

CIVIL PROCEDURE

CHAPTER TWO

PROCESS, SUMMONS, FILING OF PLEADINGS AND OTHER PAPERS

Section 201. Issuance of Summons

Upon the filing of the complaint the Court Clerk shall forthwith issue a summons and deliver it for service with a copy of the complaint to the plaintiffs attorney, Chief of Tribal Police or to a person specially appointed by the Court to serve it. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

Section 202. Form of Summons

The summons shall be signed by the Court Clerk, be under the seal of the Court, contain the name of the Court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which this Act requires the defendant to appear and defend, and shall notify him that in case of his failure to do so, judgment by default will be rendered against him for the relief demanded in the complaint. When, under Section 218, service is made pursuant to a statute or rule of the Court, the summons, or notice, or order in lieu of summons shall correspond as nearly as may be to that required by the ordinance or rule of the Court.

Section 203. Who May Serve Process Personally

(a) Process including a subpoena, if served in person, shall be served by the Chief of the Tribal Police or his deputy, or the Bureau of Indian Affairs Police, or their deputy, a person licensed to make service of process in civil cases pursuant to Court rule, or a person specially appointed by the Court for that purpose. A subpoena may also be served by any person over eighteen years of age who is not a party to the action.

(b) When process has been served and return thereof is filed in the office of the Court Clerk, a copy of the return shall be sent by the Court Clerk to the serving party's attorney within three (3) days after the return is filed.

(c) Process, other than a subpoena, shall not be served by a party's attorney except as provided in Section 204 of this Chapter. A party shall not make service of process unless appearing without an attorney, in which case, the party may make service of process in the same manner and to the same extent that an attorney for the party could have served that process under this Chapter.

CIVIL PROCEDURE

(d) The Court shall freely make special appointments to serve all process under this paragraph.

Section 204. Service of Process by Mail

(a) A summons and petition, and a subpoena, may be served by mail by the plaintiff's attorney, or any person authorized to serve process pursuant to Section 203 of this Chapter.

(b) Service by mail may be accomplished by mailing the subpoena, or a copy of the summons and petition, by certified mail, return receipt requested and delivery restricted to the addressee.

(c) Service pursuant to this paragraph shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing acceptance by the defendant or a returned envelope showing refusal of the process by the defendant. If delivery of the process is refused, upon the receipt of notice of such refusal and at least ten (10) days before applying for entry of default or judgment by default, the person serving the process shall mail to the defendant by first-class mail postage prepaid a copy of the summons and petition and a notice that despite such refusal the case will proceed and that judgment by default will be rendered against him unless he appears to defend the suit. A copy of said notice and proof of mailing thereof shall be filed of record in the case prior to the entry of a judgment by default. Any such default or judgment by default shall be set aside upon motion of the defendant if the defendant demonstrates to the Court that the return receipt was signed or delivery was refused by an unauthorized person. Such motion shall be filed within one (1) year after the defendant has notice of the default or judgment by default but in no event more than two (2) years after the judgment.

(d) In the case of an entity described in subsection (c) of Section 217 of this Chapter, acceptance or refusal by any officer or by any employee of the registered office or principal place of business who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed.

(e) In the case of governmental organization subject to suit, acceptance or refusal by an employee of the office of the officials specified in the appropriate subsection of Section 217 of this Chapter who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed.

Section 205. Service by Publication

Service of summons upon a named defendant may be made by publication when it is stated in the petition, verified by the plaintiff or his attorney, or in a separate affidavit by the plaintiff or his attorney filed with the Court, that

CIVIL PROCEDURE

with due diligence service cannot be made upon the defendant by any other method.

Section 206. Publication Service Upon Parties and the Unknown Successors of Named Parties

(a) Service of summons upon named parties, the unknown successors of a named party, a named decedent, or a dissolved partnership, corporation, or other association may be made by publication when it is stated in the complaint, verified by the plaintiff or his attorney, or in a separate affidavit by the plaintiff or his attorney filed with the Court, that the person who verified the complaint or the affiant does not know, and with due diligence cannot ascertain, the following:

(1) Whether a person named as a party is living or dead, and, if dead, the names or whereabouts of his successors, if any.

(2) The names or whereabouts of a party and the unknown successors, if any, of the named decedent or other parties.

(3) Whether a partnership, corporation, or other association named as a party continues to have legal existence or not; or the name or whereabouts of its officers or successors.

(4) Whether any person designated in a record as a trustee continues to be the trustee; or the names or whereabouts of the successors of the trustee, or

(5) The names or whereabouts of the owners or holder of special assessment or improvement bonds, or any other bonds, sewer warrants or tax bills of similar instruments.

