

CIVIL PROCEDURE

SUBCHAPTER B

TRIAL PROCEDURE

Section 731. Order of Trial

When the jury has been sworn in an action before a jury, and in trials to the Court, when the Court is ready to proceed, the trial shall proceed in the following order, unless the Court for special reasons otherwise directs:

(a) The party on whom rests the burden of proving the issues may briefly state his case, and the evidence by which he expects to sustain it.

(b) The adverse party may then briefly state his defense and the evidence he expects to offer in support of it, or the adverse party may reserve his opening statement until the beginning of the presentation of his evidence.

(c) The party on whom rests the burden of proving the issues must first produce his evidence; after he has closed his evidence the adverse party may interpose a motion for a directed verdict thereto upon the ground that no claim for relief or defense is proved. If the Court shall sustain the motion, no formal verdict of the jury shall be required, but judgment shall be rendered for the party whose motion for a directed verdict is sustained as the state of the pleading or the proof shall demand.

(d) If the motion for a directed verdict is overruled, the adverse party may then briefly state his case if he did not do so prior to the beginning of the presentation of the evidence, and, shall then produce his evidence.

(e) The parties will then be confined to rebutting evidence unless the Court, for good reasons in furtherance of justice, shall permit them to offer evidence in the original case.

(f) After the close of the evidence, and when the jury instructions have been finalized by the Court, the parties may then make their closing arguments as to the evidence proved and reasonable inferences to be drawn therefrom. The party having the burden of proving the issue shall first present his argument. Thereafter, the other party shall present his argument, and then, the party having the burden of proof shall have the opportunity for rebuttal argument. The Court may place reasonable limitation upon the time allowed for closing argument, provided, that each side to the action should have the same total for argument if time restrictions are placed thereon.

(g) After the closing arguments of the parties have been completed, the Court shall instruct the jury as to the law of the case, and shall give a copy of the written instructions to the jury for their use during their deliberations.

(h) The Court shall then place the bailiff or some other responsible person under oath

CIVIL PROCEDURE

to secure the jury against interference, and the jury shall retire to determine its verdict.

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

Section 732. Taking of Testimony

(a) **Form.** In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by a law of the Tribe or by this Title, the Tribal Rules of Evidence, or other rules adopted by the Supreme Court of the Tribe.

(b) **Affirmation in Lieu of Oath.** Whenever under this Title an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(c) **Evidence on Motions.** When a motion is based on facts not appearing of record the Court may hear the matter on affidavits presented by the respective parties, but the Court may direct that the matter be heard wholly or partly on oral testimony or depositions.

(d) **Interpreters.** The Court may appoint an interpreter of its own selection and may fix his reasonable compensation. The compensation shall be paid of funds provided by law or by one or more of the parties as the Court may direct, and may be taxed ultimately as costs, in the discretion of the Court.

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

Section 733. Exceptions Unnecessary

Formal exceptions to rulings or orders of the Court are unnecessary; but it is sufficient that a party, at the time the ruling or order of the Court is made or sought, makes known to the Court the action which he desires the Court to take or his objection to the action of the Court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.

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

Section 734. Instruction to Jury - Objection

(a) At the close of the evidence or at such earlier time during the trial as the Court reasonably directs, any party may file written requests that the Court instruct the jury on the law as set forth in the requests. The Court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the Court shall instruct the jury after the arguments are completed. No party may assign as error the giving or the failure to give an instruction unless he objects thereto or proposes the requested instruction before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity

CIVIL PROCEDURE

shall be given to make the objection out of the hearing of the jury.

(b) All instructions requested, and modifications thereof, shall be reduced to writing, numbered, and signed by the party or his attorney asking the same and filed in the record of the case.

(c) When either party asks special instructions to be given to the jury, the Court shall either give such instructions as requested, or positively refuse to do so; or give the instructions with modification in such manner that it shall distinctly appear what instructions were given in whole or part, and in like manner those refused, to that either party may except to the instructions as asked for, or as modified, or the modification, or to the refusal.

(d) All instructions given by the Court must be numbered, signed by the judgment; and filed together with those asked for by the parties as a part of the record.

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

Section 735. Uniform Jury Instructions

The Supreme Court, in its discretion, is authorized to promulgate by rule uniform instructions to be given in jury trials of civil or criminal actions, which, if applicable in a civil or criminal action, due regard being given to the facts and prevailing law, shall be used unless the Court determines that the instruction does not accurately state the law.

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

Section 736. Objections to Instructions - Copies to Parties

A party objecting to the giving of instructions, or the refusal thereof, shall not be required to file a formal bill of exceptions; but it shall be sufficient to make objection thereto by dictating into the record in open Court, out of the hearing of the jury, before the reading of all instructions, the number of the particular instruction that was requested, refused, and objected to, or the number of the particular instruction given by the Court that is excepted to. Provided, further that the Court shall furnish copies of the instructions are given by the Court.

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

Section 737. View by Jury

Whenever, in the opinion of the Court, it is proper for the jury to have a view of the property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted, in a body, under the charge of an officer, to the place, which shall be shown to them by some person appointed by the Court for that purpose. While the jury

CIVIL PROCEDURE

are thus absent, no person , other than the person so appointed, shall speak to them on any subject connected with the trial.

