TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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CHAPTER ONE
SCOPE AND APPLICATION

RULE .1 SCOPE

.1A The Comanche Nation Rules of Civil Procedure shall consist of the Formal Rules of Civil Procedure and the Informal Rules of Civil Procedure, and this Chapter, which shall determine their application. These rules shall govern all aspects of procedure in civil matters in the Comanche Nation Tribal Court, except as otherwise provided by Tribal Law.

.1B The procedural provisions of the Comanche Nation Children and Family Relations Code shall govern all civil actions prosecuted under that Code. In the event of a conflict between particular provisions of the Comanche Nation Children and Family Relations Code and these Rules of Civil Procedure, the Comanche Nation Children and Family Relations Code shall apply, any conflicting provisions of this Code notwithstanding. To the extent that a procedural questions is not answered by the Comanche Nation Children and Family Relations Code, the relevant provisions of these Rules of Civil Procedure shall be applied.

RULE .2 APPLICATION OF FORMAL AND INFORMAL RULES OF CIVIL PROCEDURE

.2A Except as otherwise provided by these Rules or other tribal law, procedure in civil matters in the Tribal Court shall be governed by the Informal Rules of Civil Procedure. Notwithstanding any other provision in these rules, all claims filed pursuant to a tort claim filed pursuant to the Comanche Nation–State of Oklahoma Gaming Compact shall be governed by the Formal Rules of Civil Procedure and none other.

.2B The parties to any civil case may agree to use the Formal Rules throughout the entire case or for any part of the case, and if there is such agreement, they shall file a joint written motion to that effect, explaining the reasons for the motion. The court shall freely grant such joint motions when to do so would be in the interest of justice, and would not result in unnecessary complexity, expense, or delay.

.2C At any point after a complaint has been filed, any party to a civil case may make a motion to invoke the Formal Rules of Civil Procedure for the rest of the case, or for the determination of particular questions of procedure. The other party may agree to the change or may object to the use of the Formal Rules, specifying the reasons for the objection. If there is an objection, the judge shall hear argument on the issue and if the judge determines that changing to the Formal Rules:

(1) would be in the interest of justice; and

(2) would provide the basis for determining an issue about which there is or could be disagreement between the parties; and

(3) would provide the basis for determining an issue which, under the circumstances, is not adequately dealt with by the Informal Rules; and

(4) would not result in unnecessary complexity, expense, or delay; and

(5) would not result in unfair advantage to either party, the judge shall grant the motion to change to the Formal Rules.

.2D At any point in a civil case in which the Formal Rules are being used, either party may make a motion to return to the Informal Rules for a part of the case or the rest of the case. The other party may agree to the change, or may object to the use of the Informal Rules, specifying the reasons for the objection. If there is an objection, the judge shall hear argument on the issue and if the judge determines that changing to the Informal Rules:

(1) would be in the interest of justice; and

(2) would not result in unfair advantage to either party, the judge shall grant the motion to change to the Informal Rules.

.2E The judge, on his or her own motion, may order that a change be made from one set of rules to the other, based on the same criteria established in sections C and D above. Before any such change shall be made on the judge's own motion, the judge shall announce his or her intention to do so and provide the parties an opportunity to be heard on the matter.

.2F whenever the judge orders that the Rules governing procedure in a case shall be changed from Formal to Informal, or vice versa, he or she shall explain the order and the reasons for its issuance. The Court Clerk shall note such change and the judge's reasons on the record.

CHAPTER TWO
COMANCHE NATION
INFORMAL RULES OF CIVIL PROCEDURE

RULE I-1 FILING AND NOTICE

I-1A. The original of every written complaint, answer, summons, motion, argument, agreement, order, or other document served upon a party during a case in Tribal Court shall be filed with the Clerk.

I-1B. A party who files any document with the Court Clerk in a lawsuit shall give a copy of the same document to every other party in the case. If a party is represented by counsel, all documents except the complaint and summons shall be given to counsel, instead of the party. Delivery of a copy as required by this Rule may be made either by giving it to the party or counsel in person or by mailing it first class, postage paid, to the party's or counsel's correct address.

I-1C. Every decision and order of the court shall be written down by the Judge or Clerk, and signed by the Judge. The Clerk shall file a copy and give or send a copy of each such ruling to each party and counsel in the case.

RULE I-2 TIMING

I-2A. Whenever a Rule, Tribal Law, or an order of the Court requires that an action be taken within a certain number of days, the day of the event from which the time limit runs shall not be counted; but the last day shall be counted unless it is a Saturday, Sunday, or tribal holiday. When the last day is a Saturday, Sunday, or tribal holiday, the deadline shall be the first work day following the day that is not counted. Where the time limit is less than seven days, Saturdays, Sundays, and tribal holidays shall not be counted at all.

I-2B. When a time limit is counted from or to the time that notice is delivered to a person and the notice is delivered by mail rather than given directly to the person, it shall be presumed that delivery takes place three days after the notice is placed in a United States Postal Service mailbox.

I-2C. On request of a party, and if good cause exists, the Judge may allow an extension of any time limit prescribed by a Rule of Civil Procedure or Rule of Court.

RULE I-3 ORAL PROCEDURES

I-3A. Unless otherwise specified by these Rules, or ordered by a Judge pursuant to a Rule of Court, motions, arguments, discovery requests, and other actions taken by the parties during the course of a lawsuit may be oral or written. Oral actions taken by the parties, in order to be enforceable by the Court, shall take place in open court in the presence of the judge and all parties.

I-3B. Notice. All oral actions taken by the parties in open court shall be subject to the notice

requirements of Rule I-13. The Notice of Motion form provided for by that rule may be used to satisfy the notice requirements for all oral actions.

RULE I-4 FORM OF COURT PAPERS

All written materials submitted to the Court must be clear and legible and shall contain the name of the Court, the names of all parties, the Court file number for the case, the signature of the party filing it or of the party's counsel, and any other information required by these Rules. For convenience the Court may develop standard forms for pleadings, motions, notices, and orders.

RULE I-5 LIMITATION OF ACTIONS

I-5A. A civil lawsuit in Tribal Court must be started:

(1) in the case of oral contracts, and actions not otherwise provided for herein, within two years;

(2) in the case of causes of action based upon statute, within one year;

(3) in the case of written contracts, five years.

I-5B. The time within which a civil lawsuit must be filed shall be counted from the date on which the injury or breach was first known to the injured party or should have been known to a reasonably aware person in the position of the injured party.

I-5C. For the purpose of meeting the deadline set in this Rule, a civil suit is started when the complaint is filed with the Clerk of the Court.

RULE I-6 COMMENCEMENT OF A LAWSUIT; COMPLAINTS; PROOF OF SERVICE; FILING FEE;
SUMMONS

I-6A. A person who wishes to start a civil lawsuit in Tribal Court shall first file a written complaint with the Court Clerk. The person who has filed the complaint shall be known as the plaintiff in the lawsuit. The complaint shall describe the injury or breach the plaintiff is complaining of, the name or describe the person responsible for such injury or breach, who shall be known as the defendant, and state the relief requested. The plaintiff shall sign the complaint. If a person is unable to prepare a written complaint, the Clerk may help that person to complete a complaint form provided by Rule of Court.

I-6B. After the plaintiff has filed the complaint, the Clerk shall issue a summons directing the defendant to answer the complaint within 20 days of the time defendant receives the complaint and summons. The summons shall be on the official form provided for that purpose by Rule of Court, and shall inform the defendant of the consequences of default.

I-6C. Within 90 days after plaintiff files a civil complaint, plaintiff shall cause a copy of the complaint, together with the summons, to be served upon (delivered to) each defendant named in the complaint. The complaint and summons must be served by a person of the age of eighteen (18) or more years who has no stake in the outcome of the lawsuit. It may be served either by giving it to the defendant directly or by leaving it at defendant’s residence or place of employment with a person at least 14 years old who lives or works there.

I-6D. The person who delivers the complaint shall sign and file a proof of service with the Clerk. The proof of service shall indicate the type of document served, the date and place of service, and the name of the person served, and shall be on the form provided for that purpose by Rule of Court.

I-6E. Every person who files a civil lawsuit shall pay a filing fee to be established by Rule of

Court.

RULE I-7 AMENDMENT, WITHDRAWAL, DISMISSAL OF THE COMPLAINT

I-7A. A plaintiff may change the complaint without Court permission at any time before the defendant answers it, as long as a copy of the changed complaint is delivered to all parties according to the Rules for complaints. After the defendant has answered the complaint, the judge may still allow plaintiff to change the complaint as long as allowing the change would not be unfair to defendant.

I-7B. The Judge shall allow plaintiff to withdraw the complaint and shall dismiss the case at any time plaintiff requests unless the defendant has counterclaimed against plaintiff or dismissal of the case would otherwise be unfair to the defendant. The Judge may order a plaintiff who withdraws a complaint to pay all costs of the suit to defendant.

RULE I-8 DEFENSES, ANSWERS; COUNTERCLAIMS

I-8A. Within 20 days after defendant receives a copy of a civil complaint and summons, he or she must answer the complaint in writing. Defendant must sign the answer, file it with the clerk, and cause it to be served upon plaintiff following the rules for service of a complaint, all within the 20 day answering period. The person who serves the answer shall file a proof of service as provided in Rule I-5D. If defendant is not able to prepare a written answer, he or she shall explain to the Clerk the nature of the defense which will be presented, and the Clerk shall help the defendant to put the answer in writing, on the form provided for that purpose by Rule of Court.

I-8B. In addition to, or as a way of raising a defense to the complaint, defendant may file a complaint (counterclaim) against plaintiff, following the same rules which apply to complaints.

RULE I-9 PRELIMINARY INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS

I-9A. A party to a civil suit may ask the judge for a pre-trial order (injunction) prohibiting or requiring particular action by another party to keep things as they are until the Court has a chance to reach a final decision in the case. The order shall be granted if the person requesting it shows that there is a good chance that he or she will win the suit and that he or she will suffer irreparable loss or injury if the injunction is not issued.

I-9B. Unless otherwise stated in the injunction, a pre-trial injunction shall remain in effect until final judgment in the case.

I-9C. Except as provided in Section D of this rule, no pre-trial injunction shall be issued unless the party to be enjoined first has notice and an opportunity to be heard in court.

I-9D. A judge may issue a temporary restraining order prohibiting or requiring particular action by a party to keep things as they are pending the court's final decision in the case without prior notice to the party to be restrained, when the party who requests such an order shows by sworn statement or oral testimony that he or she will suffer permanent loss or injury if the order is not issued before the opposing party can be notified and heard, and that he or she made a reasonable attempt to notify the opposing party of the time when the request would be made.

I-9E. A temporary restraining order shall be effective only for the time period specified in the order, and in no case for longer than ten days. Subject to the requirements of section I-9D, a temporary restraining order may be renewed once for good cause.

I-9F. The judge may require a party who requests a restraining order or pre-trail injunction to provide security for any loss or injury which may be suffered by a party who is wrongfully enjoined or restrained; provided, however, that the judge shall not require such security from the Comanche Nation or any of its branches.

RULE I-10 DEFAULT

I-10A. Failure of a defendant to file and serve and answer upon the plaintiff within 20 days after the complaint was served shall be a default and shall provide grounds for judgment against the defendant has asked for in the complaint. No judgment of default shall be made, however, unless the plaintiff makes a written motion for a default judgment and serves a copy of the motion on each defendant in the same manner as a complaint must be served. The motion for default judgment shall state a time, no sooner than three days after service of the motion, when plaintiff will argue the motion to the Judge. If defendant files an answer to the complaint at or before the time that the motion is to be argued to the Judge, no default judgment shall be granted, and the matter shall proceed as though answered on time. If defendant does not answer by that time, a default judgment shall be entered.

I-10B. In granting a default judgment, the Judge may refuse to grant relief requested by plaintiff if granting the relief would be contrary to tribal law or would be unjust. The judge may not grant plaintiff greater relief on default than was requested in the complaint.

RULE I-11 DISCOVERY

I-11A. It is the policy of the Tribal Court that the truth will be revealed more readily if all parties in a civil case have access to all information and evidence related to the case. In preparation for trial, therefore, the parties may ask each other for and shall make available to each other all information in each other's possession or control which will be used as evidence in the case, or which can reasonably be expected to lead to evidence.

I-11B. Methods of discovering and exchanging information may include but need not be limited to written questions, oral examination, requests for witnesses' names, requests for admissions, physical inspection of property, requests to perform scientific or physical tests, and requests for documents. The party who makes a request under this rule shall be as clear and specific as possible in describing what he or she wants.

I-11C. A party may refuse to make available the information requested pursuant to this rule if its release would cause the responding party or a third person undue hardship, annoyance, or embarrassment, or would violate a confidence which it is tribal custom or official tribal policy to protect. If the parties disagree about whether the responding party is required to release he information, the judge shall decide the dispute. The judge may place conditions on the release of information in order to protect confidential material, prevent unreasonable burden or expense to one party, or otherwise ensure fairness to all parties.

I-11D. A party who receives a request for information under this rule shall, within ten days of receiving the request, respond either with the information, with an indication where and when the information will be available, or with an objection and refusal to comply with the request. Failure to respond within ten days is grounds for a court order requiring response.

RULE I-12 PRE-TRIAL CONFERENCE

I-12A. In the interest of saving time, simplifying issues, and avoiding unnecessary litigation, the judge may, on his or her own motion, or on the motion of any party, schedule one or more pre-trail conferences with all parties to a case. In any case determined by the judge to be complex, at least one pre-trial conference shall be held after the completion of discovery, and early enough to aid parties in planning for trial.

I-12B. The pre-trial conference shall be held in an informal setting and shall be conducted without formal procedures. The parties and the judge shall discuss areas where the parties are in

agreement and areas where they disagree. The purpose of the discussion shall include the following:

(1) To identify and dispose of issues which may be resolved without trial;

(2) To narrow and focus issues of law which remain to be decided and to identify central facts which are still in dispute;

(3) To limit the number of witnesses and the evidence which will be presented so that testimony and other evidence is not repetitious or irrelevant; and

(4) To avoid surprise at trial.

I-12C. To accomplish the above purposes, all parties to a lawsuit shall, at the pretrial conference after discovery, fully disclose:

(1) The names and addresses of all witnesses they expect to present at trial, and the basic information to which they expect the witness to testify;

(2) All documents they expect to introduce as evidence, and the basic information which they intend to prove with the documents; and

(3) All objects which they intend to introduce as evidence and the basic information which they intend to prove with those objects.

I-12D. No party shall be permitted to use the testimony of any witness or introduce as evidence any document or object unless they disclosed the witness, document, or object at the pre-trial conference as provided in C above, unless the party proves that at the time of the pre-trial conference they were unaware of the existence or nature of the witness, document or object and could not, with reasonable effort, have discovered it in time to disclose it. Such evidence must, in any case, be disclosed to the judge and opposing party before it is offered in the trial.