(b) Service pursuant to this Section shall be made by publication of a notice, signed by the Court Clerk, in a newspaper authorized by law to publish legal notices which is published within the reservation. If no newspaper authorized by law to publish legal notices is published within the reservation, the notice shall be published in some such newspaper of general circulation within the reservation which is published in an adjoining county.

(c) All named parties, their unknown successors, and other persons who may be served by publication may be included in one notice. The notice shall state:

(1) The name of the Court in which the petition is filed,

(2) The names of the parties,

(3) Designate the parties whose unknown successors are being served, if any,

CIVIL PROCEDURE

(4) That the named parties and their unknown successors have been sued and must answer the complaint or other pleading on or before a time to be stated (which shall not be less than thirty-one (31) days from the date of the publication, or judgment, the nature of which shall be stated, will be rendered accordingly.

(5) It is not necessary for the publication notice to state that the judgment will include recovery of costs in order for a judgment following the publication notice to include costs of suit.

(d) If jurisdiction of the Court is based on property, any real property subject to the jurisdiction of the Court and any property or debts to be attached or garnished must be described in the notice.

(e) Service is complete upon publication.

Section 207. Publication Notice for Recovery of Money

When the recovery of money is sought, it is not necessary for the publication notice to state the separate items involved, but the total amount that is claimed must be stated. When interest is claimed, it is not necessary to state the rate of interest, the date from which interest is claimed, or that interest is claimed until the obligation is paid.

Section 208. Publication Notice in Quiet Title Actions

In an action to quiet title to real property, it is not necessary for the publication notice to state the nature of the claim or interest of either party, and in describing the nature of the judgment that will be rendered should the defendant fail to answer, it is sufficient to state that a decree quieting plaintiff's title to the described property will be entered. It is not necessary to state that a decree forever barring the defendant from asserting any interest in or to the property is sought or will be entered if the defendant does not answer. In quiet title actions notice shall be published twice. The second publication shall be not less than seven nor more than forty-five days after the first publication. The answer shall be due thirty-one days after the second publication, and service is complete upon the second publication.

Section 209. Completion of Publication Service

Service by publication is complete when made in the manner and for the time prescribed in this Chapter. Service by publication shall be proved by the affidavit of any person having knowledge of the publication with a copy of the published notice attached. No default judgment may be entered on such

CIVIL PROCEDURE

service until proof of service by publication is filed with and approved by the Court.

Section 210. Entry of Default on Party Served by Publication

Before entry of a default judgment or order against a party who has been served solely by publication under this Chapter, the Court shall conduct an inquiry to determine whether the plaintiff, or someone acting in his behalf, made a distinct and meaningful search of all reasonably available sources to ascertain the whereabouts of any named parties who have been served solely by publication under this subsection. Before entry of a default judgment or order against the unknown successors of a named defendant, a named decedent, or a dissolved partnership, corporation, or association, the Court shall conduct an inquiry to ascertain whether the requirements described in subsection (a) of Section 206 of this Chapter have been satisfied.

Section 211. Vacating Default Judgments Where Service is by Publication

(a) A party against whom a default judgment or order has been rendered, without other service than by publication in a newspaper, may, at anytime within three (3) years after the date of the judgment or order, have the judgment or order opened and be let in to defend.

(b) Before the judgment or order is opened, the applicant shall notify the adverse party of his intention to make such challenge, and shall

(1) File a full answer to the petition,

(2) Pay all costs if the Court requires them to be paid, and,

(3) Satisfy the Court by affidavit or other evidence that during the pendency of the action he had no actual notice thereof in time to appear in Court and make his defense.

(c) The title to any property which is the subject of and which passed to a purchaser in good faith by or in consequence of the judgment or order to be opened shall not be affected by any proceedings under the Section. Nor shall proceedings under this Section affect the title of any property sold before judgment under an attachment.

(d) The adverse party, on the hearing of any application to open a judgment or order as provided by this Section, shall be allowed to present evidence to show that during the pendency of the action the applicant has notice thereof in time to appear in Court and make his defense.

CIVIL PROCEDURE

Section 212. Certain Technical Errors Not Grounds for Vacating Judgment

(a) No judgment heretofore or hereafter rendered in any action against unknown heirs or devisees of a deceased person shall ever be construed, or held to be, either void or voidable upon the ground that an affidavit of the plaintiff to the effect that the name of such heirs or devisees, or any of them, and their residences, are unknown to the plaintiff, was not annexed to his complaint so long as said affidavit is on file in the action, and all such judgments, if not otherwise void, are hereby declared to be valid and binding from the date of rendition.

(b) No judgment heretofore or hereafter rendered in any action against any person or party served by publication shall be construed or held to be void or voidable because the affidavit for such service by publication on file in the action was made by the attorney for the plaintiff or because the complaint or other pleading was verified, if verification is necessary, by the attorney for the plaintiff or party seeking such service by publication. In all such cases it shall be conclusively presumed, if otherwise sufficient, that the allegations and statements made by such attorney were and are in legal effect and for all purposes made by plaintiff and shall have the same force and effect as if actually made by the plaintiff.

