

## CHAPTER ONE

COMMENCEMENT OF ACTION:  
PLEADINGS, MOTIONS AND ORDERS**Section 101. Commencement of Action**

A civil action is commenced by filing a complaint with the Court.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 101]

**Section 102. One Form of Action**

There shall be one form of action to be known as a "civil action."

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 102]

**Section 103. "Claim" Defined**

As used in this Act, the term "claim" means any right of action which may be asserted in a civil action or proceeding and includes, but is not limited to, a right of action created by statute.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 103]

**Section 104. Notice of Pendency of Action**

Upon the filing of a complaint in the District Court, the action is pending so as to charge third person with notice of its pendency. While an action is pending, no third person shall acquire an interest in the subject matter of the suit as against the plaintiff's title, except as provided in Sections 105 and 106 of this Act.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 104]

**Section 105. Notice of Pendency Contingent upon Service**

Notice of the pendency of an action shall have no effect unless service of process is made upon the defendant within one hundred and twenty (120) days after the filing of the petition.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 105]

**Section 106. Special Notice for Actions Pending in Other Courts**

No action pending in either state or federal court, or the court of any other Indian Tribe, shall constitute notice with respect to any real property or personal property located within the Tribal jurisdiction until a notice of pendency of the action, identifying the case and the court in which it is pending and giving the legal description of the land affected, or the description of the personal property and its location (if known) affected by the action, is filed of record in the office of the Clerk of the Tribal Court.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 106]

**Section 107. Pleadings Allowed; Form of Motions**

(a) **Pleadings.** There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Section 117; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the Court may order a reply to an answer or a third-party answer.

(b) **Motions and Other Papers.**

(1) An application to the Court for an order shall be by motion which, unless made during a hearing or trial, shall:

(i) be made in writing;

(ii) state with particularity the grounds therefore; and

(iii) set forth the relief or order sought.

The requirement of a writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions, signing, and other matters of form of pleading apply to all motions and other papers provided for by these rules.

(3) All motions shall be signed in accordance with Section 111 of this Act.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 107]

#### **Section 108. General Rules of Pleading**

(a) **Claims for Relief.** A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain:

(1) A short and plain statement of the claim showing that the pleader is entitled to relief; and

(2) A demand for judgment for the relief to which he deems himself entitled.

Relief in the alternative or of several different types may be demanded.

(b) **Defenses; Form of Denials.** A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. Denials shall fairly meet the substance of the averments denied. He may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. When he intends to controvert all averments in a pleading, including averments of the grounds upon which the Court's jurisdiction depends, it any, he may do so by general

denial subject to the obligation set forth in Section 111. If his is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial.

(c) **Affirmative Defenses.** In pleading to a preceding pleading, a party shall set forth affirmatively each of the following defenses relied upon:

- (1) Accord and satisfaction;
- (2) Arbitration and award;
- (3) Assumption of risk;
- (4) Contributory negligence;
- (5) Discharge in bankruptcy;
- (6) Duress;
- (7) Estoppel;
- (8) Failure of consideration;
- (9) Fraud;
- (10) Illegality;
- (11) Injury by fellow servant;
- (12) Laches;
- (13) License;
- (14) Payment;
- (15) Release;
- (16) Res judicata;
- (17) Statute of frauds;
- (18) Statute of limitations;
- (19) Waiver;

(20) Any other matter constituting an avoidance or affirmative defense.

When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the Court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) **Effect of Failure to Deny.** Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) **Pleading to be Concise and Direct; Consistency.**

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings or motions are required.

(2) A party may set forth and at a trial rely upon two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal, equitable, or other grounds. All statements shall be made subject to the obligations set for in Section 111 of this Act.

(f) **Construction of Pleadings.** All pleadings shall be liberally construed so as to do substantial justice.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 108]

### **Section 109. Pleading Special Matters**

(a) **Capacity.** It is not necessary to aver or assert the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is

made a party, except to the extent required to show the jurisdiction of the Court, if necessary. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge, and that party shall have the burden of proof on that issue.

