

TITLE 5
COMANCHE
NATION CIVIL
INFRACTIONS

GENERAL PROVISIONS

SCOPE AND PURPOSE OF RULES

- (a) Scope of Rules. These rules govern the procedure for all cases in Comanche Nation Tribal Court involving "infractions". Infractions are noncriminal violations of law.
- (b) Purpose. These rules shall be construed to secure the just, speedy, and inexpensive determination of every infraction case.

DEFINITIONS

For the purposes of this Title:

- (a) "Infraction" means a civil offense in which the remedy involved is liquidated damages which has been pre-determined by the Comanche Business Committee as provided by the infractions procedures in this Title. An infraction is not a crime and the judgment shall not affect or impair the credibility of a witness or otherwise of any person convicted thereof.
- (b) "Infraction case" means a civil proceeding initiated in the Comanche Nation Tribal Court pursuant to this Title that authorizes offenses to be treated as infractions.
- (c) "Notice of infraction" means a document initiating an infraction case when issued and filed pursuant to this Title.
- (d) "Court" means the Comanche Nation Tribal Court.
- (e) "Defendant" means the person against whom an action is filed under this Title.
- (f) "Judgment" means any final decision in an infraction case, including, but not limited to, a finding entered after a hearing governed by these rules or after payment of a monetary forfeiture in lieu of a hearing.
- (g) "Litter" means all waste material including but not limited to disposable package or containers thrown or deposited as herein prohibited.
- (h) "Public" means a location within the Comanche Nation Indian Country to which the public or a substantial group has access or those individuals present in such location. A public place includes, but is not limited to; a Casino, highways, transport facilities, schools, Tribal buildings, apartment houses, places of business or amusement, or any neighborhood.
- (i) "Department" means a department or agency of the Comanche Nation.
- (j) "Lawyer" means any person authorized to practice law in the Comanche Nation Tribal Court.
- (k) "Citing officer" means a Comanche Nation law enforcement officer or other official authorized by law to issue a notice of infraction.
- (l) "Judge" means any judge of the Comanche Nation Tribal Court authorized to preside over infraction cases.

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(m) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the defendant.

Duties and Authority of Officers; Warrants not Required

(a) It shall be the duty of Comanche Nation law enforcement officers to enforce the provisions of this Title without the necessity of procuring a warrant.

(b) A Comanche Nation law enforcement officer is authorized to arrest any person who is subject to the criminal laws of the Comanche Nation who resists, delays, prevents or obstructs any such officer, in the discharge, or attempt to discharge, of any duty under this Title or gives a false report to any peace officer. Any person who is subject to the criminal jurisdiction of the Comanche Nation and who is arrested under this section shall be guilty of a criminal offense and may be prosecuted pursuant to the Criminal Code of the Comanche Nation Tribal Court. To the extent authorized by law, any person who is not subject to the criminal jurisdiction of the Comanche Nation and violates any City, State, or Federal law while resisting, delaying, preventing or obstructing any such officer, in the discharge, or attempt to discharge, of any duty under this Title or gives a false report to any peace officer may be transported without unnecessary delay to the nearest authority for the State of Oklahoma or the United States.

OFFENSES

Property

Trespass

A person commits the infraction of trespass if he:

(a) Enters upon the real property of another that is posted to prohibit trespassing, is fenced or contains obvious outward signs of habitability without permission of the owner or the owner's agent;

(b) Enters Comanche Indian Country that is not specifically posted as open to the public;

(c) Refuses to depart from or re-enters the Comanche Nation Indian Country in violation of an order issued by the Tribal Court as provided by this Title.

(d) Refuses to depart from or re-enters an establishment that is generally open to the public upon the Comanche Nation Indian Country after receiving prior notice from the establishment of banishment from the premises or prohibition to enter the premises.

Vandalism

A person commits the infraction of vandalism if he:

(a) Injures, defaces, damages or destroys;

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(1) Private property in which any other person has an interest without the consent of such other person;

(2) Tribal or other property without the lawful consent of the appropriate governing body;
or

(3) An obvious place of burial or ceremonial site.