(c) All such judgments, if not otherwise defective or void, are hereby declared valid and legally effective and conclusive as of the date thereof as if such affidavit was made or the complaint or pleading was verified by the plaintiff or other party obtaining such service by publication.

Section 213. Meaning of "Successors" for Publication Purposes

The term "successors" includes all heirs, executors, administrators, devisees, trustees, and assigns, immediate and remote, of a named individual, partnership, corporation, or association.

Section 214. Minimum Contacts Required for Effective Long Arm Service

Service outside of the Tribal jurisdiction does not give the Court in persona jurisdiction over a defendant who is not subject to the jurisdiction of the Courts of this Tribe, or who has not, either in person or through an agent, submitted himself to the jurisdiction of the Courts of this Tribe either by appearance, written consent, or having voluntarily entered into sufficient contacts with the Tribe, its members, or its territory to justify tribal jurisdiction over him in accordance with the principals of due process of law and federal Indian law.

CIVIL PROCEDURE

Section 215. Consent is Effective Substitute for Service

An acknowledgment on the back of the summons or the voluntary appearance of a defendant is equivalent to service.

Section 216. Service Pursuant to Court Order

If service cannot be made by personal delivery or by mail, a defendant of any class referred to in subsection (a) or (c) of Section 217 of this Chapter may be served as provided by Court order in any manner which is reasonably calculated to give him actual notice of the proceedings and an opportunity to be heard. The Court may enter an order requiring such service whenever service has been by publication only prior to entering a default judgment.

Section 217. Manner of Making Personal Service

The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such certified copies as are necessary. If the complaint is not served with the summons, the case shall not be dismissed but the time to answer should be extended by the Court upon motion. The person serving the summons shall state on the copy that is left with the party served the date that service is made. Where service is to be made by mail, the person mailing the summons shall state on the copy that is mailed to the party to be served the date of mailing. These provisions are not jurisdictional, but if the failure to comply with them prejudices the party served, the Court may extend the time to answer. Service of the summons and complaint and service of subpoenas shall be made as follows:

(a) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and a copy of the complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person fifteen (15) years of age or older then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(b) Upon an infant, by delivering a copy of the summons and complaint to either parent and the legal guardian of the infant, if any, or the person with whom he resides if the infant is under the age of fourteen years. If the infant is over the age of fourteen years, by serving either parent and the legal guardian of the infant, if any, or the person with whom he resides and by serving the infant personally if the legal guardian cannot be located.

(c) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy

CIVIL PROCEDURE

to the defendant. Service may also be had upon such entities by delivering the summons and complaint to a place of business of such entity and leaving a copy with the person in charge of that place of business at the time service is made.

(d) Upon the United States, by delivering a copy of the summons and of the complaint to the United States Attorney for the Western District of Oklahoma or to an assistant United States Attorney or clerical employee designated by the United States Attorney in a writing filed with the Clerk of the United States District Court for the Western District of Oklahoma and by sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to such officer or agency.

(e) Upon any office or agency of the United States, by serving the United States and by delivering a copy of the summons and of the complaint to such officer or agency. If the agency is a corporation the copy shall be delivered as provided in subsection (c) of this Section.

(f) Upon a state, a state municipal corporation, any other Indian Tribe not a party to this Act, or other governmental organization thereof subject to suit, by delivering copy of the summons and of the complaint to the Chief Executive Officer thereof or by serving the summons and complaint in the manner prescribed by the law of that state or Tribe for the service of summons or other like process upon any such defendant.

(g) Upon this Tribe by delivering a copy of the summons and complaint to the Chief Executive Officer of the Tribe, or to such Tribal officer or employee as may be designated by the Chief Executive Officer of the Tribe in a writing filed with the Clerk of the Tribal District Court, and by sending a copy of the summons and complaint by registered or certified mail, return receipt requested, to the Attorney General and in any action attacking the validity of an order of an officer or agency of the Tribe not made a party, by also sending a copy of the summons and complaint by registered or certified mail, return receipt request, to such officer or agency. The name and address of the Attorney General may always be obtained from the Bureau of Indian Affairs.

(h) Upon any officer or agency of this Tribe by serving the Tribe, and by delivering a copy of the summons and complaint to such officer or agency. If the agency is a corporation, the copy shall be delivered as provided in subsection (c) of this section.

Section 217.1. Effect of Service of Some of Several Defendants

(a) Where the action is against two or more defendants, and one or more shall be been served, but not all of them, the plaintiff may proceed as follows:

CIVIL PROCEDURE

(1) If the action be against defendants jointly indebted upon contract, tort, or any other cause of action, he may proceed against the defendants served, unless the Court otherwise orders; and if he recover judgment, it may be entered against: (a) all the defendants thus jointly indebted only insofar as the judgment may be enforced against the joint property of all, and (b) against the defendants served insofar as the judgment may be enforced against the separate property of the defendants served, and if they are subject to arrest, against the persons of the defendants served.