I-12E. No offer of settlement or other statement which is made by a party during a pre-trial conference may be used as evidence against that party if settlement is not then achieved. Agreements reached as a result of a pre-trial conference shall be put in writing and signed by all parties. Such agreement shall be made part of the final judgment issued by the judge.

RULE I-13 MOTIONS

I-13A. Any questions regarding procedure or the rights of the parties which arise during a lawsuit and which cannot be settled by agreement of the parties may be presented to the judge in a motion, which is a request for an order.

I-13B. Motions may be made in writing or orally. If the motion is not made during and as a consequence of events at a trial or other hearing, the moving party shall notify other parties of the nature and basis of the motion and the hearing time at least five days before the motion is presented in court, so the responding party has a chance to plan a response. The notice required by this section shall be called a Notice of Motion, shall be in writing, and shall be served upon the party, or, if the party is represented by counsel, upon the party's counsel, according to Rule I-1B. Persons who are unable to prepare their own written Notice of Motion may be assisted by the Clerk in filling out a Notice of Motion form, provided for that purpose by Rule of Court.

I-13C. Motions to dismiss the lawsuit because the court lacks jurisdiction or because the plaintiff has not started a basis for relief may be made at any time. All other pretrial motions which would determine the procedures used at trial must be made at least five days before trial. The judge may deny a motion which could and should have been made earlier in the case if it appears that the moving party knew or should have known earlier about the basis for the motion and has raised it late because of negligence or an intent to harass the other party.

RULE I-14 COMPELLING WITNESSES TO APPEAR; SUBPOENAS

I-14A. Any party to a lawsuit or other proceeding in Tribal Court shall have the right to compel witnesses to appear in court and testify concerning the matter.

I-14B. Upon request of a party, the Court shall issue a subpoena, an order which commands a named person to appear in court and/or to bring certain evidence or documents to Court.

I-14C. All subpoenas shall be signed by a Judge, except as otherwise provided by a Rule of Court.

I-14D. Every subpoena shall be in writing and shall include the name of the Court, the Court's seal, the names of all parties, the time and place that the witness must appear, and a clear and detailed description of any documents or evidence which the witness is required to bring.

I-14E. Subpoenas shall be delivered to the witness by a person of the age of eighteen (18) or more years who has no stake in the case. The subpoena must be delivered by giving it to the witness directly.

I-14F. A person who delivers a subpoena shall promptly file with the Clerk a copy of the subpoena and a proof of service as defined in Rule I-6D.

I-14G. Failure of a witness to obey a subpoena shall be grounds for holding the witness in contempt of Court after a hearing.

I-14H. A witness who responds to a civil subpoena shall be entitled to a fee of twenty dollars ($20.00) for each day or partial day that he or she must appear in Court. The Judge may, in addition, order that the witness be paid reasonable and necessary travel and living expenses incurred in responding to the subpoena. Witnesses shall be offered full payment of their fees for one day's service at the time they are served with the subpoena. The party requesting the issuance of a subpoena shall tender the fees to the witness upon service of the subpoena.

RULE I-15 JURY TRIALS

I-15A. Jury request; fee

A jury trial shall be held if requested by either party to the case at least ten (10) days before the trial. The party who requests a jury trial shall pay to the court a jury fee established by Rule of Court. Payment of the jury fee may be waived by the Chief Judge upon the request of a party if payment of the fee would result in severe hardship to the party. The party who requests a jury trial or a visiting judge who fails to provide at least five days notice by a written motion to continue shall be liable for the payment of jury fees and fees payable to the visiting judge at the discretion of the judge presiding over the trial.

I-15B. Eligibility; non-members; jury list.

(1) To be eligible to serve as a juror on a civil case a person must be a tribal member or a permanent resident of the Comanche Nation Comanche Nation Indian Country, must be eighteen years of age or older, must never have been convicted in any court of a felony, and must not at the time the list is made, or at the time of the trial, be holding the office of tribal judge, tribal police officer, or Comanche Nation Business Committee member, or employed by the Tribal Court.

(2) For the purposes of this Rule, a permanent resident of the Comanche Nation Indian Country is a person who rents or owns a dwelling place on the Comanche Nation Indian Country, and who resides in that dwelling place other than seasonally or periodically, and who receives mail on the Comanche Nation Indian Country at an on-Comanche Nation Indian Country post office box or Comanche Nation Indian Country street address, and who intends to make the Comanche Nation Indian Country his or her permanent home for the indefinite future, and who does not claim residence at any other location for any purpose.

(3) The Comanche Nation Business Committee Secretary shall prepare each year a list of

persons eligible to serve as jurors, and shall provide the jury list to the Clerk of the Court. The list of eligible jurors shall be compiled from the Tribal census rolls of the Comanche Nation, and from the voter registration lists of each county whose boundaries are within the Comanche Nation.

(4) The Clerk shall mail juror questionnaires once every six (6) months for the purpose of establishing a pool of qualified and available jurors. The mailing shall go only to eligible persons. Jurors shall be directed to respond to juror questionnaires within fifteen (15) days from the date the juror questionnaires are mailed, and jurors shall be informed on the face of the questionnaire that failure to respond may subject the potential juror to citation for contempt of court. The juror questionnaires shall form the basis for the Clerk to issue summonses as needed for jury trials. The Clerk shall maintain the juror questionnaires and the names of the jurors summoned for review by the parties.

(5) The Clerk shall prepare a ballot in the name of each eligible person and protect the ballots from access by unauthorized persons by placing the ballots in a master ballot box and securing the master ballot box in a safe.

I-15C. Selection of panel; jury summons; failure to appear; excuse from jury duty.

(1) Not less than seven days before the date set for the beginning of a jury trial, the Chief Judge shall draw from the master ballot box, at random, the number of ballots specified by Rule of Court for a civil jury trial of the type scheduled. The Clerk of the Court shall then issue and cause to be served upon each person whose ballot was drawn a Jury Summons.

(2) The Jury Summons shall notify the person being summoned to appear in Court on the date set for the beginning of the trial, one hour before the time set for the trial. Failure of a person served with a Jury Summons to appear shall constitute contempt of court and the Summons shall contain a warning to that effect. These summonses shall be served by the Comanche Police, Tribal Court Civil Officer, certified mail or regular mail. Any person for whom jury service would be a severe hardship may be excused from service by a judge, but such excuse from jury duty shall be disfavored.

I-15D. Jury selection. On the day of the trial, the Clerk shall deposit in a ballot box ballots containing the names of each of the summoned potential jurors who have appeared by the time set for their appearance. Those persons whose names are in the ballot box shall be known as the jury panel. After the Judge calls the court to order, he or she shall draw from the jury panel ballot box, at random, the names of fourteen members of the jury panel, who shall then be seated in the jury area. The Clerk shall make a list of the names in the order in which they were called.

I-15E. Removal for cause; examination by Court, parties.

(1) After the first fourteen members of the jury panel have been seated, the judge shall examine each of them as to their qualifications, and excuse any who appear to him or her to be biased, prejudiced, and unable to fairly and effectively perform the duties of a juror, or otherwise not qualified to serve as a juror. The judge shall permit the parties or their counsel to similarly examine and ask for the removal of jurors for cause, without any limit to the number of jurors so challenged or removed, except that all such challenges must be made in good faith. The judge shall excuse any juror he or she believes to be unqualified, directing him or her to leave the jury area.

(2) After all disqualified jurors have been excused from the jury area, enough additional ballots shall be drawn by the judge to replace the disqualified persons with members of the jury panel. The Clerk shall add their names to the list in the order in which they were called. The procedure for challenge for cause shall continue until fourteen qualified persons are seated in the jury area.

I-15F. Peremptory Challenges. After the fourteen qualified persons have been seated in the jury area, each party shall have the right to remove any three persons from the jury without stating

any reason. The parties shall alternately remove jurors, or waive their turn to do so, until they have exhausted their peremptory challenges.

I-15G. Trial jury; alternate. The Clerk of the Court shall then read aloud the first seven names on the list and those persons shall be jurors for the trial. The Clerk shall also read aloud the eighth name on the list, and that person shall be an alternate juror for the trial. The alternate juror shall act in all respects as a juror, except that he or she shall not vote during jury deliberations unless one of the other jurors has been excused by the judge during the course of the trial.

RULE I-16 ORDER OF TRIAL

I-16A. At the trial of a civil case, presentations shall be made in the following order unless otherwise agreed by the parties or determined at the pre-trial conference:

(1) Motions by either party regarding procedure at trial, evidence to be presented, jurisdiction of the court, or the sufficiency of a claim;

(2) Evidence and statements presented by the party (the plaintiff) who filed the original complaint;

(3) Evidence, statements, or motions presented by the person complained against (the defendant);

(4) Motions of either party which are based on events at trial; and

(5) Final arguments by both parties.

I-16B. The judge may announce a final decision at the close of trial or may take the matter under submission and issue a written decision at a later time. All decisions shall be announced within thirty days after the end f the trial.

RULE I-17 BURDEN AND STANDARD OF PROOF; JURY VERDICTS

I-17A. Unless otherwise provided by Tribal law, the burden of proving a civil claim shall be on the party who makes the claim.

I-17B. Unless otherwise provided by Tribal law, a party to a civil case shall be considered to have met the burden of proof if more than half of the evidence presented tends to prove that party's claim.

I-17C. A civil jury verdict must be based upon the agreement of at least six of the seven jurors.

RULE I-18 INFORMAL RULES OF EVIDENCE GOVERNING TRIALS

I-18A. Purpose. The purpose of these Informal Rules of Evidence is to ensure that the Tribal Court is able to determine the truth of a matter with a minimum of delay, confusion, and uncertainty of the parties.

I-18B. Scope. Unless the Formal Rules of Civil Procedure have been invoked, these Informal Rules of Evidence shall govern the admissibility and use of evidence in civil matters.

I-18C. General Rules.

(1) Where there is more than one kind of evidence about the same subject, the judge shall give each item of evidence the importance (weight) which, according to the judge's common sense and sense of fairness, that particular type of evidence deserves. For example, in oral testimony, the testimony of persons who testify from their personal knowledge, such as firsthand observation of, or participation in, the event described shall be given more weight than the testimony of persons who only have knowledge of the event which they gained from other persons.

(2) Evidence admitted in the Tribal Court must be related either to the issues before the court or to the weight and credibility which should be given to other evidence. When questioned by the

judge or another party as to why certain evidence should be allowed, the party who wishes to present the evidence shall:

(a) State the issue which he or she will use the evidence to resolve; and

(b) Explain how the evidence is relevant to the issue.

(3) When the relevance or reliability of evidence is challenged, the judge shall decide whether or not to use the evidence, and explain the decision.

I-18D. Oaths. Before testifying in the Tribal Court, every witness shall first state before the judge, parties and spectators that he or she will testify truthfully. The Court may prescribe an oath for this purpose by Rule of Court.

I-18E. Questioning Witnesses.

(1) When questioning a witness, the judge and parties or their counsel shall not ask questions in such a way as to suggest the answer, unless the witness is one who was called by the opposing party, or is clearly hostile to the person asking questions.

(2) The judge shall determine the order in which parties or their counsel shall be allowed to question witnesses. The judge shall protect the witnesses from harassment or unnecessarily repetitious or irrelevant questioning.

(3) During the questioning of a witness, the judge may exclude from the courtroom any witnesses who have not yet testified, if this seems to be necessary to ensure that all witnesses will give truthful testimony. At the request of any party, such witnesses shall be excluded.

(4) The judge may call and/or question any witnesses on his or her own initiative.

I-18F. Sworn Written Testimony.

(1) Subject to the provisions of Rule I-18C(3), testimony of a witness may be presented in sworn written form if and only if:

(a) the witness is unable to appear in person to testify, or

(b) if the evidence presented in writing is not contradicted by other parties, or

(c) if the sworn written testimony is offered to support a motion or an uncontested request for relief, or

(d) if the sworn written testimony contradicts oral testimony already given by the same witness. Written testimony must show clearly who gave it and when the witness gave it.

(2) Copies of written records, photographs, and other documentary evidence may be presented as long as there is a reasonably reliable way to identify the items, and the methods used to prepare them.

RULE I-19 JUDGMENTS

I-19A. A judgment is a final order of the Court which disposes of a claim in whole or in part. The Judge may announce a judgment orally at a hearing in open court before the parties, or in writing, at the time of hearing or after the hearing, but in no case more than thirty (30) days after the end of the trial.

I-19B. Finality. A judgment becomes final when it has been recorded in the Docket Book by the Court Clerk. The Court shall establish, by Rule of Court, the length of time after issuance of an order within which the Clerk must enter the Order in the Docket Book.

RULE I-20 PROCEEDINGS AFTER JUDGMENT

I-20A. No later than ten (10) days after judgment is final, a party may ask the Judge for a rehearing, reconsideration, correction, vacation, or modification of the judgment.

I-20B. The Judge may grant a new hearing or reconsider any change in the judgment if he or

she finds at least one of the following to be true:

(1) The original judgment was based on or reached as a result of fraud or mistake of law;

(2) There is newly discovered evidence which probably would have affected the outcome of the case and which could not, with reasonable effort, have been discovered in time for the hearing of the case;

(3) The court did not have jurisdiction over a party or over the subject matter.

I-20C. No later than ten days after judgment is final or after a motion made pursuant to Section A of this rule is denied, a party may appeal an adverse judgment as provided in the Rules of Appellate Procedure.

I-20D. No civil judgment shall be enforced sooner than ten days after judgment is entered in the docket. A party appealing a judgment against him or her, or filing a motion pursuant to section I-20A, may make a motion requesting that the court delay (stay) enforcement of the judgment until after the section I-20A motion or appeal has been decided. The party who won the original judgment may oppose the motion for a stay and/or may request that the Court require that the party asking for a stay post a bond to protect him or her from further damage, to cover costs, or to guarantee that sufficient assets are within the control of the court to satisfy the judgment if the original winning party wins the motion or the appeal. Stays shall be granted only under the terms of this section and the Rules of Appellate Procedure, and no stays shall be granted automatically.

RULE I-21 COSTS

I-21A. Upon judgment, the Judge shall order the losing party to pay to the winning party the costs of the lawsuit, unless the applicable law provides otherwise or the judge determines that such an order would be unjust. Costs shall not be imposed on the Comanche Nation or any branch of the Comanche Nation unless specifically permitted by an applicable tribal law or agreement.

I-21B. Costs shall include civil filing fees, any costs for delivering documents required by these Rules to be delivered, postage for court notice sent to the parties, and fees and expenses paid to witnesses and jurors, but shall not include counsel fees unless tribal law so provides in a particular type of case.

I-21C. No person shall be jailed because he or she is unable to pay costs.

TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

FORMAL RULES OF CIVIL PROCEDURE

TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

Part I.
SCOPE OF RULES

RULE 1. SCOPE AND USE OF RULES

These rules are to be known as the Formal Rules of Civil Procedure and shall govern all questions of civil procedure in the Comanche Nation Tribal Court whenever, pursuant to Chapter One, a judge of the Tribal Court has ordered that they shall apply, or whenever tribal law specifically requires that they be used in a particular action or to resolve a particular question. They shall be construed to secure the just, speedy, and inexpensive determination of every action.

RULE 2. ONE FORM OF ACTION

There shall be one form of action to be known as a "civil action".

Part II.
COMMENCEMENT OF ACTION; SERVICE OF
PROCESS, PLEADINGS, MOTIONS AND ORDERS

B. Enlargement
C. Motions and affidavits
D. Orders to show cause
E. Additional time after service by mail
F. Summons and service; termination of action

RULE 3. COMMENCEMENT OF ACTION

A civil action is commenced by filing a complaint with the court.

RULE 4. PROCESS

4A. Summons; issuance after filing complaint. Upon the clerk's receipt of the complaint for filing, the clerk shall write on it the day and hour on which it was filed and the number of the action, and shall forthwith issue a summons and deliver it for service to any tribal law officer or to the plaintiff. Separate summons shall issue against each defendant.

4B. Summons; form; duplicate summons. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's counsel, if any, otherwise the plaintiff's address, and the time within which these Rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint. A copy of the complaint and summons shall be prepared for each defendant. If a summons is returned without being served, or if it has been lost, the clerk shall issue a duplicate summons in the same form and it shall be issued and served within the same time as the original.

4C. Process; by whom served. Service of all process shall be made by a tribal law officer, or any other person not less than eighteen years of age who is not a party or legal counsel in the action.

4D. Summons; service; minors. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(1) Upon an individual other than those specified in paragraphs (2), (3), (4), and (5) of this subdivision of this Rule, by delivering a copy of the summons and of the complaint to him personally or by leaving copies of them at his dwelling house or usual place of abode with some person of suitable age and discretion who lives there or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(2) Upon a minor under the age of sixteen years, by service in the manner set forth in paragraph (1) of this subdivision upon the minor and upon his father, mother or guardian, within the Comanche Nation Indian Country, or if none is found therein, then upon any person having the care or control of such minor or with whom he resides.

(3) Upon a minor for whom a guardian of his estate has been appointed by the Tribal Court, by service in the manner set forth in paragraph (1) of this subdivision, upon such guardian and the minor.

(4) Upon a person who has been judicially declared to be insane or mentally incompetent to manage his property and for whom a guardian has been appointed by the Tribal Court, by service in the manner set forth in paragraph (1) of this subdivision, upon such person and also upon his guardian, or if no guardian has been appointed, upon such person as the court designates.

(5) Upon a corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the complaint to a partner, an officer, a managing or general agent, or to any other agent authorized by appointment

or by law to receive service of process.

(6) Upon the Comanche Nation, by delivering a copy of the summons and of the complaint to the Tribal Prosecutor; provided, however, that this section shall not be construed as a waiver of the sovereign immunity of the Comanche Nation, its subdivisions, agents, agencies, enterprises, or officers.

4E. Summons: alternative methods of service.

(1) When a defendant is a non-resident of the Comanche Nation Indian Country, or is absent from the Comanche Nation Indian Country, or is a transient person, or is one whose residence is unknown to the plaintiff, or is a corporation incorporated under the laws of any state or foreign country which has no legally appointed and constituted agent on the Comanche Nation Indian Country, or is concealing himself to avoid service of summons, a summons shall be issued as in other cases and service shall be made in accordance with Sections 4E(2) or 4E(3) of this Rule. The methods of service herein provided shall be applicable for the assertion of any claim by way of cross-claim, third party claim or other appropriate pleading against any party who has not appeared in the action and shall be in addition to and not exclusive of any other means of service which may be provided by Tribal law.

(2) Summons; personal service off the Comanche Nation Indian Country. When the defendant is a resident of the Comanche Nation Indian Country, or is a corporation doing business on the Comanche Nation Indian Country, or is a person, partnership, corporation or unincorporated association subject to suit in a common name which has caused an event to occur on the Comanche Nation Indian Country out of which the claim which is subject of the complaint arose, service may be made as herein provided, and when so made shall be of the same effect as personal service within the Comanche Nation Indian Country. In case of a corporation or unincorporated association, service under this Rule shall be made on one of the persons specified in Section 4D(5).

(a) Registered mail. When the whereabouts of a defendant outside the Comanche Nation Indian Country are known, the serving party may deposit a copy of the summons and complaint in the post office, registering it with a return receipt requested. Upon return through the post office of the registry receipt, he shall file an affidavit with the court showing the circumstances warranting the utilization of the procedure authorized under Section 4E(1); and (a) that a copy of the summons and complaint was dispatched to the party being served; (b) that it was in fact received by the party as evidenced by the attached registry receipt; (c) that the genuine receipt thereof is attached; and D the date of the return thereof to the sender. This affidavit shall be prima facie evidence of personal service of the summons and complaint and service shall be deemed complete and time shall begin to run for the purposes of Section 4E(4) of this Rule thirty (30) days after filing of the affidavit of receipt.

(b) Direct service. Service off the Comanche Nation Indian Country may also be made in the same manner provided in Section 4D of this Rule by a person authorized to serve process under the law of the state or Indian Country where such service is made. Service shall be complete when made and time for purposes of Rule 4E(4) shall begin to run at that time, provided that before any default may be had on such service, there shall be filed an affidavit of service showing the circumstances warranting the utilization of the procedure under Section 4E(1) and attaching an affidavit of the process server showing the fact of the service.

(3) Summons: service by publication. Where by law personal service is not required, and a person is subject to service under Section 4E(1), such service may be made by either of the methods set forth in Section 4E(2) or by publication. Service by publication shall be made by publication of the summons in the official newspaper of the Comanche Nation, at least once a week for four successive weeks and the service shall be complete thirty days after the first publication. When the

residence of the defendant is known, the party shall on or before the date of the first publication mail a copy of the summons and complaint, postage prepared, directed to the defendant at his place of abode. The plaintiff shall file an affidavit showing the publication and mailing and the circumstances warranting the utilization of the procedure under Section 4E(1) which shall be prima facie evidence of compliance herewith, and if the residence is unknown, the affidavit shall so state.

(4) Summons; time for appearance after service under 4E(1), 4E(2), 4E(3), or 4E(5). Where service of a copy of the summons and complaint is made off of the Comanche Nation Indian Country or pursuant to subdivisions 4E(1), 4E(2), 4E(3), or 4E(5) of this Rule, the defendant shall appear and answer within thirty days after completion thereof in the same manner and under the same penalties as if he had been personally served with a summons on the Comanche Nation Indian Country.

(5) Alternative provisions for service in a foreign country.

(a) Manner. When this rule authorizes service upon a party not an inhabitant of or found within the Comanche Nation Indian Country, and service is to be effected upon the party in a foreign country, it is also sufficient if service of the summons and complaint is made:

(i) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or

(ii) as directed by the foreign authority in response to a letter rogatory, when service in either case is reasonably calculated to give actual notice; or

(iii) upon an individual, by deliver to him personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or

(iv) by any form of mail, requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(v) as directed by order of the court. Service under (iii) above may be made by any person who is not a party and is not less than 18 years of age or who is designated by order of the court or by the foreign court. On request, the clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign court or officer who will make the service.

(b) Return. Proof of service may be made as prescribed by Section 4G of this rule, or by the law of the foreign country, or by order of the court. When service is made pursuant to subparagraph (a)(iv) of section 4E(5) of this Rule, proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

4F. Territorial limits of effective service. All on-Comanche Nation Indian Country process may be served anywhere within the exterior boundaries of the Comanche Nation Indian Country.

4G. Return. When the process is served by a tribal law officer, the return shall be officially endorsed on or attached thereto and returned to the court promptly. If served by any other person, return and proof of such service shall be made promptly by affidavit thereof. In either event such return shall be made within the time during which the person served must respond to process. Failure to make proof of service does not affect the validity thereof.

4H. Return of service by publication. When the summons is served by publication, the return of the officer serving the summons shall be endorsed upon or attached to the summons stating when and how it was served and the dates of the publication, and the return shall be accompanied by a printed copy of the publication. Service by publication and the return thereof may also be made by the plaintiff or by his legal counsel in the same manner as though made by an officer.

4I. Amendment. At any time in its discretion and upon such terms as it deems just, the court 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 issued.

RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

5A. Service: when required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading after the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

5B. Service; parties served; continuance. When there are several defendants, and some are served with summons and others are not, the plaintiff may proceed against those served or continue the action. The court may order the plaintiff to proceed against those served.

5C. Service after appearance; service after judgment; how made.

(1) Whenever under these rules service is required or permitted to be made upon a party represented by counsel, the service shall be made upon counsel unless service upon the party himself is ordered by the court. Service upon counsel or upon a party shall be made by delivering or mailing a copy to him at his last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the party; or to counsel; or leaving it at counsel's office with his or her clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at his dwelling-house or usual place of abode with sod person of suitable age and discretion who lives there. Service by mail is complete upon mailing.

(2) After the time for appeal from a judgment has expired or a judgment has become final after appeal, the service of a motion, petition, complaint or other pleading required to be served and requesting modification, vacation or enforcement of that judgment, shall be served pursuant to Rule 4 as if serving a summons and complaint.

5D. Service; numerous defendants. In any action in which there are usually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

5E. Service; acceptance or waiver; voluntary appearance. The defendant may accept service of any process or waive issuance or service thereof, in writing, signed by him or by his authorized agent or counsel and the acceptance or waiver shall be filed in the action. The defendant may, in person or by counsel or by his authorized agent, enter an appearance in open court, and the appearance shall be noted by the clerk upon the docket and entered in the minutes. Such waiver, acceptance or appearance shall have the same force and effect as if summons had been issued and served. The filing of an answer shall constitute an appearance.

5F. Service; unknown heirs in real property actions. When in an action involving rights to real property, it is necessary for a complete determination of the action that the unknown heirs of a deceased person be made parties, they may be sued as the unknown heirs of the decedent, and service of summons may be made on them by publication as provided in Rule 4E(1).

5G. Filing. Except for offers of judgment under Rule 68, all papers after the complaint required

to be served upon a party or to be filed with the court within a specified time shall be both filed with the court and served upon the party within the specified time.

5H. Filing with the court defined. The filing of pleadings and other papers with the court as required by these Rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him and in the event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

RULE 6. TIME

6A. Computation. In computing any period of time prescribed or allowed by these rules, by rules of the court, by order of court, or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or tribal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or tribal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and tribal holidays shall not be counted in the computation.

6B. Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion

(1) with or without motion or notice order the period enlarged if request therefore is made before the expiration of the specified period originally prescribed or as extended by a previous order, or (2) upon motion made after

the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 60B, 52B, 59B, G and L, and 60C except to the extent and under the conditions stated in them.

6C. Motions and affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than five days before the time specified for the hearing, unless a different period is fixed by these Rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion, and, except as otherwise provided in Rules 56C and 59F, opposing affidavits may be served not later than one day before the hearing, unless the court permits them to be served at some other time.

6D. Orders to show cause. A judge of the Tribal Court, upon application supported by affidavit showing cause therefore, may issue an order requiring a party to show cause why the party applying for the order should not have the relief therein specified, and may make the order returnable at such time as he designates.

6E. Additional time after service by mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, five days shall be added to the prescribed period. This rule has no application to the mailing of notice of entry of judgment required by Rule 77G.

6F. Summons and service; termination of action. An action shall automatically terminate if the summons is not issued and served, or the service by publication commenced within one year from the filing of the complaint.

Part III.
PLEADINGS AND MOTIONS

RULE 7. PLEADINGS ALLOWED AND FORM OF MOTIONS

7A. Pleadings allowed. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

7B. Motions, petitions and other papers.

(1) An application to the court for an order shall be by petition or motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

RULE 8. GENERAL RULES OF PLEADING

8A. Claims for relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain:

(1) A short and plain statement of the grounds upon which the court's jurisdiction depends.

(2) A short and plain statement of the claim showing that the pleader is entitled to relief.

(3) A demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

8B. Defenses; form of denials. A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all

the averments except such designated averments or paragraphs as he expressly admits, but when he does so intend to controvert all its averments, including averments of the ground upon which the court's jurisdiction depends, he may do so by general denial subject to the obligations set forth in Rule 11A.

8C. Affirmative defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

8D. Effect of failure to deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

8E. Pleading to be concise and direct; consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or equitable grounds or both. All statements shall be made subject to the obligations set forth in Rule 11A.

8F. Construction of pleadings. All pleadings shall be so construed as to do substantial justice.

RULE 9. PLEADING SPECIAL MATTERS

9A. Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

9B. Fraud, mistake, condition of the mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

9C. Conditions precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

9D. Official document or act. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

9E. Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

9F. Time and place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

9G. Special damage. When items of special damage are claimed, they shall be specifically stated.

9H. Complaint in action for libel or slander. In an action for libel or slander, the complaint need not state the extrinsic facts applying to the plaintiff the defamatory matter out of which the claim arose, but may allege generally that the libel or slander was published or spoken concerning the plaintiff, and if the allegation is controverted the plaintiff shall establish on the trial that it was so published or spoken.

9I. Verification of answer. Any responsive pleading setting up any of the following matters, unless the truth the pleading appears of record, shall be verified by affidavit:

(1) That the plaintiff does not have legal capacity to sue.

(2) That the plaintiff is not entitled to recover in the capacity in which he sues.

(3) That there is another action pending in the Tribal Court between the same parties for the same claim.

(4) That there is a defect of parties, plaintiff or defendant.

(5) A denial of partnership, or of incorporation, of the plaintiff or defendant.

(6) A denial of the execution by the defendant or by his authority of any instrument in writing upon which any pleading is based, in whole or in part, and alleged to have been executed by him or by his authority, and not alleged to be lost or destroyed. When the instrument is alleged to have been executed by a person then deceased, the affidavit may state that the Affiant has reason to believe, and does believe, that such instrument was not executed by the decedent or by his authority.

(7) A denial of the genuineness of the endorsement or assignment of a written instrument.

(8) That a written instrument upon which a pleading is based is without consideration, or that the consideration therefor has failed in whole or in part.

(9) That an account which is the basis of plaintiff's action, and supported by an affidavit, is not just, and in such case the answer shall set forth the items and particulars which are unjust.

RULE 10. FORM OF PLEADING

10A. Caption; names of parties. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation of the type of pleading it is as in Rule 7A. In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

10B. Paragraphs; separate statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of single set of circumstances, and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

10C. Adoption by reference; exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in a motion. A copy of a written instrument which is an exhibit to a pleading is a part thereof for all purposes.

