

TITLE 1  
COMANCHE  
NATION TRIBAL  
COURTS

# TITLE 1 COMANCHE NATION COURTS

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## Contents

Section 1.01 Authorization.....	1
Section 1.02. Definitions .....	1
Section 1.03. Territorial Jurisdiction.....	2
Section 1.04. Civil Jurisdiction.....	2
Section 1.05. Criminal Jurisdiction.....	3
Section 1.06. Probate Jurisdiction .....	3
Section 1.07. Jurisdiction of Comanche Children and Family Relations .....	3
Section 1.08. Law To Be Applied .....	4
Section 1.09. Amendments .....	4
Section 2.01. Composition of Comanche Nation Tribal Court. ....	5
Section 2.02. Minimum Qualifications of the Comanche Nation Judges.....	5
Section 2.03. Manner of Selection of Judges .....	6
Section 2.04. Initial and Succeeding Terms of Office .....	6
Section 2.05 Vacancies in Judicial Offices .....	7
Section 2.06. Oath of Office .....	8
Section 2.07. Duties and Powers of Judges.....	9
Section 2.08. Compensation of Judges.....	10
Section 2.09. Removal of Judges .....	10
Section 2.10. Disqualifications, Conflict of Interest .....	11
Section 2.11. Decisions.....	11
Section 2.12. Records .....	13
Section 2.13. Files.....	14
Section 2.14. Motion Day .....	15
Section 2.15. Practice before the Comanche Court .....	15
Section 3.01. Court Clerk/Court Administrator; Duties; Deputy Court Clerk.....	16
Section 4.01. Comanche Nation Tribal Court Budget and Financial Account. ....	22
Section 5.01. Prosecutor. ....	24
Section 6.01 Cooperation by Tribal Employees.....	27
Section 7.01 Payment of judgments from individual Indian money accounts. ....	27
Section 8.01 Disposition of Fines and Court costs. ....	28

# TITLE 1 COMANCHE NATION COURTS

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## **Section 1.01 Authorization**

There is hereby established, ordained, and activated pursuant to the Constitution of the Comanche Nation the Judicial Branch of the Government of the Comanche Nation with a lower Court known as the District Court and an upper Court known as the Appellate Court.

## **Section 1.02. Definitions**

The following words have the meanings given below when used in this Title, unless a different meaning is obvious from the context:

- A. "Appellate Court" shall mean the Court of last resort to which appeals may be taken from the District Court: The judicial decisions of the Appellate Court are final and are not subject to further appeal.
- B. "Clerk" shall mean the Court Clerk/Court Administrator of the Court.
- C. "Code" shall mean the Statutory laws of the Comanche Nation.
- D. "Comanche Nation Tribal Court" shall mean the District and Appellate Courts of the Comanche Nation.
- E. "Constitution" shall mean the Constitution and By-Laws of the Comanche Nation.
- F. "District Court" shall mean the lower or general trial Court operating within the jurisdiction of the Comanche Nation.
- G. "He, "him", and "his" shall mean the masculine, feminine and neuter forms as appropriate unless a particular masculine, feminine or neuter form is necessary for the phrase to have meaning.
- H. "Jurisdiction" shall mean the Indian Country within the territorial jurisdiction of the Comanche Nation.

# TITLE 1 COMANCHE NATION COURTS

---

## **Section 1.03. Territorial Jurisdiction**

The Territorial Jurisdiction of the Comanche Nation Courts shall extend to all Comanche Treaty lands and all territory described as Indian Country within the meaning of Section 1151 of Title 18 of the United States Code over which the Comanche Nation has authority, including tribal or individual, trust, non-trust and restricted land, and including all land owned by tribal agencies in their own name, all waters, airspace, minerals and wildlife (vegetation), and any other such land, or interest in land, which may be subsequently acquired by virtue of Executive Order, a declaration or regulation of the United States Department of Interior, a declaration or order of a Court of competent jurisdiction, by purchase, gift, relinquishment, or by any other lawful means and shall include all Comanche Treaty lands over which the Comanche Nation retains jurisdiction.

## **Section 1.04. Civil Jurisdiction**

The Courts shall have general civil jurisdiction over all civil actions arising under the Constitution, laws, or treaties of the Comanche Nation including the tribal common law, over all general civil claims which arise within the tribal jurisdiction, and over all transitory claims in which the defendant may be served within the tribal jurisdiction. Personal jurisdiction shall exist over all defendants served within the territorial jurisdiction of the Court, served anywhere in cases arising within the territorial jurisdiction of the Comanche Nation, and/or over all persons consenting to such jurisdiction. The act of entry within the territorial jurisdiction of the Court shall be considered consent to the jurisdiction of the Court with respect to any civil action arising out of such entry. The act of entry upon the territorial jurisdiction by an extraterritorial seller, merchant, or their agent(s) shall be considered consent by the seller or merchant to the jurisdiction of this Court for any dispute arising out of any sale or commercial transaction regardless of where the sale or transaction was entered into or took place.

# TITLE 1 COMANCHE NATION COURTS

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## **Section 1.05. Criminal Jurisdiction**

The Courts shall have original jurisdiction over all criminal offenses enumerated and defined in any ordinance adopted by the Comanche Nation insofar as not prohibited by federal law and shall specifically include jurisdiction over all individuals as may be authorized by applicable Federal Law. All persons subject to criminal prosecution shall have the right to competent qualified legal representation before the Comanche Court.

## **Section 1.06. Probate Jurisdiction**

To the extent permitted by federal law the Courts shall have probate jurisdiction over all of the personal property located within the jurisdiction of the Court at the time of death, and the personal property, wherever located, of any person who is domiciled within the boundaries of the jurisdiction of the Court at the time of death.

## **Section 1.07. Jurisdiction of Comanche Children and Family Relations**

The Children and Family Relations Division of the District Court shall have exclusive original jurisdiction in all proceedings and matters relating to family matters and to child custody proceedings as defined in Title 4 Section 107(c), to matters affecting dependent or neglected children, to children in need of supervision, when such children are found within the jurisdiction of the Court, or when jurisdiction is transferred to the Court pursuant to law. The Appellate Court shall hear appeals in Children's and Family Relations cases as in other civil actions.

# TITLE 1 COMANCHE NATION COURTS

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## **Section 1.08. Law to Be Applied**

The Courts shall apply the Tribal Constitution, and the provision of all statutory law heretofore or hereafter adopted by the Comanche Nation. In matters not covered by Tribal Statute, the Court shall apply traditional tribal customs and usages, which shall be called the Common Law. When in doubt as to the Tribal Common Law, the Court may request the advice of counselors and tribal elders familiar with them. In any dispute not covered by the Tribal Constitution, Tribal Statute, or Tribal Common Law, the Court may apply any laws of the United States or any State which would be cognizable in the Courts of general jurisdiction therein, and any regulation of the Department of Interior which may be of general or specific applicability. Upon this Code becoming effective, neither Part 11 of Title 25 of the Code of Federal Regulations, except those Sections thereof which are effective when the Tribe receives certain funding from the Bureau of Indian Affairs, nor State law shall be binding upon the Court unless specifically incorporated into Tribal law by Tribal statute or be a decision of the Tribal Courts adopting some federal or state law as Tribal Common Law.

## **Section 1.09. Amendments**

The Comanche Nation Business Committee shall have the authority to alter, amend, or repeal any provision of this Act or to add new sections to this Act in its discretion, provided that any changes to this Code during the pendency of an action will not have any application to an action in process.

# TITLE 1 COMANCHE NATION COURTS

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## **Section 2.01. Composition of Comanche Nation Tribal Court.**

The Comanche Nation Court shall be composed of a District Court which shall consist of the Chief Judge, and two (2) Associate District Judges. Special Judges and Magistrates may be appointed by law. Appeals from decisions of the District Court shall be heard by a panel of three Appellate Judges which shall be comprised of a Presiding Appellate Judge and two (2) Associate Appellate Judges who were not involved in the trial of the case. The Appellate Court will have original jurisdiction over Comanche Nation Constitutional questions.

## **Section 2.02. Minimum Qualifications of the Comanche Nation Judges**

The Chief Judge of the District Court and the Judges of the Appellate Court shall:

- A. Be an enrolled member of the Comanche Nation;
- B. Be a graduate of an ABA accredited Law School and a member in good standing of a State Bar Association; and
- C. Have no less than five (5) years' experience as a licensed attorney.

All other Judges and Special Magistrates of the Comanche Nation Court shall:

- A. Be an enrolled member of a federally recognized Indian Tribe;
- B. Be a graduate of an ABA accredited Law School and a member in good standing of a State Bar Association; and
- C. Have no less than five years (5) years' experience as a licensed attorney.

Special Children's Court Judges shall:

- A. Be an enrolled member of the Comanche Nation;
- B. Be familiar with the Constitution, Code, common laws, customs and traditional child rearing practices of the Comanche Nation;
- C. Shall serve at the request of the Chief Judge of the District Court in the Children and Family Relations Division (Children's Court) of the District Court;

## TITLE 1 COMANCHE NATION COURTS

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- D. Shall be empaneled with the Chief Judge of the District Court to hear Children's Court Cases pursuant to Title 4 of the Comanche Nation Tribal Court Code;
- E. May be empaneled with other Judges and / or Special Magistrates at the request of the presiding Judge or Special Magistrate to hear Children's Court Cases pursuant to Title 4 of the Comanche Nation Tribal Court Code

### **Section 2.03. Manner of Selection of Judges**

Judges of the Comanche Nation District and Appellate Courts shall be nominated by the Chief Judge of the District Court and confirmed by the Comanche Nation Business Committee. Special Judges and Magistrates serving on the Court in special circumstances are not subject to this requirement.

### **Section 2.04. Initial and Succeeding Terms of Office**

- A. Except as provided in subsection (B) of this section, the initial term of office for the first District Court Chief Judge appointed following adoption of this code shall be two (2) years and the initial term for the Associate Judges shall be one (1) year. The terms of the initial Appellate Judges appointed following adoption of this code shall be one (1) year for one Judge, two (2) years for one Judge and three (3) years for the Presiding Judge. The Comanche Business Committee shall designate the terms for each of the initial Associate Appellate Judges appointed following the adoption of this Code.
- B. Terms of office for all Judges of the Tribal District Court and the Appellate Court after expiration of the initial terms described in subsection (A) above, shall be four (4) years, subject to renewal.
- C. Judges shall continue in office until their successors are duly appointed and installed in office, or until they have died, resigned, or been removed from office.



## TITLE 1 COMANCHE NATION COURTS

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- D. In the event that the Tribal Comanche Business Committee has appointed any Judge (who is qualified) to the Tribal Court prior to the adoption of this code, such Judge shall continue to serve for a one-year term commencing with the adoption of this code.

### **Section 2.05 Vacancies in Judicial Offices**

Vacancies in a Judicial Office shall be filled in the following manner:

- A. Within thirty days after a vacancy occurs in a Judicial Office the Chief Judge of the District Court shall cause a notice of the vacancy stating the minimum qualifications, and any other pertinent information to be published on the Tribal Website, and in a local newspaper and to other publications that primarily publish to an Indian audience for two (2) consecutive weeks. Copies of the notice shall be posted at the Tribal Office and such other places as the Chief Judge of the District Court shall direct. The notice shall direct that inquires, nominations and applications be directed to the Chief Judge of the District Court who shall keep a permanent record of responses to such notices.
- B. No sooner than twenty (20), nor more than thirty (30) days after the date on which last required notice was published or posted, the Chief Judge of the District Court shall within ten (10) days nominate a qualified candidate for the vacant Judicial Office for confirmation at the next regular or special meeting of the Comanche Business Committee.
- C. The Chief Judge of the District Court shall review the qualifications of the nominees, and may interview nominees at their discretion. In making a selection, the Chief Judge of the District Court shall give preference to qualified candidates who:

## TITLE 1 COMANCHE NATION COURTS

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1. Have more formal education and experience in the legal field particularly to Native American Law.
  2. By interview have shown that they are familiar with the Constitution, Code and Common Laws of the Comanche Nation.
  3. Have demonstrated decision making ability.
- D. If the nominee for the Judicial Office is confirmed by the Comanche Business Committee, the nominee shall be sworn into office by the Chief District Court Judge, or the next ranking available Judge of the Appellate Court.
- E. If the nominee(s) is not confirmed, the Chief Judge of the District Court shall republish the notice or establish a new list of eligible candidates, or he may reconsider the candidates on the list gathered from the previous notice. The nomination/Legislative confirmation process shall continue until a suitable nominee is confirmed.
- F. Upon the expiration of a judicial term of office, the Judicial Officer is entitled upon request, filed with the Chief Judge of the District Court not less than sixty days prior to the expiration of his term to be considered for confirmation to a new term at the next meeting of the Comanche Business Committee at which a quorum is present. If the Comanche Business Committee does not confirm the outgoing officer, they shall so declare and direct the Chief Judge of the District Court to begin the selection process. The outgoing judicial officer's term shall expire upon confirmation of the new Judge.

### **Section 2.06. Oath of Office**

Before assuming office each Judge, Special Judge, and Magistrate shall take an oath to support and protect the Constitution of the Comanche Nation and to administer justice in all causes

## TITLE 1 COMANCHE NATION COURTS

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coming before him with integrity and fairness, without regard to the persons before him to be administered by the Chief Judge or the next ranking available Judge of the Appellate Court as soon after confirmation as may be practical.

### **Section 2.07. Duties and Powers of Judges**

All Judges of the District Court and Appellate Court in cases within their authority shall have the duty and power to conduct all court proceedings, and issue all orders and papers incident thereto, in order to administer justice in all matters within the jurisdiction of the Comanche Court.

In doing so the Court shall:

- A. Be responsible for creating and maintaining rules of the Court, not in conflict with the Tribal Code or the Rules of the Appellate Court regulating conduct in the District Court, for the orderly and efficient administration of justice. Such rules must be filed in the office of the Comanche Nation Tribal Secretary Treasurer and the District Court Clerk before becoming effective.
- B. Hold Court regularly at a designated time and place.
- C. Have the power to administer oaths, conduct hearings, and otherwise undertake all duties and exercise all authority of a judicial officer under the law.
- D. Hear and decide all cases properly brought before the Court.
- E. Enter all appropriate orders and judgments.
- F. Issue all appropriate warrants and subpoenas.
- G. Keep all Court and other records as may be required.
- H. Perform the duties of the Clerk in his absence.
- I. Subject to the confirmation of the Appellate Court, to appoint such Magistrates as may be necessary for the convenient functioning of the Court. These Magistrates shall have the authority to issue arrest and search warrants, search warrants for the

## TITLE 1 COMANCHE NATION COURTS

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protection of children, emergency custody orders in children's cases, temporary commitments of persons accused of offenses, to conduct arraignments in criminal or juvenile delinquency cases, and to act on such ex parte, summary, or other matters as may be determined by Rule of the Appellate Court.

### **Section 2.08. Compensation of Judges**

- A. The compensation of all Judges of the District Court and Appellate Court shall be set by appropriate legislation of the Comanche Business Committee. No Judge shall have his compensation reduced during his term of office, except that if funds be unavailable for appropriation, the compensation of all judicial officers may be reduced proportionally to the availability of funds.
- B. The compensation of all Magistrates shall be set by order of the Appellate Court from available appropriated funds.

### **Section 2.09. Removal of Judges**

- A. The Judges of the Comanche Nation Court shall be removed only for cause by the Comanche Business Committee upon the recommendation of at least three (3) Judges of the Comanche Nation Court. The Comanche Business Committee may not remove a Judge of the Comanche Nation Court independently, but the complaining three (3) Judges of the Comanche Nation Court must first recommend the removal, and the Comanche Business Committee must then concur. The term "cause" shall include any reason sufficient for disbarment of an Attorney from the Bar of the Comanche Nation Court, or a violation of the Canons of Judicial Ethics promulgated by the American Bar Association.
- B. Magistrates shall serve at the pleasure of the District Court.

# TITLE 1 COMANCHE NATION COURTS

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## **Section 2.10. Disqualifications, Conflict of Interest**

- A. No Judge shall hear any case when he has a direct financial, personal or other interest in the outcome of such case or is related by blood or marriage to one or both of the parties as: husband; wife; son; daughter; father; mother; brother; sister; grandfather; grandmother; or any other legal dependent. A Judge should attempt to prevent even the appearance of partiality or impropriety.
- B. Either party of interest in such case or the Judge may raise the question of conflict of interest. Upon decision by the Judge concerned or the Appellate Court that disqualification is appropriate, another Judge shall be assigned to hear the matter before the Court.
- C. Any Judge otherwise disqualified because he is related to one or more of the parties in one of the relationships enumerated in subsection (A) of this Section, may hear a case if all parties are informed of the blood or marriage relationship on the record in open Court and of their right to have a different Judge hear the case, and consent to further action by that Judge in the case in open Court upon the record, or in a writing filed in the record, in spite of the conflict of interest.

## **Section 2.11. Decisions**

- A. Each decision of the District Court at trial shall be recorded on a form approved by the Appellate Court for such purpose, or embodied in written findings of fact and conclusions of law containing all the information required by the approved form. The form shall provide for recording the date of the decision, the case number, the names of all parties, substance of the complaint, the relevant facts found by the Court to be true, the Court's decision, and the conclusions of law supporting the Court's decision.

## TITLE 1 COMANCHE NATION COURTS

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- B. In a case tried to the Appellate Court, the Presiding Judge shall sign such form or decision indicating that the decision is the true decision to a majority of the trial panel on the case whether or not the Presiding Judge agreed with that decision.
- C. The decision form or the written findings of fact and conclusions of law shall be placed in the case file as an official document of the case.

# TITLE 1 COMANCHE NATION COURTS

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## **Section 2.12. Records**

The Comanche Nation Court shall be a Court of Record. To preserve such records:

- A. In all Court proceedings, the Court Reporter, which may be the Clerk in the absence of an official Court Reporter, shall record the proceedings of the Court by electronic or stenographic means. The recording shall be identified by case number and kept for five (5) years for use in appeals or collateral proceedings in which the events of the hearing are in issue. At the close of each hearing, or as otherwise specified, the Reporter shall cause a transcript to be made of the recording upon the request of any party or the Court as a permanent part of the case record at the expense of the requesting party. Court Reporters may be licensed by the Appellate Court, and shall be allowed such fees from the Parties for their services as shall be set by Rule of the Appellate Court.
- B. To preserve the integrity of the electronic record, the Reporter shall store the recording in a safe place and release it only to the relevant Court or pursuant to an Order of a Comanche Nation Judge.
- C. The Clerk shall keep in a file bearing the case name and number every written document filed in the case.
- D. All Court records shall be public records except as otherwise provided by law.
- E. After five (5) years, at least (1) one copy of all court records including judgments, pleadings and appearances, shall be reproduced on computer tape or disk, microfilm, microfiche or similar space saving electronic record keeping method, and all paper copies of said reproduced records may be disposed of.

## TITLE 1 COMANCHE NATION COURTS

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- F. The Appellate Court shall provide for the publication in books or similar reporters of all of its decisions and opinions in cases before it, and the opinions and decisions of the District Court which would be useful to the Bar of the Court and the public.

### **Section 2.13. Files**

- A. Except as otherwise provided by law, such as in juvenile cases, Court files on a particular case are generally open to the public. Any person may inspect the records of a case and obtain copies of documents contained therein during normal business hours.
- B. Any persons desiring to inspect the records of a case or obtain copies thereof may inspect such files only during the ordinary working hours of the Clerk, or a Judge and in their presence to insure the integrity of Court records under no circumstance shall anyone, except a Judge, attorney or the Clerk taking a file to a Judge in his chambers or a courtroom, take a file from the Clerk's office.
- C. A copy of any document contained in such a file may be obtained from the Clerk by any person for a reasonable copy fee, to be set by rule of the Appellate Court. The Clerk is hereby authorized to certify under the seal of his office that such copies are accurate reproductions of those documents on file in his office. The Appellate Court by rule may provide for such certification.



## TITLE 1 COMANCHE NATION COURTS

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### **Section 2.14. Motion Day**

Unless conditions make it impractical, the District Court shall establish regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed. Nothing herein shall preclude the Judge from making orders for the advancement, conduct, and hearing of actions upon proper notice, if any, at a time or place other than the regularly established time and place for such motions. Additionally, the Court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

### **Section 2.15. Practice before the Comanche Court**

The Appellate Court, after conferring with the District Court, shall make rules which shall govern who may practice before the District Court and the Appellate Court and how indigent criminal defendants may have competent qualified legal counsel appointed to represent them in Comanche Court. Such rules shall be filed in the office of the Comanche Nation Tribal Secretary Treasurer and the office of the Clerk of the Comanche Nation Court. Said rules shall include any procedures or form necessary for the efficient, orderly, and just resolution of cases under this Code and shall be filed of record in the Court Clerk/Court Administrator's office. Said Court rules shall include a Code of Judicial Ethics and shall be made available to the public by publication on the Comanche Nation Tribal Court website or other appropriate measures determined by the Comanche Nation Tribal Court.

## TITLE 1 COMANCHE NATION COURTS

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### **Section 3.01. Court Clerk/Court Administrator; Duties; Deputy Court Clerk.**

- A. Court Clerk/Court Administrator and Deputy Court Clerk; General Functions. The Court Clerk/Court Administrator performs all functions of a Court Clerk and an administrator for the Comanche Nation Tribal Court as described herein. The Court Clerk/Court Administrator shall also perform such other duties as stated in the Court Clerk/Court Administrator's job description and such additional duties specified in writing and approved by the Comanche Nation Appellate Court. The Court Clerk/Court Administrator shall be supervised by the Chief Judge of the Comanche Nation District Court; provided that nothing herein shall be construed to affect the position of any person serving as Court Clerk/Court Administrator as of the effective date of this Code; provided further that the Court Clerk/Court Administrator shall not be the same person who serves as the Comanche Nation Tribal Administrator. The Chief Judge of the Comanche Nation District Court may designate a person to serve as Deputy Court Clerk to perform such duties as required in the absence of the Court Clerk/Court Administrator.
- B. Filing and Preservation of Documents; Requests for Documents. It is the duty of the Court Clerk/Court Administrator to file together and carefully preserve in his office, all papers delivered to him for that purpose in every proceeding in the Comanche Nation Tribal Court. The Court Clerk/Court Administrator shall endorse upon every paper filed with him, the day of filing it; and upon every order for a provisional remedy, and upon every undertaking given under the same, the day of its return to his office. Any request for production of court documents, whether by subpoena or otherwise, shall be done by submission of a petition to the Court setting forth the document required and the reasons for the request. The Judge assigned to

## TITLE 1 COMANCHE NATION COURTS

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that case or in that Judge's absence, the Chief Judge of the District / Appellate Court shall make a determination of the relevancy of the request and may grant or deny the petition by written order.

- C. Numbering and Maintenance of Case files. The Court Clerk/Court Administrator shall keep the petition, the process, return, the pleadings subsequent thereto, reports, verdicts, orders, judgments, and all material acts and proceedings of the court in a separate case file for each child custody proceeding, which shall be marked with the title and number of the case. The Court Clerk/Court Administrator shall maintain any documentary or physical evidence admitted into evidence by the Court during hearings at a secure location separate and apart from the case files. Case files shall be numbered in accordance with a numbering system. Each case number shall contain an appropriate identifying prefix, followed by a hyphen and the last two digits of the calendar year in which the case was filed followed by a hyphen and the consecutive number of the case. Beginning January 1 of each calendar year, the last two digits of the calendar year designation shall be changed and the consecutive case number for each type of prefix shall begin again with the number one (1).
- D. Filing of Documents. The Court Clerk/Court Administrator shall date stamp immediately upon receipt each document filed in the case file. The Court Clerk/Court Administrator shall accept legible facsimile and e-filed transmissions of documents for filing in the casefile; provided that such documents are sent directly to a facsimile machine or dedicated Tribal Court e-mail in the Court Clerk/Court Administrator's office designated for that purpose and not accessible

## TITLE 1 COMANCHE NATION COURTS

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to the public; and provided further that the original pleading shall be mailed or otherwise delivered to the Court Clerk/Court Administrator within ten business days of the date of filing of the facsimile or e-filed copy. If the Court Clerk/Court Administrator discovers a pleading or other paper which has been filed or submitted for filing that bears an incorrect case number or other incorrect identifying data, the Court Clerk/Court Administrator shall correct the case number or other incorrect identifying data and enter a notation on the docket sheet of both cases recording the correction. The corrected pleading or other paper shall be placed in the court file bearing the corrected case number.

- E. Seal of Court Clerk/Court Administrator; Certification. The Court Clerk/Court Administrator shall keep a seal, to be furnished by the Comanche Nation Tribal Court, which shall reference the "Comanche Nation Tribal Court." The seal may be either metallic or nonmetallic. Every instrument, document, record, paper or other thing required to be certified by the court or by the Court Clerk/Court Administrator shall contain the seal of the Court Clerk/Court Administrator. The Court Clerk/Court Administrator is authorized to certify the authenticity of copies of the journal record and copies of the original instruments that are part of the court file. Such certified copies may be received in evidence with the same effect as the original would have had and without further identification by the party desiring to offer it.
- F. Dockets and Journals. In addition to any other records required by this Code or the rules of the Comanche Nation Tribal Court, the Court Clerk/Court Administrator shall keep the following records:

## TITLE 1 COMANCHE NATION COURTS

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- (1) Case Docket. On the case docket the Court Clerk/Court Administrator shall enter the case style of each action in the order in which it is brought. The docket sheets for each action shall include the title and date for every document filed in the case, including all judgments and orders of the court. Either a Judge or the clerk shall prepare a court minute during or immediately following each hearing in a case, for placement in the case docket in order to record all actions taken by the Court. The Court Clerk shall issue a copy of the court minute to the parties or their counsel of record no later than the next business day following the date of the hearing. The case docket may be kept entirely on computer or other appropriate medium. Paper copies of case dockets in the custody of the Court Clerk/Court Administrator may be destroyed after being stored on at least two electronic disks or other appropriate medium. One electronic copy of the case docket shall be maintained in the Court Clerk/Court Administrator's office and one electronic copy shall be updated monthly and stored by the Court Clerk/Court Administrator in a bank or other appropriate local repository for reproduction in the event that the copy in the Court Clerk/Court Administrator's office is destroyed or becomes unusable. Any notes, excluding court minutes, taken by the Judges during proceedings shall not be included in the court file or official records, but may be maintained by the Court Clerk/Court Administrator in separate administrative files or notebooks under the name of each Judge, arranged chronologically in order of case file numbers, which shall be for the use of the Judge who took the

## TITLE 1 COMANCHE NATION COURTS

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notes contained therein and for the use of the Court Clerk/Court Administrator for preparation of orders at the direction and subject to approval of the Chief Judge.

(2) Trial Docket. The Court Clerk/Court Administrator shall maintain a Trial Docket, listing the dates scheduled for all hearings and trials in all judicial proceedings filed in the Comanche Nation Tribal Court, including references to continuances of hearings granted, if any.

G. Process; Writs and Provisional Remedies. The Court Clerk/Court Administrator shall sign, date, seal, certify and issue process of every kind, including summons and subpoenas. The Court Clerk/Court Administrator shall also sign, date, seal, certify and issue all writs and orders for provisional remedies, including habeas corpus proceedings seeking custody of a child; provided that said documents shall first be prepared by the party or his attorney who is seeking the issuance of such process, writ or order. The Court Clerk/Court Administrator shall, upon the return of every summons, subpoena, writ or order pertaining to writs, enter upon the case docket whether or not service has been made; and, if the document has been served, the name of the person upon whom the document was served and the day and manner of the service upon such person. The entry shall be evidence in case of the loss of the document. The style of all documents issued in accordance with this section shall be "Comanche Nation Tribal Court."

H. Development of Legal Forms. The Court Clerk/Court Administrator shall develop legal forms with the assistance of the Prosecutor and shall maintain said forms at the Court Clerk/Court Administrator's Office. The forms shall be presented to the

## TITLE 1 COMANCHE NATION COURTS

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Chief Judge of the District Court for approval. The Court Clerk/Court Administrator shall assist parties not represented by legal counsel in obtaining the forms; provided that a notice shall be posted in the Court Clerk/Court Administrator's Office stating: "The Court Clerk/Court Administrator is not an attorney or qualified to provide legal advice or assistance to any person, but may answer general questions concerning the completion of legal forms available to the public by the Court Clerk/Court Administrator's Office."

- I. Case Statistics. The Court Clerk/Court Administrator of record shall furnish without cost to the Indian Child Welfare Department, hereinafter referred to as ICWD, such statistical and other information related to cases filed with the Comanche Nation Tribal Court as the ICWD may request for purposes of applying for or meeting grant requirements and for preparation of the ICWD's reports, including without limitation quarterly reports containing the number and classification of cases filed during the quarter, the number and classification of court cases dismissed during the quarter, and the number and classification of cases pending before the Comanche Nation Tribal Court as of the end of each quarter of the calendar year.
- J. Acceptance of Payments. The Court Clerk/Court Administrator is authorized to accept monies paid in accordance with any judgment, order, settlement, distribution or decree for the use and benefit of, and to the credit of, any party entitled to payment pursuant to a proceeding before the Comanche Nation Tribal Court, and to pay out such money as specified by order of the Comanche Nation Tribal Court; provided that the Court Clerk/Court Administrator shall maintain a separate bank

## TITLE 1 COMANCHE NATION COURTS

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account for this purpose and shall account separately for the funds of each party who is the beneficiary of the funds. Such order may be made by the Court in the original cause in which the funds were credited, and the Court may direct the Court Clerk/Court Administrator to make payment of the same in installments or in one lump sum as may be deemed appropriate.

### **Section 4.01. Comanche Nation Tribal Court Budget and Financial Account.**

- A. Annual Budget. The Chief District Judge and the Court Clerk/Court Administrator shall prepare an annual budget to be submitted for approval of the Comanche Business Committee in accordance with the Constitution and laws of the Comanche Nation.
- B. Establishment of Comanche Nation Tribal Court Account. Beginning on as soon as practicable after the establishment of the Comanche Nation Tribal Court there shall be established a separate account entitled "Comanche Nation Tribal Court Account," which shall consist of all approved annual budget funding from the Comanche Nation, all monies which may be received as court costs or fines, any grant funding from the federal government and any other monies designated by Comanche law for deposit into the account; provided that nothing herein shall be construed to authorize or require the payment of any filing fees in proceedings filed in the Comanche Nation Tribal Court. All monies accruing to the credit of the Comanche Nation Tribal Court Account shall be expended by the Court Clerk/Court Administrator, upon the approval of the Chief Judge, for the lawful operation and expenses of the Comanche Nation Tribal Court, the Court Clerk/Court Administrator's office or for such other purposes required by specific grants or contracts received by the Comanche Nation Tribal Court.



## TITLE 1 COMANCHE NATION COURTS

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- C. Separate Accounts. The Comanche Nation Tribal Court Account shall be divided into separate accounts as deemed necessary by the Court or as required by any accounting policies, procedures or law of the Comanche Nation, which shall include without limitation a separate account for payments to the Comanche Nation Tribal Court for the benefit of third parties.
- D. Administration of Comanche Nation Tribal Court Account. Payments from the Comanche Nation Tribal Court Account shall be made only upon approval by the Court Clerk/Court Administrator and Chief Judge of the District Court. In its administration of the Comanche Nation Tribal Court Account, the Chief Judge of the District Court and Court Clerk/Court Administrator shall comply with the accounting policies and procedures established in accordance with law of the Comanche Nation. The Chief Judge of the District Court and Court Clerk/Court Administrator shall furnish to the Comanche Business Committee quarterly and annual financial statements of all funds within the Comanche Nation Tribal Court's control, which shall disclose cumulative receipts and disbursements, cash balances, and such other fiscal information as the Comanche Business Committee may require.
- E. Banking. The Comanche Nation Tribal Court shall be authorized to maintain separate bank accounts in interest-bearing accounts of one or more banking facilities, investment and/or other commercial financial institutions selected and approved by at least two Judges of the Comanche Nation Tribal Court and to cause all disbursements from said accounts to be made in accordance with the law of the Comanche Nation.

# TITLE 1 COMANCHE NATION COURTS

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## **Section 5.01. Prosecutor.**

- A. Establishment. The office of the Comanche Nation Prosecutor is hereby established.
- B. Qualifications. In order to be eligible to hold the office of Prosecutor, a person shall be an enrolled member of a federally recognized Indian Tribe, be a graduate of an accredited law school, be a duly licensed attorney in good standing in a bar association of a state court of competent jurisdiction for the five (5) years immediately preceding the appointment, have prior experience in the practice of Native American Indian law and experience in child welfare matters and be at least twenty-eight (28) years old.
- C. Appointment; Term. The Court Clerk/Court Administrator shall advertise the position for the Prosecutor. At least two Judges of the Comanche Nation Tribal Court shall review applications submitted and interview qualified applicants. The Judges shall forward the applications of all qualified applicants with their recommendations to the Comanche Business Committee, which may also interview prospective candidates if it desires, for final decision and appointment. The Prosecutor shall hold office for a term of two (2) years beginning on the date of appointment by the Comanche Business Committee; provided that the Prosecutor may remain in office beyond the term expiration until his successor is appointed and assumes the duties of the Prosecutor. A person who has served as Prosecutor for all or a portion of a two (2) year term may serve for an unlimited number of two (2) year terms.
- D. Duties; Independent Office. The Prosecutor shall represent the interests of the Comanche Nation in all criminal matters, and the interests of a Comanche child in

## TITLE 1 COMANCHE NATION COURTS

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all involuntary child custody proceedings and other proceedings before the Comanche Nation Tribal Court. The Prosecutor may represent the Nation in voluntary child custody proceedings before the Comanche Nation Tribal Court. The Prosecutor may represent the Nation in voluntary or involuntary child custody proceedings in other jurisdictions in which the Nation has intervened. The Prosecutor may at his discretion meet with ICW workers for case staffing, permanency planning meetings and annual reviews. The office of Prosecutor shall be an independent office that is not subject to directives from any official, employee, independent contractor, agency or branch of the Comanche Nation. The Prosecutor shall consider the recommendations of ICW workers but shall exercise independent professional judgment regarding the welfare of children that are subject to, or potentially subject to, Comanche Nation Tribal Court proceedings.

- E. Removal. The Prosecutor may be removed from office, with or without disqualification to hold that office in the future, prior to the expiration of his term for any of the following causes: conviction of a crime other than a misdemeanor traffic offense in any court of competent jurisdiction; habitual or willful neglect of duty; gross partiality in office; oppression in office; corruption in office; extortion or willful overcharge of fees in office; willful maladministration; habitual drunkenness or drug abuse; or failure to produce and account for all public funds and property in his hands at any settlement or inspection authorized or required by law of the Comanche Nation. The Comanche Business Committee may commence proceedings for the removal of the Prosecutor from office upon receipt of testimony, affidavit or other written statement by a third party or third parties

## TITLE 1 COMANCHE NATION COURTS

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alleging facts, that if true, would constitute cause for removal as described in this subsection. Under no circumstances shall the Comanche Business Committee make inquiry or receive or hear evidence that would violate the confidentiality requirements of this Code. Prior to removal, the Comanche Business Committee shall issue a written complaint specifying in detail the grounds for the proposed removal and a notice of hearing, which shall be delivered to the Prosecutor at least ten (10) days prior to the hearing date. The Comanche Business Committee may, if sufficient cause appears from testimony or affidavits presented to the Committee, order the suspension of the Prosecutor from the functions of his office until the determination of the matter. The Prosecutor must appear at the time appointed in the notice, and answer the complaint, unless, for sufficient cause, the Comanche Business Committee assigns another day for that purpose. If the Prosecutor admits the allegations concerning the cause for his removal, refuses to answer the petition, or does not appear the Comanche Business Committee may order his removal from office. If the Prosecutor denies the matters charged, the Comanche Business Committee must proceed with a hearing to determine whether the Prosecutor has committed an act or omission constituting grounds for removal. If the Comanche Business Committee finds that the Prosecutor committed such an act or omission, the Comanche Business Committee shall issue a written decision stating the facts supporting grounds for removal, ordering the Prosecutor's removal from office, and declaring the office vacant; otherwise, the Comanche Business Committee shall issue a written decision stating that there is no cause for removal of the Prosecutor.

## TITLE 1 COMANCHE NATION COURTS

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The decision of the Comanche Business Committee shall be final, and the Prosecutor shall not be entitled to judicial review.

Nothing herein shall preclude the Comanche Business Committee from accepting the resignation of the Prosecutor or from declining to reappoint the Prosecutor for a subsequent term upon expiration of his term of office.

### **Section 6.01 Cooperation by Tribal Employees.**

- A. No employee of the Comanche Nation may obstruct, interfere with, or control the functions of the Comanche Nation Court.
- B. Employees of the Comanche Nation shall assist the court, upon its request, in the preparation and presentation of facts in the case and in the proper treatment of individual offenders.

### **Section 7.01 Payment of Judgments from Individual Indian Money Accounts.**

- A. The Comanche Nation Court may make application to the superintendent who administers the Individual Indian Money account of a defendant who has failed to satisfy a money judgment from the court to obtain payment of the judgment from funds in the defendant's account. The court shall certify the record of the case to the superintendent. If the superintendent so directs, the disbursing agent shall pay over to the injured party the amount of the judgment or such lesser amount as may be specified by the superintendent.
- B. A judgment of the Comanche Nation Court shall be considered a lawful debt in all proceedings held by the Department of the Interior or by the Comanche Nation Court to distribute decedents' estates.

# TITLE 1 COMANCHE NATION COURTS

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## **Section 8.01 Disposition of Fines and Court Costs.**

All Fines and Court costs assessed shall be paid over to the Court Clerk/Court Administrator for deposit the in the "Comanche Nation Tribal Court Accounts" account. The Court Clerk/Court Administrator shall keep an account of all such deposits and withdrawals available for public inspection.

TITLE 2  
COMANCHE  
NATION TRIBAL  
COURTS

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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### SECTION 1.01. DEFINITIONS

- A. Arraignment. Proceeding in which the accused is brought before the Court to plead guilty or not guilty to the violation charged against him.
- B. Bail. An amount of money set by the Judge which must be posted by a defendant in order to gain his release until trial, or appellate proceedings; the amount of bail is set at such amount as to reasonably insure that the defendant comes to Court when he is required.
- C. Bail Bond. Cash, some type of surety arrangement, or other type of security posted by a defendant to meet the bail set by the Judge as a prerequisite to defendant's release from custody until a trial or appellate proceedings.
- D. Civil Infraction. An act or omission for which a sentence of incarceration is not authorized.
- E. Code. The Criminal Code and Procedures of the Comanche Nation.
- F. Complaint. A written statement of the essential facts constituting the offense charges.
- G. Complainant. Any person signing a complaint alleging a violation of the Code.
- H. Court. The Comanche Nation Tribal Court.
- I. Crime. An act or omission for which a sentence of incarceration is authorized.
- J. Dating Violence. For purposes of the exercise of criminal jurisdiction over non-Indians, the term 'dating violence' means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- K. Domestic Violence. For the purposes of exercising criminal jurisdiction over non-Indians, the term 'domestic violence' means violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim under the domestic- or family- violence laws of an Indian tribe that has jurisdiction over the Indian country where the violence occurs.
- L. Indian. Any person who is a member of any Indian tribe as defined in 25 USC 479 [1], is eligible to become a member of any Indian tribe, or is an owner (as of October 27, 2004) of a trust or restricted interest in land; any person meeting the definition of an Indian under the Indian Reorganization Act and the regulations promulgated thereunder.
- M. Individual Rights. Those rights set forth in 25 U.S.C. § 1302 as construed by Federal Courts of controlling jurisdiction.



## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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- N. Motions. Requests, either written or oral, made to the Court for an order.
- O. Offense. A violation of criminal law.
- P. Officer. Officer of the Comanche Nation Tribal Police Department authorized by the Comanche Business Committee to enforce the Comanche Nation Tribal Criminal Code and other Codes.
- Q. Personal Recognizance. A promise by a defendant to appear at trial or appellate proceeding upon which promise the Judge order his release from custody.
- R. Probable Cause. Such a state of facts and circumstances known to the prosecutor or to the officer personally or by information from others as would, in the judgment of the Court, lead a man of ordinary caution acting conscientiously in light of such facts and circumstances, to believe that appropriate judicial proceedings are warranted.
- S. Public Servant. A public servant is a person who is serving the tribal government, State of Oklahoma, or federal government, or any of their political subdivisions as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services.
- T. Serious Physical Injury. A physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.
- U. Spouse or Intimate Partner. For purposes of exercising criminal jurisdiction over non-Indians, the term 'spouse or intimate partner' has the meaning given the term in section 2266 of title 18, United States Code.
- V. Summons. A notice to appear before the Court.
- W. Summons and Complaint. A single document containing all the requisites of both a summons and complaint.
- X. Treaty Sites. Those certain federal lands that the Comanche Nation retains jurisdiction of pursuant to Federal Law.
- Y. Warrant, Arrest/Search. Document issued by the Court expressly authorizing and directing an officer to execute an arrest or conduct a search of specifically delineated premises.

### SECTION 1.02. JURISDICTION

- A. Generally. The Comanche Nation Tribal Court is vested with jurisdiction to enforce all provisions of this Code, as amended from time to time, against any person violating the same within the boundaries of the Comanche Nation' Indian country, including any person at any Treaty Site, and against any tribal member exercising treaty hunting and fishing rights beyond

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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the boundaries of the Comanche Nation Indian Country. In the cases where the person in violation of this Code is not an Indian and is not covered by subsection 1.02(B) or (C), the Court's exercise of power shall be civil rather than criminal and punishment subject only to the applicable fine. The Court is also vested with the power to impose protection orders against non-Indians in accordance with the provisions of this Code.

B. Criminal Jurisdiction over Non-Indian Domestic or Dating Violence. The Comanche Nation Tribal Court is vested with jurisdiction to enforce all provisions of this Code against a non-Indian who has committed an act of Dating Violence or Domestic Violence against an Indian victim within the Comanche Nation' Indian country provided the non-Indian has sufficient ties to the Comanche Nation.

C. A non-Indian has sufficient ties to the Comanche Nation for purposes of jurisdiction if they:

1. reside in the Comanche Nation' Indian country;
2. are employed in the Comanche Nation' Indian country; or
3. are a spouse, intimate partner, or dating partner of either:
  - a. a member of the Comanche Nation, or
  - b. a non-member Indian who resides in the Comanche Nation' Indian country.

D. Criminal Jurisdiction Over Non-Indian Protection Order Violations. The Comanche Nation Tribal Court is vested with criminal jurisdiction to enforce all provisions of this Code related to violations of protection orders against a non-Indian that has sufficient ties to the Comanche Nation as identified in Section 1.02(B)(1), and who has violated a protection order within the Comanche Nation' Indian country provided the protected person is an Indian, and following conditions are met:

1. The protection order was issued against the non-Indian,
2. The protection order is consistent with 18 U.S.C. 2265(b), and
3. The violation relates to that portion of the protection order that provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, the protected person.

### CHAPTER 2. COMANCHE NATION TRIBAL POLICE, QUALIFICATIONS, EQUIPMENT, DUTIES

#### SECTION 2.01. ESTABLISHMENT

There is hereby established the Comanche Nation Tribal Police Department. This Department shall consist of commissioned officers, criminal investigators, and support staff.

#### SECTION 2.02. DUTIES

A. The Comanche Nation Tribal Police shall enforce the provisions of the Comanche Nation Criminal Code fully and fairly and in accordance with the procedures set forth in Chapter III of this code, including:

1. Prevent Crime;
2. Pursue and apprehend offenders and obtain legal evidence necessary to insure the

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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conviction in Tribal Court of such offenders;

3. Institute criminal proceedings in Tribal Court;
4. Execute any lawful warrant or order of arrest issued by the Tribal Court against any person within the jurisdiction of the Comanche Nation for any violation of Tribal law;
5. Make arrests without warrant for violations of Tribal law committed in their presence or when there is probable cause to believe a person has committed a crime;
6. Give first aid to the injured;
7. Aid the helpless;
8. Cooperate with all other law enforcement agencies.

### SECTION 2.03. SUPERVISION

The Comanche Nation Tribal Police Department shall be under the general supervision of the Chief of Police who reports to the Tribal Administrator until special provisions are enacted under times of emergencies as otherwise specified in Comanche Nation Law.

### SECTION 2.04. POSITIONS

There shall be a Chief of Police and commissioned officers and criminal investigators, dispatch personnel, and support personnel at such ranks as are deemed necessary and proper. The number of officers and office personnel may be reviewed and modified by the Tribal Administrator as deemed appropriate.

### SECTION 2.05. QUALIFICATIONS

All personnel of the Comanche Nation Tribal Police Department must meet all mandatory State, Federal, and Tribal guidelines established in the agency's policy and procedure handbook (2017)

### SECTION 2.06. PROPERTY

The Tribe shall furnish the department with the supplies and equipment necessary to carry out the objective of the department. All such property shall remain the property of the Tribe or the appropriate Agency pursuant to applicable guidelines. When any such property becomes obsolete, surplus or worn beyond use, it shall be disposed of or replaced as necessary pursuant applicable guidelines.

### SECTION 2.07. DISPOSITION OF SEIZED, RECOVERED AND FOUND PROPERTY

A. Application. The provisions of this section shall apply to the disposition of property that has been recovered or taken into custody by the Comanche Nation Tribal Police Department as a result of a search, investigation or other police action in accordance with tribal laws.

B. Reporting Lost, Stolen Property. All persons who have property stolen or who have lost property have an obligation to report such losses to the Comanche Nation Tribal Police Department. If reports of lost or stolen property are not made, any actions taken to dispose of that property in accordance with tribal laws shall convey full, legal title thereto.

C. Restoration of Property to Owner, Finder.

1. Property that is not needed for evidentiary purposes may be summarily returned to their

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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rightful possessor if that person establishes his identity and right to possession beyond a reasonable doubt to the satisfaction of the Chief of Police. If the property is perishable and it is not possible to return it to its rightful possessor, the seizing officer or the Chief of Police may dispose of the items as justice and the necessity of the case require following the asset forfeiture procedures that follow the policies and procedures outlined in the agency handbook with authorization coming from the Comanche Nation Court.

2. Any person who finds property shall deliver it to the Comanche Nation Tribal Police Department and may request, in writing, that if the property is not claimed by the lawful owner within six (6) months, that the property be returned to him. If, after six (6) months the lawful owner of the found property has not been identified and has not claimed the property and if the property is not needed for evidentiary purposes, the finder may request the Comanche Nation Tribal Court to order that the found property be delivered and transferred to him.

### D. Disputed Rights of Possession.

1. Any person claiming a right to possession of property in the custody of the Comanche Nation Tribal Police may petition the Court to restore possession to them.

2. In the event rights to possession are disputed, the Court may hold an informal hearing, after all persons with a possible possessory interest have received due notice and an opportunity to be heard, to determine the right to possession and dispose of the property accordingly.

E. Contraband. Any contraband which has been seized and which is no longer needed for evidentiary purposes may be ordered destroyed or otherwise disposed of by the Comanche Nation Tribal Court upon motion of the Comanche Nation Tribal Police Department. The Court may order that contraband be retained by the Comanche Nation Tribal Police Department or delivered to another law enforcement agency when a lawful use of that contraband may be made by said department or agency. For purposes of this section, contraband is defined as property which is or was possessed unlawfully and which was not lawfully owned by another person.

F. Evidence, Recovered and Found Property. If property has been in the possession of the Comanche Nation Tribal Police Department in excess of six (6) months, the owner thereof is unknown, and cannot be identified and the property is no longer needed for evidentiary purposes, the Comanche Nation Tribal Court shall order that the property be sold, destroyed or otherwise disposed of upon motion by the Comanche Nation Tribal Police Department. The Tribal Police may request by motion, and the Court may authorize, that any property may be retained by the Department for its use following the asset forfeiture procedures that follow the policies and procedures outlined in the agency handbook with authorization coming from the Comanche Nation Court. The proceeds from the sale or repurpose of such property shall be deposited in the Comanche Nation Tribal Police Department Special Deposit account.

G. Sale of Property. Any property to be disposed of by sale shall be sold at auction to the highest bidder. The date, time, place, terms and list of property to be sold shall be advertised as deemed appropriate by the Chief of Police for a two week period preceding the sale. Persons employed by the Comanche Nation Tribal Police Department and the Comanche Nation Tribal Court on a full-time, part-time, or contractual basis shall not be allowed to participate in any auction for property covered by this Section. The proceeds from the sale of such property shall be deposited in the Comanche Nation Tribal Police Department Special Deposit Account.

# TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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## CHAPTER 3. CRIMINAL PROCEDURE

### PART I. SCOPE, PURPOSE AND CONSTRUCTION

#### SECTION 3.01. SCOPE

These rules are intended to provide for the just determination of every criminal proceeding in the Comanche Nation Tribal Court. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

#### SECTION 3.02. PURPOSES AND CONSTRUCTION

These rules are intended to provide for the just determination of every criminal proceeding in the Comanche Nation Tribal Court. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

### PART II. PRELIMINARY PROCEEDINGS

#### SECTION 3.03. THE COMPLAINT

A. All prosecutions for violations of the Code shall be commenced by a complaint. A complaint signed by a complainant, other than an officer or Tribal Prosecutor, shall be witnessed by a Judge of the Court. A complaint signed by an officer or Tribal Prosecutor need not be witnessed, but shall immediately after service will be filed with the Court.

B. The complaint shall:

1. Be in writing and in the name of the Comanche Nation;
2. State the name of the accused, if known, and if not known, designate the accused by description by which he can be identified with reasonable certainty;
3. Bear the signature of the complainant or arresting officer or Tribal Prosecutor;
4. State the name and section number of the offense charged;
5. State the facts constituting the offense in ordinary and precise language, and in such manner as to enable a person of common understanding to know what conduct is alleged to constitute the offense; and
6. State the time and place of offense as definitely as can be done.
7. For purposes of crimes involving non-Indian Domestic or Dating Violence the complaint shall also allege, and the prosecution must prove beyond a reasonable doubt:
  - a. That the victim is an Indian,
  - b. That the offense occurred within the Comanche Nation' Indian country,
  - c. That the defendant has sufficient ties to the Comanche Nation, such that:
    - i. The defendant resided in the Comanche Nation' Indian county at the time of the offense,
    - ii. The defendant was employed in the Comanche Nation' Indian country at the time of the offense, or
    - iii. At the time of the offense, the defendant was a spouse, intimate partner, or dating partner of either
      - (A) A member of the Comanche Nation, or
      - (B) A non-member Indian who resides in the Comanche

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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Nation' Indian country.

8. For purposes of crimes involving non-Indian protection order violations, the complaint shall also allege, and the prosecution must prove beyond a reasonable doubt:
  - a. That the protection order was issued against the defendant,
  - b. That the protected person is an Indian,
  - c. That the violation occurred within the Comanche Nations' Indian country,
  - d. That the protection order is consistent with 18 U.S.C. 2265(b),
  - e. That the violation relates to that portion of the protection order that provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, the protected person, and
  - f. That the defendant has sufficient ties to the Comanche Nation as outlined in Section 3.03(B)(7).