(2) If the action be against defendants severally liable, he may, without prejudice to his rights against those not served, proceed against the defendants served in the same manner as if they were the only defendants.

(b) A judgment against one or more defendants served, whether jointly or severally liable, shall not be construed to make such judgment a bar to another action against those not served.

Section 218. Service Upon Party Not Inhabitant of or Found Within the Reservation

(a) Whenever an ordinance of the Tribe or an order of the Court of the Tribe provides for service of summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the geographical boundaries of the Tribal reservation, service may be made under the circumstances and in the manner prescribed by the ordinance or order, or, if there is no provision therein prescribing the manner of service, in a manner stated in this Act.

(b) In any action against a foreign corporation or association where service is authorized by Tribal law upon a Tribal Officer, and the party seeking service elects to serve the Tribal Officer, service shall be made as follows:

(1) The Tribal District Court Clerk shall issue a summons and shall forthwith mail or personally serve triplicate copies of said summons, together with a copy of the complaint and the service fee to the Tribal Officer. The Court Clerk shall make due return, indicating that the summons and complaint copies have been delivered to the Tribal Officer and the date of such delivery. Receipt of the summons and complaint by the Tribal Officer shall constitute service upon him. Within three (3) working days after service upon him, the Tribal Officer shall send copies of the summons and complaint to such foreign corporation or association, by registered or certified mail, return receipt requested, at its office as shown by the articles of incorporation, or charter, or by the latest information officially filed in the office of the Tribal Officer. The summons shall set forth the last-known address of the office of the corporation or association as ascertained by the parties by use of due diligence, and the Tribal Officer shall mail copies of the summons and complaint to the corporation or association at this address. The Tribal

CIVIL PROCEDURE

Officer shall maintain one copy of the summons and complaint with the records of the corporation or association.

(2) The original summons that is served on the Tribal Officer shall be in form and substance the same as provided in suits against residents of the Tribal jurisdiction. The summons shall state an answer date which shall be not less than forty-five (45) days nor more than sixty (60) days from the date that such summons was issued.

Section 219. Territorial Limits of Effective Service

(a) All process, other than subpoena or process involving the detention, seizure, or arrest of persons or property, may be served anywhere within the reservation boundaries, or any Indian Country, as defined by 18 U.S.C. §1151, which is subject to the jurisdiction of the Tribe and, when authorized by an ordinance of the Tribe or by this Act, beyond these territorial limits.

(b) In addition, persons who are brought in as parties pursuant to Section 117 of this Act, or as additional parties to a pending action or a counterclaim or cross-claim therein pursuant to Section 303, may be served in the manner stated in subsections (a)-(f) of Section 217 of this Act at all places outside the reservation of the Tribe but within the United States, and persons required to respond to an order of commitment for civil contempt may be served, but not arrested, at the same places.

(c) A subpoena or process involving the detention, seizure, or arrest of persons or property, may be served and compulsorily enforced only within the Indian Country, as defined by 18 U.S.C. §1151, which is subject to the jurisdiction of the Tribe. A subpoena or other process involving the detention, seizure or arrest of a person or property may be served anywhere within the United States, but no compulsory enforcement thereof may be maintained in this Court unless such person or property is located within the Indian Country of the Tribe when service is made.

(d) When the exercise of jurisdiction is authorized by Tribal or Federal law, service of the summons and complaint may be made outside this reservation:

(1) By personal delivery in the manner prescribed for service within this reservation,

(2) In the manner prescribed by the law of the place in which the service is made for service in that place in an action in any of its Courts of general jurisdiction,

(3) By publication in appropriate circumstances,

(4) As directed by the foreign authority in response to a letter rogatory, or

CIVIL PROCEDURE

- (5) As directed by the Court.

Section 220. Return of Service of Process

(a) The person serving the process shall make proof of service thereof to the Court promptly and in any event within the time during which the person served must respond to the process. If service is made by a person other than the Chief of Tribal police or his deputy, the Bureau of Indian Affairs Police or their deputy, or an attorney by mail, he shall make affidavit thereof. Return of receipt for certified or registered mail shall be attached to the proof of service if service was made by mail. A copy of each publication of notice shall be attached to the return of service by publication. Failure to make proof of service does not affect the validity of the service.

(b) The person serving the summons shall state on the copy that is left with the party served, as well as on the return, the date that service is made. Where service is to be made by mail, the person mailing the summons shall state on the copy that is mailed to the party to be served the date of mailing. These provisions are not jurisdictional, but if the failure to comply with them prejudices the party served, the Court may extend the time to answer.