10D. Method of preparation and filing. All pleadings and other papers filed in any action or proceeding shall be on white, opaque, unglazed paper measuring 8½ inches x 11 inches, with a margin at the top of each page of not less than 1½ inches and a left hand margin of not less than 1

inch. Notwithstanding the foregoing, exhibits or attachments to pleadings may be folded and fastened to pages of the specified size. An exhibit or attachment not in compliance with the foregoing provisions may be filed only if it appears that compliance is not reasonably practicable. All pleadings filed shall be endorsed with the number of the action, the title of the court and action, the nature of the paper filed, and the name and address of the party and counsel, if any, and shall be written clearly in handwriting or typewritten on one side of a sheet only, double-spaced, except in the case of quotations, and the pages numbered. Originals only shall be filed, except that where it is necessary to file more than one copy of a pleading the additional copies may be carbons or photocopies.

10E. Erasures and interlineation. All erasures and interlineation shall be called to the attention of the clerk, and noted by him on the margin with his initials, but no erasures or interlineation will be allowed in any order, finding or judgment signed by the court.

10F. Designation of defendant. When the name of the defendant is unknown to the plaintiff, the defendant may be designated in the pleadings or proceeding by any name. When his true name is discovered the pleading or proceeding may be amended accordingly.

RULE 11. SIGNING OF PLEADINGS

11A. Signing of pleadings. Every pleading of a party represented by counsel shall be signed by at least one counsel, whose address shall be stated. A party who is not represented by counsel shall sign his pleading and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of counsel constitutes a certificate by him that he has read the pleading, that to the best of his knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this Rule, it may be stricken as sham and farce and the action may proceed as though the pleading had not been served. For a willful violation of this rule counsel may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

11B. Verification of pleading generally. When in a civil action a pleading is required to be verified by the affidavit of the party, or when in a civil action an affidavit is required or permitted to be filed, the pleading may be verified, or the affidavit made, by the party or by a person acquainted with the facts, for and on behalf of such party.

RULE 12. DEFENSES AND OBJECTIONS; WHEN AND HOW PRESENTED; BY PLEADING OR MOTION; MOTION FOR JUDGMENT ON PLEADINGS

12A. When presented. A defendant shall serve and file his answer within twenty days after the service of the summons and complaint upon him, except when service of process is made pursuant to Rule 4E(1), (2) or (4). A party served with a pleading stating a cross-claim against him shall serve and file an answer thereto within twenty days after the service upon him. The plaintiff shall serve and file his reply to a counterclaim in the answer within twenty days after service of the answer or, if a reply is ordered by the court, within twenty days after service of the order, unless the order otherwise directs. The service of a motion permitted under this Rule alters these periods of time as follows, unless a different time is fixed by order of the court:

(1) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten days after notice of the court's action.

(2) If the court grants a motion for a more definite statement the responsive pleading shall be served within ten days after the service of the more definite statement.

12B. How presented; motion to dismiss. Every defense, in law or fact, to a claim for relief in

any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

(1) Lack of jurisdiction over the subject matter.
(2) Lack of jurisdiction over the person.
(3) Insufficiency of process.
(4) Insufficiency of service of process.
(5) Failure to state a claim upon which relief can be granted.
(6) Failure to join a party under Rule 19.

A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

12C. Motion for judgment on the pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

12D. Preliminary hearings. The defenses specifically enumerated as (1) through (6) in subdivision B of this Rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision C of this Rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

12E. Motion for more definite statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before filing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within ten days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

12F. Items of account; demand. The party pleading need not state the items of an account alleged in the pleading, but if demand is made in writing for the items of account, the adverse party shall file and serve a copy of the account within ten days after demand, or be precluded from giving evidence thereof. The court may order a further account when the account delivered is too general or is defective.

12G. Motion to Strike. Upon motion made by a party before responding to a pleading, or if no responsive pleading is permitted by these Rules, upon motion made by a party within twenty days after service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from a pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

12H. Consolidation of defenses in motion. A party who makes a motion under this Rule may join with it any other motions herein provided for and then available to him. If a party makes a motion under this Rule but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision I(2) hereof on any of the grounds there stated.

12I. Waiver or preservation of certain defenses. A party waives all defenses and objections which he does not present either by motion as provided herein, or, if he has made no motion, in his answer or reply, except:

(1) A defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process is waived (a) if omitted from a motion in the circumstances described in subdivision H, or (b) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15A to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7A, or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears to the court by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

RULE 13. COUNTERCLAIM AND CROSS-CLAIM

13A. Compulsory counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon his claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on the claim, and the pleader is not stating any counterclaim under this Rule.

13B. Permissive counterclaims. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

13C. Counterclaim exceeding opposing claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

13D. Counterclaim maturing or acquired after pleading. A claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

13E. Omitted counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, he may by leave of court set up the counterclaim by amendment.

13F. Cross-claim against co-party. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. The cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the

cross-claimant.

13G. Joinder of additional parties. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

13H. Separate trials; separate judgments. If the court orders separate trials as provided in Rule 42B, judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54B when the court has jurisdiction to do so, even if the claims of the opposing party have been dismissed or otherwise disposed of.

RULE 14. THIRD-PARTY PRACTICE

14A. When defendant may bring in third party. At any time after commencement of the action a defendant, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him. The third-party plaintiff need not obtain leave to make the service if he files the third-party complaint not later than 10 days after he serves his original answer. Otherwise he must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make his defenses to the third-party plaintiff's claim as provided in Rule 12, and his counterclaims against the third-party plaintiff and crossclaims against other third-party defendants as provided in Rule l3. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert his defenses as provided in Rule 12 and his counterclaims and cross-claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this Rule against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third-party defendant.

14B. When plaintiff may bring in third party. When a counter-claim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances which under this Rule would entitle a defendant to do so.

RULE 15. AMENDED AND SUPPLEMENTAL PLEADINGS

15A. Amendments.

(1) A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within twenty days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party. Leave to amend shall be freely given when justice requires.

(2) A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

15B. Amendments to conform to the evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment, but failure to so amend does not affect the result of the trial on these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be promoted thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

15C. Relation back of amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defenses on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

15D. Supplemental pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading, sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

RULE 16. PRE-TRIAL PROCEDURE; FORMULATING ISSUES

16A. Formulating Issues. In any action, the court may in its discretion direct the parties or counsel to appear before it for a conference to consider:

(1) The simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings;

(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(4) The limitation of the number of expert witnesses;

(5) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;

(6) Such other matters as may aid in the disposition of the action. The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of the parties or counsel. The order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by Rule a pre-trial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or non-jury actions or extend it to all actions.

16B. Disposition of motions; overruling by setting for trial. No civil action shall be heard on its merits until all motions are disposed of, but the setting of an action for trial shall be deemed an overruling of all motions pending.

Part IV. PARTIES

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RULE 17. PARTIES PLAINTIFF AND DEFENDANT; CAPACITY

17A. Real party in interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by law may sue in his own name without joining with him the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

17B. Actions by personal representatives; setting aside judgment. Actions for the recovery of personal property, debts or damages, and for the title to or possession of lands, or for any right attached thereto or arising therefrom, or for an injury or damage thereto may be commenced by an executor, administrator, or guardian appointed pursuant to Tribal law in the same manner as if commenced by the testator or intestate, and judgment therein shall be as conclusive as if rendered in favor of or against the testator or intestate. The judgment may be set aside upon the application of any person interested for fraud or collusion on the part of the executor, administrator or guardian.

17C. Actions by or against personal representatives. Actions for the recovery or possession of property, real or personal, or to quiet title thereto, or to determine an adverse claim thereto, and all actions founded upon contracts, may be maintained by or against an executor or administrator in all cases in which such actions might have been maintained by or against his testator or intestate.

17D. Actions against surety, assignor or endorser. The assignor, endorser, guarantor and surety upon a contract, and the drawer of a bill which has been accepted, may be sued without the maker, acceptor or other principal obligor when the latter resides beyond the limits of Tribal jurisdiction, or when his residence is unknown and cannot be ascertained by the use of reasonable diligence, or when he is dead, or insolvent.

17E. Infants or incompetent persons. Whenever an infant or incompetent person has a representative, such as a general guardian, or similar fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative he may sue by his next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.

17F. Bond of guardian ad litem or next friend. If an action is brought for the minor by his next friend or guardian ad litem, the next friend or guardian ad litem shall not receive any money or property of the minor until such friend or guardian files a bond as security therefor in such form and with such surety as the court may prescribe and approve.

17G. Consent of guardian ad litem or next friend; liability; compensation. No person shall be appointed guardian ad litem or next friend except upon written consent filed by him in the action. He shall not be personally liable for costs, unless by special order of the court. The court may allow him a reasonable compensation for services to be taxed as part of the costs of the action.

17H. Any partnership may sue and be sued in the name which it has assumed or by which it is known.

RULE 18. JOINDER OF CLAIMS AND REMEDIES

18A. Joinder of claims. A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal or equitable, as he has against an opposing party.

18B. Joinder of remedies; fraudulent conveyances. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action, but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to him, without first having obtained a judgment establishing the claim for money.

RULE 19. JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

19A. Persons to be joined if feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest, (ii) leave any of the person already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff.

19B. Determination by court whenever joinder not feasible. If a person as described in subdivision A(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measure, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

19C. Pleading reasons for nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision A(1)-(2) hereof who are not joined, and the reasons why they are not joined.

19D. Exception of class actions. This rule is subject to the provisions of Rule 23.

RULE 20. PERMISSIVE JOINDER OF PARTIES

20A. Permissive joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants, if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgement may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

20B. Separate trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

RULE 21. MISJOINDER AND NON-JOINDER OF PARTIES

Misjoinder of parties is not grounds for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

RULE 22. INTERPLEADER

22A. Interpleader. Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this Rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

22B. Release from liability; deposit or delivery. Any party invoking the interpleader, as provided by subdivision A of this Rule, may move the court for an order discharging him from liability to either party, and upon depositing in court the amount claimed or by delivering the property to the party entitled thereto, or into court as the court may direct, he may be discharged.

RULE 23. CLASS ACTIONS

23A. Prerequisites to a class action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

23B. Class actions maintainable. An action may be maintained as a class action if the prerequisites of subdivision A are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of (a) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(b) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (a) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (b) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (d) the difficulties likely to be encountered in the management of a class action.

23C. Determination by order whether class action to be maintained; notice; judgment; actions conducted partially as class actions.

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision B(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (a) the court will exclude him from the class if he so requests by a specified date; (b) the judgment, whether favorable or not, will include all members who do not request exclusion; and (c) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

(3) The judgment in an action maintained as a class action under subdivision B(1) or B(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision B(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision C(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate (a) an action may be brought or maintained as a class action with respect to particular issues, or (b) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this Rule shall then be construed and applied accordingly.

23D. Orders in conduct of actions. In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on interveners; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

23E. Dismissal or compromise. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall given to all members of the class in such manner as the court directs.

RULE 23.1 DERIVATIVE ACTIONS BY SHAREHOLDERS

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which he complaints or that his share or membership thereafter devolved on him by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

RULE 23.2 ACTIONS RELATING TO UNINCORPORATED ASSOCIATIONS

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only it is appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in Rule 23D., and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23E.

RULE 24. INTERVENTION

24A. Intervention of right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a tribal law confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest.

24B. Permissive intervention. Upon timely application anyone may be permitted to intervene in an action:

(1) When Tribal law confers a conditional right to intervene.

(2) When an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

24C. Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

24D. Time to answer. If the motion to intervene is granted, the plaintiff and defendant shall be allowed a reasonable time, not exceeding twenty days, in which to answer the pleading of the intervener.

RULE 25. SUBSTITUTION OF PARTIES

25A. Death.

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. Unless the motion for substitution is made not later than 90 days after the death is noted on the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be noted on the record and the action shall proceed in favor of or against the surviving parties.

25B. Death of defendant after tort action commenced. An action to recover damages for injuries to the person, or death caused by the wrongful act, default or neglect of another, shall not abate by reason of the death of the defendant, and his personal representative may be substituted a defendant. If the action is against a received, assignee or trustee, and such receiver, assignee or trustee dies, resigns or is removed from office, his successor in office may be substituted as defendant. The action shall thereupon proceed to judgment as if the defendant has remained alive, or the original receiver, assignee or trustee had continued in office.

25C. Incompetency. If a party becomes incompetent, the court upon motion served as provided in subdivision A of this Rule may allow the action to be continued by or against his representative.

25D. Transfer of interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision A of this Rule.

25E. Public officers; death or separation from office.

(1) When a public officer is a party to an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer sues or is sued in his official capacity, he may be described as a party by his official title rather than by name; but the court may require his name to be added.

Part V. DEPOSITIONS AND DISCOVERY

Rule 26 General provisions governing discovery

A. Discovery methods

B. Scope of Discovery

C. Protective orders

B. Failure to comply with order
C. Expenses of failure to admit
D. Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection

RULE 26. GENERAL PROVISIONS GOVERNING DISCOVERY

26A. Discovery methods. Parties may obtain discovery by one or more of the following methods: dispositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the court orders otherwise under subdivision C of this rule, the frequency of use of these methods is not limited.

26B. Scope of discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not grounds for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Insurance agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part of all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) Trial preparation: Materials. Subject to the provisions of subdivision B(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision B(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his counsel, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of counsel or other representative of a party concerning the litigation. A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37A(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (a) a written statement signed or otherwise adopted or approved by the person making it, or (b) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions or subdivision B(1) of this rule and acquired or

developed in anticipation of litigation or for trial, may be obtained only as follows:

(a) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to the state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(ii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision B(4)(c) of this rule, concerning fees and expenses as the court may deem appropriate.

(b) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35B or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(c) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions B(4)(a)(ii) and B(4)(a) of this rule; and (ii) with respect to discovery obtained under subdivision B(4)(a)(ii) of this rule the court may require, and with respect to discovery obtained under subdivision B(4)(b) of this rule the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

26C. Protective orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one person present except persons designated by the court; (6) that a disposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court. If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37A(4) apply to the award of expenses incurred in relation to the motion.

26D. Sequence of timing of discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

26E. Supplementation of responses. A party who has responded to a request for discovery with a response that was complete and when is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (a) the identity and location of persons having knowledge of discoverable matters; (b) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify and the substance of his testimony and (c) the identity of

any other person expected to be called as a witness at trial. If a party fails to supplement his responses with respect to any question directly addresses to (b) or (c) prior to 30 days before the date of trial, unless the parties otherwise agree, any witness not so identified shall not be permitted to testify except for good cause shown.

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (a) he knows that the response was incorrect when made, or (b) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

RULE 27. DEPOSITIONS BEFORE ACTION OR PENDING APPEAL

27A. Before action; petition; notice and service; order and examination; use of deposition.