(b) **Fraud, Mistake, Condition of the Mind.** In all averments of fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other conditions of mind of a person may be averred generally.

(c) **Conditions Precedent.** In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence of conditions precedent shall be made specifically and with particularity.

(d) **Official Document or Act.** In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) **Judgment.** In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) **Time and Place.** For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) **Special Damage.** When items of special damage are claimed, they shall be specifically stated, but specific amounts need not be alleged in order to obtain judgment in the amount to which the party is entitled.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 109]

**Section 110. Form of Pleadings, Motions, and Briefs**

(a) **Caption; Names of Parties.** Every pleading shall contain a caption setting forth the name of the Court, the title of the action, the file number, and a designation of the type of pleading in the terms expressed in Section 107(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties. In the initial third party complaint, counterclaim, cross-claim, motion and petition in intervention or a pleading by a party suing or being sued in a representative capacity, appropriate designations of all affected parties shall be made and their names shall be stated. Thereafter, papers relating to such matters may contain only the name of the first party in each category with an appropriate indication of other parties.

(b) **Paragraphs; Separate Statements.** All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings, or motions, or briefs. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) **Adoption by Reference; Exhibits.** Statements in a pleading, or motion, or brief may be adopted by reference in a different part of the same pleading or in another pleading or in any motion or brief. A copy of any written instrument which is an exhibit to a pleading, or a motion, or a brief is a part thereof for all purposes.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 110]

**Section 111. Signing of Pleadings**

Every pleading of a party represented by a licensed attorney or advocate shall be signed by at least one attorney or advocate of record in his individual name, whose address and telephone number shall be stated. A party who is not represented by an attorney or advocate shall sign his pleading

and his address and telephone number. Except when otherwise specifically provided by Rule or statute, pleadings need not be verified or accompanied by affidavit. The English and American Common Law Rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is not applicable in the Tribal Courts. The signature of an attorney or advocate constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this Section it may be stricken as sham and false and the action may proceed as though the pleading had not been served. For a willful violation of this Section any attorney or advocate may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 111]

**Section 112. Defense and Objections—When and How Presented - by Pleadings or Motions - Motion for Judgment on the Pleadings**

**(a) When Presented.**

(1) A defendant shall serve his answer within twenty (20) days after the service of summons and complaint upon him, except when service is made under any of the Sections 216, 218 or 221 of this Act and a different time is prescribed in the order of the Court, or under the statute of the Tribe.

A party served with a pleading stating a cross-claim against him shall serve an answer thereto within twenty (20) days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within twenty (20) day after service of the answer, or, if a reply is ordered by the Court, within twenty (20) days after service of the order unless the order otherwise directs. The Tribe or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim, within sixty (60) days after the service upon the Attorney General (or the Chief Executive Officer of the Tribe if there is no Attorney General) of the



pleading in which the claim is asserted, provided that no default judgment shall be entered against the Tribe, and upon affidavit of the Chief Executive Officer of the Tribe that the Tribe has no attorney but that an attorney contract is pending approval with the Bureau of Indian Affairs, the Court shall allow the Tribe to answer within twenty (20) days after the approval of the Attorney contract or within sixty (60) days after service, whichever is later.

The service of a motion permitted under this Section alters these periods of time as follows, unless a different time is fixed by order of the Court: (1) if the Court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten (10) days after notice of the Court's action; (2) if the Court grants a motion for a more definite statement the responsive pleading shall be served within ten (10) days after the service of the more definite statement.

(2) Within the time in which an answer may be served, a defendant may file any entry of appearance and reserve twenty (20) additional days to answer or otherwise defend. Any entry of appearance shall extend the time to respond twenty (20) days from the last date for answering and is a waiver of all defenses numbered 2, 3, 4, 5, and 9 of paragraph (b) of this Section, provided, that a waiver of sovereign immunity shall not be implied under defense numbered 9 of paragraph (b) of this Section since a defense based upon sovereign immunity is a defense to the subject matter jurisdiction of the court and not a defense to the parties capacity to be sued.