Section 221. Alternative Provisions for Service in a Foreign Country

(a) **Manner.** When the law of the Tribe referred to in Section 218 of this Chapter authorizes service upon a party not an inhabitant of or found within the territorial limits of effective service of the Tribal Court, and when service is to be effected upon the party in a foreign country, it is also sufficient if service of the summons and complaint is made: (1) in the manner prescribed by the law of the Tribe, state, or foreign country for service in that Tribe, state, or country in an action in any of its Courts of general jurisdiction; or (2) as directed by the foreign authority in response to a letter rogatory when service in either case is reasonably calculated to give actual notice; or (3) upon an individual, by delivery to him personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or (4) by any form of mail, requiring a signed receipt, to be addressed and dispatched by the Clerk of the Court to the party to be served; or (5) as directed by the order of the Court. Service under (3) or (5) above may be made by any person who is not a party and is not less than 18 years of age or who is designated by order of the District Court or by the foreign Court. On request, the Clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign Court or officer who will make the service.

(b) **Return.** Proof of service may be made as prescribed by Section 220 of this Chapter, or by the law of the Tribe, state, or foreign country, or by order of the Court. When service is made by mail pursuant to subsection (a) of this Section, proof of service shall include a receipt signed by the addressee or other evidence of the delivery to the address satisfactory to the Court.

CIVIL PROCEDURE

Section 222. Subpoena

(a) **For Attendance of Witnesses; Form; Issuance.** Every subpoena shall be issued by the Clerk under the seal of the Court, shall state the name of the Court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The Clerk shall issue a subpoena, or a subpoena for the production of documentary or other physical evidence signed and sealed, but otherwise in blank, to a party requesting it, who shall fill it in before service.

(b) **For Production of Documentary Evidence.** A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the Court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith may (1) quash or modify the subpoena if it is unreasonable and oppressive or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(c) **Service.** A subpoena may be served by the Chief of the Tribal Police, by his deputy, the Indian Police of the Bureau of Indian Affairs, or by any other person authorized by the Court or by this Act who is not a party and is not less than 18 years of age. Service of a subpoena thereof to such person and by tendering to him the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the Tribe or an officer or agency thereof, fees and mileage need not be tendered, but fees paid shall be charged to such Tribal Officer or agency budget. A subpoena may be served as provided in Section 204 if accepted by the addressee. All subpoena service expenses may be recovered as other costs.

(d) **Subpoena for Taking Depositions; Place of Examination.**

(1) Proof of service of a notice to take a deposition as provided in Sections 405(b) and 406(a) or presentation of prepared notices to be attached to the subpoena constitutes a sufficient authorization for the issuance by the Clerk of the District Court of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by Section 401(b), but in that event the subpoena will be subject to the provisions of Section 401(c) and subdivision (b) of this Section.

The person to whom the subpoena is directed may, within 10 days after the service thereof or on or before the time specified in the subpoena for compliance, if such time is less than 10 days after service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the Court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

CIVIL PROCEDURE

(2) A resident of the Tribal jurisdiction may be required to attend an examination at any place within the Tribal jurisdiction not more than fifty (50) miles from his residence, except that he may be required to attend in the county or district wherein he resides or is employed or transacts his business in person, or in the town in which the District Court is located, or at such other convenient place as is fixed by an order of the Court. A nonresident of the Tribal jurisdiction may be required to attend only in the county wherein he is served with a subpoena or resides or within 50 miles from the place of service, or at such other convenient place as is fixed by an order of the Court.

(e) Subpoena for Hearing or Trial.

(1) At the request of any party, subpoenas for attendance at a hearing or trial shall be issued by the Clerk of the District Court. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the Tribal jurisdiction, or at any place without the Tribal jurisdiction that is within 100 miles of the place of the hearing or trial specified in the subpoena; and, when a statute of the Tribe provides therefore, the Court upon proper application and cause shown may authorize the service of a subpoena at any other place.

(2) A subpoena directed to a witness in a foreign country shall issue under the circumstances and in the manner and be served as may be provided by any Tribal statute.

(f) **Contempt.** Failure by any person without adequate excuse to obey a subpoena served upon him within the Tribal jurisdiction may be deemed a contempt of the District Court.

Section 230. Summons, Time Limit for Service

(a) If service of process is not made upon a defendant within one hundred twenty (120) days after the filing of the complaint and the plaintiff cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the Courts own initiative with notice to the plaintiff or upon motion.

(b) If service of process is not made upon a defendant within one hundred eighty (180) days after the filing of the complaint, the action shall be deemed to have been dismissed without prejudice as to that defendant. This Section shall not apply to service in a foreign country.