(b) Deposits, throws, or propels any substance upon any highway, roadway, runway, or railroad track, or any vehicle while such vehicle is either in motion or stationary.

PUBLIC ORDER

False Reporting

A person commits the infraction of false reporting if he initiates a false alarm or report which is transmitted to a fire department, law enforcement agency, or other organization that responds to emergencies involving danger to life or property.

Use or Possession of Alcohol Beverage at Public Locations

A person commits the infraction of use or possession of alcohol beverage at public locations if he or she uses or possess alcohol beverages on the premises of any Comanche Nation public location where alcohol possession is not specifically authorized.

Harassment

A person commits the infraction of harassment if:

(a) Without lawful authority, he, by words or conduct directed at another, threatens to:

(1) Cause bodily injury in the future to any person;

(2) Cause physical damage to the property of a person other than the actor;

(3) Subject any person to physical confinement or restraint; or

(4) Does any other act which is intended to substantially harm any person with respect to his or her physical or mental health or safety; and

(b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out.

Cruelty to Animals

(a) A person commits the infraction of cruelty to animals if he:

(1) Maliciously kills maims or wounds any animal;

(2) Overworks, tortures, torments, deprives of necessary sustenance, drink or shelter,

(3) Cruelly beats, or mutilates or cruelly kills any animal;

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- (4) Has custody of or is responsible for an animal and willfully subjects the animal to needless suffering or inflicts any unnecessary cruelty upon the animal;
- (5) Transports or carries any animal in a cruel and inhumane manner; or
- (6) Causes any animal to fight of his amusement or betting or wagering, permits the same to be done on any premises or is present at such fight.

(b) It shall be a defense to a prosecution under this section if the actor was involved in an accepted veterinary practice or engaged in hunting or fishing in accordance with the provisions of this Title and his actions were not cruel or inhumane under the circumstances. The Court shall use a reasonableness standard when determining whether a defense exists under this subsection.

PUBLIC HEALTH, SAFETY AND WELFARE

Public Nuisance

(a) A person commits a public nuisance infraction if without lawful authority to do so, he does any act or fails to do any duty, which act or omission either;

- (1) Unreasonably annoys, injures, or endangers the comfort, repose, health, or safety of three (3) or more persons;
- (2) Offends public decency;
- (3) Unlawfully interferes with, obstructs, or tends to obstruct, or render dangerous for passage, any lake, stream, canal, or basin, or any public park, square, street, highway, or road; or
- (4) In any way unreasonably renders three (3) or more persons insecure in life or the use of property.

(b) An act or omission to act which affects three (3) or more persons in the ways specified in this section is still a nuisance regardless that the extent of the annoyance or damage inflicted on the individuals is unequal.

(c) The presence of a lawful authority under this section need not be disproved by the Comanche Nation but shall be presented as an affirmative defense.

(d) The commission by act or omission of a public nuisance shall not be applicable under this section if the same conduct constitutes another offense which has also been charged against a defendant.

Using, Possessing, Purchasing, or Obtaining Tobacco Products by Minors

"Minor," for purposes of this section, means a person under the age of 18.

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A minor commits the infraction of using, possessing, purchasing, or obtaining tobacco products, if the minor uses, possesses, purchases, or obtains tobacco products.

Rehabilitation, community restitution: The following corrective actions shall be given:

(a) For first infraction: Under the discretion and administration of an appropriate Comanche Agency:

- (1) participation in a tobacco cessation program for one hour; or
- (2) community restitution for two hours;

(b) For second infraction: Under the discretion and administration of the appropriate Comanche Agency:

- (1) participation in a tobacco cessation counseling program for one hour;
- (2) community restitution for two hours; and
- (3) participation in a peer training group for four hours;

(c) For third infraction:

- (1) rehabilitative treatment in a one-hour, six-week cessation counseling program or substantially equivalent program, or
- (2) 20 hours of community restitution.