(b) **How Presented.** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

- (1) Lack of jurisdiction over the subject matter;
- (2) Lack of jurisdiction over the person;
- (3) Improper venue or forum non conveniens;

- (4) Insufficiency of process;
- (5) Insufficiency of service of process;
- (6) Failure to state a claim upon which relief can be granted;
- (7) Failure to join a party under Section 303;
- (8) Another action pending between the same parties for the same claim;
- (9) Lack of capacity of a party to be sued; and
- (10) Lack of capacity of a party to sue.

A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or in fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Section 905, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Section 905. Every motion to dismiss shall be accompanied by a concise brief in support of that motion unless waived by order of the Court.

(c) **Motion for Judgment on the Pleadings.** After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Section 905, and all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Section 905. Every motion for judgment on the pleadings shall be accompanied by a concise brief in support of that motion unless waived by order of the Court.

(d) **Preliminary Hearings.** The defenses specifically enumerated (1)-(10) in subdivision (b) of this Section, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this Section shall be heard and determined before trial on application of any party, unless the Court orders that the hearing and determination thereof be deferred until the trial.

(e) **Motion for More Definite Statement.** If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defect complained of and the details desired. If the motion is granted and the order of the Court is not obeyed within ten (10) days after notice of the order or within such other time as the Court may fix, the Court may strike the pleading to which the motion was directed or make such order as it deems just. Such motions are not favored.

(f) **Motion to Strike.** Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by this Act, upon motion made by a party within twenty (20) days after service of the pleading upon him or upon the Court's own initiative at any time, the Court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. If, on a motion to strike an insufficient defense, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for partial summary judgment and all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by the rules relating to summary judgment.

(g) **Consolidation of Defense in Motion.** A party who makes a motion under this Section may join with it any other motions herein provided for and then available to him. If a party makes a motion under this Section but omits therefrom any defense or objection then available to him which this Section permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h) (2) hereof on any of the grounds there stated. The Court may, in its discretion, permit a party to amend his motion by stating additional defenses or objections at any time prior to a decision on the motion.

(h) **Waiver or Preservation of Certain Defenses.**

(1) A defense of lack of jurisdiction over the person, improper venue or forum non conveniens, insufficiency of process, insufficiency of service of process or lack of capacity of a party to sue is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this Section nor included in a responsive pleading or an amendment thereof permitted by Section 118(a) to be made as a matter of course or (C) if a permissive counterclaim is filed pursuant to Section 114(b).

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Section 303, and an objection of failure to state a legal defense to a claim, and a defense of another action pending may be made in any pleading permitted or ordered under Section 107(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it is determined, upon suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 112]

**Section 113. Final Dismissal on Failure to Amend**

On granting a motion to dismiss a claim for relief, the Court shall grant leave to amend if the defect can be remedied and shall specify the time within which an amended pleading shall be filed which should normally be ten (10) days absent good cause for a shorter or longer time. If the amended pleading is not filed within the time allowed, final judgment of dismissal with prejudice shall be entered on motion except in cases of excusable neglect. In such cases amendment shall be made by the party in default within a time specified by the Court for filing an amended pleading. Within the time allowed by the Court for filing an amended pleading, a plaintiff may voluntarily dismiss the action without prejudice.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 113]

**Section 114. Counterclaim and Cross-claim**

(a) **Compulsory Counterclaims.** A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the Court cannot acquire jurisdiction. But the pleader need not state the claim if (1) At the time the action was commenced the claim was the subject of another pending action or (2) The opposing party brought suit upon his claim by attachment or other process by which the Court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any other counterclaim under this Section. A party pleading a compulsory counterclaim does not thereby waive any defenses the pleader may otherwise have which are otherwise properly raised.

(b) **Permissive Counterclaims.** A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) **Counterclaim Exceeding Opposing Claim.** A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) **Counterclaim Against the Tribe.** This Act shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the Tribe or an officer or agency thereof. A compulsory counterclaim does not waive the defense of sovereign immunity when made by the Tribe or an officer or any agency thereof. A permissive counterclaim waives the defense of sovereign immunity for the purpose of determining the permissive counterclaim stated by the Tribe, its officer, or agency, but does not waive such defense for any other purpose.