Section 231. Service and Filing of Pleadings and Other Papers

(a) **Service: When Required.** Except as otherwise provided in this Act, every order required by its terms to be served, every pleading subsequent to the original complaint unless the Court otherwise orders because of numerous

CIVIL PROCEDURE

defendants, every paper relating to discovery required to be served upon a party unless the Court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except the pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons.

In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure, and upon any person then known to claim an ownership interest in the property.

(b) **Service: How Made.** whenever service is required or permitted to be made upon a party represented by an attorney (including any person licensed to practice law before the Tribal Court) the service shall be made upon the attorney unless service upon the party himself is ordered by the Court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the Clerk of the Court who shall mail a copy thereof to the party's last address of record. Delivery of a copy within this Section means: handing it to the attorney or to the party; or leaving it at his office with his Clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person fifteen years of age or older then residing therein. Service by mail is complete upon mailing.

(c) **Service: Numerous Defendants.** In any action in which there are unusually large numbers of defendants, the Court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the Court directs.

(d) **Filing.** All papers after the complaint required to be served upon a party shall be filed with the Court either before service or within a reasonable time thereafter. Discovery materials need not be filed except by order of the Court, for use in the proceeding, or to enforce or resist such discovery.

(e) **Filing with the Court defined.** The filing of pleadings and other papers with the Court as required by this Chapter shall be made by filing them with the Clerk of the Court except that the Judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the Clerk.

CIVIL PROCEDURE

Section 240. Computation and Enlargement of Time

(a) **Computation.** In computing any period of time prescribed or allowed by this Act, by order of the Court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or any other day when the office of the Clerk of the Court does not remain open for public business until 4:00 p.m. in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday or any other day when the office of the Clerk of the Court does remain open for public business until 4:00 p.m. When the period of time prescribed or allowed is less than or equal to 7 days, intermediate Saturdays, Sundays, and legal holidays or any other day when the office of the Clerk of the Court does not remain open for public business until 4:00 p.m. shall be excluded in the computation. As used in this Section and in the provisions relating to the Court, "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the Tribe.

(b) **Enlargement.** When by this Act or by a notice given thereunder or by order of the Court an act is required or allowed to be done at or within a specified time, the Court for cause shown any at any time in its discretion may (1) with or without motion or notice order the period enlarged if request thereof is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Sections 757(b), 752(c), (d) and (e), and Section 909(b), except to the extent and under the conditions stated in them.

(c) **For Motions-Affidavits.** A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by this Act or by order of the Court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Section 908(c), opposing affidavits may be served not later than 1 day before the hearing, unless the Court permits them to be served at some other time.

(d) **Additional Time After Service by Mail.** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period.

CIVIL PROCEDURE

Section 241. General Cases in Which Extraterritorial Service Authorized

Service of summons and complaint, third party complaints, and other process by which an action is instigated may be made outside the territorial limits described in Section 219 in the following cases in addition to any circumstances specifically or otherwise provided for:

(a) In all actions arising under the Tribal juvenile statutes or The Indian Child Welfare Act;

(b) In all divorce actions when one of the parties is a resident of the Tribal jurisdiction or a member of the Tribe;

(c) In all actions arising in contract where the contract was entered into, or some material portion thereof was to be performed, within the Tribal jurisdiction; or

(d) In all actions arising out of the negligent operation of an automobile within the Tribal jurisdiction by a non-resident when an injury to person or property resulted within the Tribal jurisdiction from the negligent operation of the motor vehicle.

Section 242. Legal Newspaper

All newspapers regularly published at least once each week for a period of two years prior to the date of publication of a notice within the reservation or in any county adjacent thereto, and the Tribal newsletter shall be legal newspapers for the publication of any notice required to be published by Tribal law.

CIVIL PROCEDURE

CHAPTER THREE

PARTIES

Section 301. Parties Plaintiff and Defendant: Capacity

(a) **Real Party in Interest.** Every action shall be prosecuted in the name of the real party interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute of the Tribe so provides, an action for the use or benefit of another shall be brought in the name of the Tribe.

No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) **Capacity to Sue or Be Sued.** Except as otherwise provided by law, every person, corporation, partnership, or incorporated association shall have the capacity to sue or be sued in its own name in the Courts of the Tribe, and service may be had upon unincorporated associations and partnership as provided in Section 217 (c) of this Act, upon a managing or general partner, or upon an officer of an unincorporated association.

(c) **Infants or Incompetent Persons.** Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative he may sue by his next friend or by a guardian ad litem. The Court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.

(d) **Assignment of Tort Claims Prohibited.** Claims arising in tort may not be assigned and must be brought by the injured party, provided, that this subsection shall not preclude subrogation of the proceeds of such tort claims for the benefit of any person, including insurance companies, who have compensated the injured party for their injuries, including property damage, to the extent of the payment made by the third party.