(d) Tobacco products possessed by minors are considered contraband and may be seized by Comanche Nation law enforcement.

(e) It shall be a defense to a charge of a violation of this section that tobacco products were used, possessed, purchased, or obtained for traditional tribal ceremonial purposes.

Selling or Giving Tobacco Products to Minors

(a) "Minor," for purposes of this section, means a person under the age of 18.

(b) A person commits the infraction of selling or giving tobacco products to a minor if the person sells or gives, or permits to be sold or given, tobacco products to a minor, while knowing that the minor is a minor.

(c) Fee: The following fees shall be given:

- (1) For first infraction: up to \$200 fee;
- (2) For each subsequent infraction: up to \$500 fee.

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(d) It shall be a defense to a charge of a violation of this section that tobacco products were used, possessed, purchased, or obtained for traditional tribal ceremonial purposes.

Littering

A person commits the infraction of littering if he:

(a) Throws, drops, discards or otherwise disposes of any litter anywhere within the Comanche Nation Indian Country except in authorized public waste disposal grounds or an authorized receptacle made available for such purpose; or

(b) Without lawful permission, stores or allows to accumulate any wrecked, junked or unserviceable vehicles, appliances or implements anywhere on the Comanche Nation Indian Country.

Violation of Tribal Law

A person commits the infraction of violation of tribal law if he violates any tribal law or any other Comanche Business Committee enactment intended to preserve the peace, health, safety, welfare, and morals of the Comanche Nation Indian Country, when a punishment for such violation is not provided under any other provision of this Title or the law or enactment itself.

Comanche Nation Grounds

A person commits a grounds infraction if during any Comanche Nation celebration either public or ceremonial grounds he:

(a) Uses or possesses, without lawful authority, alcohol beverage, drugs, and or controlled substances;

(b) Uses fireworks except as authorized by the Comanche Business Committee;

(c) Engages in non-traditional gambling except in conformity with tribal Gaming law;

(d) Violates a rule of the applicable celebration or ceremony;

(e) Parks in a NO PARKING area near a celebration or ceremony. Any vehicle found in violation of this subsection shall be towed away at the owner's expense; or

(f) Parks in a designated HANDICAPPED PARKING area near a celebration or ceremony. Any vehicle found in violation of this subsection shall be towed away at the owner's expense;

NOTICE OF INFRACTION

(a) Infraction Form Prescribed or approved by the Court Clerk/Administrator. Infraction cases shall be filed on a form entitled "Notice of Infraction" prescribed by the Court

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Clerk/Administrator. Notice of Infraction forms prescribed or approved by the Court Clerk/Administrator are presumed valid and shall not be deemed insufficient by reason of defects or imperfections which do not prejudice substantial rights of the defendant.

(b) Contents. The notice of infraction shall contain the following information on the copy given to the defendant, except the information required by subsections (2) is not required on a notice of infraction alleging the commission of a parking, standing, or stopping infraction:

- (1) The name, address, and phone number of the court where the notice of infraction is to be filed;
- (2) The name, address, date of birth, sex, physical characteristics, and, for a notice of traffic infraction, the operator's license number of the defendant;
- (3) For a notice of traffic infraction, the vehicle make, year, model, style, license number, and state in which licensed;
- (4) The infraction which the defendant is alleged to have committed and the accompanying statutory citation or ordinance number, the date, time, and place the infraction occurred, the date the notice of infraction was issued, and the name and, if applicable, the number of the citing officer;
- (5) A statement that the defendant must respond to the notice of infraction within 15 days of the date the notice is personally served or, if the notice is served by mail, within 18 days of the date the notice is mailed.
- (6) A space for entry of the monetary forfeiture which respondent may pay in lieu of appearing in court;
- (7) A statement that a mailed response must be postmarked not later than three days before the day the response is due;
- (8) The statements required by any other applicable statute; and
- (9) Any additional information determined necessary by the Court Clerk/Administrator.

