6-07/690.00 Defendant Incorrectly Named

A summons and complaint should be served on the person intended to be sued even though there is a mistake in the name of the defendant. (Lester v. Beer, 74 CA 2d Supp. 984) The certificate of service should show the true name of the defendant and his name as shown on the summons. For example, William A. Johnson sued herein as William A. Johnston.

In Brum v. Ivins, 154 CA 17 al p. 20, the Supreme Court stated:

There are cases of slight errors in spelling, which do not destroy the virtual identity of name, *(idem sonans).* Such errors are disregarded entirely. For example, in *Seaver* v. *Fitzgerald,* 23 Cal. 85, it was held that a valid judgment against D.C. Seaver could be based on a publication of summons designating the defendant as "D.C. Seavers." "The names," said the court, "are substantially the same."

Even if there is a substantial difference between the names, the court on proper proceedings, may allow the mistake in the name of the defendant to be corrected by amendment. (CCP 473; Nisbet v. Clio Mining Co., 2 CA 441; Thompson v. Southern Pacific Co., 180 CA 731)