(e) **Definitions.** For the purposes of this Section, the term "infant" means and includes every natural person less than eighteen years of age not declared emancipated from his parent or guardian by order of a Court of competent jurisdiction; and the term "incompetent person" means and includes every natural person who has been legally declared incompetent by a Court of competent jurisdiction by reason of mental incapacity, habitual or addictive abuse of alcohol or other drugs, or other cause as provided by law.

CIVIL PROCEDURE

Section 302. Joinder of Claims, Remedies, and Actions

(a) **Joinder of Claims.** A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal or equitable as he may have against an opposing party.

(b) **Joinder of Remedies; Fraudulent Conveyances.** Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the Court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to him, without first having obtained a judgment establishing the claim for money.

(c) **Joinder of Actions By the Court.** Whenever it appears to the Court that separate actions are pending between the same parties, or involving the same facts or law, the Court may, if the parties will not be prejudiced thereby, order said actions joined for all, or a portion of, the further proceedings.

Section 303. Joinder of Persons Needed for Just Adjudication

(a) **Persons to Be Joined if Feasible.** A person who is subject to service of process and whose joinder will not deprive the Court of jurisdiction over the subject matter of the action shall be joined as a party in the action if:

(1) In his absence complete relief cannot be accorded among those already parties, or

(2) He claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may:

(i) as a practical matter impair or impede his ability to protect that interest or

(ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

If he has not been so joined, the Court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or in a proper case, an involuntary plaintiff.

(b) **Determination by Court Whenever Joinder Not Feasible.** If a person as described in subdivision (a) (1)-(2) hereof cannot be made a party, the Court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the Court in making such determination include:

CIVIL PROCEDURE

(1) To what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties;

(2) The extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided;

(3) Third, whether a judgment rendered in the person's absence will be adequate; and

(4) Whether the plaintiff will have an adequate remedy if the action is dismissed for non-joinder.

(c) **Pleading Reasons for Non-Joinder.** A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a) (1)-(2) hereof who are not joined, and the reasons why they are not joined.

(d) **Exception of Class Actions.** This Section is subject to the provisions of Section 307.

Section 304. Permissive Joinder of Parties

(a) Permissive Joinder.

(1) All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences, or if any question or fact common to all these persons will arise in the action, or if the claims are connected with the subject matter of the action.

(2) All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences, or if any question of law or fact common to all defendants will arise in the action, or if the claims are connected with the subject matter of the action.

(3) A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) In actions to quiet title or actions to enforce mortgages or other liens upon property, persons who assert an interest in the property that is the subject of the action may be joined although their interest does not arise from the same transaction or occurrence.

CIVIL PROCEDURE

(c) **Separate Trials.** The Court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim, or who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

Section 305. Misjoinder and Non-Joinder of Parties

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the Court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Leave of the Court shall not be required when the pleader amends his pleadings within the time period for amendment of pleadings without leave of the Court specified in Section 115 (a). Any claim against a party may be severed and proceeded with separately upon order of the Court.

Section 306. Interpleader

(a) Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this Section supplement and do not in any way limit the joinder of parties permitted in Section 304.

(b) The provisions of this section shall be applicable to actions brought against a Tribal policeman or other officer for the recovery of personal property taken by him under execution or for the proceeds of such property so taken and sold by him; and the defendant in any such action shall be entitled to the benefit of this section against the party in whose favor the execution issued.

(c) The Court may make an order for the safekeeping of the subject of the action or for its payment or delivery into the Court or to such person as the Court may direct, and the Court may order the person who is seeking relief by way of interpleader to give a bond, payable to the clerk of the Court, in such amount and with such surety as the Court or judge may deem proper, conditioned upon the compliance with the future order or judgment of the Court with respect to the subject matter of the controversy. Where the party seeking relief by way of interpleader claims no interest in the subject of the action and the subject of the action has been deposited with the Court or with a person designated by the Court, the Court should discharge him from the action and from liability as to the claims of the other parties to the action with costs and, in the discretion of the Court, a reasonable attorney fee.

CIVIL PROCEDURE

(d) In cases of interpleader, costs may be adjudged for or against any party, except as provided in subsection (c) of this Section.

Section 307. Class Actions

(a) **Prerequisites to a Class Action.** One or more members of a class may sue or be sued as representative parties on behalf of all only if:

(1) The class is so numerous that joinder of all members is impracticable,

(2) There are questions of law or fact common to the class,

(3) The claims or defenses of the representative parties are typical of the claims or defenses of the class, and

(4) The representative parties will fairly and adequately protect the interests of the class.