(c) Summons. The notice of infraction shall serve as a summons.

INITIATION OF INFRACTION CASES

(a) Generally. An infraction case is initiated by the issuance, service, and filing of a notice of infraction in accordance with this rule. An infraction is issued on the date the infraction is signed by the citing officer or Tribal Prosecutor.

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(b) Who May Issue. A notice of infraction may be issued, upon certification that the issuer has probable cause to believe, and does believe, that a person has committed an infraction contrary to law:

(1) By a citing officer. The infraction need not have been committed in the officer's presence, except as provided by statute;

(2) By the Tribal Prosecutor.

(c) Service of Notice. A notice of infraction may be served either by:

(1) The citing officer serving the notice of infraction on the person named in the notice of infraction at the time of issuance by obtaining the signature of the person or indicating a refusal to sign by the person;

(2) The citing officer affixing to a vehicle in a conspicuous place the notice of a traffic infraction if it alleges the violation of a parking, standing, or stopping statute and indicating upon the notice of such service; or

(3) The citing officer or the Tribal Prosecutor filing the notice of infraction with the court, in which case the court shall have the notice served either personally or when the whereabouts of a defendant outside the Comanche Nation Indian Country are known by certified mail, postage prepaid, restricted delivery, return receipt requested on the person named in the notice of infraction at his or her address. If a notice of infraction is returned to the court as undeliverable, the court, upon motion by the prosecutor, may grant leave for notice by publication so long as such notice conforms to the rules of Civil Procedure of the Comanche Nation Tribal Court Code.

(d) Filing of Notice. When a notice of infraction has been issued, the notice shall be filed with the Court. The notice must be filed within five days of issuance of the notice, excluding Saturdays, Sundays, and holidays. In the absence of good cause shown, a notice of infraction not filed within the time limits of this section shall, upon motion, be dismissed with prejudice.

(e) Return of Service.

(1) If service of notice is made under subsection (c)(1) or (2) of this section, notice shall be complete at the time of the filing of notice so long as it conforms to subsection (d) herein.

(2) If service of notice is made under subsection (c)(3) of this section, notice shall complete upon filing of a return in conformity of the Rules of Civil Procedure of the Comanche Nation Tribal Court Code within thirty (30) days from the issuance of the notice. Upon motion by the prosecutor, the time to return service of notice may be

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extended no more than an additional thirty (30) days from the original return date by leave of the court by showing good cause for such extension.

(3) In the absence of good cause shown, service of a notice of infraction not returned within the time limits of this section shall, upon motion, be dismissed with prejudice.

RESPONSE TO NOTICE

(a) Generally. A person who has been served with a notice of infraction must respond to the notice within 15 days of the date the notice is personally served or, if the notice is served by mail, within 18 days of the date the notice is mailed.

(b) Alternatives. A person may respond to a notice of infraction by:

(1) Paying the amount of the monetary forfeiture in accordance with applicable law, in which case the court shall enter a judgment that the defendant has committed the infraction;

(2) Contesting the determination that an infraction occurred by requesting a hearing in accordance with applicable law;

(3) Requesting a hearing to explain mitigating circumstances surrounding the commission of the infraction in accordance with applicable law; or

(4) Submitting a written statement either contesting the infraction or explaining mitigating circumstances, if this alternative is authorized by local court rule. The statement shall contain the person's promise to pay the monetary forfeiture authorized by law if the infraction is found to be committed.

For contested hearing the statement shall be executed insubstantially the following form:

I hereby state as follows:

I promise that if it is determined that I committed the infraction for which I was cited, I will pay the monetary forfeiture authorized by law and assessed by the court.

I certify (or declare) under penalty of perjury under the laws of the Comanche Nation that the foregoing is true and correct.

(Date and Place) (Signature)

I understand that if this form is submitted by e-mail, my typed name on the signature line will qualify as my signature for purposes of the above certification.)