(e) **Counterclaim Maturing or Acquired after Pleading.** A claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the Court, be presented as a counterclaim by supplemental pleading.

(f) **Omitted Counterclaim.** When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, he may by leave of the Court set up the counterclaim by amendment, except that when such amendment is served within the time otherwise allowed for amendment without leave of the Court by Section 118(a) of this Act, he may set up such counterclaim by amendment without leave of the Court.

(g) **Cross-claim against Co-Party.** A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property this is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(h) **Joinder of Additional Parties.** Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Sections 303 and 304.

(i) **Separate Trials; Separate Judgments.** If the Court orders separate trials as provided in Section 706(b), judgment on a counterclaim, cross-claim, or third-party claim may be rendered in accordance with the terms of Section 901(b) when the Court has jurisdiction to do so, even if the claims of the opposing party have been dismissed or otherwise disposed of.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 114]

**Section 115.      Counterclaim; Effect of the Statutes of Limitation.**

(a) Where a counterclaim and the claim of the opposing party arise out of the same transaction or occurrence, the counterclaim shall not be barred by a statute of limitation notwithstanding that it was barred at the time the petition was filed, and the counterclaimant shall not be precluded from recovering an affirmative judgment.

(b) Where a counterclaim and the claim of the opposing party:

(1) Do not arise out of the same transaction or occurrence; and

(2) Both claims are for money judgments; and

(3) Both claims had accrued before either was barred by a statute of limitation; and

(4) The counterclaim is barred by a statute of limitation at the time that it is asserted, whether in an answer or an amended answer, the counterclaim may be asserted only to reduce the opposing party's claim.

(c) Where a counterclaim was barred by a statute of limitation before the claim of the opposing party arose, the barred counterclaim cannot be used for any purpose.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 115]

#### **Section 116. Counterclaim against Assigned Claims**

A party, other than a holder in due course, who acquired a claim by assignment or otherwise, takes the claim subject to any defenses or counterclaims that could have been asserted against the person from whom he acquired the claim, but the recovery on a counterclaim may be asserted against the assignee only to reduce the recovery of the opposing party.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 116]

#### **Section 117. Third-party Practice**

(a) **When Defendant may bring in Third-Party.** At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him, or who is or may be liable to him on a claim arising out of the transaction or occurrence that is the subject matter of any one or more of the claim(s) being asserted against him. The third-party plaintiff need not obtain leave to make the service if he files the third-party complaint not later than ten (10) days

after he serves his original answer. Otherwise he must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make his defenses to the third-party plaintiff's claim as provided in Section 114. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert his defenses as provided in Section 112 and his counterclaims and cross-claims as provided in Section 114. A third-party defendant may proceed under this Section against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third-party defendant. Any party may move to strike the third-party claim, or for its severance or separate trial.

(b) **When Plaintiff may bring in Third-Party.** When a counterclaim is asserted against a plaintiff, he may cause a third-party to be brought in under circumstances which under this Section would entitle a defendant to do so.

(c) **Party Defendants in Real Property Actions.** In an action involving real property, any person appearing in any manner in the title thereto, or claiming or appearing to claim some interest in the real property involved, may be included as a party defendant by naming such person as a party defendant in the caption of the complaint; and when such person is made a defendant in the body of the complaint under the appellation of substantially the following words, "said defendant named herein claims some right, title, lien, estate, encumbrance, claim, assessment, or interest in and to the real property involved herein, adverse to plaintiff which constitutes a cloud upon the title of plaintiff and defendant has interest, either in law or in equity, in and to the real property involved in such case, it not being necessary to set out the reason for such claim or claims in the complaint or other pleading for such person being made a party defendant.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 117]



**Section 118. Amended and Supplemental Pleadings**

(a) **Amendments.** A party may amend his pleading once as a matter of course at a time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within twenty (20) days after it is served, including amendments to add omitted counterclaims or cross-claims or to add or drop parties. Otherwise a party may amend his pleading only by leave of the Court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleading, whichever period may be the longer, unless the Court otherwise orders.