(1) A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in the Tribal Court may file a verified petition in the Tribal Court. The petition shall be entitled in the name of the petitioner and shall show:

(i) That the petitioner expects to be a party to an action cognizable in Tribal Court but is presently unable to bring it or cause it to be brought.

(ii) The subject matter of the expected action and his interest therein.

(iii) The facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it.

(iv) The names or a description of the persons he expects will be adverse parties and their addresses so far as known.

(v) The names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each. The petition shall also ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least twenty days before the date of hearing the notice shall be served either within or without the Comanche Nation Indian Country in the manner provided in Rule 4D for service of summons, but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise. If any expected adverse party is a minor or incompetent the provisions of Rule 17G shall apply.

(3) If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these Rules, and the court may make orders of the character provided for by Rules 34 and 35.

(4) If a deposition to perpetuate testimony is taken under these Rules, it may be used in any action involving the same subject matter subsequently brought, in accordance with the provisions of Rule 32A.

27B. Pending appeal. If an appeal has been taken from a judgment of the Tribal Court or before taking an appeal, if the time therefor has not expired, the Court may allow the taking of the

depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the court. In such case the party who desires to perpetuate the testimony make a motion in the court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the court. The motion shall show the names and addresses of the persons to be examined, the substance of the testimony which he expects to elicit from each and the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Ruled 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these Rules for depositions taken in actions pending in the Tribal Court.

RULE 28. PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN

28A. Within the United States: Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the Tribal Court. A person so appointed has power to administer oaths and take testimony.

28B. In foreign countries. In a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or (2) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take testimony.

28C. Disqualification for interest. No deposition shall be taken before a person who is a relative or employee or counsel of any of the parties, or is a relative or employee of such counsel, or is financially interested in the action.

RULE 29. STIPULATIONS REGARDING DISCOVERY PROCEDURE

Unless the court orders otherwise, the parties may by stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery, including extending the time provided in Rules 33, 34, and 36 for responses of discovery.

RULE 30. DEPOSITIONS UPON ORAL EXAMINATION

30A. When depositions may be taken. After commencement of the action, any party may take the testimony of any person, including a party, be deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service which is completed under Rule 4E, except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subdivision B(2) of this rule. The attendance of witnesses may be compelled by subpoena as provided in Rule 45. The deposition of a person confined in jail may be taken only by leave of court on such terms as the court prescribes.

30B. Notice of examination: General requirements; special notice; stenographic recording; production of documents and things; deposition of organization.

(1) A party desiring to take the deposition of any person upon oral examination shall give

reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (a) states that the person to be examined is about to leave the Comanche Nation Indian Country, and will be unavailable for examination unless his deposition is taken before expiration of the 30-day period, and (b) sets forth facts to support the statement. The plaintiff or his counsel shall sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11A are applicable to the certification. If a party shows that when he was served with notice under this subdivision B(2) he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) The court may upon motion order that the testimony at a deposition be recorded by other than stenographic means, in which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at his own expense.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in his notice name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision B(6) does not preclude taking a deposition by any other procedure authorized in these rules.

30C. Examination and cross-examination; record of examination; oath; objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Rules of Evidence in use in the Tribal Court pursuant to Tribal law. The examination shall commence at the time and place specified in the notice or within thirty minutes thereafter and, unless otherwise stipulated or ordered, will be continued on successive days, except Saturdays, Sundays, and tribal holidays until completed. Any party not present within thirty minutes following the time specified in the notice of taking deposition waives any objection that the deposition was taken without his presence. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subdivision B(4) of this rule. If requested by one of the parties, the testimony shall be transcribed. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In

lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transit them to the officer, who shall propound them to the witness and record the answers verbatim.

30D. Motion to terminate or limit examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26C. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37A(4) apply to the award of expenses incurred in relation to the motion.

30E. Submission to witness; changes; signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32D(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

30F. Certification and filing by officer; exhibits; copies; notice of filing; preservation of notes and tapes of depositions.

(1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of [here insert the name of witness]" and shall promptly file it with the Tribal Court. Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (a) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (b) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefore, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(4) The officer shall preserve and retain for a period of 10 years all original notes and stenographic tapes taken or recorded by him during deposition, which shall be retained by the officer in such place and manner as to ensure their availability to the court or any party upon request.

30G. Failure to attend or to serve subpoena; expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by counsel pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his counsel in attending, including reasonable counsel fees.-

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by counsel because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his counsel in attending, including reasonable counsel fees.

30H. Depositions for foreign jurisdiction. When an action is pending in a jurisdiction outside of the Comanche Nation Indian Country and a party or his counsel wishes to take a deposition within the Comanche Nation Indian Country, it may be done and a subpoena or subpoena duces tecum may issue therefor from the Tribal Court. The party or his attorney shall file, as a civil action, an application, under oath, captioned as is the foreign action, which contains the following information:

(1) The caption of the case and the court in which it is pending including the names of all parties and the names of the attorneys for the parties;

(2) References to the law of the jurisdiction in which the action is pending which authorizes the taking of the deposition within the Comanche Nation Indian Country and such facts as, under the law, must appear to entitle the party to take the deposition and have a subpoena issued for the attendance of the witness;

(3) A certified copy of the notice of taking deposition, order of the court authorizing the deposition, commission or letters rogatory or such other pleadings as, under the law of the foreign jurisdiction, are necessary in order to take the deposition;

(4) A description of the notice given to other parties and a description of the service of the application to be made upon other parties to the action. Upon the filing of the application, the Court, if to do so would be in the interest of justice, shall forthwith issue the subpoena or subpoena duces tecum as requested by the application. An affidavit of service of the application upon all other parties to the civil action shall be filed with the clerk of the court. No further proceedings in the Tribal Court are required but any party or the witness may make such motions as are appropriate under these Rules of Civil Procedure.

RULE 31. DEPOSITIONS UPON WRITTEN QUESTIONS

31A. Serving questions; notice. After commencement of the action, any party make take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. The deposition of a person confined in jail may be taken only by leave of court on such terms as the court prescribes. A party desiring to take a deposition upon written questions shall serve them upon every to her party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30B(6). Within 30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

31B. Officer to take responses and prepare record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30C, E, and F, to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by him.

31C. Notice of filing. When the deposition is filed the party who took it shall promptly give notice thereof to all other parties.

RULE 32. RULES OF DEPOSITIONS IN COURT PROCEEDINGS

32A. Use of depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30B(6) or 31A to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (a) that the witness is dead; or (b) that the witness is at a greater distance than 50 miles from the place of trial or hearing, or is not within the Comanche Nation Indian Country, unless it appears that the absence of the witness was procured by the party offering the deposition; or (c) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (d) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (e) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require

him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts. Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action in any court of the United States or of any state or Indian tribe has been dismissed and another action involving the same subject matter is afterward brought between the same arties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefore.

32B. Objections to admissibility. Subject to the provisions of Rules 28B and subdivision D(3) of this Rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

32C. Effect of errors and irregularities in depositions.

(1) As to notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to disqualification of officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to taking of deposition.

(a) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(b) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition

(c) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(4) As to completion and return of depositions. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

RULE 33. INTERROGATORIES TO PARTIES

33A. Availability; procedure for use. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the party or counsel making them. The party upon whom the

interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Rule 37A with respect to any objection to or other failure to answer an interrogatory.

33B. Scope; use at trial. Interrogatories may relate to the matters which can be inquired into under Rule 26B, and the answers may be used to the extent permitted by the rules of evidence. An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but he court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

33C. Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or form an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

RULE 34. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

34A. Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated through detection devices into reasonably usable form when translation is practicably necessary) or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26B and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26B.

34B. Procedure. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon the party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Rule 37A with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit

inspection as requested.

34C. Persons not parties. This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

RULE 35. PHYSICAL AND MENTAL EXAMINATION OF PERSONS

35A. Order for examination. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the Tribal Court may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

35B. Report of examining physician.

(1) If requested by the party against whom an order is made under Rule 35A or the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless in the case of a report of examination of a person not a party, the party shows that he is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if a physician fails or refuses to make a report the court may exclude his testimony if offered at trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician in accordance with the provisions of any other rule.

35C. Alternate procedure: Notice of examination; objections.

(1) When the parties agree that a mental or physical examination is appropriate but do not agree as to the examining physician, the party desiring the examination may seek it by giving reasonable notice in writing to every other party to the action. The notice shall specify the name of the person to be examined, the time, place and scope of the examination, and the person or persons by whom it is to be made.

(2) Upon motion by a party or by the person to be examined, and for good cause shown, the court may, in addition to other orders appropriate under subdivision A of this rule make an order that the examination be made by a physician other than the one specified in the notice. If a party after being served with a proper notice under this subdivision does not make a motion under this rule and fails to appear for the examination or to produce for examination the person in his custody or legal control, the court may on motion make such orders in regard to the failure as are just, such as those specified in Rule 37D.

(3) The provisions of Rule 5B shall apply to an examination made under this subdivision.

RULE 36. REQUESTS FOR ADMISSION

36A. Request for admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26B set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other with or after service of the summons and complaint upon the party. Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or, in the case of a defendant, within 45 days after service of the summons and complaint upon that defendant, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his counsel. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 37C, deny the matter or set forth reasons why he cannot admit or deny it. The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this Rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Rule 37A(4) apply to the award of expenses incurred in relation to the motion.

36B. Effect of admission. Any matter admitted under this Rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pre-trial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be promoted thereby and the party who obtained the admission fails to satisfy the court that withdrawal or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

RULE 37. FAILURE TO MAKE DISCOVERY: SANCTIONS

37A. Motion for order compelling discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) Motion. If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30B(6) or 31A, or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested

or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order. If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26C.

(2) Evasive or incomplete answer. For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(3) Award of expenses of motion. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or counsel advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including counsel fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust. If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the counsel advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including counsel fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust. If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

37B. Failure to comply with order.

(1) Sanctions by court. If a deponent fails to be sworn or to answer a question after being directed to do so by the court, the failure may be considered a contempt of court.

(2) Sanctions by court. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30B(6) or 31A to testify on behalf of a party fails to obey an order to provide or permit discovery; including an order made under subdivision A of this rule or Rule 35 the court may make such orders in regard to the failure as are just, and among others the following:

(a) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(b) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing matters in evidence.

(c) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(d) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(e) Where a party has failed to comply with an order under Rule 35A requiring him to produce another for examination, such orders as are listed in paragraph (a),(b), and (c) of this subdivision, unless the party failing to comply shows that he in unable to produce such person for examination. In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the counsel advising him or both to pay the reasonable expenses, including counsel fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

37C. Expenses on failure to admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admission

thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable counsel fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36A, or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to admit.

37D. Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30B(6) or 31A to testify on behalf of a party fails (1) to appear before the officer who is to take his deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (a),(b), and (c) of subdivision B(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the counsel advising him or both to pay the reasonable expenses, including counsel fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust. The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26C.

Part VI. TRIALS

RULE 38. JURY TRIAL OF RIGHT

38A. Right preserved. The right of trial by jury shall be preserved inviolate to the parties.

38B. Demand. Any person may demand a trial by jury of any issue triable of right by jury. The demand may be made by any party by serving upon the other party a demand therefore in writing at any time after the commencement of the action, but not later than the date of setting the case for trial or ten days after a motion to set the case for trial is served, whichever first occurs. The demand for trial by jury may be endorsed on or be combined with the motion to set, but shall not be endorsed on or be combined with any other motion or pleading filed with the court.

38C. Demand; 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 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 the issues of fact in the action.

38D. Waiver. The failure of a party to serve a demand as required by this Rule and to file it as required by Rule 5G 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.

RULE 39. TRIAL BY JURY OR BY THE COURT

39A. Trial by jury. When trial by jury has been demanded as provided in Rule 38, 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 counsel 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, or

(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.

39B. Order of trial by jury. The trial by a jury shall proceed in the following order, unless the court for good cause stated in the record, otherwise directs:

(1) The plaintiff or his counsel may read the complaint to the jury and make a statement of the case.

(2) The defendant or his counsel may read the answer and may make a statement of the case to the jury, but he may defer making such statement until after the close of the evidence on behalf of the plaintiff.

(3) Other parties admitted to the action or their counsel may read their pleadings and may make a statement of their cases to the jury, but they may defer making such statement until after the close of the evidence on behalf of the plaintiff and defendant. The statement of such parties shall be in the order directed by the court.

(4) The plaintiff shall then introduce evidence.

(5) The defendant shall then introduce evidence.

(6) The other parties, if any, shall then introduce evidence in the order directed by the court.

(7) The parties may then introduce rebutting evidence on each side in the respective orders set forth in this Rule above. The statement to the jury shall be confined to a concise and brief statement of the facts which the parties propose to establish by evidence on the trial, and any party may decline to make such statement.

39C. Verdict, deliberations and conduct of jury; sealed verdict.

(1) When the jurors retire to deliberate, they shall be kept together in some convenient place in charge of a proper officer. The court in its discretion may permit jurors to separate while not deliberating, or, on motion of any party, may require them to be sequestered in charge of a proper officer whenever they leave the courtroom or place of deliberation. The court shall admonish them not to converse among themselves or with anyone else on any subject connected with the trial while not deliberating, or to permit themselves to be exposed to any accounts of the proceeding, or to view the place or places where the events involved in the action occurred, until they have completed their deliberations.

(2) The court may direct the jury to return a sealed verdict at such time as the court directs.

39D. Duty of officer in charge of jury. The officer having the jurors under his charge shall not allow any communication to be made to them, or make any himself except to ask them if they have agreed upon their verdict, unless by order of the court, and shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

39E. Admonition to jurors. If the jurors are permitted to separate during trial, they shall be admonished by the court that it is their duty not to converse with or permit themselves to be addressed by any person on any subject connected with the trial.

39F. Communication to court by jury. When the jurors desire to communicate with the court during retirement, they shall make their desire known to the officer having them in charge who shall

inform the court and they may be brought into court, and through their foreman shall state to the court, either orally or in writing, what they desire to communicate.

39G. Discharge of jury; new trial. The jurors may after the action is submitted to them be discharged by the court when they have been kept together for such time as to render it altogether improbable that they can agree, or when a calamity, sickness or accident, may in the opinion of the court, require it. When a jury has been discharged without having rendered a verdict the action may be tried again.

39H. Trial by the court. Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court. 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 upon motion may order a trial by jury of any or all issues.

39I. Procedure applicable in trial by the court. The rules prescribed for trial of actions before a jury shall govern in trials by the court so far as applicable.

39J. Limitation of time of decision by court. In an action tried by the court, the decision of the court shall be given within sixty days after submission of the action. Where briefs are filed, the action shall not be deemed submitted until the time for filing the briefs has expired.

39K. Advisory jury and trial by consent. In all actions not triable of right by a jury the court upon motion or of its own initiative may try an issue with an advisory jury or, 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.

