

# CIVIL PROCEDURE

## CHAPTER SEVEN

### TRIALS

#### Section 701. Trial Defined

A trial is a judicial examination of the issues, whether of law or fact, in an action.

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

#### Section 702. Trial of Issues

Issues of law must be tried by the Court. Issues of fact arising in actions for which a jury trial is provided by law may be tried by a jury, if a jury trial is demanded, unless a reference be ordered, as hereinafter provided. All other issues of fact shall be tried to the Court.

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

#### Section 703. Jury Trial of Right

(a) **Rights Preserved.** The right of trial by jury as declared by the Tribal Constitution or a statute of the Tribe, or the Indian Civil Rights Act of 1968 shall be preserved inviolate, In all actions, except forcible entry and detained, arising in contract or tort where the amount in controversy, or the value of the property to be recovered, as stated in the prayer for relief or an affidavit of a party, or as found by the Court where the amount in controversy is questioned by the affidavit of the adverse party, exceeds Ten Thousand Dollars (\$10,000.00) except as otherwise specifically provided by law and in tax cases, and in all actions for the involuntary removal of children from the custody of their parents, or custodian and the involuntary termination of parental rights, the action may be tried to a jury upon demand of any party. All other actions and issues of fact shall be tried to the Court.

(b) **Demand.** Any party entitled to a jury trial may demand a trial by jury of any issue triable of right by a jury pursuant to any law of the Tribe by serving upon the other parties a demand therefore in writing at any time after the commencement of the action and not later than ten (10) days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party. Such demand shall not be effective unless, at the time of filing or at such later time as the Court shall by rule allow, the party making such demand deposit with the Court Clerk a reasonable jury fee in such amount as the Court shall by rule determine. The amount of such deposit shall be set by the Court in such amount as may be reasonably necessary to offset the costs of juror fees for the impaneling and trying of the action, without being in an amount which may preclude or prevent a party from exercising their right to a jury trial. Such rules shall contain a provision for waiver of the deposit requirement for person proceeding in forma pauperis.

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(c) **Same; Specification of Issues.** In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within ten (10) days after service of the demand or such lesser time as the Court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) **Waiver.** The failure of a party to serve a demand as required by this section and to file it as required by Section 231(d) constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties. Even though previously demanded, the trial by jury may be waived by the parties, in actions arising on contract, and with the assent of the court in other actions, in the following manner: By the consent of the party appearing, when the other party fails to appear at the trial by himself or attorney. By written consent, in person or by attorney, filed with the clerk. By oral consent, in open court, entered on the journal.

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

### Section 704. Trial by Jury or by the Court

(a) **By Jury.** When Trial by jury has been demanded as provided in Section 703, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless:

(1) the parties or their attorneys of record, by written stipulation filed with the Court or by an oral stipulation made in open Court and entered in the record, consent to trial by the Court sitting without a jury;

(2) the Court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Constitution and laws of the Tribe, or under the Indian Civil Rights Act.

(b) **By the Court.** Issues not demanded for trial by jury as provided in Section 703 shall be tried by the Court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the Court in its discretion or upon motion of a party may order a trial by a jury of any or all issues properly triable to a jury.

(c) **Advisory Jury and Trial by Consent.** In all actions not triable of right by a jury the court upon motion or its own initiative may try any issue with an advisory jury or, except in actions against the Tribe when a statute of the Tribe provides for trial without a jury, the Court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

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

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### Section 705. Assignment of Cases for Trial

The District Court shall provide by rule for the placing of actions upon the trial calendar

- (1) without request of the parties or
- (2) upon request of a party and notice to the other parties or
- (3) in such other manner as the Court deem expedient. Precedence shall be given to actions entitled thereto by any statute of the Tribe.

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

### Section 706. Consolidation; Separate Trials

\_\_\_\_\_ (a) **Consolidation.** When different actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delays.

(b) **Separate Trials.** The Court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or any separate issue or any number of claims, cross-claims, counterclaims, or third-party claims, or issues, always preserving inviolate the right to trial by jury as declared by the Indian Civil Rights Act, the Tribal Constitution or as given by a statute of the Tribe.

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