(b) **Amendments to Conform to the Evidence.** When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the Court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the Court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The Court may grant a continuance to enable the objecting party to meet such evidence. Where the pretrial conference order has superseded the pleadings, the pre-trial order is controlling and it is sufficient to amend the order and the pleadings need not be amended.

(c) **Relation Back of Amendments.** Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided

by law for commencing the action against him, the party to be brought in by amendment (1) has not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

The delivery or mailing of process to the Attorney General, or his designee, or the Attorney General of the Tribe, or an agency or officer thereof who would have been a proper defendant if named, satisfies the requirement of clauses (1) and (2) thereof with respect to the Tribe or any agency or officer thereof to be brought into the action as a defendant.

(d) **Supplemental Pleadings.** Upon motion of a party the Court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the Court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefore. A supplemental pleading will relate back to the original pleading if it arises out of the conduct, transaction, or occurrence set forth in the original pleading.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 118]

#### **Section 119. Pre-trial Procedure; Formulating Issues**

(a) In any action, the Court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider:

- (1) The simplification of the issues;
- (2) The necessity or desirability of amendments to the pleadings;
- (3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (4) The limitation of the number of expert witnesses;

(5) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;

(6) Such other matters as may aid in the disposition of the action.

(b) The Court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The Court in its discretion may establish by Rule a pre-trial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to non-jury actions or extend it to all actions.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 119]

#### **Section 120. Lost Pleadings**

If a pleading is lost or withheld by any person, the Court may allow a copy thereof to be substituted.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 120]

#### **Section 121. Tenders of Money or Property**

When a tender of money or property is alleged in any pleading, it shall not be necessary to deposit the money or property in Court when the pleading is filed, but it shall be sufficient if the money or property is deposited in Court at trial, or when ordered by the Court.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 121]

**Section 122. Dismissal of Actions****(a) Voluntary Dismissal: Effect Thereof.**

(1) By Plaintiff: By Stipulation. Subject to the provisions of Section 307 or Section 802 of any statute of the Tribe, an action may be dismissed by the plaintiff without order of the Court.

(i) by filing a notice of dismissal at any time before service by adverse party of an answer or of a motion of summary judgment, whichever first occurs; or

(ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal without the consent of the defendants operates as an adjudication upon the merits when filed by a plaintiff who has once voluntarily dismissed, without the consent of the defendants, in any Court of any Indian Tribe, the United States, or any state an action based on or including the same claim, unless such previous dismissal was entered due to inability to obtain personal jurisdiction over an indispensable party or lack of subject matter jurisdiction in the Court in which the case was previously filed. If the plaintiff claims either or both of these exceptions, it shall so state in its notice of dismissal and shall apply to the District Court, upon notice to all adverse parties for an order determining that the previous dismissal was within one or both of the two stated exceptions and that the plaintiff is entitled to dismiss the current action without prejudice. The Court may grant such application in its discretion and allow the plaintiff to dismiss without prejudice on such terms as are just, due regard being had for costs, attorney fees, and inconvenience of the defendants, and any apparent motive to harass, embarrass, or delay the defendants.

2) By Order of the Court. Except as provided in paragraph (1) of this subdivision of this Section, an action shall not be dismissed at the plaintiff's instance save upon order of the Court and upon such terms and conditions as the Court deems proper. If a counterclaim

has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the Court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) **Involuntary Dismissal: Effect Thereof.** For failure of the plaintiff to prosecute or to comply with this Act, a Court rule, or any order of the Court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff, in an action tried by the Court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The Court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the Court renders judgment on the merits against the plaintiff, the Court shall make findings as provided in Section 751(a). Unless the Court in its order for dismissal otherwise specifies, a dismissal under this subdivision for lack of jurisdiction, or for failure to join a party under Section 303, operates as an adjudication upon the merits.

(c) **Dismissal of Counterclaim, Cross-claim, or Third-party Claim.** The provisions of this Section apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this Section shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 122]

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## 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 plaintiff's 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.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 201]

**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.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 202]

**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 (18) 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 any attorney for the party could have served that process under this Chapter.

