

# CIVIL PROCEDURE

## CHAPTER THREE

### PARTIES

#### Section 301. Parties Plaintiff and Defendant: Capacity

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

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

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

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

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

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

## **CIVIL PROCEDURE**

alcohol or other drugs, or other cause as provided by law.

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

## CIVIL PROCEDURE

### Section 302. Joinder of Claims, Remedies, and Actions

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

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

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

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

### Section 303. Joinder of Persons Needed for Just Adjudication

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

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

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

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

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

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

(b) **Determination by Court Whenever Joinder Not Feasible.** If a person as described in subdivision (a) (1)-(2) hereof cannot be made a party, the Court shall determine

## CIVIL PROCEDURE

whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The facts to be considered by the Court in making such determination include:

- (1) To what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties;
- (2) The extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided;
- (3) Third, whether a judgment rendered in the person's absence will be adequate; and
- (4) Whether the plaintiff will have an adequate remedy if the action is dismissed for non-joinder.

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

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

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

### Section 304. Permissive Joinder of Parties

(a) **Permissive Joinder.**

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

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

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

## CIVIL PROCEDURE

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

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

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

### Section 305. Misjoinder and Non-Joinder of Parties

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

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

### Section 306. Interpleader

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

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

(c) The Court may make an order for the safekeeping of the subject of the action or for its payment or delivery into the Court or to such person as the Court may direct, and the Court may order the person who is seeking relief by way of interpleader to give a bond, payable to the clerk of the Court, in such amount and with such surety as the Court or judge may deem proper, conditioned upon the compliance with the future order or judgment of the Court with respect to the subject matter of the controversy. Where the party seeking relief by way of interpleader claims

## CIVIL PROCEDURE

no interest in the subject of the action and the subject of the action has been deposited with the Court or with a person designated by the Court, the Court should discharge him from the action and from liability as to the claims of the other parties to the action with costs and, in the discretion of the Court, a reasonable attorney fee.

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

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

### Section 307. Class Actions

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

- (1) The class is so numerous that joinder of all members is impracticable,
- (2) There are questions of law or fact common to the class,
- (3) The claims or defenses of the representative parties are typical of the claims or defenses of the class, and
- (4) The representative parties will fairly and adequately protect the interests of the class.

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

- (1) The prosecution of separate actions by or against individual members of the class would create a risk of:
  - (i) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or
  - (ii) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or
- (2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or
- (3) The Court finds that the questions of law or fact common to the members

## CIVIL PROCEDURE

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

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

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

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

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

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

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

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

(4) When appropriate

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

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

## CIVIL PROCEDURE

accordingly.

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

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

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

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

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

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

(5) Dealing with similar procedural matters.

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

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

### Section 308. Derivative Actions by Shareholders and Members

(a) In a derivative action brought by one or more shareholders or members to enforce

## CIVIL PROCEDURE

a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege:

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

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

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

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

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

### Section 309. Intervention

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

(b) **Permissive Intervention.** Upon timely application anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a tribal, federal, or state governmental officer or agency

## CIVIL PROCEDURE

or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

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

(d) **Intervention by the Tribe.** In any action, suit, or proceedings to which the Tribe or any agency, officer, or employee thereof is not a party in their official capacity, wherein the constitutionality or enforceability of any statute of the Tribe affecting the public interest is drawn in question, the parties, and upon their failure to do so, the Court shall certify such fact to the Chief Executive Officer of the Tribe, the Attorney General, and Tribal Legislative Body and the Court shall permit the Tribe to intervene for presentation of evidence, if the evidence is otherwise admissible in the case, and for argument on the question of constitutionality or enforceability. The Tribe shall, subject to the applicability provisions of law, have all the rights of a party, and be subject to the liability of a party--as to court costs only--to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality or enforceability of the Tribal laws at issue. It shall be the duty of the party raising such issue to promptly give notice thereof to the Court either orally upon the record in open Court or by a separate written notice filed with the Court and served upon all parties, and to state in said notice when and how notice of the pending question will be or has been certified to the Tribe as provided above.

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

### Section 310. Substitution of Parties

(a) **Death.**

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

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

## CIVIL PROCEDURE

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

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

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

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

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

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

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

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