### SECTION 3.04. SUMMONS - BY WHOM ISSUED, CONTENTS

A summons may be issued by the Judge following the filing of a complaint when the complaint alleges that an offense has been committed by the accused. The summons shall contain the name of the accused and shall direct the accused to appear before the Court at a stated date, time and place.

### SECTION 3.05. SUMMONS AND COMPLAINT - BY WHOM ISSUED, FILING

A summons and complaint may be issued by an officer for an offense or civil infraction which was committed in his presence, or if not committed in his presence, when he has probable cause for believing that the offense or civil infraction was committed in fact by the accused. A copy of the summons and complaint so issued shall be filed immediately with the Court before which appearance is required. A second copy shall be supplied to the prosecutor.

### SECTION 3.06. SERVICE OF SUMMONS OR SUMMONS AND COMPLAINT- MANNER, TERRITORIAL LIMITS AND RETURN

A summons and/or complaint issued pursuant to these rules shall be served upon the accused personally or by registered mail with return receipt requested by an officer. Service and proof of service shall be documented and provided to the appropriate court.

### SECTION 3.07. ARREST BY WARRANT UPON COMPLAINT

A. In lieu of a summons, an arrest warrant may be issued by the Judge at his discretion following the filing of a complaint by a complainant, officer, or the Tribal Prosecutor.

B. When an accused is arrested under a warrant, he shall be taken without unnecessary delay before the Judge who issued the warrant and at such time a copy of the complaint and warrant shall be given to him. Also, at such time, the Judge shall either:

1. Admit the accused to bail or release him upon personal recognizance and give a summons to him; or
2. Order the accused held in custody and proceed without unnecessary delay with arraignment according to section 3.12.

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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### SECTION 3.08. ARREST WITHOUT WARRANT

A. A law enforcement officer may make an arrest without a warrant if the officer has probable cause to believe that the person has committed a crime, or for any other offense committed in the officer's presence, or if there is probable cause to believe the person has violated a protective order.

B. A law enforcement officer may arrest a person without a warrant when he is notified by telegraph, telephone, radio or other mode of communication by another law enforcement officer of any other jurisdiction that there exists a duly issued warrant for the arrest of a person charged with a crime committed within his jurisdiction.

C. A law enforcement officer may arrest without a warrant a person anywhere, including his place of residence, if the peace officer has probable cause to believe the person within the preceding seventy-two (72) hours, has committed an act of family violence or domestic abuse as defined as a criminal act, although the act did not take place in the presence of the peace officer, if the officer has first observed a recent physical injury, or an impairment of physical condition of the alleged victim. No peace officer shall be held criminally or civilly liable for making an arrest pursuant to this section, provided he/she acts reasonably and in good faith.

### SECTION 3.09. ARREST BY WARRANT UPON FAILURE TO APPEAR

If an accused, upon which a summons has been served pursuant to these rules, fails to appear in person or by counsel at the place and time specified therein, a bench warrant may be issued by the Judge for the arrest of the accused.

### SECTION 3.10. EXECUTION OF WARRANT -BY WHOM AND TERRITORIAL LIMITS

A warrant issued according to these rules shall be executed by an officer within the boundaries of the Comanche Nation Indian Country.

## PART III. ARRAIGNMENT

### SECTION 3.11. ARRAIGNMENT

A. An arraignment shall be conducted in open Court upon the defendant's first appearance in Court unless defendant is granted a continuance to seek assistance of counsel, to determine which plea to enter, or for other good or sufficient reason. The Judge shall advise each defendant of his right to have the arraignment continued upon his request for good cause which may be made at any time prior to pleading guilty or not guilty. If no such request is made, the Judge may proceed with the arraignment in accordance with this rule.

B. Except for good cause shown, or at the request of the defendant, the Tribal Court shall hold an arraignment hearing for any defendant in custody during the first 48 hours, excluding weekends or holidays in which the courthouse is closed, of custody. Failure to hold an arraignment hearing within the required time shall result in the release of the defendant.

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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- C. The defendant may appear in person or by counsel.
- D. Before defendant is called upon to plead guilty or not guilty, the following proceedings shall be conducted by the Judge:
1. The complaint shall be read to the defendant or the substance of the charge contained in the complaint shall be stated to him.
  2. The defendant shall be given a copy of the complaint or summons and complaint, if one has not been previously served.
  3. The defendant shall be advised of the maximum penalty which the Judge may impose in event of conviction.
  4. The judge shall inform the defendant of his rights, which shall include, but not be limited to, the following:
    - a. The right to counsel and the right to a reasonable continuance to obtain counsel. If the defendant cannot afford counsel, one will be appointed for them at the expense of the Comanche Nation in accordance to the Comanche Nation Tribal Court Rules pertaining to indigent defense.
    - b. The right to be informed of the charges against him.
    - c. The right to have the Court compel the witnesses against him to appear and testify.
    - d. The right to cross-examine and question the witnesses against him.
    - e. The right to call witnesses in his own behalf and to have the Court issue subpoenas within its jurisdictional limits notifying the witnesses to appear.
    - f. The right to a speedy and public trial.
    - g. The right to a jury trial.
    - h. At trial, the right to testify or not to testify in his own behalf, because he has the privilege against self-incrimination.
    - i. If found guilty, the right to appeal.
    - j. The right to file a writ of habeas corpus in the United States District Court if defendant feels his rights have been violated.
    - k. The right to be released on bail or on his own recognizance pending trial.
    - l. The reading of any or all of these rights may be waived by a defendant represented by legal counsel.

### SECTION 3.12. PLEAS

- A. A defendant, personally or by counsel, may plead guilty or not guilty in accordance with the guidelines established under this section.
- B. Plea of Not Guilty. If defendant pleads not guilty, the Judge shall:
1. Ask the defendant if he wants a jury trial, or if he waives his right to a jury trial. If defendant requests a jury trial, the case shall be placed on the jury trial calendar. If defendant waives his right to a jury trial, the Judge shall record the waiver in the case record. The Judge may continue the case to allow defendant time to decide.
  2. Set the date and time for trial, or for further proceedings.
  3. Advise the defendant of his right to bail if the defendant is still in custody upon arrest with or without warrant. If bail has not yet been set, the Judge shall set bail, and if bail has already been set, the amount shall be reviewed. Bail shall be set of defendant released on personal recognizance according to section 3.13.



## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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C. Plea of Guilty. The Court shall not accept the plea of guilty without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge, and explaining fully to the defendant his right to trial by jury, his right to engage counsel, and the maximum penalty possible for the offense charged.

1. If a defendant refuses to plead or if the Judge refuses to accept a plea of guilty, the Judge shall enter a plea of not guilty. The Judge shall not enter a judgment upon a plea of guilty unless he is satisfied that the defendant is pleading guilty because he, in fact, committed the offense of which he is charged.

2. A plea of guilty shall in no case be entered except by the defendant in person.

3. A plea of guilty may be withdrawn:

a. At any time before judgment at the Judge's discretion and a plea of not guilty substituted.

b. Before sentencing, upon adequate or compelling reason given by the defendant.

4. A defendant may be permitted to plead guilty to a lesser degree of the offense charged, or to a lesser offense included within the offense charged, and if so, the reasons for the acceptance of such plea shall be set forth in the order of the Court, and any recommendations by an officer or the prosecutor, with the reasons therefore, shall be stated in writing and filed in the official files of the case.

5. Upon acceptance of a plea of guilty, the Judge may sentence immediately or at a later date.

### SECTION 3.13. BAIL

A. Entitlement. Every defendant shall be entitled to bail. Bail shall be set by the Judge. Bail is allowable pending appearance before the Trial Court, or, if after conviction, during any state of execution or pending appeal. Bail shall be set at the close of arraignment, unless exceptional circumstances require it being set at an earlier proceeding.

B. Amount. A defendant shall be admitted to bail in an amount which in the judgment of the Judge is necessary and sufficient to insure the defendant's presence at future Court proceedings at which defendant's presence is required.

C. Form of Bail Bond and Place of Deposit. A defendant admitted to bail shall execute a bond for his appearance in Court on a designated day, and from day to day thereafter as the Judge may deem appropriate. The bail bond may be in the form of cash, some type of surety arrangement, or other kind of security as may be acceptable in the judgment of the Judge. A personal recognizance bond may be allowed by the Judge at his discretion in lieu of cash, surety or other kind of security bond. The bond shall be made and deposited in the office of the Clerk of the Court.

D. Disposition of Bail.

1. Forfeiture. If there is a breach of condition, of a bond, the Judge shall declare a forfeiture of the bail.

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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- a. Setting Aside. The Judge may direct that a forfeiture be set aside, upon such conditions as the Judge may impose, if it appears that justice does not require the enforcement of the forfeiture.
- b. Enforcement. By entering into a bond each obligor, whether defendant or surety submits to the jurisdiction of the Court. His liability under the bond may be enforced, without the necessity of an independent action. The Judge shall order the issuance of a citation directed to the obligor to show cause why judgment should not be entered against him forthwith and execution issued thereon. Said citation shall be served personally or by registered mail upon the obligor at the address given in the bond. Hearing on the citation shall be held not less than twenty days after service. The defendant and the prosecutor shall be given notice of the hearing. At the conclusion of the hearing, a judgment and execution shall issue thereon as on other judgments. Judgment may be for Contempt of Court and bail posted may also be forfeited.
2. Exoneration of the Obligor. The obligor shall be exonerated when the condition of the bond has been satisfied; or, when forfeiture has been declared, the amount of forfeiture has been paid; or upon surrender of the defendant into custody before judgment upon an order to show cause and upon payment of all costs occasioned thereby.
- Continuation of Bond. In the discretion of the Judge and with the consent of surety, the same bond may be continued until the final disposition of the case on appeal.

### SECTION 3.14. MOTIONS DURING ARRAIGNMENT

- A. Defenses and objections which may be passed by Motion. Any defense or objection which is capable of determination without the trial of the general issue may be raised during arraignment.
- B. Defenses and objections which must be raised. The following defenses and objections must be raised by motion during arraignment.
  3. Generally, defenses and objections based upon defects in the institution of the prosecution or in the complaint including but not limited to;
    - a. Motions to dismiss for defective complaint (other than that it fails to show jurisdiction in the Court or to charge an offense), defective warrant, defective service, or unnecessary delay in arraignment; and
    - b. Motion to Disqualify Judge.
      - i. Disqualification of Judge. Whenever a party to any proceeding feels that the presiding Judge has a personal bias or prejudice either against him or in favor of an adverse party, he may move to disqualify the Judge. Upon such motion, the Judge shall proceed no further and another Judge shall be assigned to hear the proceeding. The moving party must state the facts and reasons for his belief that prejudice or bias exists. A party may make only one such motion in any case and that motion must be made in good faith.
- C. Waiver of Defenses or Objections Required to be Raised. Failure to present any defense or objection required to be raised during arraignment constitutes a waiver of such defense or objection, but the Judge for cause shown may grant relief from the waiver.
- D. Notice of Lack of Jurisdiction or Defect in Complaint by Court. Lack of Jurisdiction or failure of the complaint to charge an offense or civil infraction may be noticed by the Judge at any time pending final disposition of the case.
- E. Time and Manner of Making Motion. Motions under this rule shall be made orally and before any plea is entered by the defendant, and shall be supported by reasons, therefore, also orally made. The Judge, however, may require that a motion and reasons, therefore, be put in writing.

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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F. Hearing on Motion. Motions under this rule shall be determined by the Judge during arraignment proceedings, unless the Judge orders that it be deferred for determination at a later date.

### SECTION 3.15. JOINDER OF DEFENDANTS OF OFFENSES OF TRIAL

During arraignment, the Judge may order two or more defendants to be tried together if the offenses and defendants could have been joined in a single complaint. The joinder, if ordered, must occur at least 15 days prior to trial, and notice shall be given to defendant forthwith.

## PART IV. PRETRIAL

### SECTION 3.16. PRETRIAL MOTIONS

A. Generally, any defense or objection which is capable of determination without the trial of the general issue and which are not required to be raised during arraignment may be raised by pretrial motion.

B. Specifically, pretrial motions include, but are not limited to the following:

1. Motions for use of interpreter;
2. Motion for continuance of trial date;
3. Motion to dismiss complaint for lack of jurisdiction or for failure to charge an offense;
4. Motion for relief from prejudicial joinder. If it appears the defendant or his case is prejudiced by a joinder of offenses or of defendants in a complaint by such joinder for trial together, the Judge may order separate trials of courts, grant a severance of defendants or provide whatever other relief justice requires. In ruling on a motion by defendant for severance, the Judge may order the prosecutor to deliver to him for inspection privately in his chambers, any statements or confession made by defendants with the prosecutor intends to introduce in evidence at the trial.

5. Motion for pretrial conference. At any time after the filing of the complaint, the Court, upon motion of any party or upon its own motion, may order one or more conferences to consider such matters as will promote a fair and expeditious trial. At the conclusion of a conference, the Judge shall prepare and file a memorandum of the matters agreed upon.

6. Motion to suppress evidence. A motion to suppress evidence may be made when it is learned through discovery or other pretrial procedures that an opposing party intends to introduce evidence that is inadmissible under these rules.

C. Time and Manner of Making and Opposing Motions. Motions made under this rule shall be written and supported by reasons therefore, and shall be filed not later than 15 days before the trial date. Such motions shall be served on the opposing party simultaneously with filing thereof. Response in opposition to such motions shall be made in writing and supported by reasons therefore, and shall be filed not later than five (5) days before the trial date. Responses in opposition shall be served simultaneously with the filing thereof. The Judge, at his discretion, may direct that any motion be made orally.

D. Determination of Motions. The Judge may enter judgment on pretrial motions solely on papers filed, or he may set a date and time for hearing of pretrial motions.

### SECTION 3.17. DISCOVERY

A. Disclosure of Evidence by Prosecution, Information Subject to Disclosure.

1. Statement of Defendant. Upon request of a defendant the tribe shall permit the defendant to inspect and copy or photograph; any relevant written or recorded statements made by the

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

---

defendant, or copies thereof, within the possession, custody or control of the Tribe, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the Tribe; the substance of any oral statement which the Tribe intends to offer in evidence at the trial made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a Tribal agent; and recorded testimony of the defendant before a grand jury which relates to the offense charged. Where the defendant is a corporation, partnership, association or labor union, the court may grant the defendant, upon its motion, discovery or relevant recorded testimony of any witness before a grand jury who;

a. Was, at the time of his testimony, so situated as an officer or employee as to have been able legally to bind the defendant in respect to conduct constituting the offense, or;

b. Was, at the time of offense, personally involved in the alleged conduct constituting the offense and so situated as an officer or employee as to have been able legally to bind the defendant in respect to that alleged conduct in which he was involved.

2. Defendant's Prior Record. Upon request of the defendant, the Tribe shall furnish to the defendant such copy of his prior criminal record, if any, as is within the possession, custody or current control of the Tribe, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the Tribe.

3. Documents and Tangible Objects. Upon request of the defendant the Tribe shall permit the defendant to inspect any copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof which are within the possession, custody or control of the Tribe, and which are material to the preparation of his defense are intended for use by the Tribe as evidence in chief at the trial, or were obtained from or belong to the defendant.

1. Reports and Examinations and Tests. Upon request of a defendant the Tribe shall permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments, or copies thereof, which are within the possession, custody or control of the Tribe, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the Tribe, and which are material to the preparation of the defense or are intended for use by the Tribe as evidence in chief at the trial.

2. Information Not Subject to Disclosure. Except as provided in paragraphs (1), (2) and (4) of subsection (A), this rule does not authorize the discovery or inspection of reports, memoranda or other internal Tribal documents made by the attorney for the Tribe or other Tribal agents in connection with the investigation or prosecution of the case, or of statements made by Tribal witnesses or prospective Tribal witnesses except as provided in section 3.24.

B. Disclosure of Evidence by Defense, Information Subject to Disclosure.

1. Documents and Tangible Objects. If the defendant requests disclosures under subsection (A)(3) or (4) of this rule, upon compliance with such request by the Tribe, the defendant, on request of the Tribe, shall permit the Tribe to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial.

2. Reports of Examinations and Tests. If the defendant requests disclosure under subdivision (A)(3) or (4) of this rule, upon compliance with such request by the Tribe, the defendant, on request of the Tribe, shall permit the Tribe to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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defendant, which the defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to his testimony.

3. Information Not Subject to Disclosure. Except as to scientific or medical reports, this subdivision does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant, or his attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by Tribal or defense witnesses, or by prospective Tribal or defense witnesses, to the defendant, his agents or attorneys.

### SECTION 3.18. SUBPOENA

A. Attendance of Witnesses, Form, Issuance. A subpoena shall be issued by the Judge or by the clerk under authority of the Judge. It shall state the name of the Court and the title, if any, of the proceedings, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein.

B. Service. A subpoena may be served by any officer, or by any person, not a party, who is 18 years of age or over. Service of a subpoena shall be made by delivering a copy thereof to the person ordered to appear.

C. Proof of Service. Proof of service of a subpoena shall be made by the person who served the subpoena in accordance with section 3.32. If the person to be served cannot be located, the person who attempted to serve the subpoena shall file a statement of attempt to serve which shall describe his efforts at service.

D. Contempt. Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the Court from which the subpoena issued.

### SECTION 3.19. JURY

A. Eligibility, List, Record of Service. Any resident within the boundaries of the Comanche Nation Indian Country i.e. Service area (seven counties) of the age of 18 or over is eligible to be a juror regardless of race or tribal citizenship. A list of eligible jurors shall be kept by the Clerk of the Court and a record of each juror's service as a juror shall be noted thereon.

B. Selection of Jury Panel. In January of each year, the Judge shall select at least 50 names from the list of eligible jurors and each shall be notified of his or her selection. This selected list shall comprise the trial jury list for the ensuing year from which jury panels shall be selected from time to time. A jury panel shall consist of not less than 18 names.

C. Time and Manner of Notification. Those persons who are selected to serve on a jury panel, shall be notified at a reasonable time prior to the trial date and the notice shall state the date, time, place and time of the proceeding for which they shall serve.

D. Exemption from Jury Service. For good cause shown, the Judge may exempt any person from jury service. The Judge shall order the exemption be either permanent or for a specified period of time. If the exemption is temporary, the name of the prospective juror shall be returned to the selected jury list for possible selection for another panel at the expiration of the exemption. In the Court's discretion, the name of a person with a temporary exemption may be removed for that year from the selected list of jurors. If the exemption is permanent, the name of the person shall be removed from the list of eligible jurors.

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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### PART V. TRIAL

#### SECTION 3.20. TRIAL BY COURT

A. Upon the waiver by the defendant of his right to a trial by a jury he shall have a trial by the Court in accordance with these rules. The prosecution has the burden of proving beyond a reasonable doubt that the defendant is guilty of an offense as charged. A person does not have a right to a jury trial for civil infractions.

B. Opening Statements. Both parties shall have the right to make an opening statement to summarize for the Court the facts, evidence and arguments each will present and rely on during trial. The prosecution shall present its statement first and the defense shall have the option of making its opening statement at that time or after the prosecution has completed the presentation of its case. Either side may waive the opening statement.

C. Presentation of the Prosecution's Case. Upon the completion of the opening statements, the prosecution shall present to the Court, all of the evidence and testimony of witnesses on the prosecution's side of the case.

D. Presentation of the Defendant's Case. Upon the completion of the presentation of the prosecution's case and after making any appropriate motions, the defense shall present to the Court all the evidence in accordance and testimony of witnesses for the defendant's case.

E. Reopening Case. After the presentation of both sides of the case either side may ask that the case be reopened to allow the presentation of evidence or testimony that was inadvertently omitted, unavailable or non-existent earlier in the trial. Whether such evidence or testimony will be received is in the discretion of the Court.

F. Closing Arguments. After the presentation of both sides of the case, both parties shall have the right to make closing arguments in which they may interpret the facts and argue the law and generally summarize the case as they interpret it. Either side may waive their right to making closing arguments.

G. Objections. Objections may be made by either party to test the validity of any procedural, substantive, or evidentiary matter before the Court during any hearing or trial. All objections shall be made at the time the objectionable matter arises and the specific grants therefor shall be stated. The Court shall either rule immediately on the objection or take the matter under advisement for a later ruling in its discretion.

#### SECTION 3.21. TRIAL BY JURY

A. The defendant shall have the right to a trial by a jury of his peers composed of not less than six persons and one alternate unless such right has previously been waived. The prosecution has the burden of proving beyond a reasonable doubt that the defendant is guilty as charged.

B. Selection of the Jury.

1. Voir Dire. The prosecution and defense, in that order, shall have the opportunity to ask questions of the prospective jurors as they are individually called upon by the court to determine if there is any reason why a particular candidate should not be seated as a juror. Either party may question the propriety of any question asked by the other party of a prospective juror and it shall be within the discretion of the Court to rule on the propriety of the question.

2. Challenges. When both sides have completed their voir dire questioning of the six prospective jurors and the one alternate, they shall confer privately with the Judge and state all challenges they have to make against any prospective juror.

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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- a. Preemptory Challenges. Both parties shall have four preemptory challenges with which they may disqualify any prospective juror and need not state any reason for doing so.
- b. Challenges for Cause. When it is established that any prospective juror is prejudiced, biased or otherwise unable to sit as a fair and impartial juror, he may be disqualified by a challenge for cause by either side. The allowance or disallowance of a challenge for cause shall be within the discretion of the Court. The number of challenges for cause by either party is unlimited.
3. Oath to Trial Jury. After the six members and one alternate of the jury have been selected and seated, the Court shall administer an oath by which the jury swears that it will act fairly and impartially in the trial it will hear.
  - C. Opening Statements. Both parties shall have the right to make an opening statement to summarize for the Court and the jury the facts, evidence and arguments each will present or rely on during trial. The prosecution shall present its statement first and the defense shall have the option of making its opening statement at that time or after the prosecution has completed the presentation of its case. Either side may waive the opening statement.
  - D. Presentation of the Prosecution's Case. Upon the completion of the opening statements, the prosecution shall present to the Court and jury all of the evidence and testimony of witnesses on the prosecution's side of the case.
  - E. Presentation of the Defendant's Case. Upon the completion of the presentation of the prosecution's case and after making any appropriate motions, the defense shall present to the Court and jury, all of the evidence and testimony of witnesses for the defendant's case.
  - F. Reopening Case. After the presentation of both sides of the case, either side may ask that the case be reopened to allow the presentation of evidence not discovered, unavailable or non-existent earlier in the trial. Whether such evidence or testimony will be received is in the discretion of the Court.
  - G. Closing Arguments. After the presentation of both sides of the case, both parties shall have the right to make closing arguments in which they may interpret the facts and argue the law and generally summarize the case as they interpret it. Either side may waive their right to make closing arguments.
  - H. Jury Deliberations. Upon completion of the closing arguments and the reading of instructions to the jury by the Court, the jury shall retire to a place where privacy and freedom from outside interference and interruption is assured. The jury members shall first elect from among their number a foreman who shall act as spokesman for the jury. They shall then evaluate and weigh the evidence, resolve the conflicts and inconsistencies, apply the law to the facts as previously instructed by the Court and reach a verdict of guilty or not guilty by unanimous vote. The foreman shall notify the Judge when a verdict has been reached.
  - I. Objections. Objections may be made by either party to test the validity of any procedural, substantive, or evidentiary matter before the Court during any hearing or trial. All objections shall be made at the time the objectionable matter arises and the specific grants therefore shall be stated. The Court shall either rule immediately on the objection or take the matter under advisement for a later ruling in its discretion.

### SECTION 3.22. MOTIONS AT TRIAL

- A. Either party may make motions, all of which shall be oral unless otherwise directed by the Court throughout the course of the trial. Both parties shall have the opportunity to argue their respective positions on any motion made. The motions that can be made shall include but not be

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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limited to the following:

B. Motion for a Directed Verdict.

1. At the close of the prosecution's case, the defense may move that the Court direct a verdict of not guilty. Defendant's motion shall be granted only if the prosecution has failed to present a prima facie case.

2. Either party may make a motion for a direct verdict at the close of the defendant's case. A directed verdict of not guilty can be made when the prosecution failed to present a prima facie case and a directed verdict of guilty can be made if the Court finds as a matter of law that no adequate defense was presented.

C. Motions for Exclusion of Witnesses. A motion to exclude all witnesses who have not yet testified may be made by either party or done by the Court on its own initiative, prior to the time any witness has testified to insure that the testimony of all witnesses is his own independent recollection of the facts and that he does not adopt the testimony of a prior witness. It shall be within the discretion of the Court to grant or deny a motion to exclude witnesses made by either party.

D. Motion for Mistrial. A motion for a mistrial can be made at any time during the trial and can be granted in the Court's discretion. A party may make a motion for a mistrial when any action by any person other than the moving party, has the effect of prejudicing the outcome of the trial to the point that such prejudice could only be overcome by holding a new trial.

E. Motion for Judicial Notice. Either party may, during the presentation of its case, move the Court to take judicial notice of matters which by their nature, are not properly the subject of testimony or which are universally regarded as established by common notoriety. Granting or denying the motion shall be within the discretion of the Court.

F. Motion for a New Trial. The defendant may make a motion for a new trial after a verdict of guilty has been rendered against him. The motion must specifically allege the errors made by the Court during the trial which forms the basis for the motion. The motion shall be granted or denied as justice dictates.

G. Motion to Dismiss for Unnecessary Delay in Prosecution. A motion to dismiss for unnecessary delay in prosecution may be made by the defendant prior to the commencement of the trial proceedings and shall be granted if an unreasonable amount of time has elapsed since the defendant was arraigned and if the delay was not requested or acquiesced in by the defendant.

H. Motion to Exclude Evidence. A motion to exclude evidence may be made during the course of a trial when an opposing party introduces evidence that is inadmissible under these rules.

### SECTION 3.23. EVIDENCE

A. All evidence which the Court deems proper and necessary for reaching a true and just verdict or which is in accordance with Tribal customs and traditions, provided it is otherwise admissible under the Court's rules of evidence, shall be admitted subject to rules governing the permissible scope of search and seizure. In reaching a decision on the admissibility of any evidence, the Court may avail itself of any materials, books or documents prior to ruling.

B. Witnesses. The testimony of witnesses shall be given orally unless the witness, for good reason presented to the Court, is or will be unable to appear personally in Court, in which case arrangements shall be made by the party calling the witness, for both parties to simultaneously question the witness under oath for purposes of obtaining a written statement for presentation to the Court at trial. Before either party relies or comments on a written statement so taken at trial,



## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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it shall be presented to the Court and he shall strike out any questions, answers or statements he deems improper. Any witness testifying in Court or being questioned for purposes of a written statement shall be subject to direct examination by the party who called him as a witness, cross-examination by the opposing party, redirect examination by the party who called him and re-cross examination by the opposing party.

C. The Defendant as a Witness. The defendant cannot be compelled to testify as a witness. If the defendant invokes this privilege and does not testify, the Court and jury shall not consider such action as an indication of evidence of guilt. If the defendant voluntarily testifies he shall be subject to direct, cross, redirect, and re-cross examination, the same as any other witness.

D. Search and Seizure. Evidence obtained by unlawful search and seizure is inadmissible. Lawful searches and seizures may be made in accordance with the following subsections.

1. Permissible Objects of Search and Seizure. The following are subject to search and seizure:

- a. Evidence of or information concerning the commission of a criminal offense;
- b. Contraband, the fruits of crime, or things otherwise criminally possessed;
- c. Property that has been used, to commit or conceal the commission of an offense; and
- d. A person for whose arrest there is probable cause or who is unlawfully held in concealment.

2. Issuance of Search Warrant.

a. A search warrant may be issued only by a Judge.

b. Application for a search warrant may be made only by a tribal attorney or by any tribal police officer.

c. The application shall consist of a proposed warrant in conformance with paragraph (4), and shall be supported by one or more affidavits particularly setting forth the facts and circumstances tending to show that such things are in the places, or in the possession of individuals, to be searched. If an affidavit is based in whole or in part on hearsay, the affiant shall set forth facts bearing on any unnamed informants reliability and shall disclose, as far as possible, the means by which the information was obtained.

d. Instead of the written affidavit described in subparagraph (c) of this paragraph, the Judge may take an oral statement under oath when circumstances exist making it impractical for a tribal attorney or police officer to obtain a warrant in person. The oral statement shall be recorded and transcribed. The transcribed statement shall be considered to be an affidavit for the purposes of this paragraph. In such cases, the recording of the sworn oral statement and the transcribed statement shall be considered to be an affidavit for the purposes of this paragraph. In such cases, the recording of the sworn oral statement and the transcribed statement shall be certified by the Judge receiving it and shall be retained as a part of the record of proceedings for the issuance of a warrant.

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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3. Hearing.
  - a. Before acting on the application, the Judge may examine an oath, the affiants, and the applicant and any witnesses he may produce, and may himself call such witnesses as he considers necessary to a decision. He shall make and keep a record of any testimony taken before him. The record shall be admissible as evidence on any motion to suppress.
  - b. If the Judge finds that the application meets the requirements of paragraph (1), and that, on the basis of the record made before him, there is probable cause to believe that the search will discover things specified in the application and subject to seizure under paragraph (1), he shall issue a search warrant based on his finding and in accordance with the requirements of paragraph (2) to paragraph (9). If he does not so find, the Judge shall deny the application.
  - c. The Judge may orally authorize a police officer or the tribal attorney to sign the Judge's name on a duplicate original warrant. A duplicate original warrant shall be a search warrant for the purposes of paragraph (1) to paragraph (9), and it shall be returned to the Judge as provided in paragraph (9). In such cases a Judge shall enter on the face of the original warrant the exact time of the issuance of the warrant and shall sign and file the original warrant in the manner provided by law.
  - d. Until the warrant is executed, the proceedings upon application for a search warrant shall be conducted with secrecy appropriate to the circumstances.
4. Contents of Search Warrant.
  - a. A search warrant shall be dated and shall be addressed to and authorize its execution by an officer authorized by law to execute search warrants.
  - b. The warrant shall state, or describe with particularity:
    - i. The identity of the Judge issuing the warrant and the date the warrant was issued;
    - ii. The name of the person to be searched, or the location and designation of the premises or places to be searched;
    - iii. The things constituting the object of the search and authorized to be seized; and
    - iv. The period of time, not to exceed five (5) days, after execution of the warrant except as provided in subparagraph (c) of this paragraph, within which the warrant is to be returned to the issuing authority.
  - c. Except as otherwise provided herein, the search warrant shall be executed between the hours of 7:00 AM and 10:00 PM and within five days from the date of issuance. The Judge issuing the warrant may, however, by endorsement upon the face of the warrant, authorize its execution at any time of the day or night and may further authorize its execution after five days, but not more than ten days from date of issuance.
5. Execution of Warrant.

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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- a. A search warrant may be executed only within the period and at the times authorized by the warrant and only by a police officer. A police officer charged with its execution may be accompanied by such other persons as may be reasonably necessary for the successful execution of the warrant with all practicable safety.
  - b. The executing officer shall, before entering the premises, give appropriate notice of his identity, authority and purpose to the person to be searched, or to the person in apparent control of the premises to be searched, as the case may be.
  - c. Before undertaking any search or seizure pursuant to the warrant, the executing officer shall read and give a copy of the warrant to the person to be searched, or to the person in apparent control of the premises to be searched. If the premises are unoccupied or there is no one in apparent control, the officer shall leave a copy of the warrant suitably affixed to the premises.
6. Scope of Search. The scope of search shall be only such as is authorized by the warrant and is reasonably necessary to discover the persons or things specified therein. Upon discovery of the persons or things so specified, the officer shall take possession or custody of them and search no further under authority of the warrant. If in the course of the search the officer discovers things, not specified in the warrant, which he has probable cause to believe to be subject to seizure under paragraph (I) which he did not have probable cause to expect to find, he shall also take possession of the things discovered.
7. List of Things Seized. Promptly upon completion of the search, the officer shall make a list of the things seized, and shall deliver a receipt embodying the list to the person from whose possession they are taken, or the person in apparent control of the premises or vehicle from which they are taken. If the vehicle or premises are unoccupied or there is no one present in apparent control, the executing officer shall leave the receipt suitably affixed to the vehicle or premises.
8. Use of Force in Executing Warrants.
- a. The executing officer and other officers accompanying and assisting him may use the degree of force, short of deadly physical force, against persons, or to effect an entry, or to open containers, as is reasonably necessary for the execution of the search warrant with all practicable safety.
  - b. The use of deadly physical force in the execution of a search warrant is justifiable only:
    - i. If the officer reasonably believes that there is a substantial risk that things to be seized will be used to cause death or serious physical injury and the force used creates no substantial risk of injury to persons other than those obstructing the officer; or
    - ii. If the officer reasonably believes that the use of deadly physical force is necessary to defend the officer or another person from the use or threatened imminent use of deadly physical force.
9. Return of the Warrant.

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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- a. If a search warrant is not executed within the time specified by the warrant, the officer shall forthwith return the warrant to the issuing Judge.
  - b. An officer who has executed a search warrant shall, as soon as is reasonably possible and in no event later than the date specified in the warrant, return the warrant to the issuing Judge together with a signed list of things seized and setting forth the date and time of the search.
  - c. Subject to the provisions of subparagraph (d) of this paragraph, the issuing Judge shall file the warrant and list returned to him, with the record of the proceedings on the application for the warrant made pursuant to paragraph (3).
  - d. If the issuing Judge does not have jurisdiction to inquire into the offense in respect to which the warrant was issued or the offense apparently disclosed by the things seized, the Judge shall transmit the warrant and the record of proceedings for its issuance, together with the documents submitted on the return, to the clerk of the appropriate court having jurisdiction to inquire into such offense.
10. Handling and Disposition of Things Seized.
- a. The provisions of subparagraphs (b), (c), and (d) of this paragraph apply to all cases of seizure except for a seizure made under a search warrant.
  - b. If an officer makes an arrest in connection with the seizure, he shall, as soon thereafter as is reasonably possible, make a written list of the things seized and furnish a copy of the list to the defendant.
  - c. If no claim to rightful possession has been established under paragraph (11) to paragraph (14), the court shall order that the things be delivered to the officials having responsibility under the applicable laws for selling, destroying or otherwise disposing of contraband, forfeited or unclaimed goods in official custody.
  - d. If things seized in connection with an arrest are not needed for evidentiary purposes, and if a person having a rightful claim establishes his identity and right to possession beyond a reasonable doubt to the satisfaction of the seizing officer the officer may summarily return the things seized to their rightful possessor. If the things seized are perishable and it is not possible to return them to their rightful possessor, the seizing officer may dispose of the items as justice and the necessities of the case require.
11. Motion for Return or Restoration of Things Seized.
- a. Within 90 days after actual notice of any seizure, or at such later date as the court in its discretion may allow:
    - i. An individual from whose person, property or premises things have been seized may move the appropriate court to return things seized to the person or premises from which they were seized.
    - ii. Any other person a claim to rightful possession of the things seized may move the appropriate court to restore the things seized to the movant.
  - b. The appropriate court to consider such motion is:
    - i. The court having ultimate trial jurisdiction over any crime charged in connection with the seizure; or
    - ii. If no crime is charged in connection with the seizure, the court to which the warrant was returned; or
    - iii. If the seizure was not made under a warrant and no crime is charged in connection with the seizure, any court having authority to issue search warrants in the county in which the seizure was made.
12. Grounds for Motion for Return or Restoration of Things Seized. A motion for the return

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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or restoration of things seized shall be based on the ground that the movant has a valid claim to rightful possession thereof, because:

- a. The things had been stolen or otherwise converted, and the movant is the owner or rightful possessor; or
- b. The things seized were not in fact subject to seizure; or
- c. The movant, by license or otherwise, is lawfully entitled to possess things otherwise subject to seizure; or
- d. Although the things seized were subject to seizure, the movant is or will be entitled to their return or restoration upon the court's determination that they are no longer needed for evidentiary purposes; or
- e. The parties in the case have stipulated that the things seized may be returned to the movant.

13. Postponement of Return or Restoration; Appellate Review.

a. In granting a motion for return or restoration of things seized, the court shall postpone execution of the order until such time as the things in question need no longer remain available for evidentiary use.

b. An order granting a motion for return or restoration of things seized shall be reviewable on appeal in regular course. An order denying such a motion or entered under paragraph (14) shall be reviewable on appeal upon certification by the court having custody of the things in question that they are no longer needed for evidentiary purposes.

14. Disputed Possession Rights.

a. If, upon consideration of a motion for return or restoration of things seized, it appears to the court that the things should be returned or restored, but there is a substantial question whether they should be returned to the person from whose possession they were seized or to some other person, or a substantial question among several claimants to rightful possession, the court may:

- i. Return the things to the person from whose possession they were seized; or
- ii. Impound the things seized and set a hearing, assuring that all persons with a possible possessory interest in the things in question receive due notice and an opportunity to be heard; and

iii. Upon completion of the hearing provided for in clause (ii) of this subparagraph, enter an order for the return or restoration of the things seized.

b. If there is no substantial question whether the things should be returned to the person from whose possession they were seized, they must be returned to the person upon the release of the defendant from custody.

a. Instead of conducting the hearing provided for in clause (ii) of subparagraph of this paragraph and returning or restoring the property, the court in its discretion, may leave the several claimants to appropriate civil process for the determination of the claims.

### SECTION 3.24. VERDICT

A. Upon the completion of the closing arguments, the Court or jury, as the case may be, shall render its verdict.

B. Verdict by Court. The Court shall render a verdict of guilty if it believes the defendant to be guilty beyond a reasonable doubt, otherwise it shall render a verdict of not guilty. The Court shall have the option of rendering a verdict immediately after closing arguments or taking the case under advisement and ruling on it at a later date.

C. Verdict by Jury. If a unanimous jury has found beyond a reasonable doubt that the

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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defendant is guilty, a verdict of guilty shall be rendered. Otherwise, a verdict of not guilty shall be rendered.

D. Verdict of Not Guilty. If a verdict of not guilty is rendered by either the Court or the jury, judgment shall be rendered immediately and the defendant shall be immediately released from custody.

E. Verdict of Guilty. If a verdict of guilty is rendered by either the Court or jury, the Court shall so advise the defendant in open Court, set a date for sentencing, and enter a judgment of guilty in the Court's records.

### SECTION 3.25. SENTENCING PROCEDURE

A. On the date set for sentencing the defendant shall appear before the Court and sentence shall be pronounced.

B. Pre-sentence Investigation. The Court may, in its discretion, order that a pre-sentence investigation report shall inquire into the characteristics, attitude, circumstances, needs, and potential of the defendant, his criminal and social history, circumstances of the offense and any other information pertinent to sentencing.

C. Availability to Defendant. A pre-sentence investigation, if ordered, shall be available to defendant and he shall have an opportunity to rebut the contents thereof and offer information in addition thereto prior to sentencing.

D. Upon an order by the Court for a pre-sentence investigation, such an investigation shall be undertaken either by the Department of Social Services at the Comanche Nation as directed by the Court. Said Report shall be completed and submitted to the Court within the time period established by the Court.

## PART VI. SENTENCING

### SENTENCING SECTION 3.26. MISDEMEANORS

Any offense not defined as a felony shall be subject to a term of imprisonment of not more than 1 year or a fine of \$5,000, or both.

### SECTION 3.27. FELONIES

A. Any offense expressly defined as a felony shall be subject to a term of imprisonment of not more than 3 years or a fine of \$15,000, or both. A total term of imprisonment for any criminal proceeding shall not exceed 9 years.

B. A defendant shall not be subject to felony prosecution unless the defendant:

1. has been previously convicted of the same or a comparable offense by any jurisdiction in the United States, including the jurisdiction of another federally recognized Indian Tribe; or
2. is being prosecuted for an offense comparable to an offense that would be punishable by more than 1 year of imprisonment if prosecuted by the United States or any of the States.

### SECTION 3.28. DEFENDANT'S RIGHTS

A. Every defendant is entitled to those rights enumerated in the Indian Civil Rights Act, 25 U.S.C. 1302.

B. Every defendant has the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution.

C. The Comanche Nation shall provide any indigent defendant, at trial and on appeal, the

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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assistance of a defense attorney licensed to practice law by any jurisdiction in the United States, including the Comanche Nation, provided that jurisdiction applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys.

- D. In any criminal proceeding, the presiding judge shall:
1. have sufficient legal training to preside over criminal proceedings; and
  2. be licensed to practice law by any jurisdiction in the United States, including the Comanche Nation.
- E. In any criminal proceeding, the court shall maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding.
- F. In any criminal proceeding, a defendant has right to an impartial jury drawn from sources that reflect a fair cross section of the community and do not systematically exclude any distinctive group in the community, including non-Indians.
- G. Every defendant has the privilege of the writ of habeas corpus in a court of the United States to test the legality of their detention by order of the Comanche Nation.
- H. Every defendant who has been detained in jail by the Comanche Nation shall be notified of this right and any additional rights and privileges they are entitled to under 25 U.S.C. 1304(e).

### PART VII. SECTION 3.29.

The defendant shall be present in person at all proceedings in his case unless the Judge directs that defendant may appear by counsel for all or certain proceedings.

### SECTION 3.30. CONTEMPT OF COURT

- A. Any person or persons found guilty of any of the following acts shall be adjudged to be in Contempt of Court and shall be punished as the Court may direct.
1. Disorderly, contemptuous, or insolent behavior toward the Judge while holding Court, tending to interrupt the due course of a trial or other judicial proceeding;
  2. A breach of the peace, boisterous conduct, or violent disturbance in the presence of the Judge, or in the immediate vicinity of the Court held by him, tending to interrupt the due course of a trial or other judicial proceeding;
  3. Disobedience or resistance to the carrying out of a lawful order or process made or issued by the Judge;
  4. Disobedience to a subpoena duly serviced, or refusing to be sworn or to answer as a witness;
  5. Rescuing or interfering with any person or property in the custody of a police officer acting under an order of the Court or process of the Court;
  6. Failure to appear for jury duty when properly notified.
- B. When a contempt is committed in the immediate view and presence of the Judge, it may be punished summarily. To that end, an order must be made reciting the facts as they occurred, and adjudging that the person proceeded against is thereby guilty of the contempt, and that he be punished as therein prescribed.
- C. When a contempt is not committed in the immediate view and presence of the Judge, a warrant of arrest may be issued by such Judge, whereupon the person who is charged may be forthwith arrested and brought before the Judge at which time the accused must be given an opportunity to be heard in his defense or excuse of his action or actions. The Judge may there upon convict or discharge him of the charge.

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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### SECTION 3.31. TIME

A. Computation. In computing any period of time, the date of the act or event 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 a legal holiday. When a period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in these rules, "legal holiday" includes New Year's Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other appointed as a holiday by the President, or the Congress of the United States, or by the Comanche Nation Tribal Court.

B. Enlargement. The Judge may for cause shown at any time in its discretion, with or without motion, order the period enlarged if the request is made before the expiration of the period originally prescribed or as extended by a previous order. If a request is made after the expiration of the prescribed period, the Judge may permit the act to be done if failure to act is in the opinion of the Judge excusable.

### SECTION 3.32. SERVICE AND FILING OF PAPERS

A. Service, When Required. Any written document filed with the Court by a party shall be served upon the other party.

B. Service, How Made. Service when required, shall be made upon the defendant or his counsel by delivering to the defendant or his counsel, in person or by registered mail, a copy of the document to be served.

C. Service, By Whom Made. Service shall be made by an officer except where otherwise prescribed in these rules.

D. Proof of Service. Proof of service shall be made by the person serving a document by filing promptly after completion of service, a sworn signed statement containing the name of the person served, the document served, and the date, time and place served.

E. Territorial Limits. Service may be made anywhere.

F. Notice of Orders. Immediately upon the entry of an order of the Judge made on written pretrial motion, the clerk shall mail to each party, a notice thereof and shall make a note in the docket of the mailing.

G. Filing. Filing shall be accomplished by delivering the original and one copy of a document to the clerk who shall stamp it with the date. All papers required to be served shall be filed with the Court.

### SECTION 3.33. COURT REPORTER AND TRANSCRIPTS

All trials shall be recorded by a Court Reporter. Any party wishing a transcript of the trial shall bear the cost therefor.

### SECTION 3.34. COURT RECORDS AND FILES

All Court records and files shall be in the custody of the Clerk of the Court under the discretion and supervision of the Chief Judge.

### SECTION 3.35. DISMISSAL OF ACTION BY COURT OR PROSECUTION

A. By the Court. Whenever, in the opinion of the presiding Judge, the plaintiff has failed to state a cause of action, a non-justifiable action is presented or other such basic defect exists as renders judicial action improper, he may, on his own motion, dismiss said action with or without



## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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prejudice.

B. By the Prosecution. The prosecution in any criminal proceeding, with the concurrence of the arresting officer, may recommend to the Court, in chambers, that a case be dismissed; provided that good cause exists for said recommendation.

### SECTION 3.36. FINDINGS OF FACT, CONCLUSIONS OF LAW

A. Whenever deemed necessary by a presiding Judge for purposes of effecting his judgment in a case, he shall prepare or direct the preparation of findings of fact, conclusions of law and a memorandum opinion.

B. In every case wherein an appeal is taken, findings of fact, conclusions of law and a memorandum opinion shall be prepared.

### SECTION 3.37. CALENDARS AND DOCKETS

The Clerk of the Court shall be responsible for controlling the calendar and dockets of the Court under such system as shall be established by the Judges of the Comanche Nation Tribal Court.

### SECTION 3.38. EXTRADITION

A. Extradition Agreements. In the event a written and duly authorized agreement exists between the Comanche Nation and another governmental entity, the Comanche Nation shall authorize extradition of individuals from the Comanche Nation Indian Country in accordance with the terms of the agreement.

B. State Warrant for Arrest of Indian Located on the Comanche Nation Indian Country.

1. Any warrant for the arrest of any Indian who is located within the boundaries of the Comanche Nation Indian Country which is issued by a court of the State of Oklahoma or any of its political subdivisions shall be presented to the Chief of the Comanche Nation Tribal Police or his authorized representative prior to being executed.

2. Upon presentation, the Chief of the Comanche Nation Tribal Police shall authorize execution of the warrant by officers of the Tribal Police alone or in the company of officers of the presenting agency.

3. Upon execution of the warrant, the person arrested shall be held pending a hearing in the Comanche Nation Tribal Court on the validity of the warrant.

C. Extradition Hearing.

1. The Comanche Nation Tribal Court shall hold a hearing on the validity of a warrant for extradition within 72 hours from the time of the arrest.

2. At the hearing the Court shall advise the person arrested of his rights and ask the person if he is willing to waive extradition. If extradition is waived the Court shall inform the person of his right to habeas corpus and issue an order releasing the person to the requesting jurisdiction.

3. If the person being held does not waive extradition the Court shall proceed with the extradition hearing by determining whether:

a. A certified, exemplified copy of the warrant has been transmitted from the requesting jurisdiction;

b. The person named in the warrant is in fact the person being held for extradition.

4. If the Court determines that the warrant is valid and that the person identified in the warrant is the person being held for extradition, the Court shall issue an order releasing the person to the requesting jurisdiction.

5. If the Court determines that the warrant is not valid, or that the person being held is not

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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the person identified in the warrant, the Court shall issue an order releasing the person from custody.

D. Warrant from a Governmental Entity Other than Oklahoma. Any warrant for the arrest of an individual who is within the boundaries of the Comanche Nation Indian Country which is issued by a Court of a State other than Oklahoma, or the Court of another federally recognized tribe, shall be executed as if it were a warrant from the State of Oklahoma.

### SECTION 3.39. FRESH PURSUIT

The Comanche Nation and the State of Oklahoma have authorized each other's law enforcement officers to conduct fresh pursuit across the boundary of the Comanche Nation Indian Country in accordance with the terms of the Tribal-State Agreement on Fresh Pursuit and Extradition and any subsequent amendments.

### SECTION 3.40. COURT COSTS

The Court shall award court costs to the prevailing party in such cases and in such amounts as is deemed proper in the discretion of the Court.

### SECTION 3.41. FILING FEES

Filing Fees shall be established by the Chief Judge and Clerk of the Court in an amount they deem proper. Said amount may be reviewed and revised periodically.

## PART VIII. APPEALS

### SECTION 3.42. PROCEDURES FOR APPEAL

A. Grounds for Appeal. A party may appeal a final order of the Comanche Nation Tribal Court to the Comanche Nation Tribal Court of Appeals upon an allegation, made in good faith, that an error was made by the Comanche Nation Tribal Court that prejudiced the outcome of the proceedings before that Court or that an error was made by that Court in the interpretation of law.

B. Notice of Appeal. The party wishing to appeal shall file a notice of appeal with both Courts within ten (10) working days after the decision being appealed is rendered.

C. Appeal Bond. The party filing the notice of appeal shall accompany his notice of appeal to the Comanche Nation Tribal Court with a bond in the amount of \$50.00 which will be returned if he prevails on appeal or forfeited if he does not.

### SECTION 3.43. RECORD ON APPEAL

A. Record on Appeal. The record on appeal shall consist of the recording or transcript of proceedings in the Comanche Nation Tribal Court and all documents, exhibits, motions, briefs, and memoranda filed therein in that case along with all rulings, opinion, findings of fact, and conclusions of law issued by the Court therein.

B. Transcript, Cost. Any party requesting a transcript of the proceedings before the Comanche Nation Tribal Court shall bear the cost thereof. In the event the Appellate Court requires that a written transcript be provided on appeal, it will be provided to an indigent criminal defendant free of charge.

### SECTION 3.44. BRIEFING AND ARGUMENT

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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- A. Schedule. The Comanche Nation Tribal Court of Appeals, upon receipt of the notice of appeal, shall establish a briefing and argument schedule.
- B. Length of Argument. The Comanche Nation Tribal Court of Appeals shall determine and inform the parties in each case of the amount of time in which the arguments are to be presented.

### SECTION 3.45. BRIEFS

- A. Form. All briefs shall be neatly typed on white 8 W' x 11" paper. The first page shall contain the name of the Court, the name of the case and the docket number, along with the names, addresses and telephone numbers of the attorneys involved, if any.
- B. Number and Sequence. The parties shall file the following briefs in the following sequence in accordance with the briefing schedule established by the Court:
  - 1. First. Appellant's Opening Brief;
  - 2. Second. Appellee's Answering Brief;
  - 3. Third. Appellant's Responding Brief;
  - 4. Forth. Appellee's Reply Brief

### SECTION 3.46. DECISIONS

Upon the completion of the briefing schedule, receipt of the record on appeal and the hearing of arguments in the case, the Comanche Nation Tribal Court of Appeals shall render a written decision which such concurring and dissenting opinions as the Judge shall deem necessary and a copy of that decision shall be sent to the parties.