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For mitigation hearings, the statement shall be executed in substantially the following form:

I hereby state as follows:

I promise to pay the monetary forfeiture authorized by law or, at the discretion of the court, any reduced fees that may be set.

I certify (or declare) under penalty of perjury under the laws of the Comanche Nation that the foregoing is true and correct.

(Date and Place) (Signature)

I understand that if this form is submitted by e-mail, my typed name on the signature line will qualify as my signature for purposes of the above certification.

(c) Method of Response. A person may respond to a notice of infraction either personally, or if allowed by local rule by mail or by e-mail. If the response is mailed or e-mailed, it must be postmarked or e-mailed not later than midnight of the day the response is due.

FAILURE TO RESPOND

If the defendant fails to respond to a notice of infraction, the court shall enter an order finding that the defendant has committed the infraction, shall assess any monetary forfeiture provided for by law.

SCHEDULING OF HEARINGS

(a) Contested Hearings.

(1) Upon receipt of a response requesting a hearing, the court shall schedule a hearing to determine whether the defendant committed the infraction.

The hearing shall be scheduled for not less than 14 days from the date the written notice of hearing is sent by the court, nor more than 120 days from the date of the notice of infraction or the date a default judgment is set aside.

(i) If authorized by local court rule, a defendant who requests a contested hearing may first be scheduled for a prehearing conference, which shall be scheduled for not less than 14 days from the date the written notice of the hearing is sent by the court nor more than 45 days from the date of the notice of infraction or the date a default judgment is set aside, unless otherwise agreed by the defendant in writing.

(ii) The prehearing conference may be waived by the defendant in writing if the waiver is received by the court before the time set for the prehearing conference. If the prehearing

conference is waived, the case will be set for contested hearing. The contested hearing shall be scheduled for not more than 90 days from the date of the prehearing conference or, if the prehearing conference is waived, from the date the waiver of the prehearing conference is received by the court.

(2) The court shall send the defendant written notice of the time, place, and date of the hearing within 21 days of the receipt of the request for a hearing. The notice of the hearing shall also include statements advising the defendant of the defendant's rights at the hearing, how the defendant may request that witnesses be subpoenaed, and that failure to appear may be a crime for which the defendant may be arrested, and, in a traffic infraction case, the defendant's privilege to operate a motor vehicle may be suspended. If a local rule is adopted implementing sections (a)(1)(i) and (ii), the court shall advise the defendant in the notice of the defendant's right to waive the prehearing conference.

(3) The court may schedule the hearing on a contested infraction for the same time as the hearing on another infraction alleged to have been committed by the defendant. The court may schedule the hearing on a contested infraction for the same time as the trial on a misdemeanor arising out of the same occurrence as the infraction.

(4) The infraction may be dismissed upon a showing of prejudice if the court does not send a defendant written notice of a hearing within 21 days of receipt of the request for a hearing.

CONTESTED HEARINGS-PRELIMINARY PROCEEDINGS

(a) Subpoena. The defendant and the prosecuting attorney may subpoena witnesses necessary for the presentation of their respective cases. Witnesses should be served at least 7 days before the hearing. The subpoena may be issued by a judge, clerk of the court or by a party's lawyer. If a party's lawyer issues a subpoena, a copy shall be filed with the court and with the office of the Tribal Prosecutor assigned to the court in which the infraction is filed on the same day it is sent out for service. A request that an officer appear at a contested hearing shall be filed on a separate pleading. A subpoena may be directed for service to a Comanche Nation law enforcement Officer.