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

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 203]

#### **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 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.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 204]

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

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 205]

#### **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 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,

(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.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 206]

#### **Section 207. Publication Notice for Recovery of Money**

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 (7) nor more than forty-five (45) days after the first publication. The answer shall be due thirty-one (31) days after the second publication, and service is complete upon the second publication.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 207]

**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 (7) nor more than forty-five (45) days after the first publication. The answer shall be due thirty-one (31) days after the second publication, and service is complete upon the second publication.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 208]

**Section 209. Completion of Publication Service**

Service by publication is complete when made in the manner and for the time prescribed in the 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 service until proof of service by publication is filed with and approved by the Court.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 209]

**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.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 210]

**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 had notice thereof in time to appear in Court and make his defense.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 211]

**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.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 212]

**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.

[History: L. 1993, January 6; R-30-92]

## PUBLIC LAW # T 6 § 213]

**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.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 214]

**Section 215. Consent is Effective Substitute for Service**

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

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 215]

**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 reasonable calculated to 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.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 216]

**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 was 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 a 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 a copy 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 persons with whom he resides if the infant is under the age of fourteen (14) years. If the infant is over the age of fourteen (14) 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 a 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 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 District of Kansas 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 District of Kansas 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 officer 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 a 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 requested, 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.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 217]

**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 have been served, but not all of them, the plaintiff may proceed as follows:

(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 the recover judgment, it may be entered against:

(i) all the defendants thus jointly indebted only insofar as the judgment may be enforced against the joint property of all; and

(ii) 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.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 217.1]

**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 Officers 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 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.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 218]

**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 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 no 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 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 the 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

(5) As directed by the Court.

[History: L. 1993, January 6; R-30-92]

PUBLIC LAW # T 6 § 219]

**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, he shall make affidavit 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.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 220]

**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 a 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 an order of the Court.

Service under (3) and (5) above may be made by any person who is not a party and is not less than eighteen (18) years of age or who is designated by order of the District Court or by a 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.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 221]

## **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, or 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 eighteen (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 addressee. All subpoena services expenses may be recovered as with 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 ten (10) days after the service thereof or on or before the time specified in the subpoena for compliance, if such time is less than ten (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.

(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 fifty (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 one hundred (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 in contempt of the District Court.

[History: L. 1993, January 6; R-30-92]



PUBLIC LAW # T 6 § 222]

**Section 223-229. Reserved****Section 230. Summons, Time Limit for Service**

(a) If service of process is not made upon a defendant within one hundred and 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 Court's own initiative with notice to the plaintiff or upon motion.

(b) If service of process is not made upon a defendant within one hundred and 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.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 230]

**Section 231. Service and Filing of Pleadings and Other Papers**

(a) **Service: When Required.** Except as otherwise provided in the 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 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 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:

- (1) Handing it to the attorney or to the party; or
- (2) Leaving it at his office with his Clerk or other person in charge thereof; or
- (3) If there is no one in charge, leaving it in a conspicuous place therein; or
- (4) 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 (15) 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 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.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 231]

**Sections 232-239. Reserved**

**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 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 not remain open for public business until 4:00 p.m. When the period of time prescribed or allowed is less than or equal to seven (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 and 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 time 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 Section 757(b), 752(c), (d), (e), and Section 909(b), except to the extent and under the conditions stated therein.

(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 five (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 one (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 by mail, three (3) days shall be added to the prescribed period.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 240]

**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; or

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

(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 a person or property resulted within the Tribal jurisdiction from the negligent operation of the motor vehicle.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 241]

**Section 242. Legal Newspaper**

All newspapers regularly published at least once each week for a period of two (2) years prior to the date of publication of a notice within the reservation or in any county adjacent thereto, and the Tribal newspaper shall be legal newspapers authorized for the publication of any notice required to be published by Tribal law.

[History: L. 1993, January 6; R-30-92  
PUBLIC LAW # T 6 § 242]

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