39L. Interrogatories when equitable relief sought; answers advisory. In actions where equitable relief is sought, if a jury is demanded, and more than one material issue of fact is joined, the court may submit written interrogatories to the jury covering all or part of the issues of fact, and such interrogatories shall be answered by the jury. The interrogatories shall be approved by the court, and each interrogatory shall be confined to a single question of fact and shall be so framed that it can be answered yes or no, and shall be so answered. The answers shall be only advisory to the court.

RULE 40. ASSIGNMENT OF CASES FOR TRIAL

The Tribal Court shall provide by Rule of Court 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 other parties, or
(3) In such other manner as the court deems expedient.

RULE 41. DISMISSAL OF ACTION

41A. Voluntary dismissal; by plaintiff or by stipulation or by order of court; effect.

(1) Subject to the provisions of Rule 23C, or Rule 66C, or of any Tribal law, an action may be dismissed by the plaintiff without order of court by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state or Indian tribe an action based on or including the same claim.

(2) Except as provided in paragraph (1) of this subdivision of this Rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

41B. Involuntary dismissal; effect thereof. For failure of the plaintiff to prosecute or to comply with these Rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff, in an action tried by the court without a jury, has completed the preservation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52A. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this Rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

41C. Dismissal of counterclaim, cross-claim, or third-party claim. The provisions of this Rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision A of this Rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

41D. Costs of previously dismissed action. If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until plaintiff has complied with the order.

RULE 42. CONSOLIDATION; SEPARATE TRIALS; POSTPONEMENTS; CHANGE OF JUDGE

42A. Consolidation. When 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 matters in issue in the actions, or it may order all the actions consolidated, and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs of delay.

42B. 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,

crossclaim, counterclaim, or third-party claim or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims or issues, always preserving inviolate the right of trial by jury.

42C. Postponement of trial. When an action has been set for trial on a specified date by order of the court, no postponement of the trial shall be granted except for sufficient cause, supported by affidavit, or by consent of the parties, or by operation of law.

42D. Application for postponement; grounds; effect of admission of truth of affidavit by adverse party. On an application for a postponement of the trial, if the ground for the application is the want of testimony, the party applying therefor shall make affidavit that such testimony is material showing the materiality thereof, and that he has used due diligence to procure such testimony, stating such diligence and the cause of failure to procure such testimony, if known, and that such testimony cannot be obtained from any other source. If the ground for the application is the absence of a witness, he shall state the name and residence of the witness, and what he expects to prove by him. The application in either case shall also state that the postponement is not sought for delay only, but that justice may be done. If the adverse party admits that such testimony would be given and that it will be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed. Such testimony may be controverted as if the witness were personally present.

42E. Deposition of witness or party; consent. The party obtaining a postponement shall, if required by the adverse party, consent that the testimony of any witness or adverse party in attendance be taken by deposition, without notice. The testimony so taken may be read on the trial by either party as if the witnesses were present.

42F. Change of judge.

(1) Change as a matter of right.

(a) Nature of proceedings. In any action pending in Tribal Court, each side is entitled as a matter of right to a change of one judge. Each action, whether single or consolidated, shall be treated as having only two sides. Whenever two or more parties on a side have adverse or hostile interests, the presiding judge may allow additional changes of judge as a matter of right but each side shall have the right to the same number of such changes. A party wishing to exercise his right to change of judge shall file a pleading entitled "Notice of Change of Judge". The notice shall be signed by the party or his counsel; it shall state the name of the judge to be changed; and it shall neither specify grounds nor be accompanied by an affidavit. A judge may honor an informal request for change of judge. When he does so, he shall enter upon the record the date of the request and name of the party requesting change of judge. Such action shall constitute an exercise of the requesting party's right to change of judge.

(b) Filing and service. The notice shall be filed and served on the parties, and the presiding judge.

(c) Time. Failure to file a timely notice precludes change of judge as a matter of right. A notice is timely if filed twenty or more days before the date set for trial. Whenever an assignment is made which identifies the trial judge of the first time or which changes the trial judge, a notice shall also be timely as to the newly assigned judge if filed within ten days after such new assignment and before trial commences.

(d) Waiver. A party waives his right to change of judge as a matter or right when, after a judge is assigned to preside at trial or is otherwise permanently assigned to the action, the party participates before that judge in:

(i) Any judicial proceeding which concerns the merits of the action and involves the consideration of evidence or of affidavits; or

(ii) A pretrial conference; or

(iii) The commencement or trial; or

(iv) If the party agrees upon a judge to whom the case is to be assigned. Such waiver is to apply only to the agreed upon judge.

(e) Cases remanded from the Court of Appeals. When an action is remanded by the Court of Appeals and the opinion or order requires a new trial on one or more issues, then all rights to change of judge are renewed and no event connected with the first trial shall constitute a waiver.

(f) Assignment of action. After a notice of change of judge is timely filed, the parties shall inform the court in writing if they have agreed upon a judge who is willing to have the action assigned to him. An agreement of all parties upon such a judge shall be honored and shall preclude further changes of judge as a matter or right unless the judge agreed upon becomes available. If, at the end of ten days, or before the time set for trial, whichever comes first, no judge has been agreed upon, then the presiding judge or another judge appointed by the presiding judge regularly to handle such duties shall reassign the action. If a second notice of change of judge is timely filed by a party entitled to do so, the judge who made the assignment shall convene a conference which the parties or their counsel shall attend. At the conference an assignment of the action shall be made to the judge to whom the objections of the parties are least applicable. No further notices of change of judge shall be permitted without court order. If a judge to whom an action has been assigned later becomes unavailable because of death, illness, or other physical or legal incapacity, the parties shall be restored to their several positions and rights under this rule as they existed immediately before the assignment of the action to such judge.

(2) Proceedings based on cause.

(a) Grounds. Grounds for proceedings based upon cause are stated in Section 2.16 of the Comanche Nation Government Code and proceedings under that section shall be governed by this Rule.

(b) Filing and service. An affidavit shall be filed and copies served on the parties and the presiding judge in accordance with Rule 5.

(c) Timeliness and waiver. An affidavit shall be timely if filed and served within twenty days after discovery that grounds exist for change of judge. No event occurring before such discovery shall constitute waiver of rights to change of judge based on cause.

(d) Hearing and assignment. If the judge who receives an affidavit does not forthwith disqualify himself, the presiding judge shall forthwith provide for a hearing to determine the issues connected with the affidavit. The hearing judge shall decide the issues by the preponderance of the evidence and, following the hearing, shall return the matter to the presiding judge who shall as quickly as possible assign the action back to the original judge or make a new assignment, depending on the findings of the hearing judge.

(3) Duty of judge after filing of affidavit. When an affidavit for change of judge is timely filed, the judge named in the affidavit shall proceed no further in the action except to make such temporary orders as may be absolutely necessary to prevent immediate and irreparable injury, loss or damage from occurring before the action can be transferred to another judge, or assigned back to the original judge.

RULE 43. WITNESSES; EVIDENCE

43A. Definition of witness. A witness is a person whose declaration under oath or affirmation is received as evidence for any purpose, whether such declaration is made on oral examination or by deposition or affidavit.

43B. Affirmation in lieu of oath. Whenever under these Rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

43C. Limitation on examination of witness; exception. Only one counsel on each side shall conduct the examination of a witness until such examination is completed, except when the court grants permission for other counsel to conduct the examination.

43D. Form and admissibility of evidence. All questions of form and admissibility of evidence which are, pursuant to a ruling of the Tribal Court, or other Tribal law, to be resolved according to the Comanche Nation Formal Rules of Civil Procedure, shall be resolved by the application of the Federal Rules of Evidence, which, for that purpose, are incorporated herein by reference and made a part of Comanche Nation law. In all trials, the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these Rules or the Rules of Evidence in use by the Tribal Court pursuant to a ruling of the Tribal Court or other Tribal law. Documents and objects offered in evidence, whether admitted or rejected, shall be marked as exhibits or for identification, and filed in the action.

43E. 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.

43F. Omission of testimony during trial. The court may at any time before commencement of the argument, when it appears necessary to the due administration of justice, allow a party to supply an omission in the testimony upon such terms and limitations as the court prescribes.

43G. Preservation of court reporter's notes of court proceedings.

(1) The official stenographic notes or tape recording of any court proceeding are official records of the court. Such notes shall be kept by the Clerk of the Court in such place or places as shall be designated by the court. Unless the court specifies a different period for the retention of such notes, they shall be retained for a period of ten (10) years.

(2) If court reporters' notes which have been delivered to the Clerk of the Court are to be transcribed, the court reporter who took the notes shall be given the first opportunity to make the transcription, unless he has been dismissed or has otherwise terminated his position as court reporter for the Court or is unavailable for any other reason.

RULE 44. PROOF OF RECORDS

44A. Records of public officials. The records required to be made and kept by a public officer of the Comanche Nation, state, county, municipality, or any body politic, and copies thereof certified under the hand and seal of the public officer having custody of such records, shall be received in evidence as prima facie evidence of the facts therein stated.

44B. Proof of records of notaries public. Declarations and protests made and acknowledgments taken by notaries public, and certified copies of their records and official papers, shall be received in evidence as prima facie evidence of the facts therein stated.

44C. Proof of appointment of executor, administrator, or guardian; letters of certificate. Whenever it is necessary to make proof of the appointment and qualification of an executor, administrator or guardian, the letters issued to him in the manner provided by law, or a certificate of the proper clerk under his official seal that the letters issued, shall be sufficient evidence of the

appointment and qualification of the executor, administrator or guardian.

44D. Comparison of handwriting. In any action comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine shall be permitted to be made by witnesses, and such writings and the evidence of witnesses respecting them may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute.

RULE 44.1 DETERMINATION OF FOREIGN LAW

A party who intends to raise an issue concerning the law of a foreign country 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 Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.

RULE 45. SUBPOENA

45A. Subpoena for attendance of witnesses; form; issuance. Except as otherwise provided by Rule of Court, every subpoena shall be signed by a Judge under the seal of the Court in the name of the Comanche Nation, shall state the name of the court and title of the action, and shall command each person to whom it is directed to attend and give testimony at time and place therein specified.

45B. Subpoena for production of documentary evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein, but the court, upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance therewith, may quash or modify the subpoena if it is unreasonable and oppressive. In the alternative, the Court may condition denial of the motion to quash or modify the subpoena upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

45C. Failure to produce documentary evidence. Upon failure to comply with the subpoena as provided in subdivision B of this Rule, secondary evidence of the books, papers, documents or tangible things may be given at the trial.

45D. Service of subpoena. A subpoena may be served by a Tribal law officer, or by any other person who is not a party and is not less than eighteen years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fees for one day’s attendance and the mileage allowed by law. When the subpoena is issued on behalf of the Comanche Nation or an officer or agency thereof, fees and mileage need not be tendered.

45E. Subpoena for taking depositions; place of examination.

(1) Proof of service of a notice to take a deposition as provided in Rules 30B and 31A constitutes a sufficient authorization for the issuance by the clerk of the court of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by Rule 26B, but in that event the subpoena will be subject to the provisions of Rule 26C and subdivision B of this rule. The person to whom the subpoena is directed may, within 10 days after the service thereof or on or before the return date if the return date is less than 10 days after service, serve upon the party or counsel designated in the subpoena written objection to inspection or copying of any and all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court. The party serving the

subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

(2) A person served on the Comanche Nation Indian Country may be requested to attend an examination at any reasonable location within the Comanche Nation Indian Country. A person served outside of the Comanche Nation Indian Country may be required to attend within or outside of the Comanche Nation Indian Country, as long as such place is within forty miles from the place of service, or at such other convenient place as is fixed by an order of court.

45F. Subpoena for hearing or trial. At the request of any party subpoenas for attendance at a hearing or trial shall be issued by the Court. A subpoena requiring the attendance of a witness at a hearing or trial may be served any place.

45G. Contempt. Failure of any person without adequate excuse to obey a subpoena lawfully served upon him may be deemed a contempt of the court.

RULE 46. EXCEPTIONS UNNECESSARY

Formal exceptions to rulings or orders of the court are unnecessary. 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. 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.

RULE 47. JURORS

47A. Trial jury; procedure; list; striking; oath.

(1) When an action is called for trial by jury, the clerk shall prepare the deposit in a box, ballots containing the names of the jurors summoned who have appeared and have not been excused. The clerk shall then draw from the box seven names, and in addition thereto as many more as equal the number of peremptory challenges to which the parties are entitled. If the ballots are exhausted before the jury is completed, the court shall order to be forthwith drawn, in the manner provided for other drawings of jurors, but without notice and without the attendance of officers other than the clerk, as many qualified persons as necessary to complete the jury.

(2) After the jury is completed, the clerk shall make a list thereof and deliver it to the parties for peremptory challenges. The parties shall exercise their challenges by alternate strikes, beginning with the plaintiff, until the peremptory challenges are exhausted. Failure of a party to exercise a challenge in turn shall operate as a waiver of his remaining challenges but shall not deprive the other party of his full number of challenges. The list shall then be delivered to the clerk who shall call the first seven names remaining on the list who shall constitute the trial jury, and to whom an oath or affirmation shall then be administered in substance as follows: "You do solemnly affirm that you will well and truly try the issues now on trial and render a true verdict according to the law and evidence."

47B. Voir dire oath; examination of jurors.

(1) Prior to examination of jurors with respect to their qualifications, an oath or examination shall be administered in substance as follows: "You do solemnly affirm that you will well and truly answer all questions touching your qualifications to serve as a trial juror in the cause now on trial."

(2) The court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions of the parties or their attorneys as it deems proper.

47C. Grounds of challenge for cause. Challenges to jurors for cause in civil actions may be taken on one or more of the following grounds:

(1) Lack of any qualifications prescribed by Tribal law to render a person competent as a juror.

(2) Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent to either party, or being a member of a family of either party, or a partner in business with either party, or when a surety on a bond or obligation for either party.

(3) Having served as a juror or been a witness on a previous trial between the same parties in the same action.

(4) Having formed or expressed an unqualified opinion or belief as to the merits of the action or showing such a state of mind as will preclude the juror from rendering a just verdict, but in the trial of any action the fact that a person called as a juror has formed an opinion or impression based upon rumor or newspaper statements about the truth of which he has expressed no opinion shall not disqualify him to serve as a juror in such action, if he, upon oath states that he believes he can fairly and impartially render a verdict therein in accordance with the law and evidence, and the court is satisfied with the truth of such statement.

(5) The existence of a state of mind evincing enmity or bias for or against either party.

47D. Extent of examination; trial of challenge. The examination of the jurors touching their qualifications to serve shall not be restricted to the grounds of challenge for cause, but may extend to any legitimate inquiry which might disclose a basis for exercise of a peremptory challenge. Challenges for cause shall be tried by the court. Upon the trial of the challenge to an individual juror for cause the juror challenged and any other material witness produced by the parties shall be examined on oath by the court and may be so examined by either party.

