

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 person specially appointed by Court to serve it. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

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

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

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.

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

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

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.

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

Section 205. Service by Publication

Service of summons upon a named defendant may be made by publication when it is stated

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

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,

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

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.

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

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.

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

Section 209. Completion of Publication Service

Service of publication is complete when made in the manner and for the time prescribed in

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

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

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

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 that 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

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the action the applicant has notice thereof in time appear in Court and make his defense.

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

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 judgment, 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 allegation and statement 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 judgment, 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: PUBLIC LAW #SF-85-58, June 21, 1985.]

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

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 Court, 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

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the principals of due process of law and federal Indian law.

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

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.

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

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.

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

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.

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(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 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 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.

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

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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:

(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 defendant thus jointly indebted only insofar as the judgment may be enforce 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 person 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 defendant 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: PUBLIC LAW #SF-85-58, June 21, 1985.]

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-

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

Section 219. Territorial Limits of Effective Service

(a) All process, other than subpoena or process involving the detention, seizure, or arrest of person 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,

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

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

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.

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

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

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

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 be 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 matter 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

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less than 10 days after service, serve upon the attorney designated in the subpoena written objection to inspect 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 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 on 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 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.

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

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

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prejudice as to that defendant. This Section shall not apply to service in a foreign country.

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

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 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 pleading 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 proceedings, or to enforce

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

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 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 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 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

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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.

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

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.

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

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 newspaper shall be legal newspapers for the publication of any notice required to be published by Tribal law.

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