### SECTION 3.47. HABEAS CORPUS

- A. Availability. Any person whose liberty has been restrained by the Comanche Nation may prosecute a civil writ of habeas corpus in tribal court to inquire into the cause of such restraint, and if illegal, to be delivered from such restraint.
- B. Who May Not Prosecute a Writ. The following persons are not eligible to prosecute a writ of habeas corpus:
  - 1. Any person who has been adjudged guilty of an offense in the trial court and is or was eligible to obtain post-conviction relief under Section 3.24(A);
  - 2. Any person seeking to attack the legality of an order revoking a suspended or deferred sentence;
  - 3. Any person whose claim has already been adjudged on a writ of habeas corpus except as permitted in Section 3.47(F), and
  - 4. Any person seeking release due to a technical defect in commitment that does not affect the person's substantive rights under Section 3.28.
- C. Petition. A person prosecuting a writ of habeas corpus shall state in substance the following, which must be declared to be true to the best of the declarant's belief subject to the penalty of perjury:
  - 1. That the party in whose behalf the writ is petitioned is illegally imprisoned or restrained of liberty;
  - 2. How the person's liberty has been restrained;
  - 3. That the petition is not barred by Section 3.47(B);
  - 4. Why the restraint is illegal;
  - 5. Where or by whom the petitioner is restrained; and
  - 6. Name the Chief of Police, or any other person who the Petitioner claims has restrained

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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their liberty, as Respondent.

D. Granting of the Writ. The judge to whom a petition for writ of habeas corpus is presented shall without delay, unless the petition on its face is barred by Section 3.47(B) or is otherwise frivolous, issue an order directing the Respondent to show cause why the writ should not be allowed. The Tribal Prosecutor shall represent the Chief of Police in the proceedings. Such order shall be served on both the Respondent and Tribal Prosecutor. Upon issuance of a show cause order, the following shall apply:

1. The judge shall order the Respondent to appear in writing in opposition to the issuance of the writ as soon as is practicable and not more than 14 days from the date that the show cause order issues.

2. The judge shall rule on the show cause order within 7 days after either the Respondent files a written appearance in opposition or the appearance period expires, whichever comes first. Upon making a ruling, the judge shall do one of the following, as appropriate:

a. If the motion and the files and records of the case conclusively show that the Petitioner is entitled to no relief, issue a judgment denying the petition without prejudice and explain the reason for the denial.

b. Issue a writ of habeas corpus requiring that a return be made and proceed in a summary way to hear such evidence and argument as may be produced in support of or against the petition and dispose of the matter as law and justice may require. If a writ is issued, it shall, at a specified time and place, require the Respondent to file a return that states the time and cause of the Petitioner's restraint. The writ shall not command the Respondent to produce the Petitioner before the court issuing the writ unless the court, in its discretion, so orders. If after hearing the evidence and argument there is found to be no legal cause for the restraint of liberty, the court shall discharge the Petitioner from the restraint under which the Petitioner is held.

E. Contents of Return. The person on whom a writ has been served shall state in the return whether the person has the Petitioner in custody or otherwise under restraint, and if not, whether they had the Petitioner in custody or under restraint at any time, and at what time, prior to or subsequent to the date of the writ. If the person has the Petitioner in custody or otherwise under restraint, the return shall state the authority and cause of such restraint. If the Petitioner is restrained by written authority, a copy of that authority shall be included with the return. If the person on whom the writ was served had the Petitioner in custody or under restraint at any time before or after the date of the writ, but has transferred custody or restraint to another, the return shall state to whom, at what time, for what cause, and by what authority the transfer occurred. The return shall be signed by the person making the return, and such return shall be subject to the penalty of perjury.

F. Conclusiveness of Judgment. Any party to a proceeding by habeas corpus may appeal any final order of the court. No question once finally determined upon a proceeding by habeas corpus may be reexamined through another habeas corpus proceeding unless the court finds that:

1. Newly discovered evidence, viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact finder would have found the Petitioner guilty of the offense; or

2. A new rule of tribal constitutional law, tribal law interpreting Section 3.28(A), (B), (C), (D), or (F), or binding federal law addressing rights enumerated in the Indian Civil Rights Act that are reflective of rights in the United States Constitution, made retroactive to cases on collateral review by the Comanche Nations' Appellate Court or the United States Supreme Court, that was previously unavailable.

# TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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## CHAPTER 4. CRIMES

### PART I. PRINCIPLES

#### SECTION 4.01. DEFINITIONS

As used in this code unless the context requires otherwise:

- A. "Dangerous weapon" means any instrument, article or substance which under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury.
- B. "Deadly weapon" means any instrument, article or substance specifically designed for and presently capable of causing death or serious physical injury.
- C. "Deadly physical force" means physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury.
- D. "Major crime" means criminal homicide, mayhem, kidnapping, rape, battery, criminal mistreatment, burglary, arson and robbery.
- E. "Law enforcement officer" means a tribal policeman, sheriff, constable, marshal, municipal policeman, or member of the Oklahoma State Police and such other persons as may be designated by law.
- F. "Person" means a human being and, where appropriate, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.
- G. "Physical injury" means impairment of physical condition or substantial pain.
- H. "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.
- I. "Possess" means to have physical possession or otherwise to exercise dominion or control over property.
- J. "Public place" means a place to which the general public has access and includes, but is not limited to, hallways, lobbies and other parts of apartments designed for actual residence, and highways, streets, schools, places of amusement, parks, playgrounds and premises used in connection with public passenger transportation.

#### SECTION 4.02. PURPOSES; PRINCIPLES OF CONSTRUCTION

The general purposes of this code are:

- A. To ensure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized, the correction and rehabilitation of those convicted, and their confinement when required in the interests of public protection.
- B. To forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interests.
- C. To give fair warning of the nature of the conduct declared to constitute an offense and of the sentences authorized upon conviction.
- D. To define the act or omission and the accompanying mental state that constitute each offense and limit the condemnation of conduct as criminal when it is without fault.
- E. To differentiate on reasonable grounds between serious and minor offenses.
- F. To prescribe penalties which are proportionate to the seriousness of offenses and which permit recognition of differences in rehabilitation possibilities among individual offenders.
- G. To safeguard offenders against excessive, disproportionate or arbitrary punishment.

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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### SECTION 4.03. APPLICATION OF CRIMINAL CODE

A. The provisions of this criminal code shall apply to all persons committing the acts herein defined within the boundaries of the Comanche Nation Indian Country after formal adoption of this code by the Comanche Business Committee.

B. When all or part of a section is amended or repealed remains in force for the purpose of authorizing the accusation, prosecution, conviction and punishment of a person who violated the section or part thereof before the effective date of the amending or repealing action.

### SECTION 4.04. DEFENSES AND DEFENSES RAISED BY DEFENDANT

A. When a defense, other than an affirmative defense as defined in subsection (B) of this section, is raised at a trial, the Tribe has the burden of disproving the defense beyond a reasonable doubt.

B. When a defense, declared to be an affirmative defense is raised at a trial, the defendant has the burden of proving the defense by a preponderance of the evidence.

C. The Tribe is not required to negate a defense as defined in subsection (A) of this section unless it is raised by the defendant. "Raised by the defendant" means either notice in writing to the Tribe before commencement of trial or affirmative evidence by a defense witness in the defendant's case in chief.

## PART II. CRIMINAL LIABILITY

### SECTION 4.05. DEFINITIONS WITH RESPECT TO CULPABILITY

As used in this code unless the context requires otherwise:

A. "Act" means a bodily movement.

B. "Conduct" means an act or omission and its accompanying mental state.

C. "Criminal negligence" or "Criminally negligent", when used with respect to a result or to a circumstance described by a statute defining an offense, means that a person fails to be aware of a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to be aware of it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

D. "Culpable mental state" means intentionally, knowingly, recklessly or with criminal negligence as these terms are defined in paragraphs (7), (8), (9) and (10) of this subsection.

E. "Intentionally" or "with intent", when used with respect to a result or to conduct described by a section defining an offense, means that a person acts with a conscious objective to cause the result or to engage in the conduct so described.

F. "Knowingly" or "with knowledge" when used with respect to conduct or to a circumstance described by a statute defining an offense, means that a person acts with an awareness that his conduct is of a nature so described or that a circumstance so described exists.

G. "Omission" means a failure to perform an act, the performance of which is required by law.

H. "Recklessly", when used with respect to a result or to a circumstance described by a statute defining an offense, means that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

I. "To act" means either to perform an act or to omit to perform an act.

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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J. "Voluntary act" means a bodily movement performed consciously and includes the conscious possession or control or property.

### SECTION 4.06. REQUIREMENTS OF CULPABILITY

The minimal requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or the omission to perform an act which he is capable of performing. A person is not guilty of an offense unless he acts with a culpable mental state with respect to each material element of the offense that necessarily requires a culpable mental state. Provided, however, that a culpable mental state is not required if the definition of an offense clearly indicates an intent to dispense with any culpable mental state requirement or for any material element thereof.

### SECTION 4.07. CONSTRUCTION OF SECTIONS WITH RESPECT TO CULPABILITY

A. If a statute defining an offense prescribes a culpable mental state but does not specify the element to which it applies, the prescribed culpable mental state applies to each material element of the offense that necessarily requires a culpable mental state.

B. Except as provided in section 4.06, if a statute defining an offense does not prescribe a culpable mental state, culpability is nonetheless required and is established only if a person acts intentionally, knowingly, recklessly or with criminal negligence.

C. If the definition of an offense prescribes criminal negligence as the culpable mental state, it is also established if a person acts intentionally, knowingly or recklessly. When recklessness suffices to establish a culpable mental state, it is also established if a person acts intentionally or knowingly. When acting knowingly suffices to establish a culpable mental state, it is also established if a person acts intentionally.

D. Knowledge that conduct constitutes an offense, or knowledge of the existence, meaning or application of the section defining an offense is not an element of an offense unless the section clearly so provides.

### SECTION 4.08. INTOXICATION; DRUG USE OR DEPENDENCE AS DEFENSE

A. Drug use, dependence on drugs or voluntary intoxication shall not, as such, constitute a defense to a criminal charge, but in any prosecution for an offense, evidence that the defendant used drugs, or was dependent on drugs, or was intoxicated may be offered by the defendant whenever it is relevant to negate an element of the crime charged.

B. When recklessness establishes an element of the offense, if the defendant, due to drug use, dependence on drugs or voluntary intoxication, is unaware of a risk of which he would have been aware had he not been intoxicated, not using drugs, or not drug dependent, such unawareness is immaterial.

## PART III. PARTIES TO CRIME

### SECTION 4.09. CRIMINAL LIABILITY DESCRIBED

A person is guilty of a crime if it is committed by his own conduct or by the conduct of another person for which he is criminally liable, or both.

### SECTION 4.10. CRIMINAL LIABILITY FOR CONDUCT OF ANOTHER

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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A person is criminally liable for the conduct of another person constituting a crime if:

- A. He is made criminally liable by the section defining the crime; or
- B. With the intent to promote or facilitate the commission of the crime he:
  - 1. Solicits or commands such other person to commit the crime; or
  - 2. Aids or abets or agrees or attempts to aid or abet such other persons in planning or committing the crime; or
  - 3. Having a legal duty to prevent the commission of the crime, fails to make an effort he is legally required to make.

### SECTION 4.11. DEFENSE TO CRIMINAL LIABILITY FOR CONDUCT OF ANOTHER

In any prosecution for a crime in which criminal liability is based upon the conduct of another person pursuant to section 4.10, above, it is no defense that:

- A. Such other person has not been prosecuted for or convicted of any crime based upon the conduct in question or has been convicted of a different crime; or
- B. The crime, as defined, can be committed only by a peculiar class or classes of persons to which the defendant does not belong, and he is for that reason legally incapable of committing the crime in an individual capacity.

## PART IV. JUSTIFICATION

### SECTION 4.12. JUSTIFICATION AS A DEFENSE

In any prosecution for an offense, justification as described below is a defense.

### SECTION 4.13. JUSTIFICATION DESCRIBED

Conduct which would otherwise constitute an offense is justifiable and not criminal when it is required or authorized by law or by a judicial decree or is performed by a public servant in the reasonable exercise of his official powers, duties or functions.

### SECTION 4.14. CHOICE OF BEST ALTERNATIVES

A. Unless inconsistent with other provisions of this part defining justifiable use of physical force, or with some other provision of law, conduct which would otherwise constitute an offense is justifiable and not criminal when:

- 1. That conduct is necessary as an emergency measure to avoid an imminent public or private injury; and
- 2. The threatened injury is of such gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding the injury clearly outweigh the desirability of avoiding the injury sought to be prevented by the section defining the offense in issue.

B. The necessity and justifiability of conduct under subsection (A) of this section shall not rest upon considerations pertaining only to the morality and advisability of the statute, either in its general application or with respect to its application to a particular class of cases arising thereunder.

### SECTION 4.15. USE OF PHYSICAL FORCE GENERALLY

The use of physical force upon another person that would otherwise constitute an offense is



## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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justifiable and not criminal under any of the following circumstances.

- A. A parent, guardian or other person entrusted with care and supervision of a minor or an incompetent person may use reasonable physical force upon such minor or incompetent person when and to the extent necessary to maintain discipline or to promote the welfare of the minor or incompetent person.
- B. An authorized official of a jail or correctional facility may use physical force when and to the extent that he reasonably believes it necessary to maintain order and discipline or as is authorized by law.
- C. A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious physical injury upon himself may use physical force to the extent that he reasonably believes it necessary to thwart the result.
- D. A person may use physical force upon another person in defending himself or a third person, in defending property, in making an arrest or in preventing an escape, as hereafter provided.

### SECTION 4.16. USE OF PHYSICAL FORCE IN DEFENSE OF A PERSON

Except as provided in sections 4.14 and 4.15, a person is justified in using physical force upon another person to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force, and he may use a degree of force which he reasonably believes to be necessary for the purpose.

### SECTION 4.17. LIMITATIONS ON USE OF PHYSICAL FORCE IN DEFENSE OF A PERSON

Notwithstanding section 4.16, a person is not justified in using physical force upon another person if:

- A. With intent to cause physical injury or death to another person, he provokes the use of unlawful physical force by that person; or
- B. He is the initial aggressor, except that his use of physical force upon another person under such circumstances is justifiable if he withdraws from the encounter and effectively communicates to the other person his intent to do so, but the latter nevertheless continues or threatens to continue the use of unlawful physical force; or
- C. The physical force involved is the product of a combat by agreement not specifically authorized by law.

### SECTION 4.18. LIMITATIONS ON USE OF DEADLY PHYSICAL FORCE IN DEFENSE OF A PERSON

Notwithstanding the provisions of section 4.16, a person is not justified in using deadly physical force upon another person unless he reasonably believes that the other person is:

- A. Committing or attempting to commit a major crime involving the use or threatened imminent use of physical force against a person; or
- B. Committing or attempting to commit a burglary in a dwelling; or
- C. Using or about to use unlawful deadly physical force against a person.

### SECTION 4.19. USE OF PHYSICAL FORCE IN DEFENSE OF PREMISES

- A. A person in lawful possession or control of premises is justified in using physical force upon another person when and to the extent that he reasonably believes it necessary to prevent or

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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terminate what he reasonably believes to be the commission or attempted commission of a criminal trespass by the other person in or upon the premises.

B. A person may use deadly physical force under the circumstances set forth in subsection of this section, only:

1. In defense of a person as provided in section 4.18; or
2. When he reasonably believes it necessary to prevent the commission of arson or major crime by force and violence by the trespasser.

C. As used in subsection (A) and paragraph (1) of subsection (B) of this section, "Premises" includes any building, which in addition to its ordinary meaning, includes any real property, any booth, vehicle, boat, aircraft or other structure adapted for overnight accommodation of persons or for carrying on business therein. Where a building consists of separate units, including but not limited to, separate apartments, offices or rented rooms, each unit is, in addition to being a part of such building, a separate building. As used in paragraph (2) of subsection (B) of this section, "Premises" includes any building.

### SECTION 4.20. USE OF PHYSICAL FORCE IN DEFENSE OF PROPERTY

A person is justified in using physical force, other than deadly physical force, upon another person when and to the extent that he reasonably believes it to be necessary to prevent or terminate the commission or attempted commission by the other person of theft or criminal mischief of property.

### SECTION 4.21. USE OF PHYSICAL FORCE IN MAKING AN ARREST OR IN PREVENTING AN ESCAPE

Except as provided in section 4.22, a peace officer is justified in using physical force upon another person only when and to the extent that he reasonably believes it necessary:

- A. To make an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unlawful; or
- B. To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while making or attempting to make an arrest or while preventing or attempting to prevent an escape.

### SECTION 4.22. USE OF DEADLY FORCE IN MAKING AN ARREST OR IN PREVENTING AN ESCAPE

A. Notwithstanding the provisions of section 4.21, a peace officer may use deadly physical force only when he reasonably believes that:

1. An Officer may use deadly force to protect him/her self or others from what is reasonably believed to be an immediate threat of death or serious physical Injury.
2. An Officer may use deadly force to effect a capture or prevent an escape if the Officer reasonably believes the suspect has committed a felony Involving the use, or threatened use of deadly force and the Officer has probable cause to believe the suspect poses a significant threat of death or serious bodily Injury to the Officer or others if not immediately apprehended.
3. Officers' fire their weapons in a manner intended to stop and incapacitate an assailant from completing a potentially deadly act as described in this section. For maximum stopping effectiveness, and minimal danger to innocent bystanders, Officer's shoot at "center body mass".
4. Officers are not authorized to fire warning shots.
5. Officers do not discharge a firearm when it appears likely that an innocent person may be

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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injured.

6. Officers do not discharge a firearm from a moving vehicle. Officers do not fire upon a moving vehicle, unless the occupant(s) of the vehicle are using, or attempting to use, deadly force against the Officer or others.

7. Officers are authorized to shoot and kill an animal for:

a. Self-defense of the Officer or another, or  
b. When the animal is so badly injured that humanity requires its relief from further suffering.

8. Except for general maintenance, storage or authorizing training, Officers do not draw or exhibit their firearm unless circumstances create strong reasonable cause to believe that it would be necessary to lawfully use the weapon in conformance with other sections of this policy.

B. Nothing in subsection (A) of this section constitutes justification for reckless or criminally negligent conduct by a peace officer amounting to an offense against or with respect to innocent persons whom he is not seeking to arrest or retain in custody.

### SECTION 4.23. REASONABLE BELIEF DEFINED

For purposes of this act, a reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which if true would in law constitute an offense. If the believed facts or circumstances would not in law constitute an offense, an erroneous, though not unreasonable belief that the law is otherwise, does not render justifiable the use of force to make an arrest or to prevent an escape from custody.

### SECTION 4.24. USE OF PHYSICAL FORCE BY PRIVATE PERSON ASSISTING IN AN ARREST

A. Except as provided in subsection (B) of this section, a person who has been directed by a peace officer to assist him to make an arrest or to prevent an escape from custody is justified in using physical force when and to the extent that he reasonably believes that force to be necessary to carry out the peace officer's direction.

B. A person who has been directed to assist a peace officer under circumstances specified in subsection (A) of this section may use deadly physical force to make an arrest or to prevent an escape only when:

1. He reasonably believes that force to be necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or

2. He is directed or authorized by the peace officer to use deadly physical force unless he knows that the peace officer himself is not authorized to use deadly physical force under the circumstances.

### SECTION 4.25. USE OF PHYSICAL FORCE BY PRIVATE PERSON MAKING CITIZENS ARREST

A. Except as provided in subsection (B) of this section, a private person acting on his own account is justified in using physical force upon another person when and to the extent that he reasonably believes it necessary to make an arrest or to prevent the escape from custody of an arrested person whom he has arrested under section 3.08(C).

B. A private person acting under the circumstances prescribed in subsection (A) of this section is justified in using deadly physical force only when he reasonably believes it necessary to defend himself or a third person from what he reasonably believes to be the use or imminent

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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use of deadly physical force.

### SECTION 4.26. USE OF PHYSICAL FORCE IN RESISTING ARREST PROHIBITED

A person may not use physical force to resist an arrest by a peace officer who is known or reasonably appears to be a peace officer, whether the arrest is lawful or unlawful.

### SECTION 4.27. DURESS

A. The commission of acts which would otherwise constitute an offense, other than murder is not criminal if the actor engaged in the proscribed conduct because he was coerced to do so by the use or threatened use of unlawful physical force upon him or a third person, which force or threatened force was of such nature or degree to overcome earnest resistance.

B. Duress is not a defense if a person intentionally or recklessly places himself in a situation in which it is probable that he will be subjected to duress.

C. It is not a defense that a woman acted on the command of her husband, unless she acted under such coercion as would establish a defense under subsection (A) of this section.

### SECTION 4.28. ENTRAPMENT

A. The commission of acts which would otherwise constitute an offense is not criminal if the actor engaged in the proscribed conduct because he was induced to do so by a law enforcement official, or by a person acting in cooperation with a law enforcement official, for the purpose of obtaining evidence to be used against the actor in a criminal prosecution.

B. As used in this section, "induced" means that the actor did not contemplate and would not otherwise have engaged in the proscribed conduct. Merely affording the actor an opportunity to commit an offense does not constitute entrapment.

## PART V. RESPONSIBILITY

### SECTION 4.29. EFFECT OF MENTAL DISEASE OR DEFECT

A. A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capability either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.

B. As used herein, the terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

C. Mental disease or defect excluding responsibility or partial responsibility is an affirmative defense.

### SECTION 4.30. EVIDENCE OF DISEASE OR DEFECT ADMISSIBLE AS TO INTENT

Evidence that the actor suffered from a mental disease or defect is admissible whenever it is relevant to the issue of whether he did or did not have the intent which is an element of the crime.

### SECTION 4.31. ENTRY OF ORDER OF ACQUITTAL ON GROUNDS OF DISEASE OR DEFECT

A. If the Court finds that the person is no longer affected by mental disease or defect, or, if so affected, that he no longer presents a substantial danger to himself or the person of others and is not in need of care, supervision or treatment, the Court shall order him discharged from

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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custody.

B. If the Court finds that the person is affected by mental disease or defect and that he presents a substantial danger to himself or the person of others, but he can be controlled adequately and given proper care, supervision and treatment if he is released on supervision, the Court shall order him released subject to such supervisory orders of the Court as are appropriate in the interests of justice and the welfare of the defendant. The person, persons or agency to whom the individual is released shall be responsible to the Court for the care and supervision of the individual released. The conditions of release may be modified by the Court from time to time as may be necessary.

C. If the Court finds that the person is affected by a mental disease or defect and presents a substantial risk of danger to himself or the person of others and that he is not a proper subject for release on supervision, the Court shall order him committed to a proper institution for custody, care and treatment for such time and under such conditions as the Court, after proper consultation with psychiatric authorities, may deem proper.

### SECTION 4.32. INCAPACITY DUE TO IMMATURITY

A. A person who is tried as an adult in a criminal prosecution is not criminally responsible for any conduct which occurred when the person was under 18 years of age, unless remanded by the Children's Court to Tribal Court for such proceedings.

B. Incapacity due to immaturity as herein defined is an affirmative defense.

## PART VI. DISPOSITION OF OFFENDERS

### SECTION 4.33. PERIOD OF IMPRISONMENT, PROBATION

A. For any one conviction of an offense there may be imposed a period of imprisonment not to exceed one year.

B. Once imposed, any or all of the sentence may be suspended in the discretion of the Court, or the defendant may be placed on probation for such a time and under such conditions as the Court may impose.

### SECTION 4.34. FINES

A. For any one conviction of an offense there may be imposed a fine not to exceed \$5,000.00 in amount.

B. Once imposed any or all of the sentence may be suspended in the discretion of the Court.

C. In determining whether to impose a fine and its amount the Court shall consider:

1. The financial resources of the defendant and the burden that payment of a fine will impose, with due regard to the other obligations of the defendant; and
2. The ability of the defendant to pay a fine on installment basis or on other conditions to be fixed by the Court.

### SECTION 4.35. EFFECT OF NON-PAYMENT OF FINES

A. When a defendant sentenced to pay a fine defaults in the payment thereof or of any installment, the Court, on motion of the prosecuting attorney or upon its own motion, may require him to show cause why his default should not be treated as contempt of Court and may issue a citation or a warrant of arrest for his appearance.

B. Unless the defendant shows that his default was not attributable to an intentional refusal

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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to obey the order of the Court or to a failure on his part to make a good faith effort to make the payment, the Court may find that his default constitutes contempt and may order him committed until the fine, or a specified part thereof, is paid.

C. The term of imprisonment for contempt for non-payment of fines shall be set forth in the commitment order, and shall not exceed one day for each \$25.00 of the fine. A person committed for non-payment of a fine shall be given credit toward payment for each day of imprisonment at the rate specified in the commitment order.

D. If it appears to the satisfaction of the Court that the default in the payment of the fine is not contempt, the Court may enter an order allowing the defendant additional time for payment, reducing the amount thereof or of each installment or revoking the fine or the unpaid portion thereof in whole or in part.

E. A default in the payment of a fine or any installment thereof may be collected by any means authorized by law for the enforcement of a judgment. The levy of execution for the collection of a fine shall not discharge a defendant committed to imprisonment for contempt until the amount of the fine has actually been collected.

### PART VII. INCHOATE CRIMES

#### SECTION 4.36. ATTEMPT

A person is guilty of an attempt to commit a crime when he intentionally engages in conduct which constitutes a substantial step toward commission of the crime.

#### SECTION 4.37. IMPOSSIBILITY NOT A DEFENSE

In a prosecution for an attempt, it is no defense that it was impossible to commit the crime which was the object of the attempt where the conduct engaged in by the actor would be a crime if the circumstances were as the actor believed them to be.

#### SECTION 4.38. RENUNCIATION AS A DEFENSE TO ATTEMPT

A. A person is not liable under section 4.36 of this chapter if, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, he avoids the commission of the crime attempted by abandoning his criminal effort.

B. The defense of renunciation is an affirmative defense.

#### SECTION 4.39. SOLICITATION

A person commits the crime of solicitation if, with the intent of causing another to engage in specific conduct constituting a crime or an attempt to commit a crime, he commands or solicits such other person to engage in that conduct.

#### SECTION 4.40. RENUNCIATION AS A DEFENSE TO SOLICITATION

A. It is a defense to the crime of solicitation that the person soliciting the crime, after soliciting another person to commit the crime, persuaded the person solicited not to commit the crime or otherwise prevented the commission of the crime, under circumstances manifesting a complete and voluntary renunciation of his criminal intent.

B. The defense of renunciation is an affirmative defense.

#### SECTION 4.41. CONSPIRACY

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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A person is guilty of criminal conspiracy if, with the intent that conduct constituting a crime be performed, he agrees with one or more persons to engage in or cause the performance of such conduct.

### SECTION 4.42. CONSPIRATORIAL RELATIONSHIP

If a person is guilty of conspiracy, as defined above, and knows that a person with whom he conspires to commit a crime has conspired or will conspire with another person or persons to commit the same crime, he is guilty of conspiring with such other person or persons, whether or not he knows their identity, to commit such crime.

### SECTION 4.43. RENUNCIATION AS A DEFENSE TO CONSPIRACY

A. It is a defense to a charge of conspiracy that the actor, after conspiring to commit a crime, thwarted collusion of the crime which was the object of the conspiracy, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose. Renunciation by one conspirator does not affect the liability of another conspirator who does not join in the renunciation of the conspiratorial objective.

B. The defense of renunciation is an affirmative defense.

### SECTION 4.44. DURATION OF CONSPIRACY

A. Conspiracy is a continuing course of conduct which terminates when the crime or crimes which are its object are completed or the agreement that they be committed is abandoned by the defendant and those with whom he conspired.

B. Abandonment is presumed if neither the defendant nor anyone with whom he conspired does any overt act in pursuance of the conspiracy during the applicable period of limitation.

C. If an individual abandons the agreement, the conspiracy is terminated as to him only if and when he advises those with whom he conspired of his abandonment or he informs the law enforcement authorities of the existence of the conspiracy and of his participation therein.

### SECTION 4.45. DEFENSES TO SOLICITATION AND CONSPIRACY

A. Except as provided in subsection (B) of this section, it is immaterial to the liability of a person who solicits or conspires with another to commit a crime that:

1. He or the person he solicits or with whom he conspires does not occupy a particular position or have a particular characteristic which is an element of such crime, if he believes that one of them does; or

2. The person whom he solicits or with whom he conspires is not responsible or has an immunity to prosecution or conviction for the commission of the crime, or, in the case of conspiracy, has feigned the agreement; or

3. The person with whom he conspires has not been prosecuted for or convicted of the conspiracy of a crime based upon the conduct in question, or has previously been acquitted.

B. It is a defense to the charge of solicitation or conspiracy to commit a crime that if the criminal object were achieved, the actor would not be guilty of a crime under the law defining the offense or an accomplice under section 4.10.

## PART VIII. CRIMES AGAINST PUBLIC JUSTICE

### SECTION 4.46. DEFINITIONS RELATING TO CRIMES AGAINST PUBLIC JUSTICE

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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As used in this part, unless the context requires otherwise:

- A. "Benefit" means gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary.
- B. "Custody" means the imposition of actual or constructive restraint by a peace officer pursuant to an arrest or court order.
- C. "Escape" means the unlawful departure, including failure to return to custody after temporary leave granted for a specific purpose or limited period, of a person from custody or a correctional facility.
- D. "Fireman" means any fire or forestry department employee, or authorized fire department volunteer, vested with the duty of preventing or combating fire or preventing the loss of life or property by fire.
- E. "Material" means that which could have affected the course or outcome of any proceeding or transaction. Whether a false statement is "material" in a given factual situation is a question of law.
- F. "Official proceeding" means a proceeding before any judicial, legislative or administrative body or officer, wherein sworn statements are received, and includes any referee, hearing examiner, commissioner, notary or other person taking sworn statements in connection with such proceedings.
- G. "Pecuniary benefit" means gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary, in the form of money, property, commercial interests or economic gain.
- H. "Physical evidence" means any article, object, record, document or other evidence of physical substance.
- I. "Public record" means any book, document, paper, file, photograph, sound recording, computerized recording in machine storage, records or other materials, regardless of physical form or characteristic, made, received, filed or recorded in any government office or agency pursuant to law or in connection with the transaction of public business, whether or not confidential or restricted in use.
- J. "Public servant" includes:
  - 1. A public officer or employee of the Tribe or of any political subdivision thereof;
  - 2. A person serving as an advisor, consultant or assistant at the request or direction of the Tribe, or any political subdivision thereof;
  - 3. A person nominated, elected or appointed to become a public servant, although not yet occupying the position; and
  - 4. Jurors.
- K. "Statement" means any representation of fact and includes a representation of opinion, belief or other state of mind where the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation.
- L. "Sworn statement" means any statement knowingly given under oath or affirmation attesting to the truth of what is stated.
- M. "Testimony" means oral or written statements that may be offered by a witness in an official proceeding.

### SECTION 4.47. BRIBE GIVING

A person commits the crime of bribe giving if he offers, confers or agrees to confer any pecuniary benefit upon a public servant with the intent to influence the public servant's vote,



## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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opinion, judgment, action, decision or exercise or discretion in his official capacity. Bribe giving is a felony.

### SECTION 4.48. BRIBE RECEIVING

A. A public servant commits the crime of bribe receiving if he:

1. Solicits any pecuniary benefit with the intent that his vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced; or
2. Accepts or agrees to accept any pecuniary benefit upon an agreement or understanding that his vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

B. Bribe receiving is a felony

### SECTION 4.49. BRIBERY DEFENSES

A. In any prosecution for bribe giving it is a defense that the defendant offered, conferred or agreed to confer the pecuniary benefit as a result of the public servant's conduct constituting extortion or coercion.

B. It is no defense to either bribe or giving or receiving that the person sought to be influenced was not qualified to act in the desired way, whether because he had not assumed office, lacked jurisdiction or for any other reason.

### SECTION 4.50. PERJURY

A person commits the crime of perjury if he makes a false sworn statement in regard to a material issue, knowing it to be false. Perjury is a felony.

### SECTION 4.51. FALSE SWEARING

A person commits the crime of false swearing if he makes a false sworn statement, knowing it to be false.

### SECTION 4.52. UNSWORN FALSIFICATION

A person commits the crime of unsworn falsification if he knowingly makes any false written statement to a public servant in connection with an application for any benefit.

### SECTION 4.53. DEFENSES TO PERJURY AND FALSE SWEARING LIMITED

It is no defense to a prosecution for perjury or false swearing that:

- A. The statement was inadmissible under the rules of evidence; or
- B. The oath or affirmation was taken or administered in an irregular manner; or
- C. The defendant mistakenly believed the false statement immaterial.

### SECTION 4.54. RETRACTION AS A DEFENSE

It is a defense to a prosecution for perjury or false swearing committed in an official proceeding that the defendant retracted his false statement:

- A. In a manner showing a complete and voluntary retraction of the prior false statement; or
- B. During the course of the same official proceeding in which it was made; and
- C. Before the subject matter of the official proceeding is submitted to the ultimate trier of fact.

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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### SECTION 4.55. CORROBORATION OF FALSITY REQUIRED

In any prosecution for perjury or false swearing, falsity of a statement may not be established solely through contradiction by the testimony of a single witness.

### SECTION 4.56. ESCAPE

- A. A person commits the crime of escape if he escapes from custody or permits or assists a person in custody to escape.
- B. Escape is a felony if:
  - 1. The person uses or threatens to use physical force escaping from custody; or
  - 2. Having been convicted or found guilty of a felony, the person escapes from custody imposed as a result thereof; or
  - 3. The person escapes from a correctional facility; or
  - 4. Aided by another person actually present, the person uses or threatens to use physical force in escaping from custody or a correctional facility; or
  - 5. The person uses or threatens to use a dangerous or deadly weapon escaping from custody or a correctional facility.

### SECTION 4.57. FAILURE TO APPEAR

- A. A person commits the crime of failure to appear if, having by Court order been released from custody upon a release agreement upon the condition that he will subsequently appear personally in connection with a charge against him of having committed a crime, he intentionally fails to appear as required.
- B. Failure to appear is a felony if the underlying charge or crime is a felony.

### SECTION 4.58. OBSTRUCTING GOVERNMENTAL ADMINISTRATION

- A. A person commits the crime of obstructing governmental administration if he intentionally obstructs, impairs or hinders the administration of law or other governmental function by means of lying, intimidation, force, physical interference or obstacle.
- B. This section shall not apply to the obstruction of unlawful governmental action.

### SECTION 4.59. ASSAULTING A LAW ENFORCEMENT OFFICER OR FIRE FIGHTER

A person commits the crime of assaulting a law enforcement officer or fire fighter when the person intentionally or knowingly causes physical injury to another person, if they know or reasonably should know the other person is a law enforcement officer or fire fighter, and while the other person is acting in the course of official duty. Assaulting a law enforcement officer or fire fighter is a felony.

### SECTION 4.60. REFUSING TO ASSIST A PEACE OFFICER AND INTERFERING WITH A POLICE OFFICER OR PROBATION OFFICER

- A. A person commits the offense of refusing to assist a peace officer if upon command by a person known by him to be a peace officer, he unreasonably refuses or fails to assist in effecting an authorized arrest or preventing another from committing a crime.
- B. A person commits the crime of interfering with a police officer or probation officer if the person, knowing that another person is a police officer or probation officer:
  - 1. Intentionally acts in a manner that prevents, or attempts to prevent, a police officer or

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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probation officer from performing the lawful duties of the officer with regards to another person;  
or

2. Refuses to obey a lawful order by the police officer or probation officer.
- C. Section 4.60(B) does not apply to situations in which the person is engaging in activity that would constitute resisting arrest or passive resistance.

### SECTION 4.61. RESERVED

### SECTION 4.62. BRIBING A WITNESS

A. A person commits the crime of bribing a witness if he offers, confers or agrees to confer any pecuniary benefit upon a witness in any official proceeding, or a person he believes may be called as a witness, with the intent that:

1. His testimony as a witness will thereby be influenced; or
2. He will avoid legal process summoning him to testify; or
3. He will absent himself from any official proceeding to which he has been legally summoned.

B. Bribing a witness is a felony.

### SECTION 4.63. BRIBE RECEIVING BY A WITNESS

A. A witness in any official proceeding, or a person who believes he may be called as a witness, commits the crime of bribe receiving by a witness if he solicits any pecuniary benefit with the intent, or accepts or agrees to accept any pecuniary benefit upon an agreement or understanding, that:

1. His testimony as a witness will thereby be influenced; or
2. He will avoid legal process summoning him to testify; or
3. He will absent himself from any official proceeding to which he has been legally summoned.

B. Bribe receiving by a witness is a felony.

SECTION 4.64. TAMPERING WITH A WITNESS A person commits the crime of tampering with a witness if:

- A. He knowingly induces or attempts to induce a witness in any official proceeding to offer false testimony or unlawfully withhold any testimony; or
- B. He knowingly induces or attempts to induce a witness to absent himself from any official proceeding to which he has been legally summoned.
- C. Tampering with a witness is a felony.

### SECTION 4.65. TAMPERING WITH PHYSICAL EVIDENCE

A person commits the crime of tampering with physical evidence if, with intent that it be used, introduced, rejected or unavailable in an official proceeding which is then pending or to the knowledge of such person is about to be instituted; he:

- A. Destroys, mutilates, alters, conceals or removes physical evidence impairing its veracity or availability; or
- B. Knowingly makes, produces or offers any false physical evidence; or
- C. Prevents the production of physical evidence by an act of force, intimidation or deception against any person.

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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### SECTION 4.67. RESISTING ARREST

- A. A person commits the crime of resisting arrest if he intentionally resists a person known by him to be a peace officer in making an arrest.
- B. "Resists", as used in this section, means the use or threatens use of violence, physical force or any other means that creates a substantial risk of physical injury to any person.
- C. It is no defense to a prosecution under this section that the peace officer lacked legal authority to make the arrest, provided he was acting under color of his official authority.

### SECTION 4.68. HINDERING PROSECUTION

- A. A person commits the crime of hindering prosecution if, with intent to hinder the apprehension, prosecution, conviction or punishment of a person who has committed a crime or with the intent to assist a person who has committed a crime in profiting or benefiting from the commission of the crime, he:
1. Harbors or conceals such person; or
  2. Warns such person of impending discovery or apprehension; or
  3. Provides or aids in providing such person with money, transportation, weapon, disguise or other means of avoiding discovery or apprehension; or
  4. Prevents or obstructs, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery or apprehension of such person; or
  5. Suppresses by any act of concealment, alteration or destruction of physical evidence which might aid in the discovery or apprehension of such person; or
  6. Aids such person in securing or protecting the proceeds of the crime.
- B. Hindering prosecution is a felony.

### SECTION 4.69. DEFENSES FOR HINDERING LIMITED

It is no defense to a prosecution for hindering prosecution that the principal offender is not apprehended, prosecuted, convicted or punished.

### SECTION 4.70. SIMULATING LEGAL PROCESS

A person commits the crime of simulating legal process if he knowingly issues or delivers to another any document that in form and substance falsely simulates civil or criminal process. Simulating legal process is a felony.

### SECTION 4.71. CRIMINAL IMPERSONATION

- A. A person commits the crime of criminal impersonation if, with intent to obtain a benefit or to injure or defraud another, he falsely impersonates a public servant and does an act in such an assumed character.
- B. Criminal impersonation is a felony if the public servant impersonated is a peace officer, judge or justice of the peace.

### SECTION 4.72. INITIATING A FALSE REPORT

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

## PART IX. GENERAL OFFENSES AGAINST PERSONS

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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### SECTION 4.73. CRIMINAL HOMICIDE

A. A person commits criminal homicide if, without justification or excuse, he intentionally, knowingly, recklessly or with criminal negligence causes the death of another human being.

Criminal homicide is a felony.

B. "Human being" means a person who was alive at the time of the criminal act.

### SECTION 4.74. ASSAULT

A. A person commits the crime of assault if the person:

1. Intentionally, knowingly or recklessly causes physical injury however slight to another;
2. Intentionally places another in reasonable apprehension of being physically injured; or
3. With criminal negligence causes physical injury to another by means of a deadly weapon.

B. Assault is a felony if the person:

1. Has previously been convicted of assaulting the same victim;
2. Has previously been convicted of assault and both assaults involved domestic abuse;
3. The assault involves physical injury however slight and is committed in the immediate presence of, or is seen or directly perceived in any other manner by, the person's or the victim's minor child or stepchild or a minor child residing within the household of the person or victim;
4. Causing physical injury however slight, commits the assault knowing that the victim is pregnant;
5. Recklessly causes serious physical injury to another by means of a deadly or dangerous weapon;
6. Recklessly causes serious physical injury to another under circumstances manifesting extreme indifference to the value of human life;
7. Recklessly causes physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life;
8. Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical injury to the operator of a public transit vehicle while the operator is in control of or operating the vehicle;
9. While being aided by another person actually present, intentionally or knowingly causes physical injury to another;
10. While committed to a youth correction facility, intentionally or knowingly causes physical injury to another knowing the other person is a staff member of a youth correction facility while the other person is acting in the course of official duty;
11. Intentionally, knowingly or recklessly causes physical injury to an emergency medical technician, or a paramedic while the emergency medical technician or paramedic is performing official duties;
12. Being at least 18 years of age, intentionally or knowingly causes physical injury to a child 10 years of age or younger;
13. Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical injury to the operator of a taxi while the operator is in control of the taxi;
14. Intentionally or knowingly causes serious physical injury to another;
15. Intentionally or knowingly causes physical injury to another by means of a deadly or dangerous weapon;
16. Recklessly causes serious physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life;
17. Intentionally causes serious physical injury to another by means of a deadly or dangerous

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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weapon;

18. Intentionally, knowingly or recklessly causes serious physical injury to another while operating a motor vehicle under the influence of intoxicants; or

19. Strangles the victim and the assault involves domestic abuse.

### SECTION 4.75. MENACING

A person commits the crime of menacing if, by word or conduct he intentionally attempts to place another person in fear of imminent serious physical injury.

### SECTION 4.76. RECKLESSLY ENDANGERING ANOTHERPERSON

A person commits the crime of recklessly endangering another person if he recklessly engages in conduct which creates a substantial risk of serious physical injury to another person.

### SECTION 4.77. CRIMINAL MISTREATMENT

A. A person commits the crime of criminal mistreatment if:

1. The person, in violation of a legal duty to provide care for another person, or having assumed the permanent or temporary care, custody or responsibility for the supervision of another person, intentionally or knowingly or with criminal negligence withholds necessary and adequate food, physical care or medical attention from that other person; or

2. The person, in violation of a legal duty to provide care for another person, or having assumed the permanent or temporary care, custody or responsibility for the supervision of another person, intentionally or knowingly or with criminal negligence:

a. Causes physical injury or injuries to the dependent person;

b. leaves the dependent person unattended at a place for such a period of time as may be likely to endanger the health or welfare of that person;

3. The person, in violation of a legal duty to provide care for another person, or having assumed the permanent or temporary care, custody or responsibility for the supervision of another person, intentionally or knowingly:

a. Deserts the dependent person in a place with the intent to abandon that person;

b. Hides the dependent person's money or property, or takes the money or property for any use or purpose not in the due and lawful execution of the person's responsibility; or

c. Takes charge of a dependent person for the purposes of fraud.

4. If the person knowingly fails to report the crime of criminal mistreatment committed by another person.

B. As used in this section:

1. "Dependent person" means a person who because of either age or a physical or mental disability is dependent upon another to provide for the person's physical needs.

2. "Legal duty" includes, but is not limited to a duty created by familial relationship, court order, contractual agreement, or statutory or case law.

C. Criminal mistreatment is a felony if committed intentionally or knowingly.

### SECTION 4.78. FALSE IMPRISONMENT

A. A person commits the crime of false imprisonment if, with the intentional use of force, however slight, he confines the person of another.

B. The victim of the crime of false imprisonment need not know that he has been confined.

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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### SECTION 4.79. KIDNAPPING

A person commits the crime of kidnapping if, with the intentional use of force, he unlawfully effects the confinement and transportation of another. Kidnapping is a felony.

### SECTION 4.80. CUSTODIAL INTERFERENCE

A. A person commits the crime of custodial interference if they:

1. knowing or having reason to know that he has no legal right to do so, takes, entices, or keeps a person from his lawful custodian with intent to hold him permanently for a protracted period or in violation of a lawful custody or visitation order;
2. Causes the person taken, enticed or kept from his lawful custodian to be removed from the Comanche Nation Indian Country or the state of Oklahoma; or
3. Exposes the person taken to a substantial risk of illness or physical injury.

B. Custodial interference is a felony.

### SECTION 4.81. COERCION

A. A person commits the crime of coercion when he compels or induces another person to engage in conduct from which he has a legal right to abstain, or to abstain from engaging in conduct in which he has a legal right to engage, by means of instilling in him a fear that, if the demand is not complied with, the actor or another will:

1. Cause physical injury to the actor or some other person;
2. Cause damage to property;
3. Engage in other conduct constituting a crime;
4. Accuse some person of a crime or cause criminal charges to be instituted against him;
5. Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule;
6. Cause or continue a strike, boycott or other collective action injurious to some person's business, except that such a threat shall not be deemed coercive when the act or omission compelled is for the benefit of the group in whose interest the actor purports to act;
7. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense;
8. Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
9. Inflict any other harm which would not benefit the actor.

B. Coercion is a felony.

### SECTION 4.82. DEFENSE TO COERCION

In any prosecution for coercion committed by instilling in the victim a fear that he or another person would be charged with a crime, it is a defense that the defendant reasonably believed the threatened charge to be true and that his sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of the threatened charge.

### SECTION 4.83. CRIMINAL DEFAMATION

A person commits the crime of criminal defamation if with intent to defame another person he knowingly:

- A. Publishes or causes to be published false and scandalous durable matter concerning such

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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other person; or

B. Publishes or causes to be published false and scandalous matter concerning such other person by means of a radio or television broadcast.

C. It shall be a defense to any prosecution under this section that:

1. The matter published was true and was published with good motives and for justifiable ends; or

2. The publication is protected by an absolute or qualified privilege.

### SECTION 4.84. STALKING

A. Definitions

1. "Alarm" means to cause apprehension or fear resulting from the perception of danger.

2. "Coerce" means to restrain, compel or dominate by force or threat.

3. "Contact" includes by is not limited to:

a. Following the other person,

b. Waiting outside the home, property, place of work or school of the other person's family or household,

c. Sending or making written communications in any form to the other person,

d. Speaking with the other person by any means,

e. Communicating with the other person through a third person,

f. Committing a crime against the other person,

g. Communicating with a third person who has some relationship to the other person with the intent of effecting the third person's relationship with the other person, or with the intent of gaining knowledge about the other person.

h. Communicating with business entities with the intent of effecting some right or interest of the other person, or gaining knowledge of the other person.

i. Damaging the other person's home, property, place of work or school or

j. Delivering directly or through a third person any object to the other person at any time or place,

k. Using technology to track, monitor or otherwise gain knowledge of the other person's activity, including but not limited to the use of computer spy ware, surveillance equipment, tracking devices or long-distance magnification devices.

4. "Repeated" means two or more times.

B. A person commits the crime of stalking when:

1. The person knowingly alarms or coerces another person or a member of that person's immediate family or household by engaging in repeated and unwanted contact with the other person;

2. It is objectively reasonable for a person in the victim's situation to have been alarmed or coerced by the contact; and

3. The repeated unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or the victim's immediate family or household.

C. Stalking is a felony.

## PART X. CRIMES OF DOMESTIC OR FAMILY ABUSE

### SECTION 4.85 DOMESTIC ABUSE

A. Purpose. The Comanche Nation recognizes that its strength and sovereignty is grounded



## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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in its members. The future of the Comanche Nation requires a safe and healthy community. Domestic abuse is a serious crime which erodes our future. Through this code the Comanche Nation will continue to embrace the time honored traditions of the sacredness of our people by ensuring the safety of our people, protecting the community from the impacts of violent acts and ensuring that offenders are held accountable to the community.

B. Definitions.

1. Domestic abuse. The attempt, solicitation of, conspiracy to commit or commission of an act prohibited by Part IX, Part XII, or Section 4.89 of this Code between spouses, domestic partners, adult persons related by blood, marriage or adoption, persons cohabiting or who have cohabited with each other, persons who have been involved in an intimate relationship with each other prior to filing a petition for a protection order, or unmarried parents of a child.

2. Descendant. Persons related by descending lineal consanguinity, step-children, lawfully adopted children, foster children and wards.

C. Mandatory Arrest. When a law enforcement officer responds to a domestic disturbance call and has probable cause to believe that an offense of domestic abuse has occurred, the officer shall arrest and take into custody the predominant aggressor, but is not required to arrest both persons. A law enforcement officer shall arrest a person whom the officer has probable cause to believe violated a domestic abuse protection order.

D. Predominant Aggressor. When a law enforcement officer makes an arrest pursuant to subsection (A) of this section, the officer shall make every effort to determine who is the predominant aggressor by considering, among other factors:

1. The relative severity of the injuries inflicted or the seriousness of threats creating fear of physical injury;

2. If reasonably ascertainable, the history of domestic abuse involving the persons in any jurisdiction;

3. Whether any alleged crime was committed in self-defense;

4. The likelihood of future injuries to each person; and

5. Whether the incident occurred in the presence of children whether visually or auditory, or perceived by them in any manner.

E. Injury Not Determinative. If the officer determines that one person was the predominant aggressor, the officer is not required to arrest the other person believed to have caused physical harm or bodily injury against the predominant aggressor, if any.

F. Prevention of Future Violence. Whenever a law enforcement officer has reason to believe that a person has been subjected to domestic abuse, the officer shall use all reasonable means to prevent further violence, including but not limited to:

1. Confiscating any weapon involved in the alleged domestic violence or taking temporary possession of any weapons found in the household;

2. Assisting in obtaining transportation of the victim to a shelter if so desired;

3. Assisting the victim in removing essential personal effects;

4. Assisting the victim and children in obtaining necessary medical treatment;

5. Giving the victim immediate and adequate notice of rights, remedies and services available which shall include the following:

"IF YOU ARE THE VICTIM OF DOMESTIC ABUSE, you have the right to go to the tribal court and file a petition requesting any of the following orders for relief:

a. an order restraining your attacker from contacting you or your children;

b. an order directing your attacker to leave your household;

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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- c. an order preventing your attacker from entering your residence, school, business or place of employment;
- d. an order awarding you or the other parent temporary custody of a minor child or children; or
- e. an order directing the party not granted custody to pay support of minor children.

You can obtain a copy of the officer's report at no cost to you. You also have the right to obtain a protection order in state court. The forms you need to obtain an order for protection can be obtained from the clerk of the court.

G. **Mandatory Consultation.** Prosecution shall not decline to file or dismiss a domestic abuse case without prior consultation and review with the arresting officer(s) and a domestic abuse advocate.

H. **Protection Order Process.** Any person who has been the victim of domestic abuse within the preceding 180 days may petition the Court for a protection order. The person may seek relief by filing a petition with the Court alleging that the person is in danger of abuse from the respondent, that the person has been the victim of abuse committed by the respondent within the 180 days preceding the filing of the petition, and particularly describing the nature of the abuse and the dates thereof. A petition form shall be available at the court.

- 1. The petitioner has the burden of proving a claim by a preponderance of the evidence.
- 2. For purposes of computing the 180-day period, any time during which the respondent is incarcerated or has a principal residence more than 100 miles from the principal residence of the petitioner shall not be counted as part of the 180-day period.
- 3. The Court shall not assess fees for the filing of a petition for protection order or responses to that petition.

I. **Scope of Protection Orders.** If the Court finds by a preponderance of the evidence that an individual has perpetrated an act of domestic abuse against another and the victim is in danger of further abuse, the court may issue an order:

- 1. restraining the individual from having any contact or communication, direct or indirect, including by phone, mail, email, text message, or through third persons, with a petitioner, the petitioner's children, or the petitioner's intimate partner;
- 2. prohibiting the individual from being within a specified distance from petitioner, the petitioner's children, or the petitioner's intimate partner;
- 3. directing the individual to leave a specified household;
- 4. prohibiting the individual from being within a specified distance of the residence of the petitioner or the petitioner's intimate partner for the duration of the order;
- 5. prohibiting the individual from entering the petitioner's residence, school, business or place of employment, or the children's school or daycare;
- 6. awarding the petitioner temporary custody of or visitation with a minor child or children;
- 7. awarding temporary child support. In the event child support is ordered, the Court shall notify the Office of Child Support Enforcement to assist in determining the amount of child support owed pursuant to the relevant provisions of the Family Law Code;
- 8. excluding the respondent from the jurisdiction of the Comanche Nation, if the Court finds exclusion is necessary to prevent future acts of domestic abuse; or
- 9. any other order the Court deems necessary or appropriate to ensure the safety of the petitioner or petitioner's children.

J. **Respondent's Rights in Protection Order Proceeding.** Every respondent shall be given reasonable notice and opportunity to be heard sufficiently to protect that person's right to due

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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process.

1. Except in the case of an ex parte temporary order, a hearing on a petition for a protection order shall be heard within 30 days of filing of the petition.

2. At the time a petition for a protection order is filed, the court clerk shall issue a notice of hearing date. The Court shall forward a copy of the petition and notice of hearing date to the Comanche Nation Tribal Police Department. The Comanche Nation Tribal Police shall attempt to serve the notice on the respondent at least 7 days prior to the scheduled hearing date. The Comanche Nation Tribal Police Department shall file proof of service with the Court prior to the scheduled hearing date.

3. Every respondent has the right to be represented by an attorney at their own expense in any protection order proceeding.

K. Ex Parte Orders and Related Procedures. The Court may issue an ex parte temporary order for protection when it finds by a preponderance of the evidence that a petitioner is in immediate danger of domestic abuse.

1. If an ex parte temporary order is issued, the Court shall hold a full hearing within 30 days of issuance of the temporary order and provide both the petitioner and respondent with notice of the hearing at least 14 days prior to the hearing.

2. Upon issuing a temporary protection order, the Court shall provide the Comanche Nation Tribal Police Department with the information it has available regarding the location of the respondent. The Comanche Nation Tribal Police Department shall make reasonable efforts to personally serve the respondent within 7 days of issuance of an ex parte order. If personal service is not had within 7 days of issuance of an ex parte order, the Comanche Nation Tribal Police Department shall mail a copy of the order, return receipt requested, to the last known address of the respondent. Proof of service shall be filed with the Court.

3. Upon issuing an ex parte temporary protection order, the Court shall immediately notify the Comanche Nation Tribal Police Department and provide them with a copy of the order.

L. Protection Order Requirements. Every protection order issued under this section shall contain the language substantially similar to the following in a separate section immediately above the signature of the judge, if any:

“CERTIFICATE OF COMPLIANCE WITH THE VIOLENCE AGAINST WOMEN ACT: This protective order meets all full faith and credit requirements of the Violence Against Women Act, 18 U.S.C. 2265. This court has jurisdiction over the parties and the subject matter. The respondent was afforded notice or this order has been issued ex parte due to immediate danger and the respondent has been given a timely opportunity to be heard or will be given an opportunity to be heard in a timely manner as provided by the law of this jurisdiction. **THIS ORDER IS VALID AND ENTITLED TO ENFORCEMENT IN THIS AND ALL OTHER JURISDICTION'S UNDER FEDERAL FULL FAITH AND CREDIT LAWS.**

**WARNING: POSSESSION OF A FIREARM OR AMMUNITION BY RESPONDENT WHILE THIS ORDER IS IN EFFECT MAY BE PROHIBITED UNDER FEDERAL OR STATE LAW.**

**WARNING: ONLY THE COURT HAS THE POWER TO ALTER THESE CONDITIONS REGARDLESS OF THE CONSENT OF THE PROTECTED PARTY.**

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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1. The Court shall provide the Comanche Nation Tribal Police Department and Prosecutor's Office with a copy of every protection order it issues within 24 hours of issuance.
2. The Comanche Nation Tribal Police Department shall make reasonable efforts to ensure every protection order issued in accordance with this part is recorded in Oklahoma's Law Enforcement Data System and other relevant local and national law enforcement criminal data information systems.
- M. Automatic Court Protection Order in Criminal Proceedings. As a condition of release, every defendant arrested and taken into custody for a domestic abuse crime shall be issued a court order of protection prior to release from custody, which shall be deemed an order of the court and is effective without the need for judicial signature and shall remain in effect until otherwise acted upon by the Court or 180 days has passed since issuance, whichever is earlier. The Comanche Nation Tribal Police Department shall ensure the defendant is given a copy of the protection order prior to release from custody. A copy of the protection order shall be sent to the victim, Court, and Prosecutor's Office within 24 hours. The Comanche Nation Police Department shall also retain a copy for their records.
  1. The protection order shall state the following:
    - a. The defendant is restrained from having any contact or communication, direct or indirect, including by phone, mail, email, text message, or through third persons, with the victim(s), the victim(s)' children, and the victim's intimate partner;
    - b. The defendant is prohibited from being within 1000 feet of the victim(s), the victim(s)' children, or the victim(s) intimate partner(s);
    - c. The defendant shall leave the residence of the victim until further order of the Court regardless of whose name is on any lease, mortgage, or other real estate agreement;
    - d. The defendant is prohibited from being within a 1000 feet of the residence of the victim and the residence of the victim's intimate partner regardless of whose name is on any lease, mortgage, or other real estate agreement;
    - e. The defendant is prohibited from entering the victim's residence, school, business or place of employment, or the children's school or daycare, until further order of the Court;
    - f. The defendant has a right to request a hearing before the Court to modify or dismiss the protection order, and has a right to have an attorney present at that hearing;
    - g. A violation of any provision in the protection order is a crime under the laws of the Comanche Nation and may be a crime in any other jurisdiction.
  2. A defendant may request a hearing on the default protection order at any time.
  3. A hearing on the request for hearing shall be held within 30 days of a defendant filing such a request.
  4. In the event a defendant files a request for hearing within 30 days of receipt of a default protection order, the Court shall notify the Prosecutor's Office at least 7 days prior to the scheduled court date.
  5. A form automatic protection order shall be made available to the Comanche Nation Tribal Police Department and relevant jail facility to use in accordance with this subsection.
  6. The Prosecutor shall represent the Comanche Nation at any hearing on the default protection order requested by a defendant.

### SECTION 4.86. ARREST WITHOUT WARRANT

- A. A law enforcement officer shall arrest and take into custody a person without a warrant if
  1. the officer has probable cause to believe that the person has committed a crime of

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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domestic abuse, whether that crime was committed in or outside the presence of the officer;

2. the officer has probable cause to believe a person has violated the terms of a restraining or protective order that was previously personally served upon the person, or that the person to be arrested has actual notice of the order;

3. the person protected by a foreign restraining or protective order presents a copy of the order to the officer and represents that the order supplied is the most recent order in effect between the parties and that the person restrained by the order was personally served with a copy of the order or has actual notice of the order, and the officer has probable cause to believe that the person to be arrested has violated the terms of the foreign restraining or protective order;

4. the person protected by a foreign restraining or protective order has filed a copy of the order with a court or has caused the order to be entered into the Law Enforcement Data System, or in the databases of the National Crime Information Center of the United States Department of Justice, and the officer has probable cause to believe that the person to be arrested has violated the terms of the order; or

5. the officer has probable cause to believe that the person to be arrested has been charged with an offense and is presently released as to that charge, and that the person has failed to comply with a no contact provision of the release agreement or a no contact provision of conditional release on recognizance ordered by a court.

B. No law enforcement officer shall be held liable criminally or civilly for making an arrest without a warrant upon probable cause as set forth above provided that

1. the officer acted in good faith; or

2. The law enforcement officer had a reasonable belief that any protective or restraining order in question is in effect and that the person restrained was personally served with the order or has actual notice of the terms of the order.

C. No provision of this Code section shall be construed so as to abrogate or infringe upon the sovereign immunity of the Comanche Nation.

### SECTION 4.87. AUTHORITY OF LAW ENFORCEMENT TO SEIZE WEAPONS

Incident to an arrest for a crime of domestic abuse or an arrest for violation of a protective order, restraining order, or for violation of the terms and conditions of a release order, a law enforcement officer:

A. Shall seize all weapons that are alleged to have been involved or threatened to be used in a commission of the crime;

B. May seize a weapon that is in the plain view of the officer or that was found pursuant to a consensual search, as necessary for the protection of the officer or the other person.

### SECTION 4.88. OFFICIALS WHO USE EXCESSIVE FORCE

A. No special consideration shall be made for any person because of their official capacity as a law enforcement officer or other public official. All procedures and duties set out in this code shall be strictly adhered to, regardless of any administrative, interagency, or departmental investigation and sanctions.

B. Upon receiving notification that a law enforcement officer is a possible perpetrator:

1. The dispatcher shall immediately notify the Chief of Police who will brief the BIA District Special Agent-in Charge, BIA Professional Standards Division and Tribal Prosecutor. The Chief or an appropriate designee shall respond and investigate the alleged incident.

2. The Comanche Nation Police department will follow the BIA-OLES Professional

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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Standards policy for investigation and determination of allegations against its Department. The Tribal Prosecutor shall not be involved in the investigation.

### SECTION 4.89. VIOLATION OF PROTECTION ORDER

- A. A person commits the crime of violating a protection order when, after having been served with a protection order, they violate any provision of that order.
1. Violation of a protection order is a felony if:
  2. A defendant has been issued a default protection order and violates that order while the underlying domestic abuse case is pending and the underlying case was charged as a felony;
  3. The defendant has been convicted of violating a domestic abuse related protection order in this or any other jurisdiction within the proceeding 5years;
  4. The defendant has a prior conviction for domestic abuse; or
- B. The protection order was violated by commission of a felony.

### SECTION 4.90. PENALTIES FOR CRIME OF DOMESTIC ABUSE

- A. In order to succeed in meeting the goal of eliminating domestic abuse, the Court shall impose appropriate penalties.
- B. The Court shall consider both aggravating and mitigating factors in sentencing the defendant after conviction.
- C. The aggravating factors include but are not limited to:
1. Nature and Degree of injury to the victim,
  2. Other impacts to victim's life as a result of the incident,
  3. The use of a weapon,
  4. Prior history of personal crimes against current or former victim(s),
  5. Prior convictions of crimes against persons,
  6. Use of alcohol and drugs at the time of the incident,
  7. Whether children were in the residence at the time of the incident,
  8. Whether children witnessed, saw or heard the incident,
  9. Fleeing from law enforcement,
  10. Violation of release agreements,
  11. Prior violation of restraining orders,
  12. Intimidation of witnesses and or victims.
- D. Mitigating factors shall include but are not limited to:
1. Appropriate progress in Court-approved counseling and or treatment,
  2. Adherence to release conditions,
  3. Documentation of abstinence from alcohol and drugs,
  4. Lack of criminal history,
  5. Voluntary relinquishment of weapons.
- E. Mandatory Restitution:
1. In addition to any other civil or criminal penalty that may be sentenced, the Court shall order restitution for any offenses under this chapter.
  2. Scope and nature of Order:
    - a. The order of restitution under this section shall direct the defendant to pay to the victim (through the court) the full amount of the victim's losses as determined by the court pursuant to paragraph b.
    - b. For purposes of this section, the phrase "full amount of the victim's losses" includes any

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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costs incurred by the victim for:

- (1) Medical services relating to physical, psychiatric, or psychological
- (2) care;
- (3) Physical and occupational therapy or rehabilitation;
- (4) expenses;
- (5) protection order; and
- (6) Necessary transportation, temporary housing, and child care
- (7) Lost income;
- (8) Attorneys' fees, plus any costs incurred in obtaining a civil
- (9) Any other losses suffered by the victim as approximate result of the offense.

c. The issuance of a restitution order under this section is mandatory. A court may not decline to issue an order under this section because of (i) the economic circumstances of the defendant; or (ii) the fact that a victim has, or is entitled to receive, compensation for his or her injuries from the proceeds of insurance or any other source.

d. For purpose of this section, the term "victim" means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.

### SECTION 4.91. VICTIM - ADVOCATE PRIVILEGE

A. Except as otherwise provided in subsection B., a victim of domestic violence may refuse to disclose, and may prevent an advocate, elder, or medical provider from disclosing confidential oral communications between the victim and that the advocate, and/or any written records or reports of the advocate concerning the victim, unless the privilege is waived by:

1. the victim; or
2. the death of the victim.

B. The privilege does not relieve a person from any duty to report child abuse or neglect, or if the advocate believes the victim's life is in peril. A person may not claim the privilege when providing evidence in proceedings regarding child abuse or neglect.

C. As used in this section, "advocate" means an employee of or volunteer for a program for victims of domestic violence who:

1. Has a primary function of rendering advice, counseling, or assistance to victims of domestic violence; supervising the employees or volunteers of the program; or administering the program;
2. Works under the direction of a supervisor of the program, supervises employees or volunteers, or administers the program.

### SECTION 4.92. ABANDONMENT OF A CHILD

A person commits the crime of abandonment of a child if, being a parent, lawful guardian or other person lawfully charged with the care or custody of a child under 15 years of age, he deserts the child in any place with intent to abandon it. Abandonment of a child is a felony.

### SECTION 4.93. CHILD NEGLECT

A. A person having custody or control of a child under 15 years of age commits the crime of

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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child neglect if, with criminal negligence, he leaves the child unattended in any place for such period of time as may be likely to endanger the health or welfare of such child. (Compare to other Codes)

B. Child neglect is a felony if the person knowingly leaves the child, or allows the child to stay:

1. In a vehicle where controlled substances are present, being criminally delivered or manufactured;
2. In or upon premises and in the immediate proximity where controlled substances are criminally delivered or manufactured for consideration or profit or where a chemical reaction involving one or more precursor substances:
  - a. Is occurring as part of unlawfully manufacturing a controlled substance or grinding, soaking or otherwise breaking down a precursor substance for the unlawful manufacture of a controlled substance; or
  - b. Has occurred as part of unlawfully manufacturing a controlled substance or grinding, soaking or otherwise breaking down a precursor substance for the unlawful manufacture of a controlled substance; or
3. In or upon premises that have been determined to be not fit for use.
4. As used in this subsection, "vehicle" and "premises" do not include public places.

### SECTION 4.94. CRIMINAL NONSUPPORT

A. A person commits the crime of criminal nonsupport if, being the parent, lawful guardian or other person lawfully charged with the support of a child under 18 years of age, born in or out of wedlock, he refuses or neglects without lawful excuse to provide support for such child.

B. It is no defense to a prosecution under this section that either parent has contracted a subsequent marriage, that issue has been born of a subsequent marriage, that the defendant is the parent of issue born of a prior marriage or that the child is being supported by another person or agency.

C. In a prosecution for failing to provide necessary and proper medical attention, it is a defense that the medical attention was provided by treatment by prayer through spiritual means alone by adherents of a bona fide religious denomination that relies exclusively on this form of treatment in lieu of medical attention.

D. Criminal nonsupport is a felony.

### SECTION 4.95. EVIDENCE OF PATERNITY; CONFIDENTIALITY BETWEEN HUSBAND AND WIFE NOT APPLICABLE; SPOUSES COMPETENT AND COMPELLABLE

A. Any disputes regarding paternity or parentage of a child shall be resolved according to the procedures set forth in the Comanche Nation' Family Law Code.

B. No provision of law prohibiting the disclosure of confidential communications between husband and wife apply to prosecutions for criminal nonsupport. A husband or wife is a competent and compellable witness for or against either party.

### SECTION 4.96. ENDANGERING THE WELFARE OF AMINOR

A person commits the crime of endangering the welfare of a minor if he knowingly:

A. Induces, causes or permits an unmarried person under 18 years of age to witness an act of sexual conduct or sadomasochistic abuse;



## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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- B. Commits the crime of domestic abuse in the presence of an unmarried person under eighteen
- C. Permits a person under 18 years of age to enter or remain in a place where unlawful narcotic or dangerous drug activity is maintained or conducted;
- D. Induces, causes or permits a person under 18 years of age to participate in gambling as defined; or
- E. Sells, or causes to be sold, tobacco in any form to a person less than 18 years of age,

### PART XI. CRIMES AGAINST ELDERS OR INCAPACITATED ADULTS

#### SECTION 4.97. TRIBAL ELDER AND IN CAPACITATED ADULT PROTECTION AGAINST VIOLENCE AND THEFT

- A. Purpose. The purpose of this act is to protect elders and incapacitated adults within the jurisdiction of the Jurisdiction of the Comanche Nation from abuse, harassment, exploitation as defined in this code. This code provides remedies for elder abuse, harassment or neglect situations. The code shall be liberally interpreted in order to achieve its purpose.
- B. Definitions.
  - 1. Abuse.
    - a. Intentional, knowing infliction of bodily injury, unreasonable confinement, intimidation, cruel punishment or treatment resulting in physical harm or pain or mental anguish, by any person, including but not limited to anyone who has a special relationship with the victim such as a spouse, a child, or other relative recognized by tribal ordinance and custom, or a care provider.
    - b. Sexual abuse: any physical contact with the victim intended for sexual gratification of the person making such contact, or for the purpose of degrading or humiliating the victim, and which is not consented to by the victim or for which the consent was obtained by intimidation or fraud;
    - c. Emotional abuse: intentional infliction of threats, humiliation, or intimidation,
    - d. Exploitation: the unauthorized or improper use of funds, property, or other resources of an elder or incapacitated person, or failure to use the funds, property, or other resources to the elder or incapacitated person's benefit or according to the elder's direction.
  - 2. Care Provider: A person, institution, or agency that is either: 1) required by law or custom, 2) is employed to, or 3) volunteers to provide care, services, or resources to an elder.
  - 3. Elder: A senior citizen found on the Jurisdiction of the Comanche Nation who is at least sixty two (62) years of age
  - 4. Emergency: A situation in which an elder is immediately at risk of death or injury to person or property and is unable to consent to services which would remove the risk.
  - 5. Family: Immediate family members are the mother, father, siblings, half- siblings, foster-children, children of a person or other persons residing in the same house that owe a duty of care to each other, as determined by tribal custom. Descendants of immediate family members, grandparents, aunts, uncles, and other relatives owe a duty of care as determined by tribal custom and tradition.
  - 6. Good Faith: An honest belief or purpose and the lack of intent to abuse, exploit or neglect.
  - 7. Harassment: Gestures, words or actions which tend to annoy, alarm, or verbally abuse or cause tension or stress on an elder or incapacitated person. Harassment includes, but is not limited to, situations where a person willfully subjects an elder or incapacitated person to

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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unwanted or unwelcome sales, soliciting or begging.

8. Incapacity: The current inability or functional inability of a person to make responsible decisions about himself/herself as a result of mental illness, mental deficiency, physical illness or disability, or chronic use of drugs or liquor. Incapacity may vary in degree and duration and shall not be determined solely on the basis of age. A person's incapacity can be recognized by an official determination, by the Community, or by circumstances existing at a relevant time.

9. Neglect: The failure by a care provider to provide for, or the interference with, the basic needs of an elder or incapacitated adult by not supplying resources, services, or supervision necessary to maintain minimum physical and mental health, or failing to provide services or resources essential to the elder or incapacitated adult's practice of his customs, traditions, or religion.

### SECTION 4.98. ABUSE OF ELDER OR INCAPACITATED ADULT

A. A person commits the crime of abuse of an elder or incapacitated adult when he intentionally, knowingly, recklessly or with criminal negligence abuses, harasses, neglects or exploits an elder or incapacitated person.

B. Abuse of an elder or incapacitated adult is a felony if the person has a prior conviction for the same or substantially similar offense.

### SECTION 4.99. DUTY TO REPORT ABUSE, HARASSMENT, OR NEGLECT OF AN ELDER OR INCAPACITATED ADULT

A. All adults living or working on the Jurisdiction of the Comanche Nation have a duty to report suspected abuse, harassment, exploitation or neglect of an elder or incapacitated adult to the Tribal Police and Department of Children & Family Services.

B. A person who in good faith reports suspected abuse, harassment, exploitation or neglect of an elder or incapacitated adult is immune from any civil or criminal suit based on the person's report.

C. Any person who is required by this code to report such abuse and fails to do is subjected to a civil penalty of up to \$500.00.

D. Any person who knowingly or intentionally makes a report of such abuse not in good faith is subject to

1. a civil penalty of up to \$500.00 and
2. a criminal charge of initiating a False Report.

E. The name of the reporting party who reports abuse, harassment, exploitation or neglect as required by this code is confidential and shall not be released to any person unless the reporting party consents to the release or release is ordered by the Tribal Court.

### SECTION 4.100. ELDER OR INCAPACITATED ADULT PROTECTION ORDER

A. Any person, including the elder or incapacitated person, may file a petition for a protection order. The petition shall contain the information, sworn before a Notary Public, required by the Tribal Court on its approved petition form, including, but not limited to the name, age and address of the elder; a brief description of the abuse, harassment, exploitation or neglect; and the identity and location of the person(s) perpetrating the abuse, harassment, exploitation or neglect.

1. If a petition in the proper form is filed with the Tribal Court, a protection order may be issued ex parte immediately. The ex parte order shall also set the date for a show cause hearing

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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and be served on all the parties by the Tribal Police. The show cause hearing shall be scheduled within 10 working days of the granting of the ex parte protective order. At the show cause hearing the protection order may be continued or modified, upon a showing by a preponderance of the evidence that the abuse, harassment, exploitation or neglect has occurred.

2. Upon proof of service that the parties have been served with notice of the show cause hearing, the court may 1) reschedule a hearing, 2) issue a default order, or 3) dismiss the protection order if one or both of the parties fail to appear at the hearing.

B. The court shall issue a protection order which provides appropriate protection for an elder or incapacitated person if the Tribal Court determines that an elder or incapacitated person is either 1) abused, 2) harassed, 3) neglected, 4) at risk of physical harm, 5) at risk of financial harm or duress, or in imminent danger of any of the above. Such protection may include, but is not limited to the following:

1. Restraining the person who has abused, harassed, exploited or neglected an elder from continuing such acts or contacting the elder.

2. Removing the elder or incapacitated person or the person responsible for abuse, harassment, or neglect from the place where the abuse, harassment, or neglect has taken or is taking place.

3. Requiring an elder's or incapacitated person's family, conservator/guardian, care provider or other fiduciary to account for the elder's or incapacitated person's funds and property.

4. Requiring any person who harmed an elder or incapacitated person to pay restitution to the elder for damages resulting from that person's wrong doing.

5. Ordering the care provider, elder's or incapacitated person's family, Department of Children & Family Services, and or conservator/guardian to prepare a plan for and deliver elder or incapacitated person protection services which provide the least restrictive alternatives for services, care, treatment, placement or financial management consistent with the elder's or incapacitated person's needs.

6. Ordering the commencement of a proceeding for appointment of a conservator or guardian for the elder or incapacitated person.

C. Any party may request modification or termination of a protection order. The Court must hold a hearing with the parties present, unless it is shown through a lawful return of service that a party cannot be located.

D. A protection order shall be issued for a period not to exceed 12 months, but may be extended as many times as necessary to protect the person upon petition to the Court.

### PART XII. SEX -RELATED CRIMES

#### SECTION 4.101. DEFINITIONS RELATING TO SEXUAL OFFENSES

As used in this part, unless the context requires otherwise:

A. "Forcible compulsion" means to compel by physical force or threat of physical force; or a threat, express or implied, that places a person in fear of immediate physical injury to himself or another person or in fear that he or another person will immediately or in the future be kidnapped or harmed.

B. "Mentally defective" means that a person suffers from a mental disease or defect that renders him incapable of appraising the nature of his conduct.

C. "Mentally incapacitated" means that a person is rendered incapable of appraising or controlling his conduct at the time of the alleged offense because of the influence of a narcotic or

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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other intoxicating substance administered to him without his consent or because of any other act committed upon him without his consent.

D. "Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

E. "Sexual contact" means any touching of the sexual or other intimate parts of another person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party, or for the purpose of abusing, humiliating, harassing, or degrading the other person.

F. "Sexual intercourse" has its ordinary meaning and occurs upon any penetration, however slight; emission is not required.

G. "Place of prostitution" means any place where prostitution is practiced.

H. "Prostitute" means a person who engages in sexual contact or sexual intercourse for a fee.

I. "Prostitution enterprise" means an arrangement whereby two or more prostitutes are organized to conduct prostitution activities.

### SECTION 4.102. INCAPACITY TO CONSENT, SEXUAL OFFENSES

A person is considered incapable of consenting to a sexual act if he is:

A. Under 18 years of age;

B. Mentally defective;

C. Mentally incapacitated;

D. Physically helpless; or

E. Incapacitated for any reason, including by the voluntary or involuntary use of intoxicants, medication or drugs.

### SECTION 4.103. IGNORANCE OR MISTAKE AS A DEFENSE

A. In any prosecution under these provisions relating to sexual offenses in which the criminality of conduct depends on a child's being under the age of 16, it is no defense that the defendant did not know the child's age or that he reasonably believed the child to be older than the age of 16.

B. When criminality depends on the child's being under a specified age other than 16, it is an affirmative defense for the defendant to prove that he reasonably believed the child to be above the specified age at the time of the alleged offense.

C. In any prosecution under these provisions relating to sexual offenses in which the victim's lack of consent is based solely upon his incapacity to consent because he is mentally defective, mentally incapacitated or physically helpless, it is an affirmative defense for the defendant to prove that at the time of the alleged offense he did not know of the facts or conditions responsible for the victim's incapacity to consent.

### SECTION 4.104. UNLAWFUL DISSEMINATION OF AN INTIMATE IMAGE.

A. A person commits the crime of unlawful dissemination of an intimate image if:

1. The person, with the intent to harass, humiliate or injure another person, knowingly causes to be disclosed, including through an Internet website, an identifiable image of the other person whose intimate parts are visible or who is engaged in sexual conduct;

2. The person knows or reasonably should have known that the other person does not consent to the disclosure;

3. The other person is harassed, humiliated or injured by the disclosure; and

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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4. A reasonable person would be harassed, humiliated or injured by the disclosure.
- B. Unlawful dissemination of an intimate image is a misdemeanor for a first conviction and a felony for any subsequent convictions.
- C. As used in this section:
  1. "Disclose" includes, but is not limited to, transfer, publish, distribute, exhibit, advertise and offer.
  2. "Image" includes, but is not limited to, a photograph, film, videotape, recording, digital picture and other visual reproduction, regardless of the manner in which the image is stored.
  3. "Intimate parts" means uncovered human genitals, buttocks, pubic areas or female nipples.
  4. "Sexual conduct" includes but is not limited to masturbation; genital, anal, or oral sex; sexual penetration with objects; or the transfer or transmission of semen upon any part of the depicted person's body.
- D. This section does not apply to:
  1. Activity by law enforcement agencies investigating and prosecuting criminal offenses;
  2. Legitimate medical, scientific or educational activities;
  3. Legal proceedings, when disclosure is consistent with common practice in civil proceedings or necessary for the proper functioning of the criminal justice system;
  4. The reporting of unlawful conduct to a law enforcement agency; or
  5. Images originally created for a commercial purpose with the consent of the other person.

### SECTION 4.105. RAPE

- A. A person who has sexual intercourse with another commits the crime of rape if:
  1. The victim is subjected to forcible compulsion by the actor;
  2. The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness;
  3. The victim is incapacitated; or
  4. The victim is under 16 years of age.
- B. Rape is a felony.

### SECTION 4.106. SEXUAL ASSAULT

- A. A person who has sexual contact with another person or causes such other person to have sexual contact with him or her, is guilty of sexual assault if:
  1. He or she knows the conduct is offensive to the other person;
  2. He or she knows that the other person suffers from mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct;
  3. He or she knows that the other person is unaware that a sexual act is being committed;
  4. The other person is less than fourteen years old;
  5. He or she has substantially impaired the other person's power to appraise or control his or her conduct by administering or employing drugs, intoxicants or other means for the purpose of preventing resistance;
  6. The other person is less than 16 years old and the actor is at least four years older than the other person;
  7. The other person is less than 21 years old and the actor is his or her guardian or otherwise responsible for the general supervision of his or her welfare; or
  8. The other person is in custody of law or detained in a hospital or other institution and the

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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actor has supervisory or disciplinary authority over him or her.

B. Sexual Assault is a felony.

### SECTION 4.107. SEXUAL EXPLOITATION

A. A person commits the crime of sexual exploitation when he or she causes another to be exposed to explicit sexual acts, explicit sexual photographs, or explicit sexual movies, or takes sexually explicit photographs or videos of another if:

1. The victim is less than 16 years of age;
2. The victim is unaware of the photographs or videos being taken; or
3. The victim suffers from a mental disease or defect, which renders him or her incapable of appraising the nature of his or her conduct.

B. Sexual Exploitation is a felony.

### SECTION 4.108. CONTRIBUTING TO THE SEXUAL DELINQUENCY OF A MINOR

A person 18 years of age or older commits the crime of contributing to the sexual delinquency of a minor if he or she engages in sexual contact or sexual intercourse with another person less than 18 years of age with whom he or she is not married, or causes that other person to engage in sexual contact or sexual intercourse.

### SECTION 4.109. PUBLIC INDECENCY

A person commits the crime of public indecency if, while in, or in the view of, a public place he performs:

- A. An act of sexual contact or sexual intercourse; or
- B. An act of exposing his or her genitals with the intent of arousing his or her sexual desire or that of another person.

### SECTION 4.110. BIGAMY

A person commits the crime of bigamy if that person knowingly marries or purports to marry another person at a time when either is lawfully married.

### SECTION 4.111. INCEST

A person commits the crime of incest if that person marries or engages in sexual contact or sexual intercourse with their father, mother, grandparent, aunt, uncle, brother, sister, child, nephew, niece or first cousin by blood relationship.

### SECTION 4.112. PROSTITUTION

A person commits the crime of prostitution if that person engages in or offers or agrees to engage in sexual contact or sexual intercourse in return for a fee, or that person pays or offers or agrees to pay a fee to engage in sexual contact or sexual intercourse.

### SECTION 4.113. PROMOTING PROSTITUTION

A. A person commits the crime of promoting prostitution if, with intent to promote prostitution, that person knowingly:

1. Owns, controls, manages, supervises or otherwise maintains a place of prostitution or a prostitution enterprise;
2. Induces or causes a person to engage in prostitution or to remain in a place of

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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prostitution;

3. Receives or agrees to receive money or other property pursuant to an agreement or understanding that the money or other property is derived from a prostitution activity; or

4. Engages in any conduct that institutes, aids or facilitates an act or enterprise of prostitution.

B. Promoting prostitution is a felony.

### SECTION 4.114. COMPELLING PROSTITUTION

A person commits the crime of compelling prostitution if that person knowingly uses force or intimidation to compel another to engage in prostitution; or induces or causes a person under 18 years of age to engage in prostitution; or induces or causes his spouse, child or stepchild to engage in prostitution. Compelling prostitution is a felony.

### SECTION 4.115. EVIDENCE REQUIRED

A. A person shall not be convicted for Promoting Prostitution or Compelling Prostitution solely on the uncorroborated testimony of the victim whose prostitution that person is alleged to have promoted or compelled.

B. On the issue of whether a place is a place of prostitution, its general repute and repute of persons who reside in or frequent the place shall be competent evidence.

C. Notwithstanding any other limitations, spouses are competent and compellable witnesses for or against either party in prosecutions in actions for Promoting Prostitution and Compelling Prostitution.

## PART XIII. OFFENSES AGAINST PROPERTY

### SECTION 4.116. DEFINITIONS RELATING TO OFFENSES AGAINST PROPERTY

A. "Appropriate property of another to oneself or a third person" or "appropriate" means to:

1. Exercise control over property of another, or to aid a third person to exercise control over property of another, permanently or for so extended a period or under such circumstances as to acquire the major portion of the economic value or benefit of such property; or

2. Dispose of the property of another for the benefit of oneself or a third person.

B. "Deprive another of property" or "deprive" means to:

1. Withhold property of another or cause property of another to be withheld from him permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to him; or

2. Dispose of the property in such manner or under such circumstances as to render it unlikely that an owner will recover such property.

C. "Obtain" includes, but is not limited to, the bringing about of a transfer or purported transfer of property or of a legal interest therein, whether to the obtainer or another.

D. "Owner of property taken, obtained or withheld" or "owner" means any person who has a right to possession thereof superior to that of the taker, obtainer or withholder.

E. "Property" means any article, substance or thing of value, including, but not limited to, money, tangible and intangible personal property, real property, choses-in-action, and evidence of debt or of contract.

### SECTION 4.117. THEFT

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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A. A person commits the crime of theft when, with intent to deprive another of property or to appropriate property to himself or a third person he takes, appropriates, obtains or withholds such property from the owner thereof.

B. Theft is a felony if the total value of the property is \$1000 or more.

### SECTION 4.118. DEFENSES TO THEFT

A. In a prosecution for theft it is a defense that the defendant acted under an honest claim of right, in that:

1. He was unaware that the property was that of another; or

2. He reasonably believed that he was entitled to the property involved or had a right to acquire or dispose of it as he did.

B. In a prosecution for theft by extortion committed by instilling in the victim a fear that he or another person would be charged with a crime, it is a defense that the defendant reasonably believed the threatened charge to be true and that his sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of the threatened charge.

C. In a prosecution for theft by receiving, it is a defense that the defendant received, retained, concealed or disposed of the property with the intent of restoring it to the owner.

D. It is a defense that the property involved was that of the defendant's spouse, unless the parties were not living together as man and wife and were living in separate abodes at the time of the alleged theft.

### SECTION 4.119. THEFT OF LOST, MISLAID PROPERTY

A person who comes into control of property of another that knows or has good reason to know to have been lost, mislaid or delivered under a mistake as to the nature or amount of the property or the identity of the recipient, commits theft if, with intent to deprive the owner thereof, he fails to take reasonable measures to restore the property to the owner.

### SECTION 4.120. THEFT BY EXTORTION

A. A person commits theft by extortion when he compels or induces another person to deliver property to himself or to a third person by means of instilling in him a fear that if the property is not so delivered, the actor or another will in the future:

1. Cause physical injury to some person;

2. Cause damage to property;

3. Engage in other conduct constituting a crime;

4. Accuse some person of a crime or cause criminal charges to be instituted against him;

5. Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule;

6. Cause or continue a strike, boycott or other collective action injurious to some person's business; except that such conduct shall not be considered extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act;

7. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense;

8. Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or



## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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9. Inflict any other harm that would not benefit the actor.
- B. Theft by extortion is a felony if the total value of the property is \$1000 or more.

### SECTION 4.121. THEFT BY DECEPTION

- A. A person, who obtains property of another thereby, commits theft by deception when, with intent to defraud, he:
  1. Creates or confirms another's false impression of law, value, intention or other state of mind which the actor does not believe to be true;
  2. Fails to correct a false impression which he previously created or confirmed;
  3. Prevents another from acquiring information pertinent to the disposition of the property involved;
  4. Sells or otherwise transfers or encumbers property, failing to disclose a lien, adverse claim or other legal impediment to the enjoyment of the property whether such impediment is or is not valid, or is or is not a matter of official record; or
  5. Promises performance which he does not intend to perform or knows will not be performed.
- B. "Deception" does not include falsity as to matters having no pecuniary significance, or representations unlikely to deceive ordinary person in the group addressed.
- C. In a prosecution for theft by deception, the defendant's intention or belief that a promise would not be performed shall not be established by or inferred from the fact alone that such promise was not performed.
- D. In a prosecution for theft by deception committed by means of a bad check, it is prima facie evidence of knowledge that the check or order would not be honored if:
  1. The drawer has no account with the drawee at the time the check or order is drawn or uttered; or
  2. Payment is refused by the drawee for lack of funds, upon presentation within 30 days after the date of utterance, and the drawer fails to make good within 10 days after receiving notice of refusal.
- E. Theft by deception is a felony if the total value of the property is \$1000 or more.

### SECTION 4.122. THEFT BY RECEIVING

- A. A person commits theft by receiving if he receives, retains, conceals or disposes of property of another knowing or having good reason to know that the property was the subject of theft.
- B. Theft by receiving is a felony if the total value of the property is \$1000 or more.
- C. "Receiving" means acquiring possession, control or title, or lending on the security of the property.

### SECTION 4.123. RIGHT OF POSSESSION

Right of Possession of property is as follows:

- A. A person who has obtained possession of property by theft or other illegal means shall be deemed to have a right of possession superior to that of a person who takes, obtains or withholds the property from him by means of theft.
- B. A joint or common owner of property shall not be deemed to have a right of possession of the property superior to that of any other joint or common owner of the property.
- C. In the absence of a specific agreement to the contrary, a person in lawful possession of

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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property shall be deemed to have a right of possession superior to that of a person having only a security interest in the property, even if legal title to the property lies with the holder of the security interest pursuant to a conditional sale contract or other security agreement.

### SECTION 4.124. THEFT OF SERVICE

A. A person commits the crime of theft of services if:

1. With intent to avoid payment therefore, he obtains services that are available only for compensation by force, threat, deception or other means to avoid payment for the services; or
2. Having control over the disposition of labor or of business, commercial or industrial equipment or facilities of another, he uses or diverts to the use of himself or a third person such labor, equipment or facilities with intent to derive a commercial benefit for himself or a third person not entitled thereto.

B. As used in this section, "services" includes, but is not limited to, labor, professional services, toll facilities, transportation, telephone or other communications service, entertainment, the supplying of food, lodging or other accommodations in hotels, restaurants or elsewhere the supplying of equipment for use and the supplying of commodities of a public utility nature such as gas, electricity, steam and water.

C. Absconding without payment or offer to pay for hotel, restaurant or other services for which compensation is customarily paid immediately upon the receiving of them is prima facie evidence that the services were obtained by deception.

D. Theft of services is a felony if the total value of services is \$1000 or more.

### SECTION 4.125. UNAUTHORIZED USE OF A VEHICLE

A. A person commits the crime of unauthorized use of a vehicle when:

1. He takes, operates, exercises control over, rides in or otherwise uses another's vehicle, boat or aircraft without consent of the owner;
2. Having custody of a vehicle, boat or aircraft pursuant to an agreement between himself or another and the owner thereof whereby he or another is to perform for compensation, a specific service for the owner involving the maintenance, repair or use of such vehicle, boat or aircraft, he intentionally uses or operates it, without consent of the owner, for his own purpose in a manner constituting a gross deviation from the agreed purpose; or
3. Having custody of a vehicle; boat or aircraft pursuant to an agreement with the owner thereof whereby such vehicle, boat or aircraft is to be returned to the owner at a specified time, he knowingly retains or withholds possession thereof without consent of the owner for so lengthy a period beyond the specified time as to render such retention or possession a gross deviation from the agreement.

B. Unauthorized use of a vehicle is a felony.

### SECTION 4.126. DEFINITIONS RELATING TO OFFENSES AGAINST PROPERTY

As used in this part, unless the context requires otherwise:

A. "Building", in addition to its ordinary meaning, includes any booth, vehicle, boat, aircraft or other structure adapted for overnight accommodation of persons or for carrying on business therein. Where a building consists of separate units, including but not limited to separate apartments, offices or rented rooms, each unit is, in addition to being a part of such building, a separate building.

B. "Dwelling" means a building which regularly or intermittently is occupied by a person

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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lodging therein at night, whether or not a person is actually present.

C. "Enter or remain unlawfully" means:

1. To enter or remain in or upon premises when the premises, at the time of such entry or remaining, are not open to the public or when the entrant is not otherwise licensed or privileged to do so; or
2. To fail to leave premises that are open to the public after being lawfully directed to do so by the person in charge.

D. "Open to the public" means premises which by their physical nature, function, custom, usage, notice or lack thereof or other circumstances at the time would cause a reasonable person to believe that no permission to enter or remain is required.

E. "Person in charge" means a person, his representative or his employee who has lawful control of premises by ownership, tenancy, official position or other legal relationship.

F. "Premises" includes any building and any real property, whether privately or publicly owned.

### SECTION 4.127. BURGLARY

A. A person commits the crime of burglary if they enter or remain unlawfully in a building with the intent to commit a crime therein, or if in effecting entry or while in the building or in immediate flight there from they:

1. Are armed with burglar's tools as defined in section 4.131 or a deadly weapon;
2. Causes or attempts to cause physical injury to any person; or
3. Uses or threatens to use a dangerous weapon.

B. Burglary is a felony.

### SECTION 4.128. POSSESSION OF BURGLAR 'S TOOLS

A. A person commits the crime of possession of burglar's tools if he possesses any burglar tool with the intent to use the tool or knowing that some person intends to use the tool to commit or facilitate a forcible entry into premises or theft by a physical taking.

B. "Burglar tool" means an acetylene torch, electric arc, burning bar, thermal lance, oxygen lance or other similar device capable of burning through steel, concrete or other solid explosive, tool, instrument or other article adapted, designed or commonly used for committing or facilitating a forcible entry into premises or theft by a physical taking.

### SECTION 4.129. CRIMINAL TRESPASS

A person commits the crime of criminal trespass if he enters or remains unlawfully in a dwelling, or in or on a premises, or in or on Comanche Nation business property from which they have been banned from.

### SECTION 4.130. ARSON

A. A person commits the crime of arson if, by starting a fire or causing an explosion, he intentionally damages:

1. Any structure, place or thing customarily occupied by people; or
2. Any property, whether his own or another's and such act recklessly places another person in danger of physical injury or any structure, place or thing customarily occupied by people in danger of damage.

B. Arson is a felony.

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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### SECTION 4.131. RECKLESS BURNING

A person commits the crime of reckless burning if he recklessly damages property of another by fire or explosion.

### SECTION 4.132. CRIMINAL MISCHIEF

A. A person commits the crime of criminal mischief if, with intent to cause substantial inconvenience to the owner or to another person or with the intent to damage property, and having no right to do so nor reasonable ground to believe that he has such right he intentionally or recklessly damages, tampers or interferes with the property of another.

B. Criminal mischief is a felony if the damage caused is more than \$1000. SECTION

### 4.133. ROBBERY

A. A person commits the crime of robbery if, in the course of committing or attempting to commit theft, he:

1. Uses or threatens the immediate use of physical force upon the person of another with the intent of:

a. Preventing or overcoming resistance to his taking of the property or to his retention thereof immediately after the taking; or

b. Compelling the owner of such property or person to deliver the property or to engage in other conduct which might aid in the commission of the theft; or

2. Represents by word or action that he is armed with what purports to be a dangerous or deadly weapon;

3. Is aided by another person actually present;

4. Is armed with, uses or attempts to use a dangerous or deadly weapon; or

5. Causes or attempts to cause serious physical injury to any person.

B. Robbery is a felony.

### SECTION 4.134. OFFENSIVE LITTERING

A. A person commits the crime of offensive littering if he creates an objectionable stench or degrades the beauty or appearance of property or detracts from the natural cleanliness or safety of property by intentionally:

1. Discarding or depositing any rubbish, trash, garbage, debris or other refuse upon the land of another without permission of the owner, or upon any public way;

2. Draining, or causing or permitting to be drained, sewage or the drainage from a cesspool, septic tank, recreational or camping vehicle wastes holding tank or other contaminated source, upon the land of another without permission of the owner, or upon any public way; or

3. Permitting any rubbish, trash, garbage, debris or other refuse to be thrown from a vehicle which is operating.

B. As used in this section, "public way" includes, but is not limited to, roads, streets, alleys, lanes, trails, beaches, parks and all recreational facilities, operated by the Tribe, for use by the general public.

### SECTION 4.135 to SECTION 4.137 RESERVED

## PART XIV. OFFENSES INVOLVING FRAUD AND DECEPTION

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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### SECTION 4.138. DEFINITIONS RELATING TO OFFENSES INVOLVING FRAUD AND DECEPTION

As used in this part, unless the context requires otherwise:

- A. "Written instrument" means any paper, document, instrument or article containing written or printed matter or the equivalent thereof, whether complete or incomplete, used for the purpose of reciting, embodying, conveying or recording information or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.
- B. "Complete written instrument" means one which purports to be a genuine written instrument fully drawn with respect to every essential feature thereof.
- C. "Incomplete written instrument" means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument.
- D. To "falsely make" a written instrument means to make or draw a complete written instrument in its entirety, or an incomplete written instrument which purports to be an authentic creation of its ostensible maker but which is not, either because the ostensible maker is fictitious or because, if real, he did not authorize the making or drawing thereof.
- E. To "falsely complete" a written instrument means to transform, by adding, inserting or changing matter, an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him.
- F. To "falsely alter" a written instrument means to change without authorization by anyone entitled to grant it, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that the instrument so altered falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him.
- G. To "utter" means to issue, deliver, publish, circulate, disseminate, transfer or tender a written instrument or object to another.
- H. "Forged instrument" means a written instrument which has been falsely made, completed or altered.

### SECTION 4.139. FORGERY

- A. A person commits the crime of forgery if, with intent to injure or defraud, he:
  - 1. Falsely makes, completes or alters a written instrument; or
  - 2. Utters a written instrument which he knows to be forged.
- B. Forgery is a felony if the person violates subsection A:
  - a. And the written instrument is or purports to be any of the following:
  - b. Part of an issue of money, securities, postage or revenue stamps, or other valuable instruments issued by a government or governmental agency;
  - c. Part of an issue of stock, bonds or other instruments representing interests in or claims against any property or person;
  - d. A deed, will, codicil, contract or assignment;
  - e. A check for \$1,000 or more, a credit card purchase slip for \$1,000 or more, or a combination of checks and credit card purchase slips that, in the aggregate, total \$1,000 or more, or any other commercial instrument or other document that does or may evidence, create, transfer, alter, terminate or otherwise affect a legal right, interest, obligation or status; or

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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- f. A public record; or
- 2. By falsely making, completing or altering, or by uttering, at least 15 retail sales receipts, Universal Product Code labels, EAN-8 labels or EAN-13 labels or a combination of at least 15 retail sales receipts, Universal Product Code labels, EAN-8 labels or EAN-13 labels.
- C. The value of single check or credit card transactions may be added together under subsection (B)(1)(d) of this section if:
  - 1. Against multiple victims within a 30-day period; or
  - 2. Against the same victim within a 180-day period.

### SECTION 4.140. CRIMINAL POSSESSION OF A FORGED INSTRUMENT

- A. A person commits the crime of criminal possession of a forged instrument if, knowing it to be forged and with intent to utter same, he possesses a forged instrument.
- B. Criminal possession of a forged instrument is a felony if it is of the kind and in the amount specified in Section 4.139(B)(1).

### SECTION 4.141. CRIMINAL SIMULATION

A person commits the crime of criminal simulation if:

- A. With intent to defraud, he makes or alters any object in such a manner that it appears to have an antiquity, rarity, source or authorship that it does not in fact possess; or
- B. With knowledge of its true character and with intent to defraud, he utters or possesses an object so simulated.

### SECTION 4.142. FRAUDULENTLY OBTAINING A SIGNATURE

A person commits the crime of fraudulently obtaining a signature if, with intent to defraud or injure another, he obtains the signature of a person to a written instrument by knowingly misrepresenting any fact.

### SECTION 4.143. NEGOTIATING A BAD CHECK

- A. A person commits the crime of negotiating a bad check if he makes, draws or utters as check or similar sight order for the payment of money, knowing that it will not be honored by the drawee.
- B. For purposes of this section, unless the check or order is postdated, it is prima facie evidence of knowledge that the check or order would not be honored if:
  - 1. The drawer has no account with the drawee at the time the check or order is drawn or uttered; or
  - 2. Payment is refused by the drawee for lack of funds, upon presentation within 30 days after the date of utterance, and the drawer fails to make good within 10 days after receiving notice of refusal.

### SECTION 4.144. MISAPPLICATION OF ENTRUSTED PROPERTY

A person commits the crime of misapplication of entrusted property if, with knowledge that the misapplication is unlawful and that it involves a substantial risk of loss or detriment to the owner or beneficiary of such property, he intentionally misapplies or disposes of property that has been entrusted to him as a fiduciary or that is property of the government or a financial institution.

### SECTION 4.145. OBTAINING EXECUTION OF DOCUMENTS BY DECEPTION

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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A person commits the crime of obtaining execution of documents by deception if, with intent to defraud or injure another or to acquire a substantial benefit, he obtains by means of fraud, deceit or subterfuge the execution of a written instrument affecting or purporting to affect the pecuniary interest of any person.

### PART XV. OFFENSES AGAINST PUBLIC ORDER, FIREARMS

#### SECTION 4.146. RIOT

A person commits the crime of riot if while participating with five or more other persons, he engages in tumultuous and violent conduct and thereby intentionally or recklessly creates a grave risk of causing public alarm. Riot is a felony.

#### SECTION 4.147. DISORDERLY CONDUCT

A person commits the crime of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

- A. Engages in fighting or in violent, tumultuous or threatening behavior;
- B. Makes unreasonable noise;
- C. Uses abusive or obscene language, or makes an obscene gesture, in a public place;
- D. Disturbs any lawful assembly of persons without lawful authority;
- E. Obstructs vehicular or pedestrian traffic on a public way;
- F. Congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse;
- G. Initiates or circulates a report, knowing it to be false, concerning an alleged or impending fire, explosion, crime, catastrophe or other emergency; or
- H. Creates a hazardous or physically offensive condition by any act which he is not licensed or privileged to do.

#### SECTION 4.148. PUBLIC INTOXICATION

A person commits the crime of public intoxication if he creates, while in a state of intoxication, any disturbance of the public in any public or private business or place.

#### SECTION 4.149. PURCHASE OR POSSESSION OF TOBACCO OR TOBACCO PRODUCTS BY A PERSON UNDER 18 YEARS OF AGE

- A. No person under the age of 18 years shall attempt to purchase or acquire tobacco or tobacco products.
- B. No person under the age of 18 years shall have personal possession of tobacco or tobacco products.
- C. No person shall provide, sell, or give, or attempt to provide, sell or give tobacco or tobacco products to a minor.
- D. Violations of this provision shall be punishable only by a fine of not more than \$250.00 per violation.

#### SECTION 4.150. LOITERING

A person commits the crime of loitering if he loiters or prowls in a public place without apparent reason and under circumstances which warrant justifiable alarm for the safety of person or property in the vicinity, and upon inquiry by a peace officer, refuses to identify himself and give

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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a reasonable, credible account of his presence and purposes.

### SECTION 4.151. HARASSMENT

A person commits the crime of harassment if, with intent to harass, annoy or alarm another person, he:

- A. Subjects another to offensive physical contact;
- B. Publicly insults another by abusive or obscene words or gestures in a manner likely to provoke a violent or disorderly response;
- C. Communicates with a person, anonymously or otherwise, by telephone, mail or other form of written communication in a manner likely to cause annoyance or alarm; or
- D. Engages in a course of conduct that alarms or seriously annoys another person and which serves no legitimate purpose.

### SECTION 4.152. ABUSE OF CULTURAL SIGNIFICANT OBJECTS

A. A person commits the crime of abuse of cultural significant objects if he intentionally abuses a public monument or structure, a place of worship or burial or a cultural significant item or bundle.

B. As used in this section and section 4.153 "abuse" means to deface, damage, defile or otherwise physically mistreat in a manner likely to outrage public sensibilities.

### SECTION 4.153. ABUSE OF CORPSE

A. A person commits the crime of abuse of corpse if, except as otherwise authorized by law, he intentionally:

1. Abuses a corpse; or
  2. Disinters, removes or carries away a corpse.
- B. Abuse of a corpse is a felony.

### SECTION 4.154. NEGLIGENCE WOUNDING ANOTHER

Any person who, as a result of his failure to use ordinary care under the circumstances, wounds any other person with a bullet or shot from any firearm, or with an arrow from any bow, shall be punished by imprisonment for a period not to exceed six months or by a fine not to exceed \$500.00, or both. In addition, any person so convicted shall forfeit any privilege to hunt for a period of 10 years following the date of his conviction.

### SECTION 4.155. POINTING FIREARM AT ANOTHER

Any person over the age of 12 years who, with or without malice, purposely points or aims any loaded or empty pistol, gun, revolver, or other firearm, at or toward any other person within range of the firearm, except in self-defense, shall be fined upon conviction in a sum of not less than \$10.00 nor more than \$500.00, or be imprisoned not less than 10 days nor more than six months, or both.

### SECTION 4.156. CONCEALED WEAPONS

A. It shall be a misdemeanor for any person to carry a concealed dangerous weapon upon his person. A concealed weapons permit issued by any other governmental authority is not recognized on the Comanche Nation Indian Country.

B. Upon conviction, any weapons so carried shall be confiscated by order to the Comanche



## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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Nation Tribal Court.

C. This section does not apply to persons in their place of residence or business or to duly appointed law enforcement officers.

### SECTION 4.157 RESERVED

### SECTION 4.158. SETTING SPRINGGUN OR SETGUN

Any person who places or sets any loaded spring gun, set gun, or any gun, firearm or other device of any kind designed for containing or firing explosives, in any place where it may be fired, exploded or discharged by the contact of any person or animal with any string, wire, rod, stick, spring or other contrivance affixed to or connect with it, or with its trigger, shall be punished upon conviction by a fine of not less than \$100.00 nor more than \$500.00, or by imprisonment for not less than 30 days nor more than six months, or both.

### SECTION 4.159. COMMITTING OR ATTEMPTING TO COMMIT FELONY WHILE ARMED; SUBSEQUENT CONVICTIONS; PRESUMPTION

A. Any person who commits or attempts to commit any felony while armed with any pistol, revolver, machine gun or other firearm capable of being concealed upon the person, without having a license or permit to carry such firearm, upon conviction of a felony or of an attempt to commit the felony, shall, in addition to the punishment prescribed for the crime of which he has been convicted, be punished by imprisonment for not more than 3 years. Such additional period of imprisonment shall commence upon the expiration or other termination of the sentence imposed for the crime of which he stands convicted and shall not run concurrently with such sentence.

B. In the trial of a person charged with committing or attempting to commit a felony against the person of another while armed with any pistol, revolver, machine gun or other firearm capable of being concealed upon the person, without having a license or permit to carry such firearm, the fact that he was so armed is prima facie evidence of his attempt to commit such felony.

C. In no case shall any person punishable under this section be granted probation by the Tribal Court, nor shall the execution of the sentence imposed upon such person be suspended by the Court.

D. Committing or attempting to commit a felony while armed is a felony.

### SECTION 4.160. EXPLOSIVES

No person shall use, possess, detonate or transport dynamite or other explosives within the Comanche Nation Indian Country unless such person possesses a valid license from the State of Oklahoma for such activities. The use of explosives within the Comanche Nation Indian Country shall conform to all other provisions of this code.

### SECTION 4.161. FIREWORKS DEFINED

A. "Fireworks" shall mean any combustible or explosive composition or substance, or any combination of such composition or substance which was prepared for the purpose of providing a visible or audible effect by combustion, explosion, or detonation, including but not limited to firecrackers, torpedoes, skyrockets, roman candles, bombs, rockets, wheels, colored fires, fountains, mines, serpents or any other article of like construction, or any article containing any explosive substances or inflammable compound.

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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B. Fireworks does not include:

1. Sparklers, toy pistols paper caps, toy pistols, toy canes, toy guns or other devices in which paper caps containing .25 grains or less of explosive compound are used, and when the rate of burning and the explosive force of the materials in such devices are not greater than an equivalent weight of F.F.F.G. black powder, and when such devices are so constructed that the hand cannot come in contact with the cap when in place for explosion, and the major explosive force is contained or dispelled within the housing or shell of the device, there is no visible flame during discharge, there is no flaming or smoldering of any of the components or part of the device after discharge, and the device does not produce sufficient heat to readily ignite combustible materials upon which the device may be placed. The sale and use of such devices shall be permitted at all times.
2. Snakes or similar smoke-producing material containing no more than 100 grains of combustible substances when there is no visible flame during discharge, there is no after-smoldering, and the devices do not produce sufficient heat to readily ignite combustible materials upon which the devices may be placed. The sale and use of such devices shall be permitted at all times.
3. Model rockets and model rocket motors designated for the purpose of propelling recoverable aero models. The sale and use of such devices shall be permitted at all times.

### SECTION 4.162. FIREWORKS PROHIBITED

No person shall sell, manufacture, keep, or offer for sale, expose for sale, use, explode or have exploded any fireworks on the Comanche Nation Indian Country except as follows:

- A. Sale to or use of fireworks by a person or organization authorized by the Comanche Business Committee.
- B. Sale of shells cartridges, gunpowder, or explosives for use in legally permitted firearms.

## PART XVI. OFFENSES INVOLVING NARCOTICS, DRUGS AND ALCOHOLIC LIQUORS

### SECTION 4.163. DEFINITIONS, AS USED IN THIS PART

- A. "Alcoholic liquor" means any alcoholic beverage containing more than one-half of one percent alcohol by volume, and every liquid or solid, patented or not, containing alcohol and capable of being consumed by a human being.
- B. "Apothecary" means a licensed pharmacist, as defined by the laws of the state of Oklahoma, and where the context so requires, the owner of a store or other place of business where narcotic drugs are compounded or dispensed by a licensed pharmacist; but nothing in this chapter shall be construed as conferring on a person who is not registered or licensed as a pharmacist any authority, right or privilege that is not granted to him by the pharmacy laws of this state.
- C. "Coca leaves" include cocaine and any compound, manufacture, salt, derivative, mixture or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine or substances from which cocaine or ecgonine may be synthesized or made.
- D. "Dangerous drug" means:
  1. Amobarbital, secobarbital, pentobarbital, phenobarbital, acid diethylbarbituric, amphetamine, dextro amphetamine, mephentermine, methamphetamine, phenmetrazine, methylphenidate hydrochloride, glutethimide, methyprylon, meprobamate, chlordiazepoxide

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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HCL, diazepam, oxazepam, chloral hydrate, paraldehyde, ethchlorunol, and ethinamate, any salts, derivates of compounds of the foregoing substances, any preparations or compound containing any of the foregoing substances of the sales, derivatives or compounds or any registered trade-marked or copyrighted preparation or compound registered in the United States Patent Office containing any of the foregoing substances;

2. All products containing the substances lysergic acid diethylamide, psilocybin, dimethyltryptamine, methyltryptamine, peyote and mescaline;

3. Hashish, hashish oil or liquid tetrahydrocannabinols, whether synthetic or naturally derived, extracted from hashish; and

4. Any other drug designated by the Committee on Drug Problems as a dangerous drug and included in published regulations by the Oklahoma State Board of Pharmacy.

E. "Dentist" means a person authorized by law to practice dentistry medicine in this state.

F. "Hashish" means the resin produced by the plant Cannabis family Moraceae.

G. "Hashish oil" means the viscous liquid concentrate of tetrahydrocannabinols extracted from hashish.

H. "Hospital" means an institution for the care and treatment of the sick and injured, approved by the Oklahoma State Board of Pharmacy as proper to be entrusted with the custody of narcotic drugs and the professional use of narcotic drugs under the direction of a physician, dentist or veterinarian.

I. "Laboratory" means a laboratory approved by the Oklahoma State Board of Pharmacy as proper to be entrusted with the custody of narcotic drugs and the use of narcotic paraphernalia and for purposes of instruction.

J. "Manufacturer" means a person, who, by compounding, mixing, cultivating, growing or other process, produces or prepares narcotic drugs, but does not include an apothecary who compounds narcotic drugs to be sold or dispensed on prescription.

K. "Marijuana" includes the leaves, stems, flowers and seeds of the plant Cannabis family Moraceae, whether growing or not; but shall not include the resin or oil extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture or preparation from such resin or oil, including hashish and natural or synthetic tetrahydrocannabinol; and shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks, fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.

L. "Narcotic drugs" means coca leaves, opium, marijuana and every other substance neither chemically nor physically distinguishable from them; or other drugs to which the federal narcotic laws may now or hereafter apply; or any drug found by the State Board of Pharmacy after reasonable notice and opportunity for hearing, to have addiction-forming or addiction-sustaining liability similar to morphine or cocaine, from the publication of such finding. "Narcotic drugs" does not include hashish, hashish oil or liquid tetrahydrocannabinols, whether synthetic or naturally derived, extracted from hashish.

M. "Opium" includes morphine, codeine and heroin, and any compound, manufacture, salt, derivative, mixture or preparation of opium.

N. "Person" includes any corporation, association, co-partnership or one or more individuals.

O. "Physician" means a person authorized by law to practice medicine in this state and any other person authorized by law to treat sick and injured human beings in this state and to use

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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narcotic drugs in connection with such treatment.

P. "Sale" includes barter, exchange or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant or employee.

Q. The word "sale" includes every act of selling as defined in subsection (B) of this section and barter, exchange or offer therefor, and such transaction made by any person, whether as principal, proprietor, agent, servant or employee unless the selling and purchasing of alcoholic beverages is authorized by the Comanche Business Committee and then shall be in strict accordance with regulations governing such activities.

R. Whenever the words "sell" or "to sell" refer to anything forbidden under this part and relate to alcohol liquor, they include:

1. To solicit or receive an order.
2. To keep or expose for sale.
3. To deliver for value or in any way other than purely gratuitously.
4. To peddle.
5. To keep with intent to sell.
6. To traffic in.
7. For any consideration, promised or obtained, directly or indirectly, or under any pretext or by any means, to procure for any other person.

S. "Veterinarian" means a person authorized by law to practice veterinary medicine in this state.

T. "Wholesaler" means a person who supplies narcotic drugs that he himself has not produced or prepared, on official written orders, but not on prescriptions.

### SECTION 4.164. LIQUOR SALES PROHIBITED

Except as permitted by the Comanche Nation Liquor Control Ordinance, no person shall sell or purchase alcoholic beverages within the boundaries of the Comanche Nation Indian Country. Violation of this section is a civil infraction punishable by not more than five hundred dollars.

### SECTION 4.165. PUBLIC DRINKING

Except as permitted by the Comanche Liquor Control Ordinance, no person shall drink or consume any alcoholic beverage in or upon any public street, alley public ground, or other public place. Public Drinking is a civil infraction punishable by not more than five hundred dollars.

### SECTION 4.166. GIFT OF LIQUOR TO PERSON UNDER 21 YEARS OF AGE OR TO INTOXICATED PERSON

A. No person shall give or otherwise make available any alcoholic liquor to any person under the age of 21 years.

B. No person shall give or otherwise make available any alcoholic liquor to a person visibly intoxicated.

### SECTION 4.167. MINOR IN POSSESSION OF ALCOHOL

A. A person of age 18, 19, or 20 years commits the crime of minor in possession of alcohol if he or she possesses, consumes, acquires, purchases, or attempts to purchase any alcoholic beverage.

B. It is unlawful for a person age 18, 19, or 20 years old to be in a public place, or to be in a motor vehicle in a public place, while exhibiting the effects of having consumed liquor. For purposes of this subsection, exhibiting the effects of having consumed liquor means that a person

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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has the odor of liquor on his or her breath and either: (i) is in possession of or close proximity to a container that has or recently had liquor in it; or (ii) by speech, manner, appearance, behavior, lack of coordination, or otherwise, exhibits that he or she is under the influence of liquor. This subsection does not apply if the person has consumed or is consuming an alcoholic beverage under circumstances described in subsection C of this section.

C. This section does not prohibit the acceptance or consumption of sacramental wine as part of a bona fide religious rite or service, or the possession, consumption, acquisition, purchase, or attempt to purchase any official medicinal or pharmaceutical preparations containing alcohol when prescribed by a duly authorized physician or intended solely for medicinal purposes.

### SECTION 4.168. CONFISCATION OF LIQUOR AND PROPERTY

Whenever any law enforcement officer arrests any person for violation of this part, he shall take into his possession all alcoholic liquor and other related property which the person so arrested has in his possession, or on his premises, which is apparently being used in violation of this part. If the person so arrested is convicted, and it is found that the liquor and other property has been used in violation of the law, the same shall be forfeited and shall be delivered to the Tribal Court. The Court is authorized to destroy or make such other disposition thereof as it considers to be in the public interest.

### SECTION 4.169. DANGEROUS DRUGS

A. Except as provided in subsection (B) below, no person shall sell, give away, buy, distribute, buy, receive or possess a dangerous drug.

B. Subsection (A) above:

1. shall not apply to Physicians, Dentists, Apothecaries, or other persons duly licensed and authorized by law to prescribe or dispense said drugs in the course of their professional employment;
2. is a felony, with the exception of offenses involving possession of marijuana; and
3. is a misdemeanor if it involves less than one avoirdupois ounce of marijuana, and a civil infraction punishable by a fine of not more than \$100 if it involves possession of less than one avoirdupois ounce of marijuana.

C. Drug Paraphernalia

1. Drug Paraphernalia: "Drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or fashioned specifically for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body, a controlled dangerous substance in violation of the Dangerous Drug Act including, but not limited to:

- a. kits used, intended for use, or fashioned specifically for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled dangerous substance or from which a controlled dangerous substance can be derived,
- b. kits used, intended for use, or fashioned specifically for use in manufacturing, compounding, converting, producing, processing or preparing controlled dangerous substances,
- c. testing equipment used, intended for use, or fashioned specifically for use in identifying, or in analyzing the strength, effectiveness or purity of controlled dangerous substances,
- d. scales and balances used, intended for use, or fashioned specifically for use in weighing

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

---

or measuring controlled dangerous substances,

- e. diluents and adulterants, such as quinine hydrochloride, mamritol, mamrite, dextrose and lactose, used, intended for use, or fashioned specifically for use in cutting controlled dangerous substances,
- f. separation gins and sifters used, intended for use, or fashioned specifically for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana
- g. blenders, bowls, containers, spoons and mixing devices used, intended for use, or fashioned specifically for use in compounding controlled dangerous substances,
- h. capsules, balloons, envelopes and other containers used, intended for use, or fashioned specifically for use in packaging small quantities of controlled dangerous substances,
- i. containers and other objects used, intended for use, or fashioned specifically for use in parenterally injecting controlled dangerous substances into the human body,
- j. hypodermic syringes, needles and other objects used, intended for use, or fashioned specifically for use in parenterally injecting controlled dangerous substances into the human body,
- k. objects used, intended for use, or fashioned specifically for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:
  - l. metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls,
  - m. water pipes,
  - n. carburetion tubes and devices,
  - o. smoking and carburetion masks,
  - p. roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand,
  - q. miniature cocaine spoons and cocaine vials,
  - r. chamber pipes,
  - s. carburetor pipes,
  - t. electric pipes, (IOJ air-driven pipes,
  - u. chillums,
  - v. bongs, or
  - w. ice pipes or chillers,
  - x. all hidden or novelty pipes, and
  - y. any pipe that has a tobacco bowl or chamber of less than one-half (1/2) inch in diameter in which there is any detectable residue of any controlled dangerous substance as defined in this section or any other substances not legal for possession or use; provided, however, the term "drug paraphernalia" shall not include separation gins intended for use in preparing tea or spice, clamps used for constructing electrical equipment, water pipes designed for ornamentation in which no detectable amount of an illegal substance is found or pipes designed and used solely for smoking tobacco, traditional pipes of an American Indian tribal religious ceremony, or antique pipes that are thirty (30) years of age or older;
2. In determining whether an object is "drug paraphernalia: a court or jury shall consider, in addition to all other logically relevant factors, the following:
  - a. Statements by an owner or by anyone in control of the object concerning its use;
  - b. The proximity of the object, in time and space, to a direct violation of the Dangerous Drug Act;
  - c. The proximity of the object to controlled dangerous substances;

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

---

- d. The existence of any residue of controlled dangerous substances on the object;
- e. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to any person who intends to use the object to facilitate a violation of the Dangerous Drug Act. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this act shall not prevent a finding that the object is intended for use, or fashioned specifically for use, as drug paraphernalia;
- f. Instructions, oral or written, provided with the object which either state directly or imply that the object is to be used for the consumption of controlled substances;
- g. Descriptive materials accompanying the object which explain or depict its use as an object for the consumption of controlled substances;
- h. The mailer in which the object is displayed for sale;
- i. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
- j. Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;
- k. The existence and scope of legitimate uses for the object in the community; and
- l. Expert testimony concerning its use.

### SECTION 4.170. CRIMINAL ACTIVITY IN DRUGS

- A. A person commits the offense of criminal activity in drugs if he knowingly and unlawfully manufactures, cultivates, transports, possesses, furnishes, prescribes, administers, dispenses or compounds a narcotic or dangerous drug. Except for subsection (B) below, criminal activity in drugs is a felony.
- B. If the conviction is for possession of less than one avoirdupois ounce of marijuana, it is a civil infraction punishable by a fine of not more than \$100.00.

### SECTION 4.171. CRIMINAL USE OF DRUGS

- A. A person commits the offenses of criminal use of drugs if he knowingly uses or is under the influence of a narcotic or dangerous drug, except when administered or dispensed by or under the direction of a person authorized by law to prescribe and administer narcotic drugs and dangerous drugs to human beings.
- B. Pursuant to subsection (A) of this section, it is not necessary to allege or prove what specific drug the defendant used, or was under the influence of, in order to establish a prima fascia case.
- C. If the conviction is for criminal use of marijuana, criminal use of drugs is a civil infraction punishable by a fine of not more than \$100.00.

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

---

### SECTION 4.172. TAMPERING WITH DRUG RECORDS

- A. A person commits the crime of tampering with drug records if he knowingly:
1. Alters, defaces or removes a narcotic or dangerous drug label affixed by a manufacturer, wholesaler or apothecary to remove or deface such a label for the purpose of filling prescriptions;
  2. Affixes a false or forged label to a package or receptacle containing narcotic or dangerous drugs;
  3. Makes or utters a false or forged prescription or false or forged written order for narcotic or dangerous drugs; or
  4. Makes a false statement in any narcotic or dangerous drug prescription, order, report or record.
- B. Tampering with drug records is a felony.

### SECTION 4.173. CRIMINAL DRUG PROMOTION

A person commits the offense of criminal drug promotion if he knowingly maintains, frequents or remains at a place:

- A. Resorted to by drug users for the purpose of unlawfully using narcotic or dangerous drugs;
- B. Which is used for the unlawful keeping or sale of narcotic or dangerous drugs; or
- C. If the conviction is for knowingly maintaining, frequenting or remaining at a place where less than one avoirdupois ounce of marijuana is found at the time of an arrest under this section, criminal drug promotion is a civil infraction punishable by a fine of not more than \$100.00.

### SECTION 4.174. OBTAINING A DRUG UNLAWFULLY

A person commits the crime of obtaining a drug unlawfully if he obtains or procures the administration of a narcotic or dangerous drug by:

- A. The forgery or alteration of a prescription or any official written order;
- B. The concealment of a material fact;
- C. Falsely representing himself to be a person authorized by law to obtain narcotic or dangerous drugs; or
- D. Any other form of fraud, deceit or misrepresentation.

### SECTION 4.175. PRIMA FACIE EVIDENCE PERMITTED IN PROSECUTIONS OF DRUG OFFENSES

- A. Proof of unlawful manufacture, cultivation, transportation, or possession of a narcotic or dangerous drug is prima facie evidence of knowledge of its character.
- B. Proof of possession of a narcotic drug not in the container in which it was originally delivered, sold or dispensed is prima facie evidence that the possession is unlawful.

### SECTION 4.176. SEARCH, SEIZURE AND FORFEITURE OF CONVEYANCE IN WHICH DRUGS ARE UNLAWFULLY TRANSPORTED OR POSSESSED

- A. The Tribal prosecutor or law enforcement officer charged with enforcement of this code, having personal knowledge or reliable information that narcotic or dangerous drugs are being unlawfully transported or possessed in any boat, vehicle or other conveyance, may search the same without warrant or other conveyance, may search the same without warrant and without an affidavit being filed. If narcotic or dangerous drugs are found in or upon such conveyance, he



## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

---

may seize them, arrest any person in charge of the conveyance and, as soon as possible, take the arrested person and the seized drugs before the Tribal Court. He shall also, without delay, make and file a complaint for any crime justified by the evidence obtained.

B. Any boat, vehicle or other conveyance used by or with the knowledge of the owner, operator or person in charge thereof for the unlawful transportation, possession or concealment of narcotic or dangerous drugs shall be forfeited to the Tribe in the same manner and with like effect as provided in section 4.169.

### PART XVII. OFFENSES AGAINST PUBLIC HEALTH AND DECENCY

#### SECTION 4.177. ANIMAL ABUSE

A. A person commits the crime of animal abuse when the person intentionally, knowingly, or recklessly:

1. Causes serious physical injury to an animal; or
2. Cruelly causes the death of an animal.

B. Any practice of good animal husbandry is not a violation of this section.

C. It is a civil infraction for a person to fail to report the crime of animal abuse committed in their presence by another person.

#### SECTION 4.178. ANIMAL NEGLECT

A. A person commits the crime of animal neglect if the person intentionally, knowingly, recklessly, or with criminal negligence:

1. Fails to provide minimum care for an animal in that person's custody or control; or
2. Such failure to provide care results in serious physical injury or death to the animal.

B. It is a civil infraction for a person to knowingly fail to report the crime of animal neglect by another person.

#### SECTION 4.179. ANIMAL ABANDONMENT

A. A person commits the crime of animal abandonment if the person intentionally, knowingly, recklessly or with criminal negligence leaves a domesticated animal at a location without providing for the animal's continued care.

B. It is a civil infraction for a person to knowingly fail to report the crime of animal abandonment by another person.

#### SECTION 4.180. PROMOTION OF UNLICENSED BOXING, WRESTLING AND MIXED MARTIAL ARTS EVENTS

A person commits the crime of promoting unlicensed boxing, wrestling and mixed martial arts events when the person intentionally, knowingly or recklessly plans, promotes, hosts or offers a boxing, wrestling or mixed martial arts event that is not conducted in full compliance with the laws of the Comanche Nation, including but not limited to, the Intergovernmental Agreement between the Comanche Nation and the State of Oklahoma acting by and through the Oklahoma State Police and the Oklahoma State Athletic Commission dated June 28, 2012.

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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### PART XVIII. OFFENSES INVOLVING GAMING

#### SECTION 4.181. DEFINITIONS

For purposes of this part, the definition of capitalized terms shall be as set forth in section 1.04 of the Gaming Code.

#### SECTION 4.182. GAMBLING

- A. It shall be unlawful for any person to engage in Class II or Class III Gaming activity or to possess any gaming devices except as may be specifically authorized by the Gaming Code.
- B. Notwithstanding subsection (A) of this section, Class I Gaming is not prohibited.

#### SECTION 4.183. GAMING OFFENSES

- A. It shall be unlawful for any person to:
  - 1. Operate or participate in gaming on Comanche Nation Indian Lands in violation of the provisions of this Code, the Gaming Code or the rules and/or regulations promulgated there under;
  - 2. Knowingly make a false statement in an application for A contractor/vendor License application as required in the Tribal Gaming Code;
  - 3. Bribe or attempt to bribe, or unduly influence or attempt to unduly influence, any person who Licenses, operates, conducts, assists, or is otherwise employed in a gaming activity or enterprise located on Comanche Nation Indian Lands;
  - 4. Cheat at any Class II or Class III game;
  - 5. Commit fraudulent acts regarding the Class II and Class III games at the Gaming Operation, or at any other gaming facility licensed and operated pursuant to the Tribal Gaming Code, including the following:
    - a. To alter or misrepresent the outcome of a game or other event on which wagers have been made after the outcome is made sure but before it is revealed to the players;
    - b. To place, increase or decrease a bet or to determine the course of play after acquiring knowledge, not available to all players, of the outcome of the game or any event that affects the outcome of the game or which is the subject of the bet or to aid anyone in acquiring such knowledge for the purpose of placing, increasing or decreasing a bet or determining the course of play contingent upon that event or outcome;
    - c. To claim, collect or take, or attempt to claim, collect or take, money or anything of value in or from a gambling game, with intent to defraud, without having made a wager contingent thereon, or to claim, collect or take an amount greater than the amount won;
    - d. To place or increase a bet after acquiring knowledge of the outcome of the game or other event which is the subject of the bet, including past-posting and pressing bets;
    - e. To reduce the amount wagered or cancel the bet after acquiring knowledge of the outcome of the game or other event which is the subject of the bet, including pinching bets;
    - f. To manipulate, with the intent to cheat, any component of a gaming device in a manner contrary to the designed and normal operational purpose for the component, with knowledge that the manipulation affects the outcome of the game or with knowledge of any event that affects the outcome of the game;
  - 6. Use, or possess with the intent to use, any device intended to be used to violate the provisions of this section, including but not limited to a device to assist in projecting the outcome of the game, in keeping track of the cards played, in analyzing the probability of the occurrence

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

---

of an event relating to the game, or in analyzing the strategy for playing or betting to be used in the game, except as permitted by the Tribal Gaming Commission;

7. Use or possess counterfeit chips, counterfeit debit instruments or other counterfeit wagering instruments in a gambling game, associated equipment or a cashless wagering system;

8. In playing or using any gambling game, associated equipment or cashless wagering system designed to be played with, receive or be operated by chips, tokens, wagering credits or other wagering instruments approved by the Gaming Commission or by unlawful coin of the United States of America:

a. Knowingly use other than chips, tokens, wagering credits or other wagering instruments approved by the Gaming Commission or lawful coin, legal tender of the United States of America, or use coin or tokens not of the same denomination as the coin or tokens intended to be used in that gambling game, associated equipment or cashless wagering system; or

b. Use any device or means to violate the provisions of this Part or the Gaming Code;

9. When such person is not a duly authorized employee of the Gaming Operation acting in furtherance of his employment within the Gaming Facility, have on his person or in his possession any key or device known to have been designated for the purpose of and suitable for opening, entering or affecting the operation of any gambling game, cashless wagering system or drop box, or any electronic or mechanical device connected thereto, or for removing money or other contents there from;

10. Instruct another in cheating or in the use of any device for that purpose, with the knowledge or intent that the information or use so conveyed may be employed to violate any provision of this Part;

11. Knowingly entice or induce another to go to any place where a gambling game is being conducted or operated in violation of the provisions of this Part, with the intent that the other person play or participate in that gambling game;

12. Manufacture, sell or distribute any cards, chips, dice, game, receipts from Class II or Class III games that can be redeemed for cash, printed paper used to generate receipts used for Class II or Class III games that can be redeemed for cash, or device which is intended to be used to violate any provision of this Part;

13. Mark, alter or otherwise modify any associated equipment or gaming device in a manner that affects the result of a wager by determining win or lose, or alters the normal criteria of random selection, which affects the operation of a game or which determines the outcome of a game.

B. Any Indian who violates a provision of this Part may be fined not more than \$1,000 and/or imprisoned for up to one year for each violation. A separate violation occurs on each day that a violation arises or continues.

### PART XIX. OFFENSES INVOLVING CRIMINAL GANGS

#### SECTION 4.184. FINDINGS AND PURPOSES

A. The Comanche Business Committee finds and declares that it is the right of every person, regardless of race, color, creed, religion, national origin, gender, age, sexual orientation, or handicap, to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals.

B. The Comanche Business Committee has determined that the presence of gangs and gang activity on the Comanche Nation Indian Country has a direct and negative effect on the health,

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

---

safety, and welfare of the Comanche Nation. Gang activity has a particularly negative effect on the tribal youth. Gang membership and gang activity on the Comanche Nation Indian Country involves both Indians and non-Indian persons. The Comanche Business Committee has the inherent sovereign power to pass laws to protect the interests, health, safety and general welfare of all persons and activities within the boundaries of the Comanche Nation Indian Country. The Comanche Business Committee also has authority to protect these interests pursuant to Article VI, Section 1(d) of the Tribal Constitution and Bylaws. The Comanche Nation has the authority to remove and exclude from the jurisdiction of the Comanche Nation non-Indians and Indians pursuant to the inherent power of the tribal court

C. It is the intent of the Comanche Business Committee in enacting this part to seek the eradication of criminal activity by gangs by focusing upon patterns of criminal gang activity and upon the organized nature of gangs, which together, are the chief source of terror created by gangs.

D. It is not the intent of this part to interfere with the exercise of the constitutionally protected rights of freedom of speech, peaceably to assemble and petition for a redress of grievances.

### SECTION 4.185. DEFINITION OF GANG

"Gang" means any combination, conspiracy, understanding, or similar arrangement in law or in fact of three or more persons that, through its membership or through the agency of any member, engages in a course or pattern of criminal activity. It may include any combination of persons organized formally or informally, so constructed that the organization will continue in operation even if individual members enter or leave the organization. It does not include political organizations that regularly practice or otherwise advocate civil disobedience.

### SECTION 4.186. MANDATORY MINIMUM SENTENCES

A. Any person convicted of a crime while having committed the crime as a member of a gang, in furtherance of a gang, or where the crime otherwise constituted gang related activity shall be punished according to the following mandatory minimum sentences:

1. 30 days in jail and 40 hours of community service for the first gang related crime.
2. 60 days in jail and 60 hours of community for the second gang related crime.
3. 90 days in jail and 80 hours of community service for the third gang related crime.
4. 120 days in jail, 120 hours of community service, and banishment from the jurisdiction of the Comanche Nation for a period of 5 years for the fourth or more gang related crimes.

B. All community service mandated by this section shall be service authorized, operated, and monitored by the Department of Public Safety.

C. All jail mandated by this section shall be in a secured jail facility and shall not include home monitoring, electronic surveillance, a drug or alcohol treatment facility, or other alternative sentencing arrangements.

### SECTION 4.187. SOLICITATION OF GANG MEMBERSHIP

In addition to any other crime in this code, it shall be a crime for any person to solicit another to join a gang whether or not such person solicited actually joins the gang.

# TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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## CHAPTER 5. CRIME VICTIM RIGHTS PART I. GENERAL RIGHTS

### SECTION 5.01. RIGHTS OF CRIME VICTIMS INVOLVING DOMESTIC ABUSE, SEXUAL ASSAULT, STALKING, AND DATING VIOLENCE

A. Generally. Any victim of a crime that has been filed in court that directly or indirectly involves domestic abuse, sexual assault, stalking, or dating violence, has the following rights:

1. To be reasonably protected from the accused.
2. To reasonable, accurate, and timely notice of any public court proceeding, or any probation proceeding, involving the crime or of any release or escape of the accused.
3. To not be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
4. To be reasonably heard at any public proceeding in the court involving release, plea, sentencing, or any probation proceeding.
5. Within reason, to confer with the attorney for the CTUIR in the case.
6. To proceedings free from unreasonable delay.
7. To be treated with fairness and with respect for the victim's dignity and privacy.
8. To the prompt return of property when no longer needed for the prosecution of the case.
9. To be notified whether or not criminal charges will be filed.

B. Terms and Juveniles.

1. As used in this Chapter, "crime victim" or "victim of a crime" means a person directly and proximately harmed as a result of the commission of a criminal offense that directly or indirectly involves domestic abuse, sexual assault, stalking, or dating.
2. In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim's rights under this Chapter, but in no event shall the defendant be named as such guardian or representative.

## PART II.

### SECTION 5.02.

A. Officers and employees of the Law Enforcement Department engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in Section 5.01.

B. The Prosecutor shall advise the crime victim that the crime victim can seek the advice of an attorney with respect to the rights described in Section 5.01, at their own cost.

C. Notice of release otherwise required pursuant to this Chapter shall not be given if such notice may endanger the safety of another person.

## PART III. PROCEDURES

### SECTION 5.03. PROCEDURE FOR ASSERTING RIGHTS

A. A crime victim may assert their right by filing a motion with the court in which the defendant is being prosecuted or in which the crime occurred.

B. The court shall take up any such motion forthwith.

## TITLE 2 COMANCHE NATION CRIMINAL CODE AND PROCEDURES

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- C. If the court denies the relief sought, the crime victim may petition the court of appeals for a writ of mandamus.
- D. The court of appeals may issue the writ on the order of a single judge.
- E. The court of appeals shall take up and decide such application forthwith, within 5 business days after the appeal has been filed.
- F. In no event shall proceedings be stayed or subject to a continuance of more than 5 days.
- G. If the court of appeals denies the relief sought, the reasons for the denial shall be clearly stated on the record in a written opinion.
- H. Failure to afford a right shall not provide grounds for a new trial, and may only be used to re-open a plea or sentence in limited circumstances where the failure materially prejudiced the defendant in their plea or sentence.

### CHAPTER 6. TRAFFIC OFFENSES

(RESERVED)

TITLE 3 COMANCHE  
NATION RULES OF  
CIVIL PROCEDURE

# TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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## TABLE OF CONTENTS

### SCOPE AND APPLICATION OF RULES

- Rule .1 Scope
- Rule .2 Application of Formal and Informal Rules of Civil Procedure

### INFORMAL RULES OF CIVIL PROCEDURE

- Rule I-1 Filing and Notice
- Rule I-2 Timing
- Rule I-3 Oral Procedures
- Rule I-4 Form of Court Papers
- Rule I-5 Limitation of Actions
- Rule I-6 Commencement of a Lawsuit; Complaints; Proof of Service; Filing Fee; Summons
- Rule I-7 Amendment, Withdrawal, Dismissal of Complaint
- Rule I-8 Defenses, Answers; Counterclaims
- Rule I-9 Preliminary Injunctions and Temporary Restraining Orders
- Rule I-10 Default
- Rule I-11 Discovery
- Rule I-12 Pre-trial Conference
- Rule I-13 Motions
- Rule I-14 Compelling Witnesses to Appear; Subpoenas
- Rule I-15 Jury Trials
- Rule I-16 Order of Trial
- Rule I-17 Burden and Standard of Proof
- Rule I-18 Informal Rules of Evidence
- Rule I-19 Judgments; Declaratory Judgments
- Rule I-20 Proceedings After Judgment
- Rule I-21 Costs

### FORMAL RULES OF CIVIL PROCEDURE

#### PART I: SCOPE OF RULES

- Rule 1 Scope and Use of Rules
- Rule 2 One Form of Action

#### PART II:

#### COMMENCEMENT OF ACTION, SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

##### Detailed Contents of Part II

- Rule 3 Commencement of Action
- Rule 4 Process
- Rule 5 Service and Filing of Pleadings and other Papers
- Rule 6 Time

#### PART III: PLEADINGS AND MOTIONS

##### Detailed Contents of Part III



# TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

---

- Rule 7 Pleadings Allowed and Form of Motions
- Rule 8 General Rules of Pleading
- Rule 9 Pleading Special Matters
- Rule 10 Form of Pleading
- Rule 11 Signing of Pleadings
- Rule 12 Defenses and Objections; When and How Presented; by Pleading or Motion; Motion for Judgment on the Pleadings
- Rule 13 Counterclaim and Cross-claim
- Rule 14 Third-party Practice
- Rule 15 Amended and Supplemental Pleadings
- Rule 16 Pre-trial Procedure; Formulating Issues

## PART IV: PARTIES

### Detailed Contents of Part IV

- Rule 17 Parties Plaintiff and Defendant; Capacity
- Rule 18 Joinder of Claims and Remedies
- Rule 19 Joinder of Persons Needed for Just Adjudication
- Rule 20 Permissive Joinder of Parties
- Rule 21 Misjoinder and Non-joinder of Parties
- Rule 22 Interpleader
- Rule 23 Class Actions
- Rule 23.1 Derivative Actions by Shareholders
- Rule 23.2 Actions Relating to Unincorporated Associations
- Rule 24 Intervention
- Rule 25 Substitution of Parties

## PART V: DEPOSITIONS AND DISCOVERY

### Detailed Contents of Part V

- Rule 26 General Provisions Governing Discovery
- Rule 27 Dispositions before Action or Pending Appeal
- Rule 28 Persons Before Whom Depositions May be Taken
- Rule 29 Stipulations Regarding Discovery Procedure
- Rule 30 Depositions Upon Oral Examination
- Rule 31 Depositions Upon Written Questions
- Rule 32 Use of Depositions in Court Proceedings
- Rule 33 Interrogatories to Parties
- Rule 34 Production of Documents and Things and Entry Upon Land for Inspection and other Purposes
- Rule 35 Physical and Mental Examination of Persons
- Rule 36 Requests for Admission
- Rule 37 Failure to Make Discovery; Sanctions

## PART VI: TRIALS

### Detailed Contents of Part VI

- Rule 38 Jury Trial of Right
- Rule 39 Trial by Jury or by the Court

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

---

- Rule 40 Assignment of Cases for Trial
- Rule 41 Dismissal of Actions
- Rule 42 Consolidation; Separate Trials; Postponements; Change of Judge
- Rule 43 Witnesses; Evidence
- Rule 44 Proof of Records
- Rule 44.1 Determination of Foreign Law
- Rule 45 Subpoena
- Rule 46 Exceptions Unnecessary
- Rule 47 Jurors
- Rule 48 Juries of Less than Twelve; Majority Verdict
- Rule 49 Special and General Verdicts and Interrogatories
- Rule 50 Motion for a Directed Verdict
- Rule 51 Instructions to Jury; Objections; Arguments
- Rule 52 Findings by the Court
- Rule 53 Masters

### PART VII: JUDGMENT

#### Detailed Contents of Part VII

- Rule 54 Judgments; Costs
- Rule 55 Default
- Rule 56 Summary Judgment
- Rule 57 Declaratory Judgments
- Rule 58 Entry of Judgment
- Rule 59 New Trial; Amendment of Judgment
- Rule 60 Relief from Judgment or Order
- Rule 61 Harmless Error
- Rule 62 Stay of Proceedings to Enforce a Judgment
- Rule 63 Disability of a Judge

### PART VIII: PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

#### Detailed Contents of Part VIII

- Rule 64 Seizure of Person or Property
- Rule 65 Injunctions
- Rule 65.1 Security; Proceedings Against Sureties
- Rule 66 Receivers
- Rule 67 Deposit in Court; Security for Costs
- Rule 68 Offer of Judgment
- Rule 69 Execution
- Rule 70 Judgment for Specific Acts; Vesting Title
- Rule 71 Process in Behalf of and Against Persons not Parties

# 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 question 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

# TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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(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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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-trial 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.

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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### 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-trial 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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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



## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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 of 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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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

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## FORMAL RULES OF CIVIL PROCEDURE

Part I. Scope of Rules.....	1-2
Part II. Commencement of Action; Service of Process, Pleadings, Motions and Orders.....	3-6
Part III. Pleadings and Motions.....	7-16
Part IV. Parties.....	17-25
Part V. Depositions and Discovery.....	26-37
Part VI. Trials.....	38-53
Part VII. Judgment.....	54-63
Part VIII. Provisional and Final Remedies and Special Proceedings.....	64-71

# TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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## Part I.

### SCOPE OF RULES

#### Rule

- 1 Scope and use of rules
- 2 One form of action

#### 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

#### Rule 3 Commencement of action

#### Rule 4 Process

- A. Summons; issuance after filing complaint
  - B. Summons; form; duplicate summons
  - C. Process; by whom served
  - D. Summons; service; minors;
  - E. (1) Summons: alternative methods of service
    - (2) Summons: personal service off the Comanche Nation Indian Country
    - (3) Summons: service by publication
    - (4) Summons: time for appearance after service under 4E(1), 4E(2), 4E(3), or 4E(5)
    - (5) Alternative provisions for service in foreign country
  - F. Territorial limits of effective service
  - G. Return
  - H. Return of service by publication
  - I. Amendment
- 5 Service and Filing of Pleadings and other papers
    - A. Service: when required
    - B. Service; parties served; continuance
    - C. Service after appearance; service after judgment; how made
    - D. Service; numerous defendants
    - E. Service; acceptance or waiver; voluntary appearance
    - F. Service; unknown heirs in real property actions
    - G. Filing
    - H. Filing with the court defined
  - 6 Time
    - A. Computation

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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- 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



## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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.

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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### 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 some 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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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### Rule

- 7 Pleadings allowed and form of motions
  - A. Pleadings allowed
  - B. Motions, petitions, and other papers
- 8 General Rules of pleading
  - A. Claims for relief
  - B. Defenses; form of denials
  - C. Affirmative defenses
  - D. Effect of failure to deny
  - E. Pleading to be concise and direct; consistency
  - F. Construction of pleadings
- 9 Pleading special matters
  - A. Capacity
  - B. Fraud, mistake, condition of the mind
  - C. Conditions precedent
  - D. Official document or act
  - E. Judgment
  - F. Time and place
  - G. Special damage
  - H. Complaint in action for libel or slander
  - I. Verification of answer
- 10 Form of pleading
  - A. Caption; names of parties
  - B. Paragraphs; separate statements
  - C. Adoption by reference; exhibits
  - D. Method of preparation and filing
  - E. Erasures and interlineation
  - F. Designation of defendant
- 11 Signing of pleadings
  - A. Signing of pleadings
  - B. Verification of pleading generally
- 12 Defenses and objections; when and how presented; by pleading or motion; motion for judgment on pleadings
  - A. When presented
  - B. How presented; motion to dismiss
  - C. Motion for judgment on the pleadings
  - D. Preliminary hearings
  - E. Motion for more definite statement
  - F. Items of account; demand
  - G. Motion to strike
  - H. Consolidation of defenses in motion
  - I. Waiver or preservation of certain defenses
- 13 Counterclaim and cross-claim
  - A. Compulsory counterclaims
  - B. Permissive counterclaims
  - C. Counterclaim exceeding opposing claim

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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- D. Counterclaim maturing or acquired after pleading
- E. Omitted counterclaim
- F. Cross-claim against co-party
- G. Joinder of additional parties
- H. Separate trials; separate judgments
- 14 Third party practice
  - A. When defendant may bring in third party
  - B. When plaintiff may bring in third party
- 15 Amended and supplemental pleadings
  - A. Amendments
  - B. Amendments to conform to the evidence
  - C. Relation back of amendments
  - D. Supplemental pleadings
- 16 Pre-trial procedure; formulating issues
  - A. Formulating issues
  - B. Disposition of motions; overruling by setting for trial

### 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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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.

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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



## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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.

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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 13. 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.

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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### 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;

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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(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

#### Rule

#### 17 Parties plaintiff and defendant; capacity

- A. Real party in interest
- B. Actions by personal representatives; setting aside judgment
- C. Actions by or against personal representatives
- D. Actions against surety, assignor or endorser
- E. Infants or incompetent persons
- F. Bond of guardian ad litem or next friend
- G. Consent of guardian ad litem or next friend; liability; compensation
- H. Partnerships

#### 18 Joinder of claims and remedies

- A. Joinder of claims
- B. Joinder of remedies; fraudulent conveyances

#### 19 Joinder of persons needed or just adjudication

- A. Persons to be joined if feasible
- B. Determination by court whenever joinder not feasible
- C. Pleading reasons for nonjoinder
- D. Exception of class actions

#### 20 Permissive joinder of parties

- A. Permissive joinder
- B. Separate trials

#### 21 Misjoinder and non-joinder of parties

#### 22 Interpleader

- A. Interpleader
- B. Release from liability; deposit or delivery

#### 23 Class actions

- A. Prerequisites to a class action
- B. Class actions maintainable
- C. Determination by order whether class action to be maintained; notice; judgment; actions conducted partially as class actions
- D. Orders in conduct of actions
- E. Dismissal or compromise

#### 23.1 Derivative actions by shareholders

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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23.2 Actions relating to unincorporated associations

24 Intervention

- A. Intervention of right
- B. Permissive intervention
- C. Procedure
- D. Time to answer

25 Substitution of parties

- A. Death
- B. Death of defendant after tort action commenced
- C. Incompetency
- D. Transfer of interest
- E. Public officers; death or separation from office

### 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.

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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 be 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.



## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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### 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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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(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.

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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 be 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 complains 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 if it 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.

# TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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## 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 receiver, 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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

---

- D. Sequence and timing of discovery
- E. Supplementation of responses
- 27 Depositions before action or pending appeal
  - A. Before action; petition; notice and service; order and examination; use of deposition
  - B. Pending appeal
- 28 Persons before whom depositions may be taken
  - A. Within the United States;
  - B. In foreign countries
  - C. Disqualification for interest
- 29 Stipulations regarding discovery procedure
- 30 Depositions upon oral examination
  - A. When depositions may be taken
  - B. Notice of examination: General requirements; special notice; nonstenographic recording; production of documents and things; deposition of organization
  - C. Examination and cross-examination; record of examination; oath; objections
  - D. Motion to terminate or limit examination
  - E. Submission to witness; changes; signing
  - F. Certification and filing by officer; exhibits; copies; notice of filing; preservation of notes and tapes of depositions
  - G. Failure to attend or to serve subpoena; expenses
  - H. Depositions for foreign jurisdiction
- 31 Depositions on written questions
  - A. Serving questions; notice
  - B. Officer to take responses and prepare record
  - C. Notice of filing
- 32 Use of depositions in court proceedings
  - A. Use of Depositions
  - B. Objections to admissibility
  - C. Effect of errors and irregularities in depositions
- 33 Interrogatories to parties
  - A. Availability; procedure for use
  - B. Scope; use at trial
  - C. Option to produce business records
- 34 Production of documents and things and entry upon land for inspection and other purposes
  - A. Scope
  - B. Procedure
  - C. Persons not parties
- 35 Physical and mental examination of persons
  - A. Order for examination
  - B. Report of examining physician
  - C. Alternate procedure: Notice of examination; objections
- 36 Request for admission
  - A. Request for admission
  - B. Effect of admission
- 37 Failure to make discovery; sanctions
  - A. Motion for order compelling discovery

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

---

- 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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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 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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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



## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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, by 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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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.

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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(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.

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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### 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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

---

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 parties 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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

---

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 the 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 from 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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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.



## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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### 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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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 is 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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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

- A. Right preserved
- B. Demand
- C. Demand; specifications of issues
- D. Waiver

#### 39 Trial by jury or by the court

- A. Trial by jury
- B. Order of trial by jury
- C. Verdict, deliberations and conduct of jury; sealed verdict
- D. Duty of officer in charge of jury
- E. Admonition to jurors
- F. Communication to court by jury
- G. Discharge by jury; new trial
- H. Trial by the court
- I. Procedure applicable in trial by the court
- J. Limitation of time of decision by court
- K. Advisory jury and trial by consent
- L. Interrogatories when equitable relief sought; answers advisory

#### 40 Assignment of cases for trial

#### 41 Dismissal of actions

- A. Voluntary dismissal; by plaintiff or by stipulation or by order of court; effect
- B. Involuntary dismissal; effect thereof
- C. Dismissal of counterclaim, cross-claim, or third-party claim

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

---

- D. Costs of previously dismissed action
- 42 Consolidation; separate trials; postponements; change of judge
  - A. Consolidation
  - B. Separate trials
  - C. Postponement of trial
  - D. Application for postponement; grounds; effect of admission of truth affidavit by adverse party
  - E. Deposition of witness or party; consent
  - F. Change of judge
- 43 Witnesses; evidence
  - A. Definition of witness
  - B. Affirmation in lieu of oath
  - C. Limitation on examination of witness; exception
  - D. Form and admissibility of evidence
  - E. Evidence on motions
  - F. Omission of testimony during trial
  - G. Preservation of court reporters' notes of court proceedings
- 44 Proof of records; determination of foreign law
  - A. Records of public officials
  - B. Proof of records of notaries public
  - C. Proof of appointment of executor, administrator or guardian; letters or certificate
  - D. Comparison of handwriting
- 44.1 Determination of foreign law
- 45 Subpoena
  - A. Subpoena for attendance of witnesses; form; issuance
  - B. Subpoena for production of documentary evidence
  - C. Failure to produce documentary evidence
  - D. Service of subpoena
  - E. Subpoena for taking depositions; place of examination
  - F. Subpoena for a hearing or trial
  - G. Contempt
- 46 Exceptions unnecessary
- 47 Jurors
  - A. Trial jury; procedure; list; striking; oath
  - B. Voir dire oath; examination of jurors
  - C. Grounds of challenge for cause
  - D. Extent of examination; trial of challenge
  - E. Manner of challenging; number or preemptory challenges
  - F. Alternate jurors
- 48 Juries of less than twelve; majority verdict
- 49 Special and general verdicts and interrogatories
  - A. Return of verdict by nine or more jurors; presentation in court
  - B. Proceedings on return of verdict
  - C. Defective or nonresponsive verdict
  - D. Fixing amount of recovery
  - E. Special form of verdict not required
  - F. Polling jury; procedure

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

---

- G. Special verdict and interrogatories
- H. General verdict accompanied by answers to interrogatories
- 50 Motion for a directed verdict
  - A. When made; effect
  - B. Motion for judgment notwithstanding the verdict
  - C. Same: Conditional rulings on grant of motion
  - D. Same: Denial of motion
  - E. Granting of motion
- 51 Instructions to jury; objections; arguments
  - A. Instructions to jury; objection
  - B. Instructions to jury; notations; filing; transcript
  - C. Arguments
  - D. Interruption of counsel during argument
- 52 Findings by the court
  - A. Effect
  - B. Amendment
  - C. Submission on agreed statement of facts
- 53 Masters
  - A. Appointment and compensation
  - B. Reference
  - C. Powers
  - D. Meetings
  - E. Witnesses
  - F. Statement of accounts
  - G. Report; contents and filing
  - H. Report of master
  - I. Stipulation as to findings
  - J. Draft report

### 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.

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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### 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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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.

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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### 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,



## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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- (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.

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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### 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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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.

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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



## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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 the 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 part 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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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

#### 54 Judgments; costs

- A. Definition; form
- B. Judgment upon multiple claims or involving multiple parties.
- C. Judgment in divorce action
- D. Demand for judgment
- E. Entry of judgment after death of party

#### F. Costs

#### 55 Default

- A. Entry
- B. Judgment by default
- C. Setting aside default
- D. Plaintiffs, counterclaimants, cross-claimants

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

---

- E. Judgment against the Comanche Nation
- F. Judgement when service by publication; statement of evidence
- 56 Summary judgment
  - A. For claimant
  - B. For defending party
  - C. Motion and proceedings thereon
  - D. Case not fully adjudicated on motion
  - E. Form of affidavits; further testimony; defense required
  - F. When affidavits are unavailable
  - G. Affidavits made in bad faith
- 57 Declaratory judgments
- 58 Entry of judgment
  - A. Entry
  - B. Remittitur; procedure; effect on right of appeal
  - C. Enforcement of judgment; special writ
  - D. Objections to form
- 59 New trial; amendment of judgment
  - A. Procedure; grounds
  - B. Scope
  - C. Contents of motion; amendment; rulings reviewable
  - D. Time for motion
  - E. Time for serving affidavits
  - F. On initiative of court
  - G. Questions to be considered in new trial
  - H. Motion on ground of excessive or inadequate damages
  - I. After service by publication
  - J. Number of new trials
  - K. Motion to alter or amend a judgment
  - L. Specification of grounds of new trial in order
- 60 Relief from judgment or order
  - A. Clerical mistakes
  - B. Correction of error in record of judgment
  - C. Mistake; inadvertence; surprise; excusable neglect; newly discovered evidence; fraud, etc
  - D. Reversed judgment of foreign state
- 61 Harmless error
- 62 Stay of proceedings to enforce a judgment
  - A. Stay in injunctions and receiverships
  - B. Stay on motion for new trial or for judgment
  - C. Injunction pending appeal
  - D. Stay of judgment directing execution of instrument; sale of perishable property and disposition of proceeds
  - E. Stay in favor of the Comanche Nation or agency thereof
  - F. Stay of judgment under Rule 54B
- 63 Disability of a judge

### RULE 54. JUDGMENTS; COSTS

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

---

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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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



## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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 160, 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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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### 65 Injunctions

- A. Preliminary injunction; notice
- B. Dissolution of preliminary injunction prior to final hearing prohibited; exception in case of verified answer
- C. Motion to dissolve or modify
- D. Temporary restraining order; notice; duration
- E. Security
- F. Security on injunction restraining collection of money; injunction made permanent
- G. Form and scope of injunction or restraining order
- H. Disobedience of injunction as contempt; order to show cause; warrant; attachment; punishment

#### 65.1 Security; Proceedings against sureties

### 66 Receivers

- A. Application; verification; service; notice; restraining order
- B. Appointment; oath; bond; certificate
- C. Powers; termination; governing law
- D. Procedure

### 67 Deposit in court; security for costs

- A. By leave of court
- B. By order of court
- C. Custody; duties of clerk
- D. Security for costs; when required; bond and conditions
- E. Inability to give security; proof; objection and examination
- F. Exemptions; exceptions

### 68 Offer of judgment

### 69 Execution

### 70 Judgment for specific acts vesting title

### 71 Process in behalf of and against persons not parties

## 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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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 shall 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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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 contemtor 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 contemtor, 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 complaint 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 (a) 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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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

## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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 trial 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



## TITLE 3 COMANCHE NATION RULES OF CIVIL PROCEDURE

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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.

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# TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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## COMANCHE CHILDREN AND FAMILY RELATIONS CODE

### STATEMENT OF HISTORY

The Comanche Nation Tribal Court was created on April 9, 1987, under the authority of Article VI, Section 7, Subsection (J) of the Constitution of the Comanche Tribe (later known as Comanche Nation). The Court's powers and duties are set forth in this Code, pursuant to the inherent sovereignty of the Comanche Nation and in accordance with the Indian Child Welfare Act.

### CHAPTER ONE

#### TITLE; PURPOSE AND CONSTRUCTION; COMANCHE NATION TRIBAL COURT; PROSECUTOR; COURT CLERK/COURT ADMINISTRATOR; GENERAL DEFINITIONS

**Section 101. Title.** This Code shall be cited as the "Comanche Children and Family Relations Code" or "Children's Code."

**Section 102. Purpose and Construction.**

- (a) **Purpose.** The purpose of this Code is to establish a division of the Comanche Tribal Court to:
- (1) Secure for each child subject to this Code such care and guidance, preferably in his own home, as will best serve his welfare and the interests of the Nation and society in general;
  - (2) Protect and preserve Comanche tribal custom and heritage and the cultural identity of each child, and preserve and strengthen the ties between the child and the Comanche Nation whenever possible;
  - (3) Preserve and strengthen family ties whenever possible, and strengthen and improve the home and its environment when necessary;
  - (4) Remove a child from the custody of his parents and Indian custodians only when his welfare and safety or the protection of the public would otherwise be endangered;
  - (5) Secure for any child removed from the custody of his parents the necessary care, guidance and discipline to assist him in becoming a responsible and productive member of his Nation and society in general;
  - (6) Resolve, whenever possible, Comanche Nation child welfare matters by preventative and non-judicial means before resorting to the Comanche Nation Tribal Court for adjudication;
  - (7) To provide standards and procedures to guide the Comanche Nation Tribal Court when hearing matters involving Comanche children; and
  - (8) Guarantee to persons under the jurisdiction of the Comanche Nation Tribal Court the protection of rights accorded them under the Indian Civil Rights Act of 1968, 25 U.S.C. §§

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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1301-1303.

**Construction.** The provisions and terms of this Code shall be liberally construed so as not to limit the jurisdiction of the Comanche Nation Tribal Court over children, and to facilitate the authority of the Comanche Nation Tribal Court to act to protect the interests of children and their families. When interpreting terms not defined by this Law, the Comanche Nation Tribal Court shall take into consideration Comanche laws, customs, and traditional child-rearing practices. Unless in conflict with applicable Comanche law, terms not specifically defined in this Law shall be defined according to their normal usage, or as defined in the Indian Child Welfare Act (25

U.S.C. § 1901-1963); Title IV-B and Title IV-E of the Social Security Act (42 U.S.C. §620 et seq. and 42 U.S.C. §670 et seq. respectively); the Adoption and Safe Families Act (ASFA) (P.L. 105-89); and the Bureau of Indian Affairs Guidelines to the federal law; and any applicable federal law.

### **Section 103. Comanche Nation Children and Family Relations Division of the Comanche Nation Court.**

- (a) The Comanche Children and Family Relation Code is established and is to be administered as a division of the Comanche Nation Court pursuant to Title 1 of the Comanche Nation Tribal Courts Code. The provisions of Title 1 will be specifically applicable to the Children and Family Relation Division.
- (b) Any one Comanche Nation Tribal Court Judge acting separately or any two or more Comanche Nation Tribal Court Judges acting jointly, are authorized to: (1) take official judicial action in child custody proceedings as defined in **section 107(d)** of this Code; (2) take official judicial action in judicial proceedings for name changes for children and adults, guardianships involving adult wards and adult adoptions; and (3) conduct marriage ceremonies in accordance with all requirements of this Code, including the limitations set forth in **subsection f** of this section. In carrying out the duties and powers especially enumerated under this Code, the Judges of the Comanche Nation Tribal Court shall have the powers commensurate with similar Judges of courts of similar jurisdiction, including, but not limited to, the contempt power, the power to issue custody warrants, and the power to issue search warrants and writs of habeas corpus and mandamus.
- (c) **Limitations of Authority.** A Court order signed by one Judge may be vacated or rescinded only when executed by: (1) the Judge who issued the order or (2) at least two Judges, regardless of whether either was the Judge who originally issued the order. A Court order signed by two or more Judges may be vacated or rescinded only when executed by at least two Judges, and if possible, by all three Judges. Notwithstanding the foregoing, no child (or children) shall be returned to the parent or the home from which the child was originally removed without a specific Court Order signed by at least two Judges following hearing in regular or special session.

### **(1) Section 104. Court Clerk/Court Administrator: Duties: Deputy Court Clerk.**

- (a) **Court Clerk/Court Administrator and Deputy Court Clerk; General Functions.** The Court

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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Clerk/Court Administrator of the Comanche Nation Tribal Court performs all functions of a Court Clerk for the Children and Family Relations Division of Comanche Nation Tribal Court has set forth in Title 1 of the Comanche Nation Code.

- (b) Filing and Preservation of Documents; Requests for Documents. It is the duty of the Court Clerk/Court Administrator to file together and carefully preserve in his office, all papers delivered to him for that purpose in every proceeding in the Comanche Nation Tribal Court. The Court Clerk/Court Administrator shall endorse upon every paper filed with him, the day of filing it; and upon every order for a provisional remedy, and upon every undertaking given under the same, the day of its return to his office. Any request for production of court documents, whether by subpoena or otherwise, shall be done by submission of a petition to the Nation Tribal Court setting forth the document required and the reasons for the request. The Nation Tribal Court shall make a determination of the relevancy of the request and may grant or deny the petition by written order.
- (c) Numbering and Maintenance of Casefiles. Related to the operation of the Comanche Nation Children and Family Relations Division. The Clerk/Court Administrator shall keep the petition, the process, return, the pleadings subsequent thereto, reports, verdicts, orders, judgments, and all material acts and proceedings of the court in a separate case file for each child custody proceeding, which shall be marked with the title and number of the case. The Court Clerk/Court Administrator shall maintain any documentary or physical evidence admitted into evidence by the Court during hearings at a secure location separate and apart from the case files. Case files shall be numbered in accordance with a numbering system. Each case number shall contain a prefix, followed by a hyphen and the last two digits of the calendar year in which the case was filed followed by a hyphen and the consecutive number of the case. Beginning January 1 of each calendar year, the last two digits of the calendar year designation shall be changed and the consecutive case number for each type of prefix shall begin again with number The types of prefixes shall be as follows:
- (1) Deprived, child abuse, child in need of treatment and child in need of supervision cases: JFJ;
  - (2) Guardianship cases: PG;
  - (3) Adoption cases, including relinquishments or consents to adoption: PA;
  - (4) Paternity proceeding: JFP.
  - (5) Emancipation proceedings; actions for judicial consent to the marriage of a child; and actions for writ of habeas corpus related to custody of a child: JFM; and
  - (6) Name change case: NC.
- (d) Filing of Documents. The Court Clerk/Court Administrator shall date stamp each document filed in the case file. The Court Clerk/Court Administrator shall accept legible facsimile transmissions of documents for filing in the casefile; provided that such documents are sent directly to a facsimile machine in the Court Clerk/Court Administrator's office designated for that purpose and not accessible to the public; and provided further that the original pleading shall be mailed or otherwise delivered to the Court Clerk/Court Administrator within ten business days of the date of filing of the facsimile copy. If the Court Clerk/Court

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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Administrator discovers a pleading or other paper which has been filed or submitted for filing that bears an incorrect case number or other incorrect identifying data, the Court Clerk/Court Administrator shall correct the case number or other incorrect identifying data and enter a notation on the docket sheet of both cases recording the correction. The corrected pleading or other paper shall be placed in the court file bearing the corrected case number. .

- (e) Seal of Court Clerk/Court Administrator; Certification. The Court Clerk/Court Administrator shall keep a seal, to be furnished by the Comanche Nation Tribal Court, which shall reference the "Comanche Nation Tribal Court." The seal may be either metallic or nonmetallic. Every instrument, document, record, paper or other thing required to be certified by the court or by the Court Clerk/Court Administrator shall contain the seal of the Court Clerk/Court Administrator. The Court Clerk/Court Administrator is authorized to certify the authenticity of copies of the journal record and copies of the original instruments that are part of the court file. Such certified copies may be received in evidence with the same effect as the original would have had and without further identification by the party desiring to offer it.
- (f) Dockets and Journals. In addition to any other records required by this Code or the rules of the Comanche Nation Tribal Court, the Court Clerk/Court Administrator shall keep the following records:
  - (1) Case Docket. On the case docket the Court Clerk/Court Administrator shall enter the case style of each action in the order in which it is brought. The docket sheets for each action shall include the title and date for every document filed in the case, including all judgments and orders of the court. Either a Judge or the clerk shall prepare a court minute during or immediately following each hearing in a case, for placement in the case docket in order to record all actions taken by the Court. The Court Clerk shall issue a copy of the court minute to the Prosecutor, the ICWD Director and the parties or their counsel of record no later than the next business day following the date of the hearing. The case docket may be kept entirely on computer or other appropriate medium. Paper copies of case dockets in the custody of the Court Clerk/Court Administrator may be destroyed after being stored on at least two electronic disks or other appropriate medium. One electronic copy of the case docket shall be maintained in the Court Clerk/Court Administrator's office and one electronic copy shall be updated monthly and stored by the Court Clerk/Court Administrator in a bank or other appropriate local depository for reproduction in the event that the copy in the Court Clerk/Court Administrator's office is destroyed or becomes unusable. Any notes, excluding court minutes, taken by the Judges during proceedings shall not be included in the court file or official records, but may be maintained by the Court Clerk/Court Administrator in separate administrative files or notebooks under the name of each Judge, arranged chronologically in order of case file numbers, which shall be for the use of the Judge who took the notes contained therein and for the use of the Court Clerk/Court Administrator for preparation of orders at the direction and subject to approval of the Chief Judge.
  - (2) Trial Docket. The Court Clerk/Court Administrator shall maintain a Trial Docket, listing the dates scheduled for all hearings and trials in all judicial proceedings filed in the Comanche Nation Tribal Court, including references to continuances of hearings granted, if any.
- (g) Process; Writs and Provisional Remedies. The Court Clerk/Court Administrator shall sign, date, seal, certify and issue process of every kind, including summons and subpoenas. The

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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Court Clerk/Court Administrator shall also sign, date, seal, certify and issue all writs and orders for provisional remedies, including habeas corpus proceedings seeking custody of a child; provided that said documents shall first be prepared by the party or his attorney who is seeking the issuance of such process, writ or order. The Court Clerk/Court Administrator shall, upon the return of every summons, subpoena, writ or order pertaining to writs, enter upon the case docket whether or not service has been made; and, if the document has been served, the name of the person upon whom the document was served and the day and manner of the service upon such person. The entry shall be evidence in case of the loss of the document. The style of all documents issued in accordance with this section shall be "Comanche Nation Tribal Court"

- (h) Development of Legal Forms. The Court Clerk/Court Administrator shall develop legal forms with the assistance of the Prosecutor and shall maintain said forms at the Court Clerk/Court Administrator's Office. The Court Clerk/Court Administrator shall assist parties not represented by legal counsel in completing the forms; provided that a notice shall be posted in the Court Clerk/Court Administrator's Office stating: "The Court Clerk/Court Administrator is not authorized to provide legal advice or assistance to any person, but may answer general questions concerning the completion of legal forms available to the public by the Court Clerk/Court Administrator's Office."
- (i) Case Statistics. The Court Clerk/Court Administrator of record shall furnish without cost to the ICWD such statistical and other information related to cases filed with the Comanche Nation Tribal Court as the ICWD may request for purposes of applying for or meeting grant requirements and for preparation of the ICWD's reports pursuant to **sections 303 and 304** of this Code, including without limitation quarterly reports containing the number and classification of cases filed during the quarter, the number and classification of court cases dismissed during the quarter, and the number and classification of cases pending before the Comanche Nation Tribal Court as of the end of each quarter of the calendar year.
- (j) Acceptance of Payments on Behalf of Children. The Court Clerk/Court Administrator is authorized to accept monies paid in accordance with any judgment, order, settlement, distribution or decree for the use and benefit of, and to the credit of, any child who is the subject of a child custody proceeding before the Comanche Nation Tribal Court, and to pay out such money as specified by order of the Nation Tribal Court; provided that the Court Clerk/Court Administrator shall maintain a separate bank account for this purpose and shall account separately for the funds of each child who is the beneficiary of the funds. Such order may be made by the Court in the original cause in which the funds were credited, and the Court may direct the Court Clerk/Court Administrator to make payment of the same in installments or in one lump sum as may seem for the best interests of the child.

### **Section 105. Comanche Nation Tribal Court Budget and Financial Account.**

(a) Annual Budget. The Comanche Nation Tribal Court shall prepare an annual budget to be submitted for approval of the General Council in accordance with the Constitution and laws of the Comanche Nation.

(b) Establishment of Comanche Nation Tribal Court Account. Beginning on October 1, 2008, there shall be established a separate account entitled "Comanche Nation Tribal Court

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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Account," which shall consist of all approved annual budget funding from the Comanche Nation, all monies which may be received as court costs or fines, any grant funding from the federal government and any other monies designated by Comanche law for deposit into the account; provided that nothing herein shall be construed to authorize or require the payment of any filing fees in proceedings filed in the Comanche Nation Tribal Court. All monies accruing to the credit of the Comanche Nation Tribal Court Account shall be expended by the Court Clerk/Court Administrator, upon the approval of the Chief Judge, for the lawful operation and expenses of the Comanche Nation Tribal Court, the Court Clerk/Court Administrator's office or for such other purposes required by specific grants or contracts received by the Comanche Nation Tribal Court.

Separate Accounts. The Comanche Nation Tribal Court Account shall be divided into separate accounts as deemed necessary by the Court or as required by any accounting policies, procedures or law of the Comanche Nation, which shall include without limitation a separate account for payments to the Comanche Nation Tribal Court for the benefit of third parties.

(c) Administration of Comanche Nation Tribal Court Account. Payments from the Comanche Nation Tribal Court Account shall be made only upon approval by the Court Clerk/Court Administrator and Chief Judge. In its administration of the Comanche Nation Tribal Court Account, the Nation Tribal Court and Court Clerk/Court Administrator shall comply with the accounting policies and procedures established in accordance with law of the Comanche Nation. The Comanche Nation Tribal Court shall furnish to the Comanche Business Committee quarterly and annual financial statements of all funds within the Comanche Nation Tribal Court's control, which shall disclose cumulative receipts and disbursements, cash balances, and such other fiscal information as the Comanche Business Committee may require.

(d) Banking. The Comanche Nation Tribal Court shall be authorized to maintain separate bank accounts in interest-bearing accounts of one or more banking facilities, investment and/or other commercial financial institutions selected and approved by at least two Judges of the Comanche Nation Tribal Court and to cause all disbursements from said accounts to be made in accordance with the law of the Comanche Nation

### **Section 106. Prosecutor.**

The Prosecutor of the Comanche Nation Children and Family Relations Division shall be the Prosecutor as set forth in Section 5.01 of Title 1 of the Comanche Nation Courts Code.

**Section 107. Definitions: General** Unless the context otherwise requires, as used in this Code the following terms shall be defined as follows:

(a) Adjudicatory Hearing. "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition alleging a child to be deprived, abused, in need of supervision, or in need of treatment filed pursuant to this Code are supported by the evidence.

(b) Adult. "Adult" means (1) a person eighteen years of age or over, or (2) a married person less than eighteen years of age.

(c) Child or Comanche Child. "Child" or "Comanche child" means any unmarried person who is under age eighteen and is either: (1) a member of the Comanche Nation; or (2) eligible for membership in the Comanche Nation and either the biological child of a member of

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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the Comanche Nation or the biological child of a person who is eligible for membership in the Comanche Nation.

(d) Child Custody Proceedings. "Child custody proceedings" means all voluntary or involuntary proceedings involving children, including without limitation cases in which the child has been made a ward of the Comanche Nation Tribal Court; foster care placements; adjudications; termination of parental rights; relinquishments or consents to adoption; permanency plans; pre-adoptive and adoptive placements; adoptions; guardianship proceedings; transfer proceedings to or from a court of another sovereign; paternity actions; actions for judicial consent to the marriage, employment or enlistment of a child, when such consent is required by law; emancipations, actions for writ of habeas corpus; and actions concerning children in need of treatment and children in need of supervision. For purposes of this Code, the following types of child custody proceedings shall have the following meanings:

(1) "Foster care placement" which shall mean any action removing a child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a legal guardian where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(2) "Termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship, as more specifically defined in **subsection (u)** of this section;

(3) "Pre-adoptive placement" which shall mean the temporary placement of a child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(4) "Adoptive placement" which shall mean the permanent placement of a child for adoption, including any action resulting in a final decree of adoption.

The term "child custody proceeding" shall not include a placement based on an award in a divorce proceeding of custody to one of the parents.

(e) Comanche Nation Tribal Court. "Comanche Nation Tribal Court" or "Court" means the Children and Family Relations Division of the Comanche Nation Tribal Court established pursuant to **section 103** of this Code.

(f) Comanche Household. A "Comanche Household" is a home in which at least one head of the household is a member of the Comanche Nation, or eligible for membership in the Nation.

(g) Court of Indian Offenses. "Court of Indian Offenses" means a court established pursuant to 25 C.F.R. Part 11.

(h) Commit. "Commit" means to transfer custody.

(i) Detention. "Detention" means the temporary care of a child who requires secure custody in a physically restrictive placement or facility pending Court disposition or a Court order for placement or commitment.

(j) Developmentally Disabled Child. "Developmentally disabled child" means any child who has a physical or mental impairment or a combination of physical and mental impairments lasting indefinitely, for an extended period of time, or permanently, which



## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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substantially limits one or more of the major life activities of the child, such as self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency, or who is regarded as having such an impairment by a competent medical professional.

(k) Dispositional Hearing. "Dispositional hearing" means a hearing, held after an adjudicatory hearing has found a child to be deprived, abused, in need of supervision, or in need of treatment in which the Court shall determine what treatment should be ordered for the family and the child, and what placement of the child should be made during the period of treatment.

(l) Expert Witness. An "expert witness" means one of the following persons providing expert testimony on a topic related to his field of expertise:

(1) A member of the Comanche Nation who is knowledgeable about the Comanche Nation's family values, practices and customs, provided that such qualifications shall be established by consideration of the following factors: the age of the expert witness, whether he is fluent in the language of the Comanche Nation, whether he has resided within the territorial jurisdiction of the Comanche Nation for a significant period of time, the extent of his involvement in Indian church activities, ceremonies, dances and other cultural activities within the Nation, testimony by other members of the Comanche Nation that he is recognized as being knowledgeable about the Nation's family values, practices and customs, and other similar factors;

(2) A lay expert witness having substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and childrearing practices within the Comanche Nation;

(3) A licensed physician;

(4) A qualified mental health professional; or

(5) A professional person having substantial education and experience in the area of his specialty.

(m) He and His. "He" and "his" is used in a non-gender specific manner and includes both males and females.

(n) Indian Country. "Indian country" shall be defined for purposes of this Code as all the territory over which the Comanche Nation may exercise civil or criminal jurisdiction, including but not limited to formal and informal reservation land, land held in trust for the Nation, land held in trust for individual tribal members, dependent Indian communities, and other lands set aside for use by the Nation. This definition is meant to be as broad and as inclusive as possible and shall be interpreted to include all lands and waters over which the Nation may exercise jurisdiction pursuant to applicable law. The jurisdiction of the Comanche Nation is concurrent with the Kiowa Indian Tribe and the Apache Indian Tribe with respect to the commonly-held lands referred to as the KCA lands, and the term "Indian country" shall include said lands.

(o) Law Enforcement Agency. "Law enforcement agency" means a law enforcement agency of the Nation, the Bureau of Indian Affairs or other federal agency, a municipality, a county sheriff or a state agency.

(p) Nation. "Nation" means the Comanche Nation.

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(q) Protective Supervision. "Protective supervision" means a legal status created by court order at any dispositional phase of involuntary child custody proceedings, where the child has been made a ward of the Comanche Nation Tribal Court but has not been placed in ICWD custody, and has instead been permitted by the Court to remain in his own home or the home of an extended family member or legal custodian under the supervision of the Comanche Nation Tribal Court through the ICWD during the period during which treatment is being provided to the family by the agency designated by the Court.

(r) Qualified Mental Health Professional. "Qualified mental health professional" means a person having specific training and current experience in the mental health testing, examination, evaluation and diagnosis of children and adolescents and who either: holds at least a master's degree in a mental health field and is employed under the classification of a psychological assistant or social worker II or above by the state as a provider of mental health services or possesses a current, valid Oklahoma license in a mental health field or permission to practice by a licensure board in a mental health field.

(s) Residual Parental Rights and Responsibilities. "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after legal custody or guardianship of the person of said child has been vested in another person, agency, or institution, but where parental rights have not been terminated, including, but not necessarily limited to, the responsibility for support, the right to consent to adoption, the right to inherit from the child, the right to determine the child's religious affiliation, and the right to reasonable visitation with the child unless restricted by the Court.

(t) Telephone Conference Communication. "Telephone conference communication" means use of a telephone device that allows all parties, which may include the child, to hear and be heard by the other parties at the hearing.

(u) Termination of Parental Rights or Termination of Parent-Child Legal Relationship. "Termination of parental rights" or "termination of the parent-child legal relationship" means the permanent elimination by Court order of all parental rights and duties, including residual parental rights and duties, but not including the child's right to inherit from the parent whose rights have been terminated, subject to the effects described in **section 720** of this Code.

(v) Transfer Proceeding. "Transfer proceeding" means any proceeding in the Court to grant, accept, or decline transfer of any children's case from or to the courts of any Indian Nation or state whenever such transfer is authorized by tribal, federal, or state law.

(w) Tribal Administrator. "Tribal Administrator" means the person selected to serve as tribal administrator in accordance with the Constitution of the Comanche Nation, Art. 5, § 9.

(x) Ward of Court. "Ward of Court" means an abused or deprived child or a child in need of supervision or in need of treatment who is the subject of proceedings pending before the Comanche Nation Tribal Court, where the Court has granted ICWD custody of the child or authority to determine the placement or custody of the child or has ordered ICWD to supervise the Court's direct placement of the child with a parent or legal custodian.

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# TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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## CHAPTER TWO

### JURISDICTION; PROCEDURAL AND EVIDENTIARY REQUIREMENTS; APPEALS; FULL FAITH AND CREDIT

#### **Section 201. Jurisdiction Over Comanche Children Domiciled on Indian Country.**

Except as otherwise provided by this Code or other applicable law, the Comanche Nation Tribal Court shall have exclusive jurisdiction in child custody proceedings as defined in **section 107(d)** of this Code and investigations of child abuse and neglect, addressed in **sections 501 and 502 of this Code**, involving a Comanche child domiciled in Indian country. The Comanche Nation Tribal Court shall also have concurrent jurisdiction over Comanche children and adults domiciled in Indian country in judicial proceedings for adult adoptions in accordance with **section 917** of this Code, guardianships involving adult wards in accordance with **chapter 10** of this Code, name changes in accordance with **chapter 13** of this Code, and for the conduct of marriage ceremonies in accordance with **chapter 14** of this Code. The Comanche Nation Tribal Court shall have such other jurisdiction as expressly provided in this Code, including the jurisdictional provisions in **chapter 12**, governing paternity determinations, and **chapter 15**, governing child support matters.

#### **Section 202. Jurisdiction Over Comanche Children Domiciled Outside Indian Country.**

(a) Concurrent Jurisdiction. The Comanche Nation Tribal Court shall have concurrent jurisdiction with a state or tribe in child custody proceedings as defined in **section 107(d)** of this Code and investigations of child abuse and neglect, addressed in **sections 501 and 502** of this Code, involving a Comanche child who is not domiciled in Indian country. The Comanche Nation Tribal Court shall also have concurrent jurisdiction over Comanche children and adults domiciled outside Indian country in judicial proceedings for adult adoptions in accordance with **section 917** of this Code, guardianships involving adult wards in accordance with **chapter 10** of this Code, name changes in accordance with **chapter 13** of this Code, and for the conduct of marriage ceremonies in accordance with **chapter 14** of this Code. The Comanche Nation Tribal Court shall have such other jurisdiction as expressly provided in this Code, including the jurisdictional provisions in **chapter 12**, governing paternity determinations, and **chapter 15**, governing child support matters.

(b) Manner in Which Concurrent Jurisdiction May be Exercised. Concurrent jurisdiction shall be exercised by the Comanche Nation Tribal Court in the following circumstances, provided that the child shall be made a ward of the court in such cases:

- (1) When a child custody proceeding has been filed in Comanche Nation Tribal Court, and no other child custody proceedings has been held in the court of another jurisdiction;
- (2) When a child custody proceeding involving a Comanche child has been filed in the court of another sovereign and the Comanche Nation Tribal Court determines that the exercise of concurrent jurisdiction is necessary for the protection of the child's best interests; or
- (3) When a child custody proceeding involving a Comanche child has been filed in the court of another sovereign and the case has been transferred to the Comanche Nation Tribal

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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Court pursuant to **section 203** of this Code.

### **Section 203. Indian Child Welfare Act Transfers from State and Tribal Courts.**

(a) Transfers from State Courts. Pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1911 (b), any state court may transfer to the Comanche Nation Tribal Court any child custody proceedings subject to exclusive or concurrent tribal jurisdiction involving any Comanche child, if the Comanche Nation Tribal Court accepts jurisdiction over the case.

(b) Transfers from Tribal Courts. Any tribal court or Court of Indian Offenses may transfer to the Comanche Nation Tribal Court any child custody proceedings subject to exclusive or concurrent tribal jurisdiction involving any Comanche child, if the Comanche Nation Tribal Court accepts jurisdiction over the case.

(c) Hearing on Acceptance of Transfer. The Comanche Nation Tribal Court shall determine whether to accept a transfer of child custody proceedings described in **subsections (a) and (b) of this section** after a tribal, Court of Indian Offenses or state order of transfer is received by the Court Clerk/Court Administrator. The Court shall conduct a hearing regarding acceptance or rejection of the transfer, with notice to all parties in the case and to the Prosecutor and the ICWD. At the hearing, the Court may consider the following:

(1) Whether the child or its family will be in need of special services for physical or mental disease or defect and if so, whether the Nation and its resources would be able to adequately provide such special services; and

(2) If transfer is tendered prior to adjudication, whether the witnesses necessary to adjudicate the case will be available. If the witnesses will probably not appear, the Court should decline to accept the transfer until after the adjudication is completed;

(3) Any other matters which may adversely affect the Nation's ability to provide treatment or necessary services to the family, including information from the ICWD Director regarding the availability of ICWD resources ; and

(4) The likelihood that the transferring court would encourage tribal participation and follow the Comanche Nation's placement preferences in its proceedings if the transfer is not accepted.

(d) Transfer Procedures. A state or tribal court transferring a case to the Nation's jurisdiction under **subsection (a) or (b)** of this section shall transmit all documents and legal and social records, or certified copies thereof, to the Comanche Nation Tribal Court. Upon acceptance of a transfer, the Comanche Nation Tribal Court shall proceed with the case as if the petition has been originally filed or the adjudication had been originally made in this Court. Transfer cases shall be assigned a Comanche Nation Tribal Court case number as in other cases.

### **Section 204. Indian Child Welfare Transfers to Tribal or State Courts.**

(a) Conditions. The Comanche Nation Tribal Court may assume temporary custody of a non-Comanche minor and may issue any temporary order or grant any interlocutory relief authorized by this Code in any case arising in Indian country, involving an alleged abused child, deprived child, child in need of supervision or child in need of treatment, and filed in the Court on an emergency basis or without accurate information regarding the status of the subject child

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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as a Comanche child as defined in this Code, regardless of whether another state or tribal court has jurisdiction of the child or has jurisdiction to determine the custody or support of the child. The Comanche Nation Tribal Court shall transfer any such case to the appropriate social services agency, law enforcement agency or Court of the minor's Indian Nation, or if the minor is a non-Indian to the appropriate social services agency, law enforcement agency or court of the state where the minor is a resident or domiciled, upon the Court's own initiative or upon the petition of the Prosecutor.

(b) Order of Transfer. Upon entering an order transferring a case as provided in this section, the Court shall serve a certified copy of the order of transfer to the Court Clerk/Court Administrator of the receiving jurisdiction by certified mail, return receipt requested. The Comanche Nation Tribal Court shall retain custody of the child pending an order or notice of acceptance from the receiving jurisdiction, and upon receiving such order or notice, shall send a certified copy of the entire case file and any social service or law enforcement reports concerning the child's case to the Court Clerk/Court Administrator of the receiving jurisdiction by certified mail, return receipt requested. The Comanche Nation Tribal Court may then close the case file and dismiss the case subject to any necessary order for the protection of the child until completion of physical transfer to the receiving jurisdiction.

### **Section 205. Intervention in State and Other Tribal Child Custody Proceedings.**

(a) General. The Prosecutor may intervene on behalf of the Comanche Nation in state and tribal child custody proceedings involving Comanche children. In determining whether to intervene in such cases, the Prosecutor, in consultation with the ICWD, shall consider whether sufficient funds are available for an effective intervention in such proceedings, whether there is sufficient staff time to engage in the time-consuming demands of intervention, including in some cases the necessity of travel outside of the State of Oklahoma, whether intervention is necessary to protect the rights of the Nation, the child or the child's family, and whether the case has the potential to set valuable precedent regarding tribal rights under the federal Indian Child Welfare Act.

(b) Intervention Involving Children Domiciled Within Indian Country. In cases in which the child is domiciled in Indian country, the Prosecutor shall intervene in order to seek dismissal of the state or tribal court action for that Court's lack of jurisdiction under the Indian Child Welfare Act, 25 U.S.C. § 1911(a), and shall refer the case to the CPS Worker for investigation, and if determined to be necessary for the child's protection, for institution of child custody proceedings in the Comanche Nation Tribal Court.

(c) Intervention Involving Children Domiciled Outside Indian Country. In cases in which the child is not domiciled in Indian country, the Prosecutor shall intervene for the following purposes: to attend hearings when necessary for the protection of the interests of the child and the Comanche Nation, which may include hearings by telephone conference communications, to serve as an advocate of the Comanche Nation regarding proper placement of the child, and to move on behalf of the Nation to transfer proceedings to the Comanche Nation Tribal Court if warranted by the special circumstances of each case.

(d) Responsibilities of ICWD. The ICWD shall provide appropriate services in all cases in which the Prosecutor has intervened on behalf of the Comanche Nation, which may

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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include the conduct and preparation of home studies, the provision of supervision, the provision of rehabilitative services to the child and family, the preparation of reports and recommendations to the appropriate court, the attendance at Court hearings, advocacy of the Indian Child Welfare Act, which may include testimony as an expert witness, coordination with the Department of Human Services to ensure that children subject to the proceedings receive all available services, including special services available due to the child's status as a Comanche child, and such other duties described in this Code.

**Section 206. Procedural Requirements.** The procedural requirements set forth in this Code and the rules of the Comanche Nation Tribal Court shall apply in all proceedings under this Code. This Code shall supersede any conflicting provisions of general rules of civil procedure established by law of the Nation. To the extent that any procedure is not specifically set forth in this Code, any general rules of civil procedure set forth by law of the Nation shall apply.

### **Section 207. Hearings.**

(a) **Procedure.** All hearings shall be held before the Comanche Nation Tribal Court without a jury and, with the exception of hearings for termination may be conducted in an informal manner. The general public shall be excluded from all hearings in child custody proceedings. The Court shall admit only such persons as have an interest in the case or the work of the Court, including parents, legal custodians and their attorneys; guardian ad litem; court personnel; ICWD personnel; and any other such persons whose presence the Court determines is in the child's best interests. With the exception of parents, legal custodians or their attorneys and guardians ad litem, witnesses may be excluded from hearings on termination of parental rights by the Court upon the Court's own initiative or upon request of persons described in the foregoing sentence. Hearings may be continued from time to time as ordered by the Court.

(b) **Record.** An audio tape record shall be taken of all proceedings which might result in the transfer of legal custody by the Court from a parent or a previous legal custodian to another person, agency, or institution. An audio tape record shall be made in all other hearings, unless waived by the parties in the proceeding and so ordered by the Judge.

(c) **Consolidated Hearings.** When more than one child is named in a petition alleging the child to be in need of supervision, in need of treatment, abused, or deprived, the hearings may be consolidated; or heard separately at any stage of the proceeding in the Court's discretion.

(d) **Separate Hearings; Record.** Each child custody proceeding shall be heard in closed court proceedings separately and apart from any other child custody proceedings; provided that nothing herein shall preclude consolidation of child custody proceedings involving different children of the same parent or parents. The Court Clerk/Court Administrator shall record, at a minimum, the audio portion of all hearings, but may instead video tape hearings if sufficient resources are available or as otherwise provided by law. The Court Clerk/Court Administrator shall maintain one or more tapes, cassettes or compact diskettes (CDs) for each casefile or consolidated casefile separate and apart from audio or video recordings maintained for other casefiles,

(e) **Child's Testimony in Chambers:** The Comanche Nation Tribal Court, upon its own motion, or upon the motion of any party, may take video-taped testimony in adjudication or

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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dispositional phases of child custody proceeding in chambers from a child twelve (12) years of age or younger appearing as a witness and may exclude the child's parents and other persons if the Comanche Nation Tribal Court finds such action would be likely to be in the best interests of the child. The Comanche Nation Tribal Court may in its discretion allow the attorney for each party to be present. Only the Judges and attorneys may question the child.

(f) Admissibility of Prerecorded Statements of a Child Age 12 or under Who is Victim of Abuse: The video-taped recording of an oral statement of a child made to the Federal Bureau of Investigation or other federal, tribal or state law enforcement officer or social services worker before a hearing on child custody proceedings begins is admissible into evidence in any adjudication or termination proceeding affecting or that could affect the parent-child, legal custodian-child or family relationship in which a child twelve (12) years of age or younger is alleged to have been abused, if:

(1) The Comanche Nation Tribal Court determines that the time, content, and circumstances of the statement provide sufficient signs of reliability; no corroboration of the child's statement is necessary for admission;

(2) The recording is both a visual and sound recording and is recorded on film or videotape or by other electronic means;

(3) The recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;

(4) The statement is not made in response to questioning calculated to lead the child to make a particular statement or is clearly shown to be the child's statement and not made solely as a result of a leading or suggestive question(s);

(5) Every voice on the recording is identified;

(6) The person conducting the interview of the child in the recording is present at the proceeding and is available to testify; or be cross-examined by any party; and

(7) Each party to the proceeding is afforded an opportunity to view the recording before it is offered into evidence, and a copy of a written transcript transcribed by a licensed or certified court reporter is provided to the parties.

**Section 208. Burden of Proof.** The burden of proof in the proceedings covered by this Code shall be as follows:

(a) Adjudications. Adjudication of abused children, deprived children, children in need of supervision and children in need of treatment: preponderance of the evidence (i.e., the greater weight of the evidence that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other).

(b) Contempt Proceedings. Contempt proceedings: preponderance of the evidence (i.e., the greater weight of the evidence that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other).

(c) Termination Proceedings. Termination of parental rights and determinations that

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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consent of parent to adoption is unnecessary: clear and convincing evidence (i.e., evidence indicating that the thing to be proved is highly probable or reasonably certain—a greater burden than "preponderance of the evidence," the standard applied in most civil trials, but less than "evidence beyond a reasonable doubt," the standard applied in criminal proceedings).

(d) Other Proceedings. All other proceedings: preponderance of the evidence (i.e., the greater weight of the evidence that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other); provided that any inconsistent provision of this Code identifying a specific burden of proof for a specific type of child custody proceeding shall be controlling.

### **Section 209. Reliance on Adjudication, Disposition or Evidence.**

(a) No Civil Disability. No adjudication or disposition in proceedings under this Code shall impose any civil disability upon a child or disqualify him from participation in any personnel system of the Nation, appointment or election to an office of the Nation, or, to the extent consistent with applicable federal law, service in the military forces of the United States.

(b) Admissibility of Evidence in Other Proceedings. No adjudication, disposition, or evidence given in proceedings brought under this Code shall be admissible in any other action or proceedings, except in subsequent child custody proceedings concerning the same child or children of the same parent.

**Section 210. Habeas Corpus.** A person seeking the presence of a child at the Comanche Nation Tribal Court for the purpose of determining the legality of the physical custody of the child by another person or entity may file a verified petition for writ of habeas corpus, stating the reasons why said custody is unlawful. The petitioner shall attach to his petition any documents necessary to meet his burden of proof that the other person's physical custody of the child is not lawful, including without limitation any relevant court orders. The Court Clerk/Court Administrator shall issue the writ stating a date and time for a hearing on the writ, and directing the presence of the child at the hearing. The Comanche Nation Tribal Court's decision on a petition for writ of habeas corpus shall constitute a final order, and no petition for rehearing shall be allowed.

**Section 211. Mandamus.** Upon application by a real party in interest, the Comanche Nation Appellate Court Appeals or any justice or judge thereof, may issue a writ of mandamus during term, or at chambers, to the Comanche Nation Tribal Court or any corporation, board or person, to compel the performance of any act which the law specially enjoins as a duty resulting from an office, trust or station; but though the order may require the Comanche Nation Tribal Court to exercise its judgment or proceed to the discharge of any of its functions, it cannot control judicial discretion. The petitioner shall have the burden of establishing the following: (1) he has a clear legal right to the relief sought; (2) the respondent's refusal to perform a plain legal duty not involving the exercise of discretion; and (3) the adequacy of mandamus and the inadequacy of other relief.

**Section 212. Appeals.** An appeal to the Comanche Nation Appellate Court may be taken



## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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from any final order, judgment, or decree rendered by the Comanche Nation Tribal Court by any person aggrieved thereby. Appeals shall be commenced within fifteen (15) days from the judgment appealed from by filing a written notice of appeal with the Court Clerk/Court Administrator. An appeal not timely filed shall be dismissed. All appeals shall be taken in the manner provided for appeals as set forth in 25 C.F.R. §§ 11.800 - 806. For purposes of appeals, final orders include the following: adjudicatory order, permanency plan order, order terminating parental rights, order accepting revocation of a relinquishment, an order determining a child eligible for adoption without the consent of a parent and decree of adoption. Appeals shall be advanced on the calendar of the Court of Appeals and shall be decided at the earliest practical time. Whenever an appeal is made concerning termination of parental rights, an indigent parent, upon request, subject to the availability of funds, may be provided a copy of the recording of the trial proceeding for the appeal at the expense of and paid from the court fund; provided that a party may at his own expense obtain a certified transcription of the recording from a licensed or certified court reporter and file it within 20 days of the filing of a notice of appeal, in which event the party ordering the transcript shall instruct the court reporter to send copies to the other parties at the expense of the party ordering the transcript.

### **Section 213. Full Faith and Credit.**

(a) General. Subject to the provisions of this subsection and **subsections (b) and (c)** of this section, as applicable, the Comanche Nation Tribal Court shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe or state applicable to child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of the Comanche Nation Tribal Court or any other entity. The Comanche Nation Tribal Court may afford full faith and credit to certified copies of state or tribal court orders in judicial proceedings without further inquiry, or may, upon its own motion or motion of an interested party, conduct an independent review, which may include notice and hearing to interested parties, of tribal or state court documents and other evidence related to the tribal or state court order in order to determine whether any one or more of the factors set forth in **subsections (b) and (c)** of this section are present.

(b) State Court Orders. The Comanche Nation Tribal Court may in its discretion consider any one or more of the following factors prior to giving full faith and credit to a state court order, and may refuse to afford full faith and credit or may withdraw an earlier decision to afford full faith and credit if it determines that any such one or more factor is present:

(1) Whether the state court possessed subject matter and personal jurisdiction over the child; and/or

(2) Whether the state court afforded due process, including but not limited to protection of the rights set out in the Indian Child Welfare Act, to all interested persons participating or seeking to participate in the state proceeding; and/or.

(3) Whether the state court, if requested, allowed intervention by the Comanche Nation.

(c) Other Tribal Court Orders. The Comanche Nation Tribal Court may in its discretion consider any one or more of the following factors prior to giving full faith and credit to an order of another tribal court, and may refuse to afford full faith and credit or may withdraw an earlier decision to afford full faith and credit if it determines that any such one or more factor is present:

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(1) Whether the other tribal court possessed subject matter and personal jurisdiction over the child;

(2) Whether the other tribal court afforded due process to all interested parties participating in the other tribal court proceedings; and/or

(3) Whether the other tribal court, if requested, allowed intervention by the Comanche Nation.

(d) Comanche Laws Controlling. Because of the vital interest of the Comanche Nation in its children and those children who may become members of the tribe, the statutes, regulations, public policies, customs and traditions or common law of the Comanche Nation shall control any proceeding involving a Comanche child.

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# TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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## CHAPTER THREE

### INDIAN CHILD WELFARE DEPARTMENT; REPORTS; RECORDS; CONFIDENTIALITY

#### **Section 301. Definitions: Agencies.**

- (a) **BIA-CWO.** "BIA-CWO" means the child welfare office, division or department of the Anadarko Agency, Bureau of Indian Affairs.
- (b) **Child Placement Agency.** "Child placement agency" means an agency designed for the care or placement of children licensed or approved in accordance with this Code, or, if outside the Nation's jurisdiction, by the law of the jurisdiction in which such facility is physically located, or both.
- (c) **CNCSP.** "CNCSP" means the Comanche Nation Child Support Program.
- (d) **CPS Worker.** "CPS Worker" means the person employed by the Comanche Nation Social Services Department who is responsible for the investigation of child abuse and neglect for Comanche children domiciled on Indian country and referral of cases to the Prosecutor for filing.
- (e) **ICW or ICWD.** "ICW" or "ICWD" means the Indian Child Welfare Department of the Comanche Nation.
- (f) **Indian Child Welfare Worker or ICW Worker.** "Child welfare worker" or "ICW worker" means the person employed by ICWD who is responsible for providing culturally oriented preventive and treatment services to at-risk Indian families as more fully set forth in this Code.

#### **Section 302. Establishment of Comanche Nation Indian Child Welfare Department.**

The Comanche Nation Indian Child Welfare Department (ICWD) is hereby established as an agency of the Comanche Nation. The ICWD shall be subject to the fiscal and general administrative supervision of the Comanche Nation Tribal Administrator; provided that such supervision shall not include the Tribal Administrator's access to information protected by the confidentiality requirements in **section 313** of this Code. The Comanche Nation Chairman is authorized to approve and execute all federal contracts related to funding of the ICWD, and to execute cooperative agreements with the State of Oklahoma, provided that said cooperative agreements are first approved by the Comanche Business Committee.

#### **Section 303. Duties and Authority of Comanche Nation Indian Child Welfare Department.**

- (a) **General.** The ICWD shall be responsible for the following:
- (1) Providing culturally oriented preventive and treatment services to at-risk Indian families within the jurisdiction of the Nation, including parenting skills training and education of the Indian community on child protection issues;
  - (2) Maintaining a tribal foster care program, and conduct home studies and prepare

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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reports for purposes of foster care licensing and recommendations relating to potential adoptive parents;

(3) Issuing foster care licenses and supervision of foster care families;

(4) Negotiating cooperative agreements between the Nation and other states or tribes relating to provision of services to Comanche children and their families, including without limitation cooperative agreements regarding reciprocal enforcement of orders; provided that no such cooperative agreements shall contain a waiver of sovereign immunity absent the express written approval of the Comanche Business Committee by resolution;

(5) Cooperating with other social services agencies in order to ensure the best possible protection of Comanche children and their families; and

(6) Maintaining case folders for each child, which shall include narrative histories that contain dates and times of contacts involving the child and lengths of visits.

(7) Exercising all other duties consistent with this Code.

(b) Proceedings in the Comanche Nation Tribal Court. The ICWD shall be responsible for the protection of Comanche children subject to the jurisdiction of the Comanche Nation Tribal Court, provided that the BIA-CWO may share this responsibility to the extent authorized by a cooperative agreement between the ICWD and the BIA-CWO, if any such agreement is entered into. In performing these duties, the ICWD shall have authority to engage in the following activities:

(1) Placement and supervision of children placed by the Comanche Nation Tribal Court in the legal custody of the ICWD, including emergency placements;

(2) Conduct of placement home studies and placement recommendations regarding children in foster care to the Comanche Nation Tribal Court;

(3) Preparation of reports and recommendations regarding children in foster care to the Comanche Nation Tribal Court; and

(4) Participation in and attendance of all Comanche Nation Tribal Court proceedings in order to serve as an advocate for the child, including permanency planning for the child.

(c) State Court Proceedings. The ICWD shall provide appropriate services in child custody proceedings in which the Prosecutor has intervened on behalf of the Comanche Nation in accordance with **section 205** of this Code.

### **Section 304. Director and ICWD Staff.**

(a) Qualifications; General Administrative Duties. The Director shall be hired by the Comanche Tribal Administrator. The qualifications of the Director shall be as set forth in the job description for the Director approved in accordance with applicable personnel policies of the Comanche Nation. The Director shall be responsible for the day to day operation of the ICWD, shall hire staff pursuant to the personnel policies and procedures of the Nation, assist the Tribal Administrator or his designee in the preparation of staff job descriptions, supervise all staff of the ICWD, and be responsible for seeking funding sources and preparing grant applications. In the event of a vacancy in the Director position, the Tribal Administrator, upon

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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approval of the Comanche Business Committee, shall appoint an Interim Director; provided that the Interim Director shall serve until hiring of a Director.

(b) Reports. The Director shall prepare and submit reports to any federal or state agency providing funding for the ICWD to the extent required by the funding agency's grant documents, compact or contract. Upon request, the Director shall submit copies of such reports to the Tribal Administrator and the Comanche Nation Chairman for distribution to the Comanche Business Committee; provided that any information subject to the confidentiality requirements of **section 313** of this Code shall first be removed from said copies.

(c) Provision of Services. The Director may also be a service provider and maintain a caseload to the extent that he has sufficient time for the performance of those duties.

(d) Continuing Education. The Director and ICWD staff shall participate in continuing education for no less than the minimum number of hours of continuing education ordinarily required for their state counterparts in their respective fields or related fields.

(e) Confidentiality Agreements. Upon commencing ICWD employment, the ICWD Director and ICWD staff shall execute confidentiality agreements stating that they will conform to all confidentiality requirements of this Code.

**Section 305. CPS Worker**. The CPS Worker shall be an employee of the Comanche Nation Social Services Department, which is an agency separate from the Indian Child Welfare Department. The duties of the CPS Worker shall include the following:

- (1) Investigate all reports or complaints regarding Comanche children domiciled on Indian country;
- (2) Prepare applications for emergency custody, petitions for child custody proceedings and any other pleadings necessary for the protection of Comanche children;
- (3) Refer petitions to the Prosecutor of the Comanche Nation for action;
- (4) Provide testimony in hearings before the Comanche Nation Tribal Court or other courts as needed; and
- (5) Such other duties as set forth in this Code or as may be required.

**Section 306. Legislative Purpose Related to Reporting Child Abuse**. The Comanche Business Committee hereby declares that the complete reporting of child abuse and neglect is a matter of concern and that in enacting **chapter 3** of this Code it is the intent of the Nation to protect the children within the jurisdiction of the Nation and to offer protective services in order to prevent any further harm to a child suffering from abuse and neglect. It is the further intent of the Nation that the various federal, state and tribal medical, mental health, education and social services agencies impacting on child welfare matters find a common purpose through cooperative interaction.

**Section 307. Requirements for Reporting Child Abuse or Neglect**.

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(a) Duty to Report Suspicion of Child Abuse or Neglect; Required Information. Any person specified in subsection (b) of this section who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions which would reasonably result in abuse or neglect shall immediately report or cause a report to be made of such fact to the CPS Worker and the Comanche Nation Police and/or other appropriate law enforcement agency. If ICWD staff receives an unwritten report of child abuse and/or neglect, such ICWD staff person shall prepare a written report in accordance with policies approved by the ICWD Director, as soon as possible after it is initially made by telephone or otherwise. If the CPS Worker receives an unwritten report of child abuse or neglect, the CPS Worker shall prepare a written report in accordance with policies approved by the Social Services Department Director, as soon as possible after it is initially made by telephone or otherwise. Each such written report shall, if possible, contain the information:

- (1) The names and addresses of the child and the child's parents or other persons responsible for the child's health, safety or welfare;
- (2) The child's age, sex and race;
- (3) The nature and extent of the abuse or neglect, including any evidence of previous injury or known or suspected abuse or neglect to the child or the child's siblings;
- (4) Whether the child has tested positive for alcohol or a controlled dangerous substance;
- (5) The family composition;
- (6) The source of the report and the name, address, and occupation of the person making the report;
- (7) Any action taken by the reporting source;
- (8) Any other information that the person making the report believes may be helpful in establishing the cause of the injuries and the identity of the person or persons responsible therefor if such information or any part thereof is known to the person making the report.

(b) Persons Required to Report. Persons required to report such abuse or neglect or circumstances or conditions shall include any of the following:

- (1) Physician or surgeon, including a physician in training;
- (2) Child health associate or community health representative (CHR);
- (3) Medical examiner or coroner;
- (4) Dentist;
- (5) Osteopath;
- (6) Optometrist;
- (7) Chiropractor;
- (8) Chiropodist or podiatrist;
- (9) Registered nurse or licensed practical nurse;

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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- (10) Hospital personnel engaged in the admission, care, or treatment of patients;
- (11) School official or employee;
- (12) Social worker or worker in a halfway house or child day care center, including a child day care center located in a private residence;
- (13) Mental health professional;
- (14) Any law enforcement personnel and any employee of a jail or juvenile detention center;
- (15) The Prosecutor or his assistants;
- (16) Social Services Department employee, including CPS Worker;
- (17) ICWD employee, including ICW Worker; and
- (18) Any worker in a battered women's shelter, children's shelter, or other children's facility.

(c) Authorization to Report. In addition to those persons specifically required by this section to report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in abuse or neglect, any other person may report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in child abuse or neglect to the tribal law enforcement agency and the CPS Worker.

(d) Admissibility of Written Report. A written report from persons or officials required by this chapter to report known or suspected child abuse or neglect shall be admissible as evidence in any proceeding related to child abuse.

(e) Civil Penalties for Failure to Report. Any Indian or non-Indian person subject to the jurisdiction of the Comanche Nation Tribal Court who willfully violates the provisions of this section in addition to any other penalties established by any applicable state or federal law shall be subject to a civil penalty not to exceed Five Hundred Dollars (\$500.00) and shall be liable for damages proximately caused thereby.

**Section 308. Required Report of Post-Mortem Investigation**. Any person who is required to report known or suspected child abuse or neglect and who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report such fact immediately to the appropriate law enforcement agency and to the appropriate coroner or medical examiner. The law enforcement agency and the coroner or medical examiner shall accept such report for investigation and shall report their findings to the appropriate law enforcement agency, the CPS Worker, the Prosecutor, the ICWD, and/or the Oklahoma Child Death Review Board, as required by State and Federal law for each reporting entity.

### **Section 309. Evidence of Abuse or Neglect**

(a) Photographs and X-Rays. Any child health associate, person licensed to practice medicine, registered nurse or licensed practical nurse, hospital personnel engaged in the admission, examination, care or treatment of patients, medical examiner, coroner, social worker,

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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or local law enforcement officer who has before him a child he reasonably believes is an abused or deprived child may take or cause to be taken color photographs of the areas of trauma visible on the child. If medically indicated, such person may take or cause to be taken X-rays of the child.

(b) Transmission to Law Enforcement Agency. Any color photographs or X-rays which show evidence of child abuse shall be immediately forwarded to the Comanche Nation Police or other appropriate law enforcement agency.

**Section 310. Immunity from Liability.** Any person participating in good faith in the making of a report or in a judicial proceeding held pursuant to this Code, the taking of color photographs or X-rays, or the placing in temporary custody of a child pursuant to this chapter or otherwise performing his duties or acting pursuant to this Code shall be immune from any liability, civil or criminal, that otherwise might result by reason of such reporting. For the purpose of any proceedings, civil or criminal, the good faith of any person reporting child abuse, any person taking color photographs or X-rays, and any person who has legal authority to place a child in protective custody shall be presumed.

**Section 311. Communication Not Privileged.** The privileged communication between patient and physician and between husband and wife shall not be a ground for excluding evidence in any judicial proceedings resulting from a report pursuant to this chapter.

**Section 312. Home Study and Other Reports.**

(a) Home Study Reports. Unless waived by the Court, the ICWD or other agency designated by the Court shall make a home study and report in writing in all children's cases, except:

(1) If the allegations of a petition filed pursuant to **sections 602 or 603** are denied **by a respondent**, the study shall not be made until the Court has entered an order of adjudication; and

(2) The study and investigation in all adoptions shall be made as provided in the provisions relating to adoptions.

(b) Use of Reports as Evidence. For the purpose of determining proper disposition of a child the general rules of evidence shall not apply, and written reports and other material relating to the child's mental, physical, and social history may be received and considered by the Court along with other evidence. However, the Court, if so requested by the child, his parent or legal custodian, or other party to the proceedings, shall require that the person who wrote the report or prepared the material, if available, appear as a witness and be subject to both direct and cross-examination. In the absence of such request, the Court may order the person who prepared the report or other material to appear if it finds that the interest of the child, his parent or legal custodian, or other party to the proceedings so requires. The Court shall inform the child, his parent or legal custodian, or other party to the proceedings of the right of cross-examination concerning any written report or other material as specified in this subsection.



## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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### **Section 313. Confidentiality Requirements.**

(a) **General Confidentiality Requirements.** The general confidentiality requirements for investigations and child custody proceedings are as follows:

(1) **Sealed Court Records.** A record of all Comanche Nation Tribal Court proceedings under this Code, including all reports filed with the Court, shall be sealed and preserved in a secure place by the Comanche Nation Tribal Court Clerk/Court Administrator.

(2) **Separate Law Enforcement Agency Records.** The records of law enforcement agencies concerning all children's cases or children taken into temporary custody or issuance of a summons or subpoena under the provisions of this Code shall be maintained separately from the records of arrest.

(3) **Confidentiality; Non-Disclosure.** Except as expressly authorized in this Code, all Comanche Nation Tribal Court, ICWD, and law enforcement records, files, documents and other related information associated with a child custody proceeding shall be confidential and shall not be accessible for inspection or copying or otherwise disclosed to the public, including, but not limited to the following: fingerprints, photographs, names, addresses, or other information concerning the identity of a child taken into temporary custody or issuance of a summons or subpoena; all reports of child abuse or neglect; social service reports; medical records; transcripts; depositions; audio or video recordings; and the names of informants reporting child abuse or neglect. The ICWD shall adopt appropriate policies and procedures in order to facilitate the protection of confidential information, such as: (i) use of a separate computer that is not linked to any other computer and that contains no confidential information for any necessary ICWD internet use, and (ii) placement of separate cover sheets containing no confidential information on ICWD reports regarding placements.

(4) **Publication Prohibitions.** Except as expressly authorized in this Code, no person shall publish any of the following information in a newspaper or other publication or release or discuss such information with any other person who, or entity that, does not have lawful access to such information: identifying information about any child, parent, legal custodian, informant or witness involved in child custody proceedings (i.e., the name, picture, place of residence or identity of any such person), notices of state court proceedings received by the Comanche Nation, or the substance of any notice, hearing, order or Comanche Nation Tribal Court file.

(5) **Confidentiality Binding on Persons Receiving or Viewing Confidential Information.** Any person who receives or views documents or other information pursuant to this section shall maintain the confidentiality of such information and shall be bound by the relevant provisions of this section.

(b) **Exceptions to General Confidentiality Requirements.** The requirements in **paragraphs (1), (2), (3) and (4) of subsection (a)** of this section shall be subject to the following exceptions:

(1) The records described in paragraphs (3) and (4) of subsection (a), of this section may be released as appropriate under the following circumstances:

(i) When the child has escaped from an institution to which he has been committed;

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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- (ii) By order of the Court upon submission of a petition setting forth the document required and the reasons for the request; or
- (iii) When the disclosure is to a tribal, federal, or state social services or law enforcement agency in its official capacity needing the information in order to assist in apprehension, to conduct a current investigation, or as otherwise provided by this Code or any other law of the Nation or by any memorandum of understanding or cooperative agreement between the Nation and any tribal, federal or state social services or law enforcement agency.

(2) The following records may be inspected only for good cause determined by written order of the Comanche Nation Tribal Court:

- (i) Counselors' records and all other reports of social and clinical studies involving a child;
- (ii) Records of court proceedings in formal relinquishments; and
- (iii) Records of court proceedings in formal adoptions.

(3) The records described in **paragraphs (1), (2), (3) and (4) of subsection (a)** of this section (except relinquishment records and adoption records, which may be inspected only by court order in accordance with **subsection (b)** of this section), may be accessed and used by the following persons or agencies in the following circumstances, which shall be narrowly construed against access and use in the event of ambiguity:

- (i) Law enforcement agency or social services department investigating a report of known or suspected child abuse or neglect, caring for, supervising or treating a child or family which is the subject of the report or record, including the Comanche Nation Police, the ICWD, and the BIA-CWO, if authorized by cooperative agreement, but excluding administrators and other personnel of the Anadarko Agency, and excluding administrators, personnel and elected officials of the Comanche Nation, may be provided with all information in the written report required by **section 307(a)** of this Code, including information identifying an informant who reported suspected child abuse or neglect; a record of the final disposition of the report including services offered and services accepted; any plan for rehabilitative treatment; the Comanche Nation Tribal Court casefile number, if any; and a brief description of any legal consequences to the parents or legal custodians, including the name of any parent whose rights were terminated and the date of termination;
- (ii) The Prosecutor and the attorneys of record for the child, the attorney of record for the child's parent and/or the child's legal custodian, may review and copy said court records for use in a child custody proceeding involving the child, with protection of the identities of reporters of child abuse and other appropriate persons and subject to the protection of the identities of placements; provided that if the parent or the legal custodian is not represented, the parent or legal custodian shall be afforded an opportunity to inspect the report; provided further that no identifying or confidential information regarding the foster parents shall be included in the court records accessed by unrepresented parents or legal custodians;

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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- (iii) The ICW Program or any agency to which legal custody of the child has been transferred, or its representative or legal counsel may review and copy said court records, for use in a child custody proceeding involving the child;
- (iv) A physician, psychologist, therapist, counselor, or other professional engaged for the purpose of providing examination, care or treatment of a child in a child custody proceeding may review said court records;
- (v) Comanche Nation Tribal Court personnel may review said court records;
- (vi) A person or Indian Tribe authorized by order of the Comanche Nation Tribal Court to intervene in a child custody proceeding involving the child may review and copy said court records;
- (vii) Any person eighteen years of age or older named in the report or record who was alleged as a child to be deprived or abused, or, if the child named in the report or record is a minor or is otherwise incompetent at the time of the request, his guardian ad litem may review said court records; and
- (viii) The Comanche Nation Appellate Court, upon its finding that access to such records may be necessary for determination of an issue before such Court, may review said court records, but such access shall be limited to in camera inspection unless the Comanche Nation Tribal Court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before the Comanche Nation Appellate Court.

(4) The disclosure of identifying information shall not be prohibited when there is a death of a suspected victim of child abuse or neglect and the death becomes a matter of public record, the subject of an arrest by a law enforcement agency, or the subject of the filing of a formal charge by a law enforcement agency.

(c) Confidentiality Requirements Regarding Access to Records and Information by Elected Officials; No Political Interference. No elected officials of the Comanche Nation and no Comanche Nation employees, except ICWD employees and court personnel, shall have access to any court records, agency records or other records or information regarding any specific child who is or who may be the subject of a child custody proceeding in the Comanche Nation Tribal Court, another tribal court, a Court of Indian Offenses or a state court, unless such person is the parent or legal custodian of the child who is the subject of the child custody proceeding. No elected officials of the Comanche Nation shall attempt to use political influence or otherwise be directly or indirectly involved in any manner in such child custody proceedings. In the event an official or employee of the Comanche Nation receives written notice of the pendency of any such proceeding, said official or employee shall immediately forward said notice in a sealed envelope to the ICWD, without retaining a copy, and shall not discuss the notice or its contents with any person or entity unless directed by written order of the Comanche Nation Tribal Court.

(d) Civil Sanctions for Confidentiality Violations. Any Indian or non-Indian person subject to the jurisdiction of the Comanche Nation Tribal Court who willfully violates the provisions of this section in addition to any other penalties established by any applicable state or federal law shall be subject to a civil penalty not to exceed Five Hundred Dollars (\$500.00) and shall be liable for damages proximately caused thereby.

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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### **Section 314. Central Child Abuse Registry. RESERVED**

### **Section 315. Management Information System.**

(a) Implementation. On or before October 1, 2005, the ICWD shall implement management information system for all programs and services of the ICWD related to children, youth and families.

(b) Basic Requirements. The management information system shall:

(1) To the maximum extent possible, be based upon the integration, utilization and modification, as necessary, of existing information systems within the ICWD;

(2) Provide for the security of and limited access to the information;

(3) Include case specific information, including outcomes, and have the ability to monitor the status of children and youth receiving services through the ICWD;

(4) Be capable of providing management reports and information regarding the various children and youth programs of the ICWD, and of providing aggregate information necessary for planning, monitoring and evaluation of said programs and services; and

(5) Be designed so that management and analytical reports can be readily generated for those who require them.

(c) Access. The child welfare information system shall be maintained on a computer protected from access by internet or network users and shall be available for access only by the Director, and such other ICWD personnel authorized in writing by the Director.

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# TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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## CHAPTER FOUR

### PLACEMENTS; FAMILY RELATIONSHIPS; PLACEMENT PREFERENCES; FOSTER HOMES

#### **Section 401. Placements: Background Checks: Types of Placements.**

(a) Criminal Background and Abuse Registry Check. A home shall not be eligible for a foster home license or other placement of a child pursuant to this Code, including without limitation a non-custodial parent or adoptive parent, if the prospective placement, or any member of said person's household, is named as a perpetrator on any state or tribal child abuse registry or has a record of conviction of a crime that includes any form of violence or action of a sexual nature as an element or is the subject of pending criminal charges alleging commission of such a crime. The ICWD shall, prior to placement, obtain a national criminal history records search by the Oklahoma State Bureau of Investigation or other appropriate source based upon submission of fingerprints for any prospective placement, including placement with a non-custodial biological parent or kinship foster parents, and any adult residing in the home of such person. The ICWD shall also search the Oklahoma Child Abuse Registry and the child abuse registry of any state in which the prospective placement, including a non-custodial biological parent and kinship foster parents, and any adult residing in the home of such person has lived during the preceding ten years. The ICWD shall maintain the confidentiality of the records search results and shall use the results only for purposes of determining a person's eligibility to become a foster parent. Any person violating the provisions of the preceding sentence shall be subject to a civil penalty not to exceed Five Hundred Dollars (\$500.00).

(b) Types of Placements. Children who are the subject of involuntary child custody proceedings shall be placed with the following types of placements in accordance with this chapter and **chapter 7** ("Dispositions") of this Code or any other applicable provisions of this Code, including without limitation the placement preferences set forth in **section 403** of this Code:

(1) Emergency Shelter Home. "Emergency shelter home" means the Comanche Nation Children's Shelter or a private foster home licensed by the ICWD and designated primarily for time-limited emergency placements, usually lasting no longer than thirty (30) days for any child.

(2) Foster Home. "Foster home" means a facility for the care of not more than ten (10) children in a family type setting, licensed or approved in accordance with this Code, or, if outside the Nation's jurisdiction, by the law of the jurisdiction in which such facility is physically located or both.

(3) Group Care Facilities. "Group care facilities" means places (other than child day care centers providing part-time care of children) where persons are contracted or employed to provide care for small groups of children, licensed or approved in accordance with this Code, or, if outside the Nation's jurisdiction, by the law of the jurisdiction in which such facility is physically located or both. The Comanche Nation may operate a single facility as both a group care facility and a shelter provided that: (1) the agency of the Nation that operates the group care facility and shelter adopts and implements appropriate policies and procedures that address the specific goals of a shelter and a group care facility and (2) the use of a single facility for shelter

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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and group care purposes is not inconsistent with any law, regulation or funding requirements applicable to the facility.

(4) Halfway House. "Halfway house" means group care facilities for children who have been placed on probation by virtue of being adjudicated in need of supervision under this Code, licensed or approved in accordance with this Code, or, if outside the Nation's jurisdiction, by the law of the jurisdiction in which such facility is physically located or both.

(5) Kinship Foster Home. "Kinship foster home" means a foster home in which the foster parents are extended family members of the child in accordance with **section 402(a)** of this Code.

(6) Non-Custodial Parent. "Non-Custodial Parent" means a parent of the child as defined in **section 402(b)** of this Code whose conduct has not caused or contributed to the alleged or established status of the child as deprived, abused, in need of supervision or in need of treatment.

(7) Shelter. "Shelter" means a facility licensed and operated by the ICWD for the short-term temporary care of a child in facilities providing the least possible restrictive environment pending execution of a court order for emergency or temporary placement or other court disposition; provided that such placement shall not exceed thirty (30) days unless authorized by court order due to special circumstances. The Comanche Nation may operate a single facility as both a shelter and a group care facility provided that: (1) the agency of the Nation that operates the shelter and group care facility adopts and implements appropriate policies and procedures that address the specific respective goals of a shelter and a group care facility and (2) the use of a single facility for shelter and group care purposes is not inconsistent with any law, regulation or funding requirements applicable to the facility.

(8) Therapeutic home. A "therapeutic home" means a foster home operated or licensed by the ICWD and able to provide extraordinary care or services, by virtue of training, experience, and/or special skills that are designed to remedy the specific social and behavioral problems of a foster child residing in the home.

**Section 402. Definitions: Family and Custodial Relationships.** The following definitions shall be followed in all child custody proceedings in the Comanche Nation Tribal Court, and are also hereby declared as the official law of the Comanche Nation in all state child custody proceedings involving children of members of the Comanche Nation or children who are members of the Comanche Nation and who are subject to the federal Indian Child Welfare Act, 25 U.S.C. §1901 et. seq. and the Oklahoma Indian Child Welfare Act, 10 O.S. § 40.1 et. seq. in such state court proceedings:

(a) Extended Family Member. "Extended family member" shall mean a person who has reached the age of eighteen and who is the Comanche child's:

- (1) Grandparent;
- (2) Aunt or uncle;
- (3) Brother or sister;
- (4) Niece or nephew;

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(5) First or second cousin; or.

(6) a person recognized as a grandparent, aunt, uncle, brother, sister, niece, nephew first cousin or second cousin based on a judicial or traditional adoption accomplished in one of the following ways:

- (i) Pursuant to order of a state court or of a tribal court, including the Comanche Nation Tribal Court, provided that said court possessed jurisdiction over the child sufficient to issue such order; or
- (ii) Pursuant to custom of the Comanche Nation regarding family relationships, which extend outside of the biological descendancy of the child's family, including customs regarding band memberships, provided that the person claiming to be a traditional extended family member of the child's extended family pursuant to tribal custom shall have the burden of proof of establishing the fact of his traditional extended family relationship with the child's family, and such proof shall include the testimony of at least one Comanche elder who is knowledgeable about said customs.

(b) Parent. "Parent" means:

(1) Any biological parent of a child, including a presumed father, an adjudicated father, an acknowledged father of a child born out of wedlock whose paternity has been established pursuant to **chapter 12** of this Code, and including an alleged father, provided that such alleged father shall seek a paternity determination in accordance with **chapter 12** of this Code as early as possible after receiving notice or otherwise becoming aware of child custody proceedings involving his child; and

(2) Any person who has lawfully adopted a child pursuant to order of a state court or of a tribal court, including the Comanche Nation Tribal Court, provided that said court possessed jurisdiction over the child sufficient to issue such order; or who has lawfully adopted a child pursuant to custom of the Comanche Nation, provided that the person claiming to be a parent pursuant to tribal custom shall have the burden of proof of establishing the fact of such adoption, and such proof shall include the testimony of at least one Comanche elder who is knowledgeable about said customs.

(c) Mother. "Mother" means the female parent as defined in **subsection (b)** of this section.

(d) Father. "Father" means the male parent as defined in **subsection (b)** of this section.

(e) Grandparent. "Grandparent" means a person who is:

(1) A biological grandparent; or

(2) A biological brother of a biological grandparent and, if married, his spouse, or a sister of a biological grandparent and, if married, her spouse; or

(3) A biological great-grandparent; or

(4) Any other person, who, by virtue of a judicial or traditional adoption either of himself or a member of his family pursuant to **section 402(a)(6)** would qualify as a grandparent.

(f) Aunt. "Aunt" means a person who, by blood or marriage, is:

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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- (1) A female sibling of the biological parents; or
  - (2) A female sibling of a grandparent; or
  - (3) Any other person, who, by virtue of a judicial or traditional adoption either of herself or a member of her family pursuant to **section 402(a)(6)** would qualify as an aunt.
- (g) Uncle. "Uncle" means a person who, by blood or marriage, is:
- (1) A male sibling of the biological parents; or
  - (2) A male sibling of a grandparent; or
  - (3) Any other person, who, by virtue of a judicial or traditional adoption either of himself or a member of his family pursuant to **section 402(a)(6)** would qualify as an uncle.
- (h) Sister. "Sister" means:
- (1) Any female sibling, including a half-sister; or
  - (2) Any other person, who, by virtue of a judicial or traditional adoption either of herself or a member of her family pursuant to **section 402(a)(6)** would qualify as a sister.
- (i) Brother. "Brother" means a person who is:
- (1) Any male sibling, including a half-brother; or
  - (2) Any other person, who, by virtue of a judicial or traditional adoption either of himself or a member of his family pursuant to **section 402(a)(6)**, would qualify as a brother.
- (j) Nephew. "Nephew" means the male child of a brother or sister.
- (k) Niece. "Niece" means the female child of a brother or sister.
- (l) Stepparent. "Stepparent" means a person married to a biological parent, but who is not a biological parent of the child.
- (m) First Cousin. "First Cousin" means the child of an aunt or uncle.
- (n) Second Cousin. "Second Cousin" means the child of a first cousin.
- (o) Indian custodian. An "Indian custodian" means any Indian person who has legal custody of a child pursuant to the following type of authorization:
- (1) Pursuant to order of a state court or of a tribal court, including the Comanche Nation Tribal Court, provided that said court possessed jurisdiction over the child sufficient to issue such order; or
  - (2) Pursuant to authorization by a parent who has transferred the temporary physical care, custody, and control over the child to such person, provided that said authorization need not be in writing, and may be established by testimony regarding verbal statements by the parent, habits and practices of the parent and the person claiming to be an Indian custodian regarding custody of the child, and proof of any other factors relevant to the person's status as an Indian custodian; or
  - (3) Pursuant to customs of the tribe of which the child is a member, based upon testimony of at least one Comanche tribal member knowledgeable about said customs.
- (p) "Legal custodian" means:



## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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- (1) An Indian custodian as defined in the preceding subsection; or
- (2) Any other person who has legal custody of a child pursuant to order of the Court or other court of competent jurisdiction, including a person appointed as the child's legal guardian in guardianship proceedings.

### **Section 403. Placement Preferences.**

(a) Applicability of Placement Preferences. When a Comanche child has been removed from his or her home, the protection of the child is the first priority, with the goal of reunification of the child with the parents from whom the child was removed or with the non-custodial parents. In making a placement of or committing legal custody of a Comanche child to any person other than the child's parent or legal guardian, the Comanche Nation Tribal Court, any tribal court exercising jurisdiction over a Comanche child, the Comanche Indian Child Welfare Department and, and as required by the Federal Indian Child Welfare Act, 25 U.S.C. §1915(c) and the Oklahoma Indian Welfare Act, 10 O.S. §40.6, any state court or other governmental or private placement agency exercising placement authority over a Comanche child shall place the child in the order of preferences set forth in **subsections (b) and (c)** of this section, subject to all other applicable requirements in this section and other provisions of this Code.

(b) Foster Care or Pre-adoptive Placements: Criteria; Preferences. Any Comanche child accepted for foster care or pre-adoptive placement shall be placed in the least restrictive setting which most approximates a family and in which the special needs, if any, may be met. In any foster care or pre-adoptive placement, a preference shall be given, in the absence of good cause to the contrary as described in **subsection (d)** of this section, in the following order of priority, to a placement with:

- (1) a member of the child's extended family who is a member of the Comanche Nation;
- (2) a member of the child's extended family who is not a member of the Comanche Nation;
- (3) a foster home, licensed, approved or specified by the Comanche Nation;
- (4) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- (5) an institution for children approved by an Indian tribe or operated by an Indian organization, which has a program suitable to meet the child's needs.

(c) Adoptive Placement Preferences. In any foster care or pre-adoptive placement, a preference shall be given, in the absence of good cause to the contrary as described in **subsection (d)** of this section, in the following order of priority, to a placement with:

- (1) a member of the child's extended family who is a member of the Comanche Nation;
- (2) a member of the child's extended family who is not a members of the Comanche Nation;
- (3) a member of the Comanche Nation; or
- (4) a member of another tribe.

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(d) **Good Cause Not to Follow Preferences.** The following factors may be considered in determining whether there is good cause not to strictly comply with the placement preferences set forth in **subsections (b) and (c)** of this section:

(1) Where both parents are deceased, and at least one of the parents has stated a placement preference in an affidavit filed of record with the Nation Tribal Court Clerk/Administrator or has stated a placement preference in a will admitted into probate in the state courts, in the Nation's court, in the court of another Indian Nation, or in a proceeding before an administrative law judge;

(2) When the child is already in the custody of a stepparent who is a member of the Nation or an Indian custodian as defined by **section 402(a)** of this Code at the time of commencement of any child custody proceeding, and the Court finds that the continued custody of the child by such person would be in the child's best interests;

(3) When the child is under the age of fourteen and has spent a significant amount of time with a specific extended family member or stepparent, has stated a preference for placement with said extended family member or stepparent, and the court finds that such a placement would be in the child's best interests; or

(4) When the child is fourteen years of age or older and states a preference for placement with a specific extended family member or stepparent, provided that the Court determines that such placement is in the child's best interests.

(e) **Record of Inability to Comply with Preferences.** If custody of a Comanche child cannot be made pursuant to the placement preferences set forth in this section, the reason for such determination shall be specified in the court and/or agency records concerning the child. In addition, such reasons shall be made known to the court exercising jurisdiction over the child by the placement agency.

(f) **Parental Preference and Location of Foster Home.** In foster care placements, the Court may consider the preference of the parents and the proximity of the prospective foster home to the Comanche child's home, taking into account any special needs of the child, in applying the preferences set forth in **subsection (b)** of this section, where appropriate.

(g) **Considerations Regarding Persons Within Placement Categories.** For each possible placement, the Court shall consider the willingness, fitness, ability, suitability, and availability of each person in a placement category before considering the next lower level of placement preference.

(h) **Placement with Agency Which Must Follow Placement Preferences.** The Court may place the Comanche child with the Comanche Nation Indian Child Welfare Department ("ICWD") or with a child placement agency approved by the ICWD for further placement in lieu of a direct placement. When the Court does so, the agency shall place said child in accordance with the preferences described in this section, and any person having a prior preference may petition the Court to review the placement to a lower preference made by that agency.

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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### **Section 404. Foster Home License Required: Dual Licenses: Foster Care Payments.**

(a) **License Required.** A household, including a proposed kinship foster home, shall be licensed by the ICWD to serve as a foster home for the twenty-four hour care of a Comanche child who is not the biological child of at least one head of the household, with the following exceptions:

- (1) A home providing care and supervision for a total period of less than thirty (30) days in any twelve-month period, including temporary respite care;
- (2) A home licensed by the State of Oklahoma;
- (3) A home providing care and supervision only to a child(ren) placed in that home by an agency for the purpose of legal adoption by that family, unless, the adoption has not been completed within two years of placement; or
- (4) The home of the child's legal custodian.

(b) **Dual Licensing.** A foster home licensed by the Comanche Nation may be licensed by another agency at the same time, and may simultaneously serve as a foster home for one or more child placed by the Comanche Nation and one or more child placed by another agency; provided that the ICWD supervision shall be limited to supervision of the care of the child placed by the ICWD unless otherwise stated by written agreement between the ICWD and another agency.

(c) **Out-of-State Foster Homes.** The Comanche Nation ICWD is authorized to utilize an out-of-state foster home that has been licensed by a licensing authority of another jurisdiction for placements of Comanche children; provided that the Nation has received a copy of a home study for the foster home and provided further that the licensing standards used to license the home are the same as, or substantially similar to, the Comanche Nation foster home licensing requirements set forth in this chapter.

(d) **Foster Care Payments.** Foster homes licensed by the ICWD and located within the State of Oklahoma, including kinship foster homes, shall be eligible for foster care payments through the State of Oklahoma.

### **Section 405. Investigation and Issuance of Licenses.**

(a) **Application.** Any family living within the boundaries of the State of Oklahoma may apply for certification as a foster family for tribal children, including a kinship foster home described in section 401(b)(5) of this Code.

(b) **Statement of Procedures.** The ICWD shall prepare a written statement regarding procedures in the application and licensing process, which shall be given to every applicant.

(c) **Criminal Background and Abuse Registry Check.** The ICWD shall obtain a national criminal history records search by the Oklahoma State Bureau of Investigation or other appropriate source based upon submission of fingerprints for any prospective foster parent, including kinship foster parents, and any adult residing in the home of such parent. The ICWD shall also search the Oklahoma Child Abuse Registry and the child abuse registry of any state in which the prospective foster parents, including kinship foster parents, and any adult residing

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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in the home of such parent has lived during the preceding ten years. The ICWD shall maintain the confidentiality of the records search results and shall use the results only for purposes of determining a person's eligibility to become a foster parent. Any person violating the provisions of this subsection shall be subject to a civil penalty not to exceed Five Hundred Dollars (\$500.00).

(d) Evaluation of Foster Home; Home Study. The ICWD shall determine whether a potential foster home is able to effectively care for foster children by reviewing personal and professional references, observing during a visit to the home of the applicant foster care family, and interviewing the foster care parent. The ICWD shall perform or obtain a foster home study in accordance with established procedures of the ICWD to determine if the applicant meets the minimum foster home standards set forth in this chapter.

(e) Issuance of License. The ICWD shall issue a license to a family for the care of foster children:

(1) When it has determined that the family meets tribal licensing standards; and

(2) When the applicant has signed an agreement concerning the rights and duties of a tribal foster home and the rights and duties of the ICWD. Such agreement shall include, but not be limited to, descriptions of the rights and responsibilities of the foster parent, including the duty to refrain from direct contact with the child's parents at any time absent a court order authorizing such communications pursuant to **section 410** of this Code, keep information concerning the child and the child's family confidential, except such information required to be shared for purposes of the child's educational and health needs. Such agreements shall also include, but not be limited to, descriptions of the rights and responsibilities of the ICWD, the rights and responsibilities of the foster child, the rights and responsibilities of the child's parents/custodians, arrangements for financial assistance, if available, and a statement concerning the right of the ICWD to evaluate the foster home.

(f) License Specifications. Every license shall specify the kind of license and the maximum number of foster children to be provided care at any one given time.

(g) Notification by Licensee of Changes. The ICWD shall be notified, in advance, of any changes that would affect the terms of the license, such as a change of address or additional persons in the home.

(h) Provisional License. An applicant who has been determined to be inadequate to provide foster care may be granted a provisional license pending implementation of the recommended changes when optional placements are limited and it has been determined to be in the best interest of the child.

(i) Therapeutic Foster Homes. A provision shall be made for the licensing of foster homes for specific children who require extraordinary care or services or have special needs. This type home may not otherwise be eligible for regular certification according to foster home standards set forth in this chapter. This provision shall not be construed as replacing the regular tribal foster home standards and placement procedures.

(j) Kinship Foster Home. A noncustodial parent may serve as a kinship foster home unless and until the noncustodial parent obtains legal custody of the child by court order in a divorce or other appropriate legal proceeding. Any other person related by blood, marriage, adoption and by tie or bond to a child and/or to whom has been ascribed a family relationship

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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role with the child's parents or the child may be eligible for licensing as a kinship foster care parent. A child may be placed in the kinship foster home upon the completion of the records search to ascertain if there is a federal, state or tribal record of criminal history for the prospective kinship foster parent or any other adult residing in the prospective kinship foster parent's home pursuant to **section 401(a)** and subject to any other standards established by the ICWD, pending a determination as to whether the kinship foster home meets all other licensing requirements for foster parents in accordance with this code. A child shall not remain in an unlicensed kinship foster home for more than thirty (30) days, excluding the home of a noncustodial parent; provided that a noncustodial parent who has not received a foster home license shall not be eligible for foster care payments pursuant to **section 404(d)** of this Code. The ICWD and the kinship foster care parent shall develop a plan for the care of the child, which shall be periodically reviewed and updated. The kinship foster parent shall cooperate with any activities specified in the case plan for the child including, but not limited to, counseling, therapy, court sessions, visits with the child's parents or other family members, and training.

### **Section 406. Requirements Related to Personal Qualifications of Foster Family.**

(a) **Personal Qualities.** In considering an application for a prospective foster parent the primary consideration should be the parents' capacity to provide love and understanding to a child or children in distress. Prospective foster parents shall possess personal qualities of maturity, stability, flexibility, ability to cope with stress, capacity to give and receive love, and good moral character. Relationships within the family shall be such that a wholesome atmosphere for the growth of the foster child will be assured. No family member or household member shall have a record of child abuse or other such crime. The foster family shall provide names and addresses of references who can attest to the family's qualifications to become foster parents.

(b) **Age.** The biological age of a foster parent should be considered in relation to physical condition, flexibility, vitality, maturity, and ability to exercise appropriate authority, supervision, and physical care for specific children. No restriction is placed on upper age level, but all foster parents shall have the physical and emotional stamina to deal with the care, guidance, and protection of children.

(c) **Health.** Each member of the foster family household, and any person who assists with the care and supervision of the foster children, shall be in good health and have a medical report on file for foster care licensure. The medical report shall be completed and signed by a licensed physician stating that the foster care applicant is in good health and free from any physical or mental illness which might be detrimental to a foster child. A medical statement shall be completed and signed by a licensed physician that the persons have no communicable and contagious diseases and have no health condition which will be detrimental to foster children.

(d) **Income.** The foster family shall have sufficient income to meet the family's basic needs. The foster care payment shall not be considered as income but as reimbursement for services and shall meet the basic needs of the foster child.

(e) **Employment.** Employment, education, and/or training pursuits of foster parents are evaluated in regard to the ages and needs of the children for whom they wish to provide care. Both parents in a two-parent home and single parents will be allowed employment out of the

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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home provided suitable plans for day care and/or supervision of the child are made and approved by the ICWD. Foster parents may obtain free day care services for foster children if eligible through the Oklahoma Department of Human Services.

(f) Parenting Abilities. Foster parents' motivation for application will be examined. Attitudes of significant members of the foster parents' extended families regarding child placement should also be examined. Foster parents should have the capacity to provide for the foster child's needs while giving proper consideration to their own children and should have a realistic assessment of the positive and negative aspects of foster parenthood, including acceptance of the temporary nature of foster care. Where necessary, foster parents should have the ability to care for children with special needs, such as physical handicaps and emotional disturbances. Foster parents should have the ability to administer discipline in a manner appropriate to the age and development of the child. Although families differ in their approach to discipline, harsh or threatening methods are particularly damaging to children in foster care. Discipline should be defined as an overall plan for teaching acceptable behavior; punishment is, more narrowly, negative reinforcement for unacceptable behavior.

(g) Family Composition. The composition of the foster family will be taken into account in assessing whether the child's needs will be met by such a placement, in accordance with the following standards:

(1) The presence of other children in the home, either the foster parent's own or other foster children, and related adults shall be taken into account as they may be affected by or have an effect upon the foster child(ren).

(2) Two parents shall be selected in most cases; however, single parents shall be selected when they can effectively fulfill the needs of a particular child. It is preferable that foster parents shall care for not more than two children less than two years of age, including the foster parent's own children. Foster families should not have more than a total of six children, including foster children and foster parent's own children, in the foster home. Exceptions shall be made in order to keep siblings together.

(3) All placement situations shall consider the effect of having some children in the foster home whose parents visit them and other children whose parents do not.

(4) A tribal foster home may not have adult roomers or boarders unrelated to the foster parent without special approval of the ICWD.

(5) The foster parent shall keep the ICWD informed of any changes in household membership and of all others having regular contact with the foster child in the foster home.

(h) Commitment to Meet Child's Needs. The foster family shall demonstrate its ability to meet the child's needs in accordance with the following standards:

(1) A daily routine shall be such as to promote good health, rest and play habits and positive growth.

(2) The foster family shall demonstrate a willingness to cooperate with available resources for the foster child.

(3) The foster child shall be allowed to attend the church preference of his choice and in accordance with the preference of his family. Opportunities for satisfying religious and spiritual experience are provided the child through an appropriate religious affiliation. No child

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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will be expected to attend any religious service against his wishes.

(4) A balanced and ample diet adjusted to the age, special needs and physical development of the foster child shall be provided.

(5) The foster family shall demonstrate the ability to maintain strict confidentiality as it relates to the foster child and his biological family.

(6) The foster family shall demonstrate a willingness to show respect for the child's individual cultural heritage.

(i) Criminal Background; Child Abuse Registry. A home shall not be eligible for a foster home license if a foster parent, prospective foster parent, or any member of the household is named as a perpetrator on any state or tribal child abuse registry or has a record of conviction of a crime that includes any form of violence or action of a sexual nature as an element or is the subject of pending criminal charges alleging commission of such a crime.

(j) Training. The foster care applicants will be required to attend an eight-hour pre-service foster parent training program and subsequent in-service training as provided by the ICWD.

### **Section 407. Requirements for Foster Home Facilities.**

(a) Safety. The physical facilities of the foster home shall be kept in an orderly manner and reasonably clean to assure a healthy, sanitary environment. The house shall present no hazards to the safety of a foster child. The foster family shall have access to emergency services in case of a crisis.

(b) Location. The location shall be such that the foster parent is able to arrange transportation to school, church, recreational and health facilities, and other community facilities and resources as needed.

(c) Sleeping Arrangements. The foster child shall be provided adequate and appropriate sleeping space, consistent with his needs for privacy or personal safety.

(d) Play Space. Play space, fenced if necessary, shall be available and free from hazards which might be dangerous to the life and health of the child.

(e) Home. The home shall provide space adequate to meet the physical needs of the family with space provided for the privacy of the foster child.

(f) Cultural Requirements. Nothing in the requirements set forth in this section shall prevent the operation of the foster home in accordance with tribal culture.

**Section 408. Denial of Application or Suspension or Revocation of License.** The ICWD may deny a tribal foster home application if it finds that it does not meet the standards for foster homes set forth in this chapter, and may suspend or revoke a tribal foster home license for good cause, which may include the foster parent's violation of its agreement with the ICWD described in section 405(e)(2) of this Code. The ICWD shall notify in writing the tribal foster home applicant or the foster home of the denial of the application or the suspension or revocation

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## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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of the license. The notification shall state the grounds for the action taken. The ICWD shall send a notice of the closure of any tribal foster home to any entities financially responsible, including, but not limited to, the State of Oklahoma Department of Human Services, Child Welfare Division.

### **Section 409. Supervision of Tribal Foster Homes.**

(a) General Requirement. The ICWD shall be responsible for supervision of foster homes that it has licensed and/or in which a Comanche child has been placed if required by a tribal/state foster care agreement or compact.

(b) Six Month Review. The ICWD shall re-evaluate a tribal foster home at least once every six months to determine continued eligibility to provide foster care services according to foster care standards set forth in this chapter. The evaluation process may include a report of the family's care of children during the past year, a home visit, and a medical report if the evaluation indicates a medical examination is necessary.

(c) Other Visits. The ICWD shall have authority to visit a tribal foster home for evaluation of the home and for monitoring the health and safety of the foster children at any time during normal working hours, and at other times agreed upon by the tribal foster home and the ICWD.

**Section 410. Direct Communications Between Parents, Legal Custodians and Foster Parents.** The Comanche Nation Tribal Court may issue an order authorizing direct communications between the child's parents or legal custodians and the child's foster parents if the Court determines that such communications are in the child's best interests. If such an order is issued, the ICWD shall facilitate such communications through use of a written agreement between such persons prepared by the ICWD that identifies whether the communications shall be by telephone or in-person, the location of any in-person communications, any limitations regarding the purpose of such communications, whether such communications shall occur in the presence of the ICWD and such other details as deemed appropriate by the ICWD.

### **Section 411. Tribal/State Agreements for Foster Care Payments.**

(a) Tribal-State Agreements. The Director of the ICWD is authorized to enter into agreements with the State of Oklahoma concerning state financial assistance and the provision of other state resources on a year to year basis or such other intervals as authorized by law or policy.

(b) General Eligibility; Kinship Foster Homes. A licensed foster parent shall be eligible for foster care payments in accordance with a tribal/state foster care payment agreement described in **subsection (a)** of this section; provided that a kinship foster parent shall not be entitled to any payments for providing foster care until such foster parent receives final approval from the ICWD to be a licensed kinship foster parent. When the kinship foster parent is licensed by the ICWD, the kinship foster care family shall be eligible to receive payment for the full foster care rate for the care of the child and any other benefits that might be available to foster



## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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parents, whether monetary or in services. If a child is placed with a kinship foster parent prior to the home's final approval as a foster care home, the ICWD shall immediately refer such child and family for assistance through any available tribal or state family assistance program.

(c) Payments; Uses. Foster care payments shall be made in accordance with the foster care agreement made between the ICWD and the foster family at the time the child is placed in foster care. Foster care payments are not considered income but as reimbursement for the costs incurred in providing foster care. The child's expenses, such as school fees, clothes, shoes, allowance shall be paid from the foster care payments. Medical expenses shall be separately paid pursuant to said agreement.

### **Section 412. Licensing Records.**

(a) Record Contents. The ICWD shall establish and maintain an individual record for each licensed foster home and for each applicant for licensing as a foster home, which shall at a minimum contain the following:

- (1) A copy of the application for license signed by the applicant;
- (2) A physician's statement concerning the physical health of persons in the tribal foster home;
- (3) A pre-licensing home study;
- (4) References from persons who can evaluate the applicant as a potential tribal foster home;
- (5) A biannual evaluation of the tribal foster home;
- (6) Documentation of any waiver of licensing regulations;
- (7) A complete home study;
- (8) A criminal background check on each applicant and any other adult residing in the home;
- (9) A copy of a CDIB for each member of the Indian foster family; and
- (10) Specific information regarding each child placed with the family, including the foster parent agreement for each child placed in the home, signed by the applicant and the Director of the ICWD, case plans and reviews, court orders, case summaries, reports and narratives, medical and dental records, a copy of the child's certificate of degree of Indian blood, and other pertinent information.

(b) Record Availability. This record shall be available only to the following;

- (1) The ICWD;
- (2) The applicant;
- (3) The Licensing Review Board; and
- (4) The Child Welfare Division of the Oklahoma Department of Human Services, if required for purposes of obtaining or coordination of state financial or other assistance.

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# TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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## CHAPTER FIVE

### CIRCUMSTANCES REQUIRING COURT INTERVENTION; INITIATION OF COURT INVOLVEMENT; EMERGENCY CUSTODY; SHELTER AND DETENTION FACILITIES

#### **Section 501. Definitions: Children's Circumstances Requiring Court Intervention.**

(a) Abused Child. "Abused child" means a child who is the subject of an act or omission by a parent or legal custodian which seriously threatens the health or welfare of the child, provided that persons investigating reports of child abuse shall take into account accepted child rearing practices of the culture in which the child participates, in cases involving any one or more of the following situations:

(1) Any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any kind, subdural hematoma, soft tissue swelling, or death, and such condition or death is at variance with the degree or type of such condition arising from accidental or natural causes, or circumstances indicate that such condition or death may not be the product of an accidental or natural causes; or

(2) Any case in which a child is subject to serious emotional damage, based on findings by a qualified expert witness who is a psychiatrist or psychologist; or

(3) Any case in which a child is subject to sexual assault or molestation; or

(4) Any case in which the child's parents or legal custodians have failed to protect or allowed another to abuse the child without taking lawful means to stop such abuse and prevent it from recurring.

(b) Child Abuse or Neglect. "Child abuse or neglect" means circumstances that would qualify a child as an "abused child" as defined in **subsection (a)** of this section or as a "deprived child" subject to "neglect" as defined in **subsection (e)** of this section. "Child abuse or neglect" also encompasses those acts that would qualify as "child abuse," as defined in 25 U.S.C. §3202(3), and "child neglect," as defined in 25 U.S.C. §3202(4), as well as "abuse," as defined in Okla. Stat. tit. 10A, §1-1-105(2), and "neglect," as defined in Okla. Stat. tit. 10A, §1-1-105(47).

(c) Child in Need of Supervision. "Child in need of supervision" means any child:

(1) Who has repeatedly disobeyed reasonable and lawful commands or directives of his parent or legal custodian; or

(2) Who is willfully and voluntarily absent from his home without the consent of his parent or legal custodian for a substantial period of time, or without intent to return; or

(3) Who, being subject to compulsory school attendance, is willfully, voluntarily, and habitually absent from school for fifteen (15) or more days or parts of days within a semester or for four (4) or more days or parts of days within a four week period without a valid excuse as defined by the local school boards.

(d) Child in Need of Treatment. "Child in Need of Treatment" means a child who has a demonstrable mental illness and as a result of that mental illness:

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(1) Can be expected within the near future to intentionally or unintentionally inflict serious physical injury to himself or another person and has engaged in one or more recent overt acts or made significant recent threats which substantially support that expectation; or

(2) Is unable to attend to those of his basic needs that must be attended to in order for him to avoid serious harm in the near future and has demonstrated such inability by failing to attend to those basic needs in the recent past. A determination regarding the ability of the child to attend to his basic needs shall be based upon the age of the child and reasonable and appropriate expectation of the abilities of a child of such age to attend to said needs.

The term "child in need of treatment" shall not mean a child afflicted with epilepsy, developmental disability, organic brain syndrome, physical handicaps, brief periods of intoxication caused by such substances as alcohol or drugs or who is truant or sexually active unless the child also meets the criteria of a child in need of treatment pursuant to the definitions contained in this **subsection**.

(e) Deprived Child. "Deprived child" means a child who is the subject of an act or omission by a parent or legal custodian constituting one or more of the following types of child neglect which threatens the health or welfare of the child, provided that persons investigating reports of child neglect shall take into account accepted child rearing practices of the culture in which the child participates:

(1) A child who is for any reason destitute or homeless;

(2) A child who is abandoned due to the failure of the parent, guardian or custodian to provide reasonable support and maintain regular contact with the child; provided that failure to maintain a normal parental relationship with the child without just cause for a period of six months shall constitute prima facie evidence (i.e., evidence that will establish the fact absent introduction of contradictory evidence) of abandonment; and provided further that custody with extended family members or voluntary consent to placement does not constitute abandonment; or

(3) A child who does not have the proper parental care or guardianship or whose home is an unfit place for the child by reason of neglect, cruelty or depravity on the part of his parents, legal custodian or other person in whose care the child may be, including but not limited to an abused child; or

(4) A child who is a developmentally disabled child deprived of the nutrition necessary to sustain life or of the medical treatment necessary to remedy or relieve a life-threatening medical condition in order to cause or allow the death of said child if such nutrition or medical treatment is generally provided to similarly situated developmentally disabled children or children who are not developmentally disabled, provided that no medical treatment is necessary if, in the reasonable medical judgment of the attending physician, such treatment would be futile in saving the life of the child; or

(5) A child who is, due to improper parental care and guardianship, absent from school for fifteen (15) or more days or parts of days within a semester or for four (4) or more days or parts of days within a four week period without a valid excuse as defined by the local school boards if said child is subject to compulsory school attendance.

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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### **Section 502. Action and Investigation Upon Receipt of Report of Suspected Child Abuse, Neglect, Child in Need of Treatment or Child in Need of Supervision.**

(a) Coordination Between CPS Worker, Comanche Nation Police and Prosecutor. Upon the receipt of a report of suspected child abuse, neglect, child in need of treatment or child in need of supervision from any source, the CPS Worker and the Comanche Nation Police or other appropriate law enforcement agency shall immediately notify the Prosecutor. If the CPS Worker receives a report of suspected child abuse, neglect, child in need of treatment or child in need of supervision from any source other than the Comanche Nation Police, the CPS Worker shall immediately transmit a copy of the report to the Comanche Nation Police or other appropriate law enforcement agency. If the Comanche Nation Police receives a report of suspected child abuse, neglect, child in need of treatment or child in need of supervision from any source other than the CPS Worker, or whenever, in the course of any criminal investigation, the Comanche Nation Police determines that there is cause to believe that a child may be or is alleged to be abused or deprived by reason of the acts or omissions of a person responsible for the health, safety or welfare of the child or the failure on the part of a person responsible for the child's health, safety or welfare to provide protection for the child, the Comanche Nation Police shall immediately notify any other appropriate law enforcement agency and verbally contact the CPS Worker for the purpose of an investigation by that office. The verbal notification to the CPS Worker shall be followed with written notification no later than the close of the next business day.

(b) Special Requirements for Alleged Abuse or Neglect Related to Potential Criminal Charges. The CPS Worker and the Comanche Nation Police and/or other appropriate law enforcement agency shall be responsible for the coordination of all initial investigations of all reports of known or suspected child abuse or neglect that might foreseeably result in criminal charges and shall arrange for any such investigations to be conducted by persons trained to conduct either the complete investigation or such parts thereof as may be assigned. In such cases in which the Comanche Nation Police or the CPS Worker is the agency receiving a report of alleged abuse or neglect that might foreseeably result in criminal charges, such agency shall provide notice by phone to the other immediately and shall provide notice by phone within 12 hours to all other appropriate agencies, including the Federal Bureau of Investigation and the United States Attorney for the Western District of Oklahoma, as required by the Memorandum of Understanding for Reporting and Investigating Child Abuse Criminal Offenses in Indian Country attached to this Code as **Appendix 3**. Such agency shall further provide a written report within 36 hours of the initial report to the agencies provided with the initial telephone report containing the information required by said Memorandum of Understanding. The Comanche Nation Police shall provide for persons to be continuously available to respond to such reports. Nation, state and federal agencies may cooperate to fulfill the requirements of this subsection. As used in this subsection, "continuously available" means the assignment of a person not necessarily located at the Comanche Nation Police headquarters but who is immediately accessible through electronic means or the use of agreements with local law enforcement agencies to assure that law enforcement personnel are immediately available.

(c) Investigations. The CPS Worker and/or the law enforcement agency responsible for the investigation shall make a thorough investigation immediately upon receipt of any report of known or suspected child abuse or neglect, or known or suspected circumstances concerning a child in need of treatment or a child in need of supervision. The immediate concern of such

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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investigation shall be the protection of the child. The investigation, to the extent that it is reasonably possible, shall include:

- (1) The nature, extent, and cause of the abuse or neglect or of the child's suspected status as a child in need of supervision or a child in need of treatment;
- (2) The identity of the person responsible for such abuse or neglect;
- (3) The names and conditions of any other children living in the same place;
- (4) The environment and the relationship of any children therein to the person responsible for the suspected abuse or neglect;
- (5) All other data deemed pertinent.

(d) On-Site Visits and Interviews. The investigation shall, at a minimum, include a visit to the child's place of residence or place of custody, a visit to the location of the alleged abuse or neglect, and an interview with or observance of the child who is reportedly in need of treatment, in need of supervision, deprived or abused. If admission to the child's place of residence cannot be obtained, the Comanche Nation Tribal Court, upon good cause shown, shall order the responsible person to allow the interview, examination and investigation.

(e) Referral of Investigation Report to CPS Worker. If the investigation was not conducted by the CPS Worker, the agency responsible that conducted the investigation shall refer its investigation report to the CPS Worker.

(f) Emergency Medical Examination and Treatment. Emergency medical examination and treatment shall be secured for a child only as authorized by **section 512** of this Code.

### **Section 503. Search Warrants for the Protection of Children.**

(a) Authority to Issue. A search warrant may be issued by the Comanche Nation Tribal Court to search any place within Indian Country for the recovery of any child believed to be a deprived or abused child, a child in need of supervision, or a child in need of treatment.

(b) Warrant Requirements. Such warrant shall be issued only on the conditions that the application for the warrant shall:

- (1) Be in writing and supported by affidavit sworn to or affirmed before the Court;
- (2) Name or describe with particularity the child sought;
- (3) State that the child is believed to be a child in need of supervision, a child in need of treatment or a deprived or abused child and the reasons upon which such belief is based;
- (4) State the address or legal description of the place to be searched; and
- (5) State the reasons why it is necessary to proceed pursuant to this section instead of proceeding by issuance of a summons.

### **Section 504. Issuance and Return of Search Warrant.**

(a) Issuance. If the Comanche Nation Tribal Court is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, it shall issue a search

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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warrant identifying by name or describing with particularity the child sought and the place to be searched for the child.

(b) Service. The search warrant shall be directed to any law enforcement officer authorized by law to execute it wherein the place to be searched is located. The warrant shall be served in the daytime unless the application for the warrant alleges that it is necessary to conduct the search at some other time, in which case the Comanche Nation Tribal Court may so direct. A copy of the warrant, the application therefore, and the supporting affidavit shall be served upon the person in possession of the place to be searched and where the child is to be sought, or if no one be home, a copy shall be left in plain sight within the place searched.

(c) Custody of Child. If the child is found, the child shall be taken into custody, transported to and placed in the detention or shelter facility.

(d) Return. The warrant shall be returned to the Court Clerk/Court Administrator for filing, immediately upon service, and the officer shall subscribe on the warrant his name, the date and time of service, the place where the child was delivered by him and his fees. A copy shall be delivered to the Prosecutor. If the child was not found, such information should be subscribed on the warrant.

**Section 505. Expiration of Search Warrant.** A search warrant for the protection of a child shall be null and void if not served within ten days of the date of issuance and a void warrant should be returned with the reason for non-service subscribed thereon.

**Section 506. Emergency Order for Children Taken Into Emergency or Protective Custody Prior to Filing of Petition.**

(a) Custody Before Obtaining Emergency Order. Law enforcement may take a child into emergency or protective custody prior to the filing of a petition without a court order if the child is willfully and voluntarily absent from the home of the child without the consent of the parent or legal custodian for a substantial length of time or without intent to return, or if the law enforcement officer has a reasonable suspicion that the child is in need of protection due to abandonment, abuse or neglect, or is in surroundings that are such as to endanger the welfare of the child; provided that the child shall be subject to return to his parents or legal custodian if an emergency order of the Comanche Nation Tribal Court is not obtained pursuant to **subsection (b)** of this section within seventy-two (72) hours of the time that the child was taken into emergency custody.

(b) Emergency Order. If a child is or will be taken into emergency or protective custody prior to the filing of a petition, the CPS Worker or the Prosecutor must seek an emergency order of the Comanche Nation Tribal Court. The application for an emergency order shall be presented by the CPS Worker or Prosecutor and shall be supported by a sworn affidavit which may be based upon information and belief. The Court shall issue the emergency order based solely on the application, provided that the application states facts sufficient to demonstrate to the court that there is reasonable suspicion to believe the child is in need of protection due to abandonment, abuse or neglect, or is in surroundings that are such as to endanger the welfare of the child. The emergency order may specify a specific placement for

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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the child and contain such other requirements as described in **subsections (a), (b), (c) and (d)** of **section 507**, and shall specify the date on which hearing on the emergency custody order shall be held. The emergency order may be transmitted to the Court Clerk/Court Administrator by facsimile, and the facsimile copy file stamped upon receipt, provided that the original order shall be delivered to the Court Clerk/Court Administrator and attached to the file stamped facsimile copy within ten days of the date of filing the facsimile copy.

(c) Notice to Parent or Legal Custodian. The Court Clerk/Court Administrator shall issue notice of a hearing on the emergency custody order, together with a copy of the emergency order, to the parent or legal custodian of a child. If the whereabouts of the parent or legal custodian are known, the notice and order shall be served on such person by a law enforcement officer or ICW worker. If the whereabouts of the parent or legal custodian are not known, the Court Clerk/Court Administrator shall mail the notice and the order to the last known address of the parent or legal custodian. The written notice shall:

(1) Inform the parents, legal guardian, or custodian that the child has been removed from the home,

(2) Inform the parent, legal guardian, or custodian of the child that an emergency custody order has been issued and that hearing to determine custody of the child will on a date specified in the notice, which shall be within five (5) days from the date the child was removed from the home, and

(3) Contain information about the:

- (i) emergency custody hearing process, including, but not limited to, the date, time and place that the child was taken into protective or emergency custody;
- (ii) nature of the allegation that led to placement of the child into protective or emergency custody;
- (iii) address and telephone number of the tribal and federal law enforcement agencies;
- (iv) phone number of the ICWD; and
- (v) right of the parent, legal guardian or custodian to contact an attorney.

(4) Contain the following or substantially similar language: "FAILURE TO RESPOND TO THIS NOTICE OR TO APPEAR AT THE EMERGENCY CUSTODY HEARING MEANS YOUR CHILD WILL STAY OR BE PLACED IN EMERGENCY CUSTODY. YOUR FAILURE TO RESPOND OR COOPERATE MEANS YOU MAY LOSE CUSTODY OF THIS CHILD OR YOUR RIGHTS AS A PARENT MAY BE TERMINATED."

(d) Hearing on Emergency Order. Within the next five (5) days following the child being taken into protective or emergency custody, the Comanche Nation Tribal Court shall conduct an emergency custody hearing to determine whether evidence or facts exist that are sufficient to demonstrate to the Comanche Nation Tribal Court there is reason to believe the child is in need of protection due to abuse or neglect, or is in surroundings that are such as to endanger the health, safety or welfare of the child. At the emergency custody hearing, the Comanche Nation Tribal Court shall advise the parent or legal custodian of the child in writing of the procedure which will be followed with regard to determining custody of the child, including, but not limited to any right of the parent or legal guardian or custodian to testify and

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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present evidence at court hearings and the consequences of failure to attend any hearings which may be held. At the emergency custody hearing, the Comanche Nation Tribal Court shall:

(1) Release the child to the child's parent or legal custodian or other responsible adult without conditions or under such conditions as the Comanche Nation Tribal Court finds reasonably necessary to ensure the health, safety or welfare of the child; or

(2) Continue the child in or place the child into emergency custody if continuation of the child in the child's home is contrary to the health, safety or welfare of the child, and

(3) Obtain information from the parent or legal guardian necessary to identify and locate kinship placement resources; provided that if such information indicates that within one (1) year of the emergency custody hearing the child had resided with a grandparent for six (6) months, and that such grandparent was the primary caregiver and provided primary financial support for the child during such time, the Comanche Nation Tribal Court shall provide notice and an opportunity to be heard at future hearings to such grandparent, and

(4) Require the ICWD to provide to any person caring for the child information on programs and services available to the child.

(e) Deadline for Filing Petition; Emergency Order Expiration or Extension. A petition for a child in need of supervision, child in need of treatment, abused child or deprived child proceeding shall be filed and a summons issued following assumption of custody and issuance of an emergency order within the time stated in **section 603** of this Code. If the petition is not filed by said deadline, then the emergency custody order shall expire, custody of the child shall be returned to his parent or legal custodian, and the Prosecutor shall submit for filing in the court record a written record specifying the reasons why the petition was not filed and specifying to whom the child was released. If a petition is filed within the time period specified in section 603, the emergency custody order shall remain in force and effect for not longer than sixty (60) days, except as otherwise provided by this subsection. The emergency custody order shall not be extended beyond sixty (60) days absent a showing that such further extension is necessary to ensure the health, safety or welfare of the child and is in the best interests of the child. The Comanche Nation Tribal Court may hold additional hearings at such intervals as may be determined necessary by the Comanche Nation Tribal Court to provide for the health, safety or welfare of the child.

### **Section 507. Emergency or Protective Custody of Child.**

(a) Emergency or Protective Custody of Alleged Child in Need of Supervision. Whenever a child is taken into emergency or protective custody as a child in need of supervision, the child shall be detained or be released to the custody of his parent, legal custodian or attorney, upon the written promise of such parent, legal custodian or attorney to bring the child to the Comanche Nation Tribal Court at the time fixed. If detained, such child shall be taken to a shelter designated by the Court. The person having the child in custody shall immediately report his detention of the child to the Prosecutor in accordance with **section 508** of this Code and to the Chief Judge of the Comanche Nation Tribal Court. If the Chief Judge cannot be reached, such detention shall be reported immediately to any Judge serving on the Comanche Nation Tribal Court.

(b) Emergency or Protective Custody of Alleged Abused or Deprived Child.



## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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Whenever a child is taken into emergency or protective custody as an abused or deprived child, he shall be taken to one of the following: (1) a shelter, (2) hospital, (3) foster home or (4) other appropriate place as designated by the Comanche Nation Tribal Court. When a child has been taken into custody as a deprived child without a court order, the law enforcement officer or CPS Worker shall immediately report the fact of the detention of the child to the Prosecutor in accordance with **section 508** of this Code and to the Chief Judge of the Comanche Nation Tribal Court. If the Chief Judge cannot be reached, then the CPS Worker shall immediately report the fact of the child's detention to any Judge regularly serving the Comanche Nation Tribal Court.

(c) Emergency or Protective Custody of Alleged Child in Need of Treatment.

Whenever a child is taken into emergency or protective custody as a child in need of treatment, he shall be taken to a shelter, hospital, foster home or other appropriate place as designated by the Comanche Nation Tribal Court or he shall be taken immediately before the Comanche Nation Tribal Court for the purpose of obtaining an order for protective custody. When a child has been taken into custody as a child in need of treatment without a court order, the law enforcement officer or CPS Worker shall immediately report the fact of the detention of the child to the Prosecutor in accordance with **section 508** of this Code and to the Chief Judge of the Comanche Nation Tribal Court, or if the Chief Judge cannot be reached, the CPS Worker shall immediately report the fact of the child's detention to any Judge regularly serving the Comanche Nation Tribal Court.

(d) Mental Health Examination. Any emergency or protective order of the Comanche Nation Tribal Court pursuant to this section may require a mental health examination of the child. After a prescreening examination and a determination that there is reasonable cause to believe that the child may be mentally ill or developmentally disabled, or has sustained any trauma which may result in a delayed medical danger or injury, and/or there exists an imminent danger that the child will intentionally or unintentionally inflict seriously physical injury on himself or another person, the child may be admitted to a hospital or mental health facility approved by the Comanche Nation Tribal Court for seventy-two hour treatment and evaluation. Upon the advice of a physician the treatment and evaluation period may be extended for a period not exceeding ten days unless the Comanche Nation Tribal Court further extends said time period.

**Section 508. Notification of Comanche Nation Tribal Court Officers.** Whenever an officer or other person takes a child to a detention or shelter facility, or admits a child to a medical facility, and determines not to release said child, the officer or other person who took the child to a detention or shelter facility shall notify the Prosecutor, the ICWD, and any agency or persons so designated by the Comanche Nation Tribal Court at the earliest opportunity that the child has been taken into custody and where he has been taken. He shall also promptly file a brief written report with the Prosecutor, the ICWD, and any agency or person so designated by the Comanche Nation Tribal Court stating the facts which led to the child being taken into custody and the reason why the child was not released. This report shall be filed within twenty-four hours excluding Saturdays, Sundays, and legal holidays.

**Section 509. Temporary Care and Shelter.**

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(a) Temporary Shelter. A child who must be taken from his home but who does not require physical restriction shall be given temporary care in a shelter facility approved by the ICWD and designated by the Comanche Nation Tribal Court or the ICWD and shall not be placed in detention unless detention is the least restrictive placement for the child.

(b) Temporary Shelter in Child's Home. Upon application of the ICWD, in rare instances, the Comanche Nation Tribal Court may find that it is not necessary under the circumstances to remove a child from his home to a temporary shelter facility and may provide temporary shelter in the child's home by authorizing a representative of the ICWD, if emergency caretaker services are available and there is no risk of endangerment to the ICW representative, to remain in the child's home with the child until a parent, legal custodian, or extended family member of the child enters the home and expresses willingness and has the apparent ability, as determined by the ICWD, to resume charge of the child, but in no event shall such period of time exceed twenty-four hours. In the case of an extended family member, the extended family member is to assume charge of the child until a parent or legal custodian enters the home and expresses willingness and has the apparent ability, as determined by the ICWD, to resume charge of the child. The director of the ICWD shall designate in writing the representatives of the ICWD authorized to perform such duties. The court order allowing emergency shelter in the child's home may be written or oral, provided, that if the order is given verbally, the Judge shall reduce the consent given to writing within twenty-four hours.

### **Section 510. Conditions of Detention of Child: Detention or Confinement in Adult Facility.**

(a) Conditions of Detention. Except as authorized by **subsection (b)** of this section a child who has been taken into custody as a deprived or abused child, a child in need of supervision or a child in need of treatment, may not be placed in any detention facility pending court proceedings, but shall be placed in shelter care or foster care, or released to the custody of his parents or some other responsible party. When a child is taken into custody as a child in need of supervision as a result of being a runaway, the Comanche Nation Tribal Court may order the child placed in a juvenile detention facility pending court proceedings if it finds said detention to be essential for the safety of the child.

(b) Detention in Adult Facilities. Children in need of supervision, including runaways, and children in need of treatment who are seriously assaultive or destructive towards others or themselves such that detention is necessary for the protection of the child or the public may be placed in a secure detention in a jail certified by the Oklahoma Department of Health or appropriate federal or tribal agency, police station or similar law enforcement offices for purposes of identification, processing or arranging for transfer up to seven days, during which time arrangements shall be made for returning the child to his parent, legal custodian or for obtaining a court order directing other custodial arrangements; provided that detention in such facilities may be made only if there is no existing acceptable alternative placement for the child; and the facility meets the requirements for licensure of state juvenile detention facilities, is appropriately licensed, and provides sight and sound separation for juveniles, including total separation between juvenile facility and adult facility areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities, total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities and separate

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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juvenile and adult staff, specifically direct care staff such as recreation, education and counseling. Specialized services staff, such as cooks, bookkeepers, and medical professionals who are not normally in contact with detainees or whose infrequent contacts occur under conditions of separation of juvenile and adults can serve both. The detention of a child in jail, police station or similar law enforcement offices for the purposes of identification, processing or arranging transfer established by this section shall not exceed seven days, not including the actual travel time required for transporting a child from a jail to a juvenile detention facility or other placement.

(c) Contracts for Juvenile Detention Facilities. The ICWD, with approval of the Comanche Business Committee, or the BIA shall contract with any state juvenile detention facility for the providing of detention services pursuant to 10 O.S. § 1107.1(F).

**Section 511. Court Ordered Release.** At any time prior to the filing of a petition and entry of an emergency custody order, the Comanche Nation Tribal Court may order the release of any child from detention or shelter care without holding a hearing, either without restriction or upon written promise of the parent or legal custodian to bring the child to the Comanche Nation Tribal Court at a time set or to be set by the Court.

**Section 512. Authorized Medical Examination and Treatment.**

(a) Emergency Medical Examination and Treatment When Necessary. When any child is taken into custody pursuant to this Code and it reasonably appears to the police officers, CPS Worker or person acting pursuant to court order that the child is in need of medical examination and treatment to preserve his health or that there is the need to preserve evidence, such as the preparation of a rape kit or other examination, or that existing conditions make it advisable, any police officer, any CPS Worker or person acting pursuant to Comanche Nation Tribal Court order may obtain and authorize medical examination and medical treatment for any child found to be in need of medical treatment as diagnosed by a competent medical authority in the absence of a parent or legal custodian who is competent to authorize medical treatment. If an immediate medical examination and/or treatment are required, the officer or the employee of the Comanche Nation Tribal Court or person acting pursuant to court order shall authorize said medical examination and/or treatment only after exercising due diligence to locate the parent, legal custodian or other person legally competent to authorize said medical treatment. The parent or legal custodian of the child shall be responsible for such medical expenses as ordered by the Comanche Nation Tribal Court. No law enforcement officer, employee of the Comanche Nation Tribal Court, or person acting pursuant to court order authorizing such treatment in accordance with the provisions of this section for any child found in need of such medical treatment shall have any liability, civil or criminal, for giving such authorization.

(b) Medical Examination in Cases Involving Alleged Physical or Sexual Abuse of Child in Cases Where Emergency Medical Examination and Treatment Not Necessary. If an immediate medical examination and/or treatment is not required in cases involving alleged physical or sexual abuse of a child, a medical examination by a physician or health care provider with a background in child physical or sexual abuse previously identified by the United States Attorney's office will be arranged in the normal course of business in accordance with the Memorandum of Understanding for Reporting and Investigating Child Abuse Criminal Offenses

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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in Indian Country attached to this Code as **Appendix3**.

(c) Court Order for Medical Treatment Prior to Adjudication At any time after a child is taken into custody with or without a court order and prior to adjudication on the merits:

(1) When the Comanche Nation Tribal Court finds that emergency medical, surgical, or dental treatment is required for a child in ICWD custody it may authorize such treatment or care if the parents or legal custodian are not immediately available to give their consent or to show cause why such treatment should not be ordered. The power to consent to emergency medical care may be delegated by the Comanche Nation Tribal Court to the agency or person having physical custody of the child pursuant to this Code or pursuant to court order.

(2) After making a reasonable effort to obtain the consent of the parent or legal custodian, and after a hearing on notice the Comanche Nation Tribal Court may authorize or consent to non-emergency medical, surgical, or dental treatment or care for a child in ICWD custody.

(d) Court Order for Medical Treatment After Adjudication. After a child has been adjudicated a ward of the Comanche Nation Tribal Court, the Court may consent to any necessary emergency, preventive, or general medical, surgical, or dental treatment or care, or may delegate the authority to consent thereto to the ICWD, other agency or legal custodian of the child; provided further that the ICWD may authorize a foster parent to secure preventive and non- surgical general medical or dental treatment or care to a licensed foster parent.

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## CHAPTER SIX

### ADJUDICATION

#### **Section 601. Intake.**

(a) Referrals to CPS Worker. Whenever it appears to a law enforcement officer, ICWD personnel or any other person that a child is or appears to be within the Comanche Nation Tribal Court's jurisdiction, by reason of neglect or abuse, need of supervision, or need of treatment, the law enforcement officer shall refer the matter to the CPS Worker.

(b) Initial Determination. Upon receipt of a referral or whenever it otherwise comes to the attention of the CPS Worker that a child is or appears to be within the Comanche Nation Tribal Court's jurisdiction, by reason of neglect or abuse, need of supervision, or need of treatment, the CPS Worker shall determine whether the interests of the child or of the community requires that further action be taken.

(c) Preventive Services. If the CPS Worker determines that the interests of the child or of the Nation do not require court action, the CPS Worker, in consultation with the Prosecutor and the ICWD, may refer the case to the appropriate program for preventative services, including without limitation the Healthy Families Program, Family Preservation Program or other programs offering services related to prevention of child abuse or neglect.

(d) Additional Investigation and Recommendations. If the CPS Worker is unable to determine whether the interests of the child or of the Nation require that court action be taken from information available to him, he may investigate or refer the matter to the ICWD or other agency designated by the Comanche Nation Tribal Court for additional investigation and recommendations as to filing a petition or as to initiating referrals for preventive services.

#### **Section 602. Referral to Prosecutor; Action by Prosecutor**

(a) Referral to Prosecutor; Review; Petition. If the CPS Worker determines that the interests of the child or of the community require that court action be taken, he shall deliver a copy of the entire case file, including any reports, witness statements and other documents, to the Prosecutor, and may prepare and file a petition in consultation with the Prosecutor. Upon receiving the case file from the CPS Worker, the Prosecutor shall review the case file to determine if there is sufficient evidence which will be admissible under the applicable evidentiary rules to establish the jurisdiction of the Comanche Nation Tribal Court over the child. If the Prosecutor determines that sufficient evidence is available to establish the jurisdiction of the Comanche Nation Tribal Court over the child and no petition has yet been filed, he shall authorize the CPS Worker to prepare and/or file the petition, or shall prepare and/or file the petition himself.

(b) Notification if Insufficient Evidence. If the Prosecutor determines that there is not sufficient evidence available to establish the jurisdiction of the Comanche Nation Tribal Court over the child, he shall so notify the CPS Worker in writing, or, in his discretion, may request the appropriate law enforcement or child welfare agency to conduct a further investigation into the matter.

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**Section 603. Deadline for Filing Petition When Child Already in Custody; Petition Prior to Removal of Child.**

(a) Petition When Child Already in Custody. A petition for a child in need of supervision, child in need of treatment, abused child or deprived child proceeding shall be filed and a summons issued within ten (10) days from the date of assumption of custody, or custody of the child shall be returned to his parent or legal custodian; provided, however, such time period may be extended a period of time not to exceed twenty (20) calendar days from the date of assumption of custody of the child if, upon request of the Prosecutor at an emergency custody hearing described in section 506(e) of this Code, the Comanche Nation Tribal Court determines there are compelling reasons to grant additional time for the filing of such petition. Where a child has been taken into custody and upon allegations of cruelty on the part of the parents, legal custodian or other person having custodial care of the child, the ten-day limitation in this subsection shall not cause the child to be relinquished to such person, legal custodian or other person having custodial care of the child. In all such cases, the Comanche Nation Tribal Court shall determine whether the petition was filed within a reasonable time.

(b) Petition Prior to Removal of Child. When a child has not been taken into custody before a petition has been filed, the Prosecutor shall file a petition seeking adjudication for any alleged deprived or abused child, child in need of supervision, or child in need of treatment. The petition may seek removal of the child from the home. No order of the Comanche Nation Tribal Court providing for the removal of an alleged or adjudicated child from his home shall be entered unless the Court finds that the continuation of the child in his home is contrary to the welfare of the child. Said order shall include either a determination as to whether or not reasonable efforts have been made to prevent the need for the removal of the child from his home and as appropriate, reasonable efforts have been made to provide for the return of the child to his home or a determination as to whether or not an absence of efforts to prevent the removal of the child from his home is reasonable under the circumstances, if such removal of the child from his home is due to an alleged emergency and is for the purpose of providing for the safety of the child.

**Section 604. Petition Heading.** The Prosecutor shall sign and file all child welfare petitions alleging a child to be in need of supervision, in need of treatment, deprived, or abused. Such petitions and all subsequent court documents in such proceedings shall contain a heading and title in substantially the following form:

IN THE COMANCHE NATION TRIBAL COURT  
LAWTON, OKLAHOMA

In The Interest Of:                    )  
  )  
  ) Case No. JFJ-  
  )  
An Alleged\_\_\_\_\_Child,    ) And Concerning                    )  
  )  
  )  
Respondent(s).                         )

**Section 605. Petition Contents.**

(a) Information. The petition shall set forth plainly the facts which bring the child within the Comanche Nation Tribal Court's jurisdiction. The petition shall also state the name, age, and residence of the child and the names and residences of his parents, legal custodian, and/or nearest known extended family member if no parent or legal custodian is known.

(b) Statement Regarding Termination. All petitions filed alleging the abuse or neglect of a child may include the following statement: "If this petition is sustained, the Nation may seek termination of parental rights at a later time by amending the petition, in which event you will receive notice and an opportunity for a separate hearing on termination of parental rights."

**Section 606. Summons.** Upon filing of a petition the Court Clerk/Court Administrator shall issue a summons to the respondents and the child as in other civil cases. The summons shall be in substantially the following form:

IN THE COMANCHE NATION TRIBAL COURT  
LAWTON, OKLAHOMA

In The Interest Of:                    )  
  )  
  ) Case No. JFJ-  
  )  
An Alleged \_\_\_\_\_ Child,        ) And Concerning:                    )  
  )  
  )  
  )  
  ) Respondent(s).

SUMMONS

THE COMANCHE NATION to:

\_\_\_\_\_,  
Respondents.     [NAME     AND  
ADDRESS]

YOU ARE HEREBY NOTIFIED, that a petition has been filed in the Comanche Nation Tribal Court alleging that the above named \_\_\_\_\_ is a (deprived child), (abused child) (child in need of supervision) (child in need of treatment) and that as the (parent) (custodian) of said child you have been named as the Respondent, all as more fully set out in the attached petition.

YOU ARE THEREFORE ORDERED TO APPEAR at the Courtroom of the Comanche Nation Tribal Court at \_\_\_\_\_, on the \_\_ day of \_\_, 20\_\_, at the hour of \_\_\_\_ o'clock \_\_.m. and to there remain subject to the call of the Court until discharged that you may be advised of the allegations contained in the petition and may answer that you admit or deny the allegations of the petition.

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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YOU ARE FURTHER ORDERED, if the above named child is in your physical custody or subject to your control, to bring the child to Court with you.

You may seek the advice of an attorney on any matter relating to this proceeding at your own expense.

\_\_\_\_\_  
Court Clerk/Court Administrator

[Seal]

(Return as in other civil cases)

**Section 607. When Summons Unnecessary.** A summons need not be issued or be served upon any respondent who appears voluntarily, or who waives service in writing before a notary public or Court Clerk/Court Administrator, or who has promised to appear at the hearing in writing upon the release of a child from emergency custody or otherwise, but any such person shall be entitled to a copy of the petition and summons upon request.

**Section 608. Additional Parties to be Summoned.** The Comanche Nation Tribal Court on its own motion or on the motion of any party may join as a respondent or require the appearance of any person it deems necessary to the action and authorize the issuance of a summons directed to such person.

**Section 609. Service of Process; Subsequent Notices.**

(a) **Service Required for Adjudication Hearing.** The adjudication hearing shall not be held until at least twenty (20) days after the service of process, including the summons and the petition, except with the consent of the parent, if known; provided that this requirement shall not prevent a court from immediately taking custody of a child and ordering whatever action may be necessary to protect the child's health or welfare.

(b) **Service on Parent or legal Custodian Residing Within Jurisdiction.** Summons shall be served on a parent or legal custodian who resides within the jurisdiction of the Comanche Nation Tribal Court as follows:

(1) Absent the conditions in **paragraph (2)** of this subsection, summons shall be served by personal delivery or certified mail with postage prepaid and delivery restricted to the intended recipient at his place of residence with a return receipt requested. Service of summons shall be deemed complete upon the filing of a return of personal service or upon filing of the return of the requested mail receipt.

(2) If the Comanche Nation Tribal Court finds that said person's place of residence is not known and cannot be determined after due diligence, the Court may order that the summons be published and a copy mailed to the last known address of said person. The summons shall be published once in a newspaper of general circulation in the county in which the parent was last known to reside, and proof of publication and mailing shall be filed with the Court Clerk/Court Administrator.



## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(c) Service on Parent or Legal Custodian Residing Outside Jurisdiction. If the parents or legal custodian of the child required to be summoned resides outside the jurisdiction of the Comanche Nation Tribal Court, the fact of the child's presence within the Court's jurisdiction shall confer jurisdiction on the Court as to any absent parents or legal custodian if summons has been served in the following manner:

(1) If the person to be served is temporarily present within the jurisdiction of the Comanche Nation Tribal Court, summons may be served by personal delivery. Service of summons shall be deemed complete upon the filing of a return of personal service.

(2) If the summons is not served by personal delivery in accordance with **paragraph (1)** of this subsection and the residence of the person to be served outside the Comanche Nation Tribal Court's jurisdiction is known, a copy of the summons and petition shall be served by personal delivery or sent by certified mail with postage prepaid and delivery restricted to such person at his place of residence with a return receipt requested. Service of summons shall be deemed complete upon the filing of a return of personal service or upon filing of the return of the requested mail receipt.

(3) If the Comanche Nation Tribal Court finds that the place of residence of the person to be served is not known and cannot be determined after due diligence, the Court may order that the summons be published and a copy mailed to the last known address of the parent or legal custodian. The summons shall be published once in a newspaper of general circulation in the county in which the parent was last known to reside, and proof of publication and mailing shall be filed with the Court Clerk/Court Administrator.

(d) Notice of Hearings Subsequent to Service of Process. After proper service of process in accordance with **subsection (a), (b) or (c)** of this section, the Court Clerk/Court Administrator shall provide notice of each hearing to the parent or legal custodian of the child by mailing the notice by regular mail to the last known address of the parent or legal custodian and to the address of all counsel of record; except that, as required by **section 803** of this Code, notice of hearing of termination of parental rights shall be served in the same manner as a summons, as described in **subsections (a), (b) or (c)** of this section. The parent or legal custodian shall have a duty to provide his address, including any address changes, to the Court Clerk/Court Administrator and, if represented by an attorney, to his attorney.

### **Section 610 Pre-Adjudicatory Procedures and Services.**

(a) Scope of Continued Investigation and Provision of Services by the ICWD. Pending the adjudicatory hearing, the ICWD shall, to the extent necessary, perform appropriate casework and offer appropriate services to the parent or legal custodian and the child, and shall make reasonable efforts to prevent the removal of the child from the care of the parent or legal custodian, and to eliminate the need for continued removal. In the course and scope of the continuing investigation, the ICWD shall, to the extent possible:

(1) Contact and interview all relevant parties, including the parents and children, as well as, if appropriate, caretakers, extended family members, neighbors, teachers, and treatment personnel;

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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- (2) Visit the home and/or place where the child was residing and/or is now residing;
  - (3) Address the child's past and current circumstances, including home environment, family and parental history, parent's current circumstances, including financial information if relevant, the nature of the reported charges, and the information supporting or contravening those charges;
  - (4) Determine if the child can remain safely in parental care with services provided, and assist in providing those services;
  - (5) Determine what services are necessary to facilitate return of the child to parental care, with or without continuing supervision; locate and offer, and refer the parent to, those services;
  - (6) Seek out extended family members, or others with whom the child is familiar, and with whom the child can be placed if return home is not possible; and
  - (7) Draw conclusions as to what is in the best interests of the child, and how best to protect the child's health and safety to prevent removal or make return to parental care possible.
- (b) Service Plan Pending Adjudicatory Hearing. After the preliminary inquiry hearing, and prior to the adjudicatory hearing, the ICWD shall hold a conference with the parents or legal custodians, and all attorneys and/or spokespersons, and the child, if appropriate, and any other persons who may provide helpful participation, as approved by the ICWD. For each child and parent or legal custodian, willing to work cooperatively with the ICWD pending the adjudicatory hearing, the ICWD shall develop an appropriate service plan for each parent, legal custodian and child, designed to protect the child's health and safety and to reunify the family, if possible. The plan shall be detailed and specific as to:
- (1) The areas in which the family needs assistance;
  - (2) The services required to address those needs;
  - (3) Who will provide those services;
  - (4) The time lines to which the family and the ICWD will be held for completion of services; and
  - (5) How the family's progress, or lack of progress, will be measured.

### **Section 611. Failure to Appear.**

- (a) Failure to Appear; Bench Warrant. When a parent or other person was served with a summons or subpoena, or signed a written promise to appear and bring the child to court, or has waived or acknowledged service fails to appear with the child on the date set by the Comanche Nation Tribal Court, a bench warrant may be issued for the parent or other person, the child, or both. Such person may also be proceeded against for contempt of court.
- (b) Other Circumstances; Bench Warrant; Search Warrant. If after reasonable effort the summons cannot be served or if the welfare of the child requires that he be brought immediately into the custody of the Comanche Nation Tribal Court, a bench warrant may be issued for the parents, legal custodian, other person having physical custody of the child, or for the child, or the Comanche Nation Tribal Court may issue a search warrant for the child as

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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provided by law.

### **Section 612. Appointment of Guardian Ad Litem.**

(a) Guardian Ad Litem for Child. Subject to availability of funds, the Comanche Nation Tribal Court may, in its discretion, appoint a guardian ad litem to protect the interest of a child in proceedings pursuant to this Code when:

(1) No parent, legal custodian, or extended family member of the child appears at the first or any subsequent hearing in the case; or

(2) The Comanche Nation Tribal Court finds that there may be a conflict of interest between the child and his parent or legal custodian; The Comanche Nation Tribal Court finds that it is in the child's interest and necessary for his welfare, whether or not a parent or legal custodian is present; or

(3) The Comanche Nation Tribal Court determines that the child has no parent or legal custodian.

(b) Guardian Ad Litem for Parent. Subject to availability of funds, the Comanche Nation Tribal Court may, in its discretion, appoint a guardian ad litem for any parent in proceedings pursuant to this Code who has been determined to be mentally ill by a Court of competent jurisdiction or is developmentally disabled; except that, if a conservator has been appointed, the conservator may serve as the guardian ad litem. If the conservator does not serve as guardian ad litem, he shall be informed that a guardian ad litem has been appointed.

(c) Cases Involving Abuse. In all proceedings brought for the protection of a child suffering from abuse or non-accidental injury, a guardian ad litem shall be appointed for said child. Said guardian ad litem shall have the power to represent the child in the legal proceedings.

(d) Visitation of Child's Residence. All guardians ad litem shall, whenever practical, be required to personally visit the place of residence of the child.

### **Section 613. Notice of Legal Rights.**

(a) Notice Regarding Legal Rights and Responsibilities. At his first appearance before the Comanche Nation Tribal Court, the child and his parents or legal custodian shall be fully advised by the Court of their legal rights and the potential consequences of the proceedings, including:

(1) Their right to be represented by an attorney, at their own expense, at every stage of the proceeding;

(2) Their right to see, hear and cross-examine all witnesses against them;

(3) Their right to call witnesses on their own behalf and to have court process compel the attendance of witnesses for them;

(4) The possibility that parental rights may be terminated in accordance with a petition for termination included in the initial petition or a petition for termination that may be added at a later time;

(5) The child's right to confidentiality.

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## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(b) Court Appointed Counsel. If the child or his parents or legal custodian requests an attorney and is found to be without sufficient financial means, counsel, to the extent funds are available or counsel is available at no fee, shall be appointed by the Comanche Nation Tribal Court in proceedings wherein the Nation is a party, and termination of the parent-child legal relationship is stated as a possible remedy in the summons. The Comanche Nation Tribal Court may appoint counsel without such request if it deems representation by counsel necessary to protect the interest of the child or other parties.

(c) Notice of Right to Appeal. If the child and his parents or legal custodian were not represented by legal counsel, the Comanche Nation Tribal Court shall inform them at the conclusion of the proceedings that they have the right to appeal in accordance with **section 212** of this Code, provided that lack of counsel alone shall not be grounds for reversal.

### **Section 614. Adjudicatory Hearing.**

(a) Consideration of Evidence. At the adjudicatory hearing, the Comanche Nation Tribal Court shall consider whether the allegations of the petition are supported by evidence in accordance with the applicable standard of proof required by **section 208** of this Code, except that jurisdictional matters of the age and residence of the child shall be deemed admitted by or on behalf of the child unless specifically denied prior to the adjudicatory hearing.

(b) Amendment of Petition Based on Evidence. When it appears that the evidence presented at the hearing discloses issues not raised in the petition the following action shall be taken:

(1) The Comanche Nation Tribal Court may deem the petition amended and proceed immediately to consider the additional or different matters raised by the evidence; or

(2) If the amendment results in a substantial departure from the original allegations in the petition, the Comanche Nation Tribal Court may, if it finds such action to be in the best interests of the child or otherwise in the interests of justice, order the petition to be amended in writing to conform to the evidence and continue the hearing, either on the motion of any interested party or on its own motion.

### **Section 615. Mentally Ill and Developmentally Disabled Children.**

(a) Order for Examination. If it appears from the evidence presented at an adjudicatory hearing or otherwise that the child may be mentally ill or developmentally disabled, as these terms are defined in this section, the Comanche Nation Tribal Court shall order that the child be examined by a physician, psychiatrist, and/or psychologist and may place the child in a hospital or other suitable facility for the purpose of examination for a period not to exceed thirty days.

(b) Suitable Facility for Examination. A suitable facility for the purpose of examination shall be a facility designated by the Comanche Nation Tribal Court for treatment and evaluation, but neither a tribal, city or county jail, nor a detention facility shall be considered a suitable facility under any circumstances.

(c) Order for Hospitalization. If the report of the examination made pursuant to **subsection (a)** of this section states that the child is mentally ill to the extent that hospitalization or institutional confinement and treatment is required, the Comanche Nation Tribal Court may

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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order such hospitalization, institutional confinement, or treatment prior to or after adjudication.

(d) Dismissal of Petition. The Comanche Nation Tribal Court may dismiss the original petition when a child who has been ordered to receive treatment is no longer receiving treatment.

(e) Resumption of Hearing Under Certain Circumstances. The Comanche Nation Tribal Court shall set a time for resuming the hearing on the original petition under the following circumstances:

(1) The report of the examination made pursuant to **subsection (a)** of this section states that the child is not mentally ill to the extent that hospitalization or institutional confinement and treatment are required;

(2) The child is found not to be mentally ill; or

(3) The report of the examination made pursuant to **subsection (a)** of this section states that the child is developmentally disabled but not mentally ill.

(f) Mentally Ill Person Defined. "Mentally ill person" means a person who is of such mental condition that he is in need of supervision, treatment, care, or restraint.

(g) Developmental Disability Defined. "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or a neurological impairment or a combination thereof, which may have originated during the first eighteen years of life, which can be expected to continue indefinitely, and which constitutes a substantial handicap.

(h) Mentally Retarded Person Defined. "Mentally retarded person" means a person whose intellectual functions have been deficient since birth or whose intellectual development has been arrested or impaired by disease or physical injury to such an extent that he lacks sufficient control, judgment, and discretion to manage his property or affairs or who, by reason of this deficiency and for his own welfare or the welfare or safety of others, requires protection, supervision, guidance, training, control, or care.

**Section 616. Dismissal of Petition**. When the Comanche Nation Tribal Court finds that the allegations of the petition are not supported by evidence in accordance with the applicable standard of proof required by **section 208** of this Code, the Court shall order the petition dismissed and the child discharged from any detention or restriction previously ordered. His parents or legal custodian shall also be discharged from any restriction or any other previous temporary order.

**Section 617. Sustaining Petition**. When the Comanche Nation Tribal Court finds that the allegations of the petition are supported by evidence in accordance with the applicable standard of proof required by **section 208** of this Code, the Court shall sustain the petition and make an order of adjudication setting forth whether the child is deprived, abused, in need of supervision, or in need of treatment and making the child a ward of the Court. In cases concerning deprived children, evidence that child abuse or non-accidental injury has occurred shall constitute prima facie evidence (i.e., evidence that will establish the fact absent introduction of contradictory evidence) that such child is deprived and such evidence shall be sufficient to support an adjudication under this section.

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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**Section 618. Temporary Orders.** Upon sustaining a petition the Comanche Nation Tribal Court shall make such dispositional orders as may be necessary to protect the child prior to the dispositional hearing which shall be held without undue delay.

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# TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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## CHAPTER SEVEN

### DISPOSITION, REVIEW HEARINGS AND PERMANENCY PLANNING

**Section 701. Dispositional Hearing.** After making an order of adjudication finding the child to be a ward of the Court, the Comanche Nation Tribal Court shall conduct a dispositional hearing, which may be held immediately following the adjudication or at a hearing scheduled on a separate date for that purpose. The purpose of the dispositional hearing is for the Comanche Nation Tribal Court to determine the proper disposition best serving the interests of the child and the Comanche Nation, approve a treatment plan described in **section 703** of this Code, and address any other issues related to the protection of the health, welfare, and safety of the child. The Comanche Nation Tribal Court may order any agency within its jurisdiction or request any other agency to prepare and submit to the Court prior to disposition a proposed treatment plan, social study, home study, family or medical history or other reports which may be helpful in determining proper disposition and treatment. Such proposed treatment plan and reports shall be filed with the Comanche Nation Tribal Court and a copy delivered to the parties or their attorney at least five days prior to the dispositional hearing, including any dispositional hearing held on the same date as the adjudication.

**Section 702. Studies and Reports.** Reports submitted for purposes of disposition and review hearings should include, if applicable, all information required by Title IV-B and Title IV-E of the Social Security Act (42 U.S.C. §620 *et seq.* and 42 U.S.C. §670 *et seq.* respectively); the Adoption and Safe Families Act (ASFA) (P.L. 105-89), the Adoption Assistance and Child Welfare Act of 1980, (known as P.L. 96-272), and any other relevant laws for case plans where the child is receiving foster care maintenance payments from federal or state funds.

**Section 703. Treatment Plan.**

(a) **Treatment Plan Required.** In every case the Comanche Nation Tribal Court shall order the ICWD to prepare a detailed treatment plan for the treatment and disposition of the problems identified in the adjudication.

(b) **Treatment Plan Contents.** The treatment plan shall contain at a minimum:

- (1) A brief social and family history;
- (2) A brief statement of the causes of the Comanche Nation Tribal Court's exercise of its jurisdiction;
- (3) The specific treatment programs the family should be required to complete, their duration, and what is expected to be accomplished;
- (4) The specific actions the parents, legal custodian or child should be ordered to do or refrain from doing and the reasons therefore;
- (5) The specific treatment or other social services offered by the Nation or other agency which the family should be required to accept; and

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(6) The person or agency to be vested with custody of the child if the child cannot remain in its own home, and a detailed plan describing how and when the child will be retained in its home under supervision and when court supervision should cease.

(c) Filing of Treatment Plan. The treatment plan shall be filed with the Comanche Nation Tribal Court and a copy delivered to the parties or their attorney at least five days prior to the dispositional hearing.

**Section 704. Medical Examination** The Comanche Nation Tribal Court may have the child examined by a physician, psychiatrist, or psychologist, and the Court may place the child in a hospital or other suitable facility for this purpose.

**Section 705. Hearings Informal**. The dispositional hearing and review hearings shall be informal and the general rules of procedure and evidence shall not apply so that all pertinent information may be considered in determining treatment and disposition. However, when feasible, the Comanche Nation Tribal Court shall order the writer of any report or study to appear and answer questions regarding that report if it be challenged by any party.

### **Section 706. Continuance**

(a) Circumstances. The Comanche Nation Tribal Court may continue the dispositional hearing, either on its own motion or on the motion of any interested party, for a reasonable period to receive reports or other evidence, but the Court shall continue the hearing for good cause on the motion of any interested party in any case where the termination of the parent-child legal relationship is a possible remedy.

(b) Physical Custody. If the hearing is continued, the Comanche Nation Tribal Court shall make an appropriate order for detention of the child or for his release in the custody of his parents, legal custodian or other responsible person or agency under such conditions of supervision as the Court may impose during the continuance.

(c) Scheduling Priorities. In scheduling investigations and hearings, the Comanche Nation Tribal Court shall give priority to proceedings concerning a child who is in detention or who has otherwise been removed from his home before an order of disposition has been made.

### **Section 707. Order of Protection**

(a) Conditions. The Comanche Nation Tribal Court may make an order of protection in assistance of, or as a condition of, any decree of disposition authorized by this chapter. The order of protection may set forth reasonable conditions of behavior to be observed for a specified period by the parent, legal custodian, or any other person who is party to the proceeding.

(b) Requirements in Order. The order of protection may require any such person:

- (1) To stay away from a child or his residence;
- (2) To permit a parent to visit a child at stated periods;



## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(3) To abstain from offensive conduct against a child, his parent or parents and/or legal custodian, foster parents or any other person to whom custody of a child has been given;

(4) To give proper attention to the care of the home;

(5) To cooperate in good faith with an agency:

(i) Which has been given legal custody of a child;

(ii) Which is providing protective supervision of a child by court order; or

(iii) To which the child has been referred by the Court; or

(6) To refrain from acts of commission or omission that tend to make a home an improper place for a child.

(c) Requirements for Parent or Legal Custodian. When such an order of protection is made applicable to a parent or legal custodian, it may specifically require his active participation in the rehabilitation process and may impose specific requirements upon such parent or legal custodian, subject to the penalty of contempt for failure to comply with such order without good cause, as provided in **subsection (e)** of this section.

(d) Termination, Modification or Extension. After notice and opportunity for hearing is given to a person subject to an order of protection, the order may be terminated, modified, or extended for a specified period of time if the Comanche Nation Tribal Court finds that the best interests of the child and the Nation will be served thereby.

(e) Contempt. A person failing to comply with an order of protection without good cause may be found in contempt of court.

### **Section 708. Child in Need of Treatment; Disposition.**

(a) ICWD Provision for Care. The ICWD may provide for the care of a child adjudicated to be a child in need of treatment who is in the custody of the ICWD as follows:

(1) The ICWD shall assist in obtaining the outpatient care and treatment of the child and shall place the child in his home, the home of an extended family member of the child, a foster home, a group home, a transitional living program, an independent living program or in any other community-based child care facility under the jurisdiction or licensure of the State of Oklahoma or the ICWD appropriate for the care of the child and shall provide for the outpatient care and treatment of the child; or

(2) The ICWD may place a child in need of treatment and found by a court to be eligible to receive inpatient care and treatment in a treatment center operated by the Comanche Nation, another tribe or the State of Oklahoma, Indian Health Service or other public or private mental health facility. The ICWD shall establish a system for the regular review by a qualified mental health professional, at intervals of not more than sixty (60) days, of the case of each child in need of treatment in the custody of the ICWD and receiving inpatient care and treatment to determine whether or not continued inpatient treatment is required and appropriate for the child. When such child no longer requires inpatient care and treatment in a mental health treatment facility, the ICWD shall place the child as provided in **paragraph 1** of this subsection.

(b) Utilization of Available Services. In providing for the outpatient care and the

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## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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treatment of children in its custody who have been adjudicated in need of treatment, the ICWD shall utilize to the maximum extent possible and appropriate the services available through state or tribal guidance centers, substance abuse programs and community-based private nonprofit agencies and organizations.

(c) Inpatient Mental Health Treatment. Nothing contained in this section shall be interpreted to require the ICWD to place a child found by a court to be eligible for inpatient mental health treatment in a mental health facility when the ICWD determines that such placement is inappropriate or unnecessary for the treatment needs of the child.

### **Section 709. Abused or Deprived Child; Disposition.**

(a) Placement. When a child has been adjudicated to be abused or deprived the Comanche Nation Tribal Court shall enter a decree of disposition. When the decree does not terminate the parent-child legal relationship pursuant to **chapter 8** of this Code, the Comanche Nation Tribal Court shall order any one or more of the following, provided that placement of the child shall be in accordance with the placement preferences of **section 403** of this Code:

(1) The Court may place the child in the legal custody of one or both parents or the legal custodian, with or without protective supervision, under such conditions as the Court may impose.

(2) The Court may place the child in the legal custody of an extended family member or other suitable person, with or without protective supervision, under such conditions as the Court may impose, in accordance with applicable provisions of this Code.

(3) The Court may place legal custody in the ICWD or a child placement agency for placement in accordance with applicable provisions of this Code.

(4) The Court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that he receive other special care and may place the child in a hospital or other suitable facility for such purposes.

(b) Termination. The Comanche Nation Tribal Court may enter a decree terminating the parent-child legal relationship of one or both parents pursuant to **chapter 8** of this Code, and disposition of the child shall be made in accordance with **chapter 7** of this Code.

### **Section 710. Child in Need of Supervision; Disposition.**

(a) Placement. When a child has been adjudicated as being in need of supervision, the Comanche Nation Tribal Court may order any one or more of the following, provided that placement of the child shall be in accordance with the placement preferences of **section 403** of this Code:

(1) The Comanche Nation Tribal Court may place the child on probation or under protective supervision in the legal custody of one or both parents or the legal custodian under such conditions as the Court may impose.

(2) The Comanche Nation Tribal Court may place the child in the legal custody of an extended family member or other suitable person under such conditions as the Court may impose, which may include placing the child under protective supervision in accordance with applicable provisions of this Code.

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(3) The Comanche Nation Tribal Court may place legal custody in the ICWD or a child placement agency for placement in accordance with this Code.

(b) The Comanche Nation Tribal Court may require as a condition of probation that the child report for assignment to a supervised work program or place such child in a childcare facility which shall provide a supervised work program, if:

(1) The child is not deprived of the schooling which is appropriate to his age, needs, and specific rehabilitative goals;

(2) The supervised work program is of a constructive nature designed to promote rehabilitation, is appropriate to the age level and physical ability of the child, and is combined with counseling from guidance personnel; and

(3) The supervised work program assignment is made for a period of time consistent with the child's best interest, but not exceeding one hundred eighty days.

(c) Examination. The Comanche Nation Tribal Court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist, or that he receive other special care, and may place the child in a hospital or other suitable facility for such purposes.

(d) Commitment. The Comanche Nation Tribal Court may commit the child to any institution or group care facility designated by the Court.

### **Section 711. Legal Custody: Duties and Authority.**

(a) Duties of Agency Vested with Legal Custody. Any agency or institution vested by the Comanche Nation Tribal Court with legal custody of a child or any legal custodian having physical custody of a child, including any legal custodian, shall have the duty to protect and care for the child, including, but not limited to:

(1) The rights and responsibilities of the physical and legal care, custody, and control of a child when legal custody has not been vested in another person, or agency, or institution; and

(2) The duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for the child.

(b) Authority of Legal Custodian. The child's legal custodian, if expressly authorized by the Comanche Nation Tribal Court, or any agency or institution vested by the Court with legal custody of a child shall have the following authority affecting the child, including, but not limited to:

(1) The authority to consent to marriage in accordance with **chapter 14** of this Code, enlistment in the armed forces, and to extraordinary medical and surgical treatment;

(2) The authority to represent a child in legal actions and to make other decisions of substantial legal significance concerning a child; and

(3) The authority to consent to the adoption of a child when the parent-child relationship has been terminated by judicial decree or the death of the parents, if expressly authorized by the Court.

(c) Provision of Information to Agency or Institution. If legal custody or guardianship

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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of the person is vested in an agency or institution, the Comanche Nation Tribal Court shall transmit, with the court order, copies of the social study, any clinical reports, and other information concerning the care and treatment of the child.

(d) Provision of Information to Court. A legal custodian or an agency or institution vested by the Comanche Nation Tribal Court with legal custody of a child shall give the Court any information concerning the child that the Court at any time may require.

(e) Authority of Agency Vested with Legal Custody of Child. An agency or institution vested by the Comanche Nation Tribal Court with legal custody of a child shall have the right, subject to the approval of the Court, to determine where and with whom the child shall live.

(f) Removal of Child from State. No legal custodian shall remove the child from the state for more than thirty days without Comanche Nation Tribal Court approval.

(g) Length of Period of Custody; Review. A decree vesting legal custody of a child in an institution, or agency other than the ICWD may be for an indeterminate period, not to exceed two years from the date it was entered. Such decree shall be reviewed by the Comanche Nation Tribal Court no later than six months after it is entered.

(h) Removal of Legal Custodian. No legal custodian may be removed without his consent until given notice and an opportunity to be heard by the Comanche Nation Tribal Court if he so requests