47E. Manner of challenging; number of peremptory challenges. Each side shall be entitled to four peremptory challenges. For the purposes of this rule, each case, whether a single action or two or more actions consolidated or consolidated for trial, shall be treated as having only two sides. Whenever it appears that two or more parties on a side have an adverse or hostile interest, the court may allow additional peremptory challenges, but each side shall have an equal number of peremptory challenges. If the parties on a side are unable to agree upon the allocation of peremptory challenges among themselves, the allocation shall be determined by the court. Any individual party, without consent of any other party, may challenge for cause.

47F. Alternate jurors. The court may direct that not more than six jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to 1 peremptory challenge in addition to those otherwise allowed by law if 1 or 2 alternate jurors are to be impaneled, 2 peremptory challenges if 3 or 4 alternate jurors are to be impaneled, and 3 peremptory challenges if 5 or 6 alternate jurors are to be impaneled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by law shall not be used against an alternate juror.

RULE 48. JURIES OF LESS THAN TWELVE; MAJORITY VERDICT

The parties may stipulate that the jury shall consist of any number less than twelve but not less than three, or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

RULE 49. SPECIAL AND GENERAL VERDICTS AND INTERROGATORIES

49A. Return of verdict by nine or more jurors; presentation in court. When twelve jurors have been impaneled to try the action, and if there has been no stipulation as provided in Rule 48 entered in the minutes of the trial, the concurrence of nine or more jurors shall be sufficient to render a verdict therein. When the twelve jurors unanimously agree upon a verdict, the verdict shall be signed by the foreman and returned into court. When the jurors do not unanimously agree upon a verdict, but nine or more agree, the jurors who agree shall each sign the verdict agreed upon, and notify the court of that fact, and thereupon the jury shall be returned into court and deliver to the court the verdict so signed. The court shall receive and cause the verdict to be read and recorded, and judgment shall be entered thereon.

49B. Proceedings on return of verdict. When the jurors have agreed upon a verdict, they shall be conducted into court by the officer having them in charge. The clerk shall read the verdict and shall inquire of the jury, or jurors agreeing if it is their verdict. If any such juror disagrees as to the verdict, the jury shall again retire to consider the case further, but if no juror disagrees, the court shall receive the verdict and order it to be entered into the minutes, and the jury shall be discharged. Where a verdict is rendered by nine or more jurors the verdict shall be received unless a juror signing the verdict disagrees thereto.

49C. Defective or nonresponsive verdict. If the verdict is informal or defective, the court may direct it to be reformed at the bar, and where there has been a manifest miscalculation of interest, the court may direct a computation thereof at the bar, and the verdict may, if the jury assents thereto, be reformed in accordance with such computation. If the verdict is not responsive to the issue submitted to the jury, the court shall call the jurors' attention thereto, and send them back for further deliberation.

49D. Fixing amount of recovery. When a verdict is found for the plaintiff in an action for recovery of money, and for the defendant upon a counterclaim or cross-claim for recovery of money, the jury shall find the amount of recovery on each claim, and the court shall render judgment in favor of the party entitled thereto for the difference in the amounts of such verdicts.

49E. Special form of verdict not required. No special form of verdict is required. Where there has been a substantial compliance with the law in rendering a verdict, the judgment shall be rendered and entered thereon notwithstanding a defect in the form of the verdict.

49F. Polling jury; procedure. When the verdict is announced either party may require the jury to be polled, which shall be done by the clerk asking each juror separately if the verdict returned in his verdict. If any juror answers in the negative, the jury shall again be sent out for further deliberation, but if each juror concurs in the verdict it shall be received and noted in the minutes, except as provided by subdivision C of this Rule, and the jury shall be discharged.

49G. Special verdicts and interrogatories. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence, or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the

evidence, each party waives his right to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand the court may make a finding, or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

49H. General verdict accompanied by answer to interrogatories. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the court shall direct the entry of the appropriate judgment upon the verdict and answers. When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may direct the entry of judgment in accordance with the answers, notwithstanding the general verdict or may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, the court shall not direct the entry of judgment but may return the jury for further consideration of its answers and verdict or may order a new trial.

RULE 50. MOTION FOR A DIRECTED VERDICT

50A. When made; effect. A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence, in the event the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor.

50B. Motion for judgment notwithstanding the verdict. Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Not later than 15 days after the entry of judgment, a party who has moved for a directed verdict may file a motion to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned such party, not later than 15 days after the jury has been discharged, may file a motion for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

50C. Same: Conditional rulings on grant of motion.

(1) If the motion for judgment notwithstanding the verdict, provided for in subdivision B of this rule, is granted, the court shall also rule on the motion for new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify new grounds for granting or denying the motion for a new trial. If the motion for new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. In case the motion for a new trial

has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(2) The party whose verdict has been set aside on motion for judgment notwithstanding the verdict may serve a motion for a new trial pursuant to Rule 59 not later than 10 days after entry of the judgment notwithstanding the verdict.

50D. same: Denial of motion. If the motion for judgment notwithstanding the verdict is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling him to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment notwithstanding the verdict. If the appellate court reverses the judgment, nothing in this rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

50E. Granting of motion. The granting of a motion for directed verdict may be either by the submission of a formal verdict to the jury for signature by a juror appointed by the court to act as foreman for that purpose, or by an appropriate order of the court in accordance with the motion.

RULE 51. INSTRUCTIONS TO JURY; OBJECTIONS; ARGUMENTS

51A. Instructions to jury; objection. 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 he court shall instruct the jury after arguments are completed. No party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of hearing of the jury.

51B. Instructions to jury; notations; filing; transcript.

(1) The court shall either give or refuse the instruction as requested, or shall modify the instruction, indicating the modifications made and give it as modified. On the margin of each instruction requested, the court shall write the word "given" or "refused" or the words "given as modified", and place his initials thereon. The instructions which the court will give may be used by the parties in the arguments to the jury.

(2) The written instructions shall be filed among the papers in the action and constitute a party of the record. At the request and cost of either party, the entire instructions given by the court shall be transcribed by the reporter and filed with the clerk.

51C. Arguments. The party having under the pleadings the burden of proof on the whole case shall be entitled to open and close the argument. Where there are several parties having several claims or defenses, and represented by different counsel, the court shall prescribe the order of argument among them.

51D. Interruption of counsel during argument. Interruption of counsel in argument will not be permitted, except for the purpose of raising a question of law.

RULE 52. FINDINGS BY THE COURT

52A. Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court, if requested before the trial, shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment. In granting or refusing preliminary injunctions the court shall similarly set forth the findings of fact and conclusion of law which

constitute the grounds of its action. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court.

52B. Amendment. Upon motion of a party filed not later than 15 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be filed with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the trial court an objection to such findings or has made a motion to amend them or a motion for judgment.

52C. Submission on agreed statement of facts. The parties to an action may submit the matter in controversy to the court upon an agreed statement of facts, signed by them and filed with the clerk and the court shall render judgment thereon as in other cases. The agreed statement certified by the court to be correct, and the judgment shall constitute the record of the action.

RULE 53. MASTERS

53A. Appointment and compensation. The court in any action to be tried without a jury may appoint a special master therein. As used in these Rules the word "master" includes a referee, an auditor, and an examiner. 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.

53B. Reference. A reference to a master shall be the exception and not the rule. Save in matters of account, a reference shall be made only upon a showing that some exceptional condition requires it.

53C. 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 of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. He may rule upon the admissibility of evidence unless otherwise directed by the order of reference. He has 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 Rule 43H for a court sitting without a jury.

53D. 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 counsel to be held within twenty days after the date of the order of reference and shall notify the parties or their counsel. 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 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.

53E. Witnesses. The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Rule 45. 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 Ruled 37 and 45.

53F. 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 a 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.

53G. Report; contents 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 unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and original exhibits. The clerk shall forthwith mail to all parties notice of the filing.

53H. Report of master. The court shall accept the master's findings of fact unless clearly erroneous. Within ten 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 Rule 6C. 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.

53I. Stipulation as to findings. The effect of a master's report is the same whether or not the parties have consented to the reference, but when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

53J. 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.

Part VII. JUDGMENT

Rule

54A. Definition; form. "Judgment" as used in these Rules includes a decree and an order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

54B. Judgment upon multiple claims or involving multiple parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however, designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

54C. Judgment in divorce action. Trial or hearing on an application for judgment for absolute divorce shall not be had until twenty days after date of service of process or unless acceptance of process had been filed with the clerk for at least twenty days.

54D. Demand for judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

54E. Entry of judgment after death of party. Judgment may be entered after the death of a party upon a verdict or decision upon an issue of fact rendered in his lifetime.

54F. Costs. A party who claims costs shall file a statement of his costs and serve a copy thereof on the opposing party. The statement shall be filed and served within ten days after judgment, unless for good cause shown the time is extended by the court. At any time within five days after receipt of the copy of the statement of costs, the opposing party may file objections to the statement serving a copy thereof on the party claiming such costs. The court shall pass upon the objections and by its order correct the statement of costs to the extent that it requires correction.

RULE 55. DEFAULT

55A. Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these Rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default.

55B. Judgment by default. Judgment by default may be entered as follows:

(1) By motion. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the court upon motion of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if he has been defaulted for failure to appear and if he is not an infant or incompetent person.

(2) By hearing. In all other cases the party entitled to a judgment shall apply to the court herefor, but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, he or, if appearing by representative, his representative, shall be served with written notice of the application for judgment at least three days prior to the hearing on such application. If, in order to enable the court to enter judgement or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an

investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when required by law.

55C. Setting aside default. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60C.

55D. Plaintiffs, counterclaimants, cross-claimants. The provisions of this Rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54D.

55E. Judgement against the Comanche Nation. No judgment by default shall be entered against the Comanche Nation or an officer or agency thereof unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. This section shall not be construed as a waiver of the sovereign immunity of the Comanche Nation.

55F. Judgment when service by publication; statement of evidence. Where service of process has been made by publication and no answer has been filed within the time prescribed by law, judgment shall be rendered as in other cases, but a reporter's transcript certified by the reporter as correct shall be filed as a part of the record.

RULE 56. SUMMARY JUDGMENT

56A. For claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of twenty days from the service of process upon the adverse party or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any party thereof.

56B. For defending party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

56C. Motion and proceedings thereon. Upon timely request by any party, the court shall set a time for hearing of the motion. If no request is made, the court may, in its discretion, set a time for such hearing. A party opposing the motion must file affidavits, memoranda or both within 15 days after service of the motion. The moving party shall have 5 days thereafter in which to serve reply memoranda and affidavits. The foregoing time periods may be shortened or enlarged by the court or by agreement of the parties. The judgment sought shall be rendered forthwith if the pleadings, depositions, answer to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

56D. Case not fully adjudicated on motion. If on motion under this Rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial

shall be conducted accordingly.

56E. Form of affidavits; further testimony; defense required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the Affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

56F. When affidavits are unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

56G. Affidavits made in bad faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this Rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

RULE 57. DECLARATORY JUDGMENTS

The procedure for obtaining a declaratory judgment shall be accordance with these Rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rule 38 and subdivisions A, H, and K of Rule 39. The existence of another remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

RULE 58. ENTRY OF JUDGMENT

58A. Entry. All judgments shall be in writing and signed by a judge. The filing with the clerk of the judgment constitutes entry of such judgment, and the judgment is not effective before such entry, except that in such circumstances and on such notice as justice may require, the court may direct the entry of a judgment nunc pro tunc, and the reasons for such direction shall be entered of record. The entry of judgment shall not be delayed for taxing cost.

58B. Remittitur; procedure; effect on right of appeal.

(1) A party in whose favor a verdict or judgment has been rendered may, in open court, or in writing filed with the clerk, remit any part of the verdict or judgment. The remittitur shall be entered on the judgment docket and in the minutes, and execution shall thereafter issue for the balance only of the judgment after deducting the amount remitted.

(2) The remittitur shall not affect the right of the opposite party to appeal from the judgment, and for that purpose the amount of the original judgment shall be considered the amount in controversy.

58C. Enforcement of judgment; special writ. The court shall cause the judgment to be carried into execution. When the judgment is for personal property, and it is shown by the pleadings and found that the property has a special value to the plaintiff, or prevailing party, a special writ for the

seizure and delivery of the property and may, in addition to the other relief granted, enforce its judgment in the manner provided by law.

58D. Objections to form.

(1) In case of a judgment other than for money or costs, or that all relief be denied, the judgment shall not be settled, approved and signed until the expiration of five days after the proposed form thereof has been served upon opposing counsel unless the opposite party or his counsel endorses on the judgment an approval as to form. The five-day provision may be waived by the court only upon an express written finding by minute order or otherwise of necessity to shorten time or to enter judgment without notice.

(2) If objection to the form of the judgment is made within the time provided in paragraph (1) of this subdivision, the matter shall be presented to the court for determination.

(3) The requirements of this rule shall not apply to parties in default.

RULE 59. NEW TRIAL; AMENDMENT OF JUDGMENT

59A. Procedure; grounds. A verdict, decision or judgment may be vacated and a new trial granted on motion of the aggrieved party for any of the following causes materially affecting his rights:

(1) Irregularity in the proceedings of the court, referee, jury or prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair trial.

(2) Misconduct of the jury or prevailing party.

(3) Accident or surprise which could not have been prevented by ordinary prudence.

(4) Material evidence, newly discovered, which with reasonable diligence could not have been discovered and produced at the trial.

(5) Excessive or insufficient damages.

(6) Error in the admission or rejection of evidence, error in the charge to the jury, or in refusing instructions requested, or other errors of law occurring at the trial or during the progress of the action.

(7) That the verdict is the result of passion or prejudice.

(8) That the verdict, decision, finding of fact, or judgment is not justified by the evidence or is contrary to law.

59B. Scope. A new trial may be granted to all or any of the parties and on all or party of the issues in an action in which there has been a trial by jury, for any of the reasons for which new trials are authorized by law or Rule of Court. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct entry of a new judgment.

59C. Contents of motion; amendment; rulings reviewable.

(1) The motion for new trial shall be in writing, shall specify generally the grounds upon which the motion is based, and may be amended at any time before it is ruled upon by the court.

(2) Upon the general ground that the court erred in admitting or rejecting evidence, the court shall review all rulings during the trial upon objections to evidence.

(3) Upon the general ground that the court erred in charging the jury and in refusing instructions requested, the court shall review the charge and the rulings refusing an instruction requested.

(4) Upon the general ground that the verdict, decision, findings of fact, or judgment is not justified by the evidence, the court shall review the sufficiency of the evidence.

59D. Time for motion. A motion for a new trial shall be filed not later than 15 days after entry

of the judgment.