(b) **Class Actions Maintainable.** An action may be maintained as a class action if the prerequisites of subsection (a) are satisfied, and in addition:

(1) The prosecution of separate actions by or against individual members of the class would create a risk of:

(i) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or

(ii) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) The Court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

CIVIL PROCEDURE

(c) **Determination by Order Whether Class Action to Be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.**

(1) As soon as practicable after the commencement of an action brought as a class action, the Court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (b) (3), the Court shall direct to the members of the class the best notice practicable under the circumstances, including individual members who can be identified through reasonable effort. The notice shall advise each member that

(i) the Court will exclude him from the class if he so requests by a specified date;

(ii) the judgment, whether favorable or not, will include all members who do not request exclusion; and

(iii) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

(3) The judgment in an action maintained as a class action under subdivision (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the Court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c)(2) was directed, and who have not requested exclusion, and whom the Court finds to be members of the class.

(4) When appropriate

(i) an action may be brought or maintained as a class action with respect to particular issues, or

(ii) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this Section shall then be construed and applied accordingly.

(5) Where the class contains more than five hundred (500) members who can be identified through reasonable effort, it shall not be necessary to direct individual notice to more than five hundred (500) members, but the members to whom individual notice is not directed shall be given notice in such manner as the Court shall direct, which may include publishing notice in newspapers, magazines, trade journals or other publications, posting it in appropriate places, and taking other steps that are reasonably calculated to bring the notice to the attention of such members, provided that the cost of giving such notice shall be reasonable in view of the amounts that may be recovered by the class members who are being notified. Members to whom individual notice was not directed may request exclusion from the class at anytime before the issue of liability is determined, and commencing an individual action before the

CIVIL PROCEDURE

issue of liability is determined shall be the equivalent of requesting exclusion from the class.

(d) **Orders in Conduct of Actions.** In the conduct of actions to which this Section applies, the Court may make appropriate orders:

(1) Determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(2) Requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the Court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

(3) Imposing conditions on the representative parties or on intervenors;

(4) Requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly;

(5) Dealing with similar procedural matters.

The orders may be combined with an order under Section 119, and may be altered or amended as may be desirable from time to time.

(e) **Dismissal or Compromise.** A class action shall not be dismissed or compromised without the approval of the Court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the Court directs.

Section 308. Derivative Actions by Shareholders and Members

(a) In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege:

(1) That the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law, and

(2) That the action is not a collusive one to confer jurisdiction on a Court of the Tribe which it would not otherwise have. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort.

CIVIL PROCEDURE

(b) The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the Court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the Court directs. The Court shall not take jurisdiction over such actions concerning the internal affairs of corporations or other entities formally organized under the law of some other jurisdiction absent the consent of all parties to the controversy or some compelling reason to assume such jurisdiction.

(c) An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the Court may make appropriate orders corresponding with those described in Section 307(d) and the procedure for dismissal or compromise of the action shall correspond with that provided in Section 307.

Section 309. Intervention

(a) **Intervention of Right.** Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the Tribe confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) **Permissive Intervention.** Upon timely application anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a tribal, federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) **Procedure.** A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Section 231. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. If the motion to intervene is granted, all other parties may serve a responsive pleading upon leave of the Court.

(d) **Intervention By the Tribe.** In any action, suit, or proceeding to which the Tribe or any agency, officer, or employee thereof is not a party in their official capacity, wherein the constitutionality or enforceability of any statute of the Tribe affecting the public interest is drawn in question, the

CIVIL PROCEDURE

parties, and upon their failure to do so, the Court shall certify such fact to the Chief Executive Officer of the Tribe, the Attorney General, and Executive Committee and the Court shall permit the Tribe to intervene for presentation of evidence, if the evidence is otherwise admissible in the case, and for argument on the question of constitutionality or enforceability. The Tribe shall, subject to the applicable provisions of law, have all the rights of a party, and be subject to the liabilities of a party — as to court costs only — to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality or enforceability of the Tribal laws at issue. It shall be the duty of the party raising such issue to promptly give notice thereof to the Court either orally upon the record in open Court or by a separate written notice filed with the Court and served upon all parties, and to state in said notice when and how notice of the pending question will be or has been certified to the Tribe as provided above.

Section 310. Substitution of Parties

(a) Death.

(1) If a party dies, the Court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Section 231 and upon persons not parties in the manner provided for the service of a summons, and may be served within or without the Tribal jurisdiction. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record, the action shall be dismissed as to the deceased party.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(3) Actions for liable, slander, and malicious prosecution shall abate at the death of the defendant.

(4) Other actions, including actions for wrongful death shall survive the death of a party

(b) **Incompetency.** If a party becomes incompetent, the Court upon motion served as provided in subdivision (a) of this Section may allow the action to be continued by or against his representative.

(c) **Transfer of Interest.** In case of any transfer of interest, the action may be continued by or against the original party, unless the Court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this Section.

CIVIL PROCEDURE

(d) **Public Officers; Death or Separation From Office.**

(1) When a public officer is a party to an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer sues or is sued in his official capacity, he may be described as a party by his official title rather than by name but the Court may require his name to be added.