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

Section 738. Deliberations of the Jury

When the case is finally submitted to the jury, they shall retire for deliberation. When they retire, they must be kept together, in some convenient place, under charge of an officer, until they agree upon a verdict or be discharged by the Court, subject to the discretion of the court, to permit them to separate temporarily at night, and at their meals. The officer having them under his charge shall not suffer any communication to be made to them, or make any himself, except to ask them if they are agreed upon their verdict, and to communicate a request by the jury to the Court in open Court, unless by order of the Court; and he shall not, before their verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon.

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

Section 739. Admonition of Jury on Separation

If the jury are permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the Court that it is their duty not to converse with, or suffer themselves to be addressed by, any other person, on any subject of the trial, and that it is their duty not to form or express an opinion thereon, until the case is finally submitted to them.

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

Section 740. Information After Retirement

After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed as to any part of the testimony, or if they desire to be informed as to any part of the law arising in the case, they may request the officer to conduct them to the Court, where the information on the point of law shall be given in writing, and the Court may give its recollections as to the testimony on the point in dispute, or cause the same to be read by the stenographer or played back on an electronic recording device by the reporter in the presence of, or after notice to, the parties or their Counsel. Upon motion in appropriate circumstances, the Court may order that other portions of the record relating to the same issue also be read or played back to the jury upon the questioned point.

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

CIVIL PROCEDURE

Section 741. When the Jury may be Discharged

The jury may be discharged by the Court on account of the sickness of a juror, or other accident or calamity requiring their discharge, or by consent of both parties, or after they have been kept together until it satisfactorily appears to the Court that there is no probability of their agreeing.

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

Section 742. Re-trial

In all cases where the jury are discharged during the trial, or after the cause is submitted to them, it may be tried again immediately, or at a future time, as the Court may direct.

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

Section 743. Proof of Official Record

(a) **Authentication.**

(1) Domestic. An official record kept within the United States, or any Indian Tribal jurisdiction, state, district, commonwealth, territory, or insular possession thereof, or within the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Island, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public office having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office.

(2) Foreign. A foreign official record, or any entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position related to the attestation or is in a chain of certificate of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul, general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the Court may, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the

CIVIL PROCEDURE

foreign official record to be evidence by an attested summary with or without a final certification.

(b) **Lack of Record.** A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (a) (1) of this Section in the case of a domestic record, or complying with the requirements of subdivision (a) (2) of this Section for summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) **Other Proof.** This Section does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

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

Section 744. Determination of Foreign Law

A party who intends to raise an issue concerning the law of a foreign jurisdiction shall give notice in his pleadings or other reasonable written notice. The Court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Tribal Rules of Evidence. The Court's determination shall be treated as a ruling on a question of law. The District Court shall take judicial notice of the law of any foreign jurisdiction within the United States published in an official publication of that jurisdiction upon reasonable notice of the law in question. The term "foreign jurisdiction within the United States" includes every federally recognized Indian Tribe, every state, territory, or possession of the United States, the United States, and their political subdivisions and agencies.

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

Section 745. Appointment and Duties of Masters

(a) **Appointment and Compensation.** The District Court with the concurrence of a majority of all the Judges thereof may appoint one or more standing masters, and the trial judge, in an appropriate case, may appoint a special master to act in a particular case. The word "master" includes a referee, an auditor, and an examiner, a commissioner, and an assessor. The compensation to be allowed to a master shall be fixed by the Court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the Court as the Court may direct. The master shall not retain his report as security for his compensation; but when the party ordered to pay the compensation allowed by the Court does not pay it after notice and within the time prescribed by the Court, the master is entitled to a writ of execution against the delinquent party.

(b) **Reference.** A reference to a master shall be the exception and not the rule. In action to be tried by a jury, a reference shall be made only when the issues are complicated; in

CIVIL PROCEDURE

actions to be tried without a jury, save in matter of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

(c) **Powers.** The order of reference to the master may specify or limit his powers and may direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writing applicable thereto. He may rule upon the admissibility of evidence unless otherwise directed by the order or reference and has the authority to put witnesses on oath and may himself examine them, and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Section 732(c) for a Court sitting without a jury.

(d) **Proceedings.**

(1) Meetings. When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within twenty (20) days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the Court for an order requiring the master to speed the proceedings and to make his report. If a party fails to appear at the time and place appointed, the master may proceed ex parte, or, in his discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) Witnesses. The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Section 222. If without adequate excuse a witness fails to appear or give evidence, he may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in Section 412(b) and 222(f).

(3) Statement of Accounts. When matters of accounting are in issue before the master, he may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as he directs.

CIVIL PROCEDURE

(e) Report.

(1) Content and Filing. The master shall prepare a report upon the matters submitted to him by the order of reference, and, if required to make findings of fact and conclusions of law, he shall set them forth in the report. He shall file the report with the clerk of the court and in an action to be tried without a jury, unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The clerk shall forthwith mail to all parties notice of the filing.

(2) In Non-Jury Actions. In an action to be tried without a jury the Court shall accept the master's findings of fact unless clearly erroneous. Within ten (10) days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the Court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Section 240(d). The Court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(3) In Jury Actions. In an action to be tried by a jury the master shall not be directed to report the evidence. His findings upon the issues submitted to him are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report.

(4) Stipulation as to Findings. The effect of master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(5) Draft Report. Before filing his report, a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

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