59E. Time for serving affidavits. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has ten days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding twenty days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

59F. On initiative of court. Not later than 15 days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

59G. Questions to be considered in new trial. A new trial, if granted, shall be only a new trial of the question or questions with respect to which the verdict or decision is found erroneous, if separable. If a new trial is ordered because the damages are excessive or inadequate and granted solely for that reason, the verdict shall be set aside only in respect of the damages, and shall stand in all other respects.

59H. Motion on ground of excessive or inadequate damages.

(1) When a motion for new trial is made upon the ground that the damages awarded are either excessive or insufficient, the court may grant the new trial conditionally upon the filing within a fixed period of time of a statement by the party adversely affected by reduction or increase of damages accepting that amount of damages which the court shall designate. If such a statement is filed within the prescribed time, the motion for new trial shall be regarded as denied as of the date of such filing. If no statement is filed, the motion for new trial shall be regarded as granted as of the date of the expiration of the time period within which a statement could have been filed. No further written order shall be required to make an order granting or denying the new trial final. If the conditional order of the court requires a reduction of or increase in damages, then the new trial will be granted in respect of the damages only and the verdict shall stand in all other respects.

(2) If a statement of acceptance is filed by the party adversely affected by reduction or increase of damages, and the other party thereafter perfects an appeal, the party filing such statement may nevertheless cross-appeal and the perfecting of a cross-appeal shall be deemed to revoke the consent to the decrease or increase in damages.

59I. After service by publication.

(1) When judgment has been rendered on service by publication, and the defendant has not appeared, a new trial may be granted upon application of the defendant for good cause shown by affidavit, made within one year after rendition of the judgment.

(2) Execution of the judgment shall not be stayed unless the defendant gives bond, approved by the Court, in double the amount of the judgment or value of the property adjudged, payable to the plaintiff in the judgment, conditioned that the party will prosecute the application for new trial to effect, and will satisfy such judgment as may be rendered by the court should its decision be against him.

59J. Number of new trials. Not more than two new trials shall be granted to either party in the same action, except when the jury has been guilty of some misconduct or has erred in matters of law.

59K. Motion to alter or amend a judgment. A motion to alter or amend the judgment shall be filed no later than 15 days after entry of judgment.

59L. Specification on grounds of new trial in order. No order granting a new trial shall be made and entered unless the order specifies with particularity the ground or grounds on which the new trial

is granted.

RULE 60. RELIEF FROM JUDGMENT OR ORDER

60A. Clerical mistakes. Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on motion of any party and after such notice, if any, as the court orders. During pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

60B. Correction of error in record of judgment.

(1) When a mistake in a judgment is corrected as provided by subdivision A of this Rule, thereafter the execution shall conform to the judgment as corrected.

(2) Where there is a mistake, miscalculation or misrecital of a sum of money, or of a name, and there is among the records of the action a verdict or instrument of writing whereby such judgment may be safely corrected, the court shall on application and after notice, correct the judgment accordingly.

60C. Mistake; inadvertence; surprise; excusable; neglect; newly discovered evidence; fraud, etc. On motion and upon such terms as are just the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59D; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged, or a prior judgment on which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be filed within a reasonable time, and for reasons (1), (2) and (3) not more than six months after the judgment or order was entered or proceeding was taken. A motion under this subdivision does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding, or to grant relief to a defendant served by publication as provided by Rule 59J or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

60D. Reversed judgment of foreign state. When a judgment has been rendered upon the judgment of another Indian Tribe, state, or foreign country, and the foreign judgment is thereafter reversed or set aside by a court of such Indian Tribe, state, or foreign country, the Tribal Court shall set aside, vacate and annul its judgment.

RULE 61. HARMLESS ERROR

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

RULE 62. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

62A. Stay in injunctions and receiverships. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision C of this Rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

62B. Stay on motion for new trial or for judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to subdivisions A and C of Rule l60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52B, or when justice so requires in other cases until such time as the court may fix.

62C. Injunction pending appeal. When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

62D. Stay of judgment directing execution of instrument; sale of perishable property and disposition of proceeds.

(1) If the judgment or order appealed from directs the execution of a conveyance or other instrument, the execution of the judgment or order shall not be stayed by the appeal until the instrument is executed and deposited with the clerk of the court to abide the judgment of the Court of Appeals.

(2) A judgment or order directing the sale of perishable property shall not be stayed, but the proceeds of the sale shall be deposited with the clerk of the court to abide the appeal.

62E. Stay in favor of the Comanche Nation or agency thereof. When an appeal is taken by the Comanche Nation or an officer or agency thereof or by direction of any department of the Comanche Nation and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

62F. Stay of judgment under Rule 54B. When a court has ordered a final judgment under the conditions stated in Rule 54B, the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

RULE 63. DISABILITY OF A JUDGE

If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these Rules after a verdict is returned or findings of fact and conclusions of law are filed, then another judge, assigned by the Chief Judge, may perform those duties. If such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

Part VIII. PROVISIONAL AND FINAL
REMEDIES AND SPECIAL PROCEEDINGS
Rule
64 Seizure of person or property

RULE 64. SEIZURE OF PERSON OR PROPERTY

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by law. The remedies thus available include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, however designated and regardless of whether the remedy is ancillary to an action or must be obtained by an independent action.

RULE 65. INJUNCTIONS

65A. Preliminary injunction; notice

(1) Notice. No preliminary injunction shall be issued without notice to the adverse party.

(2) Consolidation of hearing with trial on merits. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subdivision A(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

65B. Dissolution of preliminary injunction prior to final hearing prohibited; exception in case

of verified answer. The defendant in an injunction proceeding may answer as in other civil actions but the preliminary injunction shall not be dissolved before final hearing because of a denial of the material allegations of the complaint unless the answer denying the allegations is verified.

65C. Motion to dissolve or modify. Motions to dissolve or modify a preliminary injunction without determining the merits of the action may be heard after an answer is filed, upon notice to the opposite party. If, upon hearing the motion, it appears that there is not sufficient ground for the injunction, it shall be dissolved, or if it appears that the injunction is too broad, it shall be modified.

65D. Temporary restraining order; notice; hearing; duration. A temporary restraining order may be granted without written or oral notice to the adverse party or his counsel only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or his counsel can be heard in opposition, and (2) the applicant or his counsel certifies to the court in writing the efforts, if any, which have been made to give the notice or the reasons supporting his claim that notice should not be required. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunctions hall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On two days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

65E. Security. No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the Comanche Nation or of an officer or agency thereof. The provisions of Rule 65.1 apply to a surety upon a bond or undertaking under this rule.

65F. Security on injunction restraining collection of money; injunction made permanent.

(1) Upon dissolution of a preliminary injunction or temporary restraining order restraining the collection of money, if the action is continued over a trial, the court shall require the defendant to give security to be approved by the court, and payable to the plaintiff in the amount previously enjoined and such additional amount as the court requires, and conditioned upon refunding to the plaintiff the amount of money, interest and costs which may be collected by him in the action in the event a permanent injunction is ordered on final hearing.

(2) If a permanent injunction is ordered on final hearing, the court shall, on motion of the plaintiff, enter judgment against the principal and surety giving the security for the amount shown to have been collected and to which the plaintiff appears entitled.

65G. Form and scope of injunction or restraining order. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance and shall be specific in terms. It

shall describe in reasonable detail, and not be reference to the complaint or other document, the act or acts sought to be restrained, and it is binding only upon the parties to the action, their officers, agents, servants, employees, and counsel, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

65H. Disobedience of injunction as contempt; order to show cause; warrant; attachment; punishment.

(1) Disobedience of an injunction may be punished by the court as a contempt.

(2) When a party in whose favor an injunction has been issued files an affidavit that the party against whom the injunction was issued is guilty of disobeying the injunction and describes the acts constituting such disobedience, the court may order the person so charged to show cause at the time and place the court directs why such disobedient party should not be adjudged in contempt of the court.

(3) The order, with a copy of the affidavit, shall be served upon the person charged with the contempt within sufficient time to enable him to prepare and make return to the order.

(4) If such person fails or refuses to make return to the order to show cause a warrant of arrest may issue directing the Tribal Police to arrest him and bring him before the court at a time and place direct by the court, and he may be required to give bail for his attendance at the trial and his submission to the final judgment of the court.

(5) If the alleged contemptor is a corporation, an attachment for sequestration of the property of the corporation may be issued upon refusal or failure to appear.

(6) Upon the appearance of the alleged contemptor, or at the trial of the issue, the court shall hear the evidence, and if the person enjoined has disobeyed the injunction he may be committed to jail until he purges himself of the contempt as may be directed by the court or until he is discharged by law.

RULE 65.1 SECURITY; PROCEEDINGS AGAINST SURETIES

Whenever these rules, including the Injunction Rule and any other relating to security, require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability maybe enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known.

RULE 66. RECEIVERS

66A. Application; verification; service; notice; restraining order. An application for the appointment of a receiver may be included in a verified compliant or may be made by separate and independent verified application after a complaint has been filed. No application shall be considered unless served upon the adverse party except where (at least ten days after filing the application, the applicant files a sworn affidavit showing that all reasonable efforts have been made, personal service on the adverse party cannot be made within the Comanche Nation Indian Country or by direct service outside of the Comanche Nation Indian Country, or (b) there is substantial cause for appointing a receiver before service can otherwise be made. If application for appointment of a receiver without notice is made, the court shall require and the applicant shall file in the court a bond in such amount as the court shall fix, with such surety as the court shall approve, conditioned to indemnify the defendant for such costs, and all damages as may be occasioned by the seizure, taking and detention

of the defendant's property; or, if the defendant is available for service, the court may order a hearing on the application in less than ten days. No application for a receiver ship under this rule shall be entertained where Rule 65 is applicable.

66B. Appointment; oath, bond; certificate.

(1) The court shall not appoint as receiver a party, an officer or employee of a party, counsel for a party, or a person interested in the action; provided, however, that after such notice as the court shall find is adequate, and if no party shall have objected, the court may appoint an employee of a party or an officer of a corporate party, or a person otherwise interested in the action, in a case in which the court finds that the property has been abandoned or that duties of the receiver will consist chiefly of physical preservation of the property (including crops growing thereon), collection of rents or the maturing, harvesting and disposition of crops then growing thereon.

(2) Before entering upon his duties, the receiver shall file a bond to be approved by the court in the amount fixed by the order of appointment, conditioned that he will faithfully discharge the duties of receiver in the action and obey the order of the court. He shall make an oath to the same effect, which shall be endorsed on the bond. The clerk shall thereupon deliver to the receiver a certificate of his appointment. The certificate shall contain a description of the property involved in the action.

66C. Powers; termination; governing law.

(1) The receiver may, subject to control of the court, commence and defend actions. He shall take and keep possession of the property, receive rents, collect debts and perform such other duties respecting the property as authorized by the court.

(2) The court may at any time suspend a receiver and may, upon notice, remove a receiver and appoint another.

(3) A receivership may be terminated upon motion served with at least ten days notice upon all parties who have appeared in the proceedings. The court in the notice of hearing may require that a final account and report be filed and served, and may require the filing of written objections thereto. In the termination proceedings, the court shall take such evidence as is appropriate and shall make such order as is just concerning its termination, including all necessary orders on the fees and costs of the receivership.

(4) In all matters relating to the appointment of receivers, to their powers, duties and liabilities, and to the power of the court, the principles of equity shall govern when applicable.

66D. Procedure. An action wherein a receiver has been appointed shall not be dismissed except by order of the court. The practice in the administration of estates by receivers or by similar officers appointed by the court shall be in accordance with the practice heretofore followed. In all other respects the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by these rules.

RULE 67. DEPOSIT IN COURT; SECURITY FOR COSTS

67A. By leave of court. In an action in which any party of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any to her thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing.

67B. By order of court. When it is admitted by the pleading or examination of a party that he has in his possession, or under his control money or other things capable of delivery which are the subject of litigation, and held by him as trustee for another party, or which belong or are due to another party, the court may order the money or things to be deposited in court or delivered to such

party upon such conditions as may be just and subject to the further order of the court.

67C. Custody; duties of clerk. When any money, debt, instrument of writing or other article is paid or deposited in court to abide the result of legal proceedings, the clerk shall seal the article in a package, and deposit it in a safe or bank, subject to the control of the court, and enter in the records of the action a statement showing each item of money or property received by him, and the disposition thereof. If the deposit is money the court may order the clerk to deposit it with the Tribal Treasurer, who shall receive and hold it subject to the order of the court.

67D. Security for costs; when required; bond and conditions. At any time before trail of an issue of law or fact, on motion of the defendant, supported by affidavit showing that the plaintiff is not the owner of property within the Comanche Nation Indian Country out of which the costs could be made by execution sale, the court may order the plaintiff to give security for the costs of the action. The Court shall fix the amount of the security, the time within which it shall be given and it shall be given upon condition that the plaintiff will pay all costs that may be adjudged against him, and authorize judgment against the sureties, if a written undertaking. If the plaintiff fails so to do within the time fixed by the court, the court shall order the action dismissed without notice.

67E. Inability to give security; proof; objection and examination. If the plaintiff, within five days after the order, makes strict proof of his inability to give the security, the order to give security shall be vacated. The proof may be made by affidavit, but if objection thereto is made by the defendant, the plaintiff shall submit himself to the court at a time designated by the court, when he shall be examined orally as to his inability to give such security.

67F. Exemptions; exceptions.

(1) The following shall not be required to give security for costs:

(i) the Comanche Nation

(ii) a Police Officer of the Comanche Nation

(iii) A board or commission of the Comanche Nation, or an officer of such board or commission acting in his official capacity.

(iv) An executor, administrator or guardian appointed under the laws of the Comanche Nation.

(2) When the costs are secured by an attachment bond or other bond no further security shall be required.

(3) An intervener, and a defendant seeking judgment against the plaintiff on a counterclaim, though the plaintiff has discontinued his action, shall be required to give security as is required of a plaintiff.

RULE 68. OFFER OF JUDGMENT

At any time more than ten (10) days before the trial begins a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within ten (10) days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and a judgment complying with the requirements of Rule 58A shall be entered. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by

further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than ten (10) days prior to the commencement of hearings to determine the amount or extent of liability.

RULE 69. EXECUTION

Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of a judgment, and in proceedings on and in aid of execution shall be as provided by law. In aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these Rules or otherwise by law.

RULE 70. JUDGMENT FOR SPECIFIC ACTS; VESTING TITLE

70A. If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt.

70B. If real or personal property is within the Comanche Nation Indian Country, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk.

RULE 71. PROCESS IN BEHALF OF AND AGAINST PERSONS NOT PARTIES

When an order is made in favor of a person who is not a party to the action, he may enforce obedience to the order by the same process as if he were a party, and, when obedience to an order maybe lawfully enforced against a person who is not a party, he is liable to the same process for enforcing obedience to the order as if he were a party.