

**RESOLUTION OF THE GOVERNING BODY OF
THE THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD RESERVATION**

- WHEREAS,** This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and
- WHEREAS,** The Constitution of the Three Affiliated Tribes generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and
- WHEREAS,** Article VI, Section 3 of the Constitution of the Three Affiliated Tribes specifically authorizes and empowers the Tribal Business Council to exercise all sovereign authority both legislative and judicial within the scope of the jurisdiction recognized in Article I of the Constitution; and
- WHEREAS,** The Judicial Civil Procedure code, chapter II of the Code of Laws of the Three Affiliated Tribes lacks a provision for service by publication; and
- WHEREAS,** It is the considered judgment of the Tribal Business Council that there exists an immediate need for an interim provision in the Civil Procedure Code governing service by publication, pending the enactment of a new Civil Procedure Code; and
- NOW, THEREFORE, BE IT RESOLVED,** The Tribal Business Council of the Three Affiliated Tribes hereby adopts the attached procedure governing service by publication pending enactment of a new Civil Procedure Code; and
- NOW, BE IT FURTHER RESOLVED,** That the attached provisions entitled, "Rules of Civil Procedure Governing Service By Publication For Domestic Relations", shall take effect immediately.

**RULES OF CIVIL PROCEDURE GOVERNING
SERVICE BY PUBLICATION IN THE AREA
OF DOMESTIC RELATIONS**

1. Service By Publication. A defendant, whether known or unknown, who cannot be served personally may be served by publication in the manner hereinafter provided if the action is for divorce, separation from bed and board, or annulment of a marriage of a resident of the Reservation or to determine custody of an individual subject to the Court's jurisdiction.

2. Filing of Complaint and Affidavit for Service by Publication. Before service of the summons by publication is authorized, there must be filed with the Clerk of Court of the Fort Berthold Tribal Court a Complaint setting forth a claim in favor of the plaintiff and against the defendant, and an affidavit executed by the plaintiff or his attorney stating the following:

(A) That personal service of the summons and complaint cannot be made upon the defendant in this Reservation to the best knowledge, information, and belief of the Affiant, in which case the affidavit must be accompanied by the return of a law enforcement officer where the action is brought stating that after diligent inquiry for the purpose of serving the summons and complaint he is unable to make personal service thereof upon the defendant.

3. Number of Publications. Service of the summons by publication may be made by publishing the same two times, once in each week for two successive weeks, in a newspaper published on the Reservation, and if no on-reservation newspaper is published, then in a newspaper having a general circulation on the reservation.

4. Mailing of Summons and Complaint. A copy of the summons and complaint, at any time after the filing of the affidavit for publication and not later than ten days after the first publication of the summons, must be deposited in some post office, postage prepaid, and directed to the defendant to be served at the defendant's last reasonably ascertainable post office address.

5. Personal Service Outside Reservation Equivalent to Publication. After the affidavit for publication and the complaint in the action are filed, personal service of the summons and complaint upon the defendant off the reservation is equivalent to and has the same force and effect as the publication and mailing provided for in paragraphs 3 and 4 hereinabove.

6. Time When First Publication or Service Outside Reservation Must Be Made. The first publication of the summons and complaint upon the defendant off of the Reservation, must be made within sixty days after the filing of the affidavit for publication. If not so made, the action is deemed discontinued as to any defendant not served within that time.

7. When Defendant Served by Publication Permitted to Defend. The defendant upon whom service by publication is made, or the defendant's representative, by written Answer within thirty (30) days after completion of service by publication or on application and cause shown at any time before entry of judgment, must be allowed to defend the action.

8. When Service By Publication Is Complete. Service by publication is complete upon the expiration of fifteen days after the first publication of the summons.

9. Amendment. At any time and upon such notice and terms as it deems just, the court, in its discretion, may allow any process or proof of service thereof to be amended unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process is issued.

10. Proof of Service of the Summons And Complaint. When served by publication, proof of service must be made by an affidavit of mailing of a copy of the summons and complaint in accordance with paragraph 4. Said affidavit must state that a copy of the process, pleading, order of court, or other paper to be served was deposited by the affiant, with postage prepaid, in the United States mail and directed to the party shown in the affidavit to be served at the party's last reasonably ascertainable post office address, showing the date and place depositing and that the affiant is of legal age and having attached thereto the return receipt, if any.

CERTIFICATION

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 6 were present at a Regular Meeting thereof duly called, noticed, convened, and held on the 10th day of May, 1990; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 4 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Dated the 10th day of May, 1990.

ATTEST:

Edward Love Fejer
Chairman, Tribal Business Council

Paul Young
Secretary, Tribal Business Council