(b) Discovery. Upon written demand of the defendant at least 14 days before a contested hearing, filed with the court and served on the office of the Tribal Prosecutor assigned to the court in which the infraction is filed, the prosecuting attorney shall at least 7 days before the hearing provide the defendant or the defendant's lawyer with (1) a copy of the citing officer's sworn statement (2) a copy of video or photographic evidence the prosecutor proposes to introduce at trial, unless in reply to the discovery request the prosecutor provides the address to a website where such evidence is accessible to the defendant; and (3) the names of any witnesses not identified in the citing officer's sworn statement. No other discovery shall be required. If the prosecuting authority provides any portion of the discovery less than 7 days before the hearing, such untimely discovery shall be suppressed only upon a showing of prejudice in the

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presentation of the defendant's case. If the Tribal Prosecutor, without reasonable excuse or justification, fails to provide any portion of the discovery prior to the day of the hearing, the portion of discovery not provided shall be suppressed. Neither party is precluded from investigating the case, and neither party shall impede another party's investigation. A request for discovery pursuant to this section shall be filed on a separate pleading.

(c) Amendment of Notice. The court may permit a notice of infraction to be amended at any time before judgment if no additional or different infraction is charged, and if substantial rights of the defendant are not thereby prejudiced. A continuance shall be granted if the defendant satisfies the court that the additional time is needed to defend against the amended notice of infraction.

(d) Sufficiency. No notice of infraction shall be deemed insufficient for failure to contain a definite statement of the essential facts constituting the specific infraction which the defendant is alleged to have committed, nor by reason of defects, imperfections or omissions which do not tend to prejudice substantial rights of the defendant.

FAILURE TO APPEAR

(a) Entry of Judgment. If the defendant fails to appear at a requested hearing the court shall enter judgment against the defendant finding that the defendant has committed the infraction and assessing against the defendant any monetary forfeitures provided by law. A judgment upon a failure to appear shall not be entered if it appears to the court from the papers on file that the infraction case was brought in an improper court.

(b) Setting Aside Judgment Upon Failure To Appear. For good cause shown and upon terms the court deems just, the court may set aside a judgment entered upon a failure to appear.

SUSPENSION OF MONETARY PENALTY

(a) The court may waive or suspend a portion of the monetary forfeiture, or provide for payments over time not to exceed six (6) months, or in lieu of monetary payment provide for the performance of community restitution as provided by law.

(b) The court has continuing jurisdiction and authority to supervise disposition for not more than 1 year.

FAILURE TO PAY OR COMPLETE COMMUNITY RESTITUTION

(a) Payment of monetary forfeiture or completion of community restitution is due within 10 days from judgment, unless:

(1) The judge orders a payment over time, not to exceed six (6) months, at which time payment is due in accordance to the schedule established by the Court Clerk/Administrator.

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(2) The judge orders satisfaction of the judgment on a specific date, not to exceed sixty (60) days from the date of the judgment.

(b) Failure To Pay or Complete Community Restitution.

(1) Indian Defendants. If an Indian defendant fails to satisfy judgment by the date ordered by the Court, he shall be determined to be in direct contempt of court for failure to pay and be subject to punishment in accordance to the Comanche Nation Tribal Court Criminal Code. Upon motion, a warrant shall be issued for his arrest.

(2) Non-Indian Defendants. If a non-Indian defendant fails to satisfy judgment by the date ordered by the Court, the Court shall enter a Journal Entry of Judgment in conformity with the following:

(i) The defendant shall be named as the judgment debtor,

(ii) The Comanche Nation shall be named as the judgment creditor,

(iii) The judgment amount shall be the amount of the monetary forfeiture ordered plus twenty-five dollars (\$25.00) per hour of community restitution ordered, so long as the total amount per infraction does not exceed the maximum fees allowed in accordance to this Title.

(c) Removal of the Failure To Pay or Complete Community Restitution. When the defendant has paid all monetary penalties owing, including completion of community restitution, the court shall indicate within the file a satisfaction of the judgment.

APPEAL TO APPELLATE COURT

Appeals from a judgment in a civil infraction case will be to the Comanche Nation Appellate Court.

FEES

Unless otherwise indicated within this Title, all offenses are subject to the following fees:

(a) For the first infraction of an offense: no less than \$100.00, but no more than \$300.00;

(b) For the second infraction of the same offense: no less than \$100, but no more than \$600.00;

(c) For the third and subsequent infractions of the same offense: no less than \$100, but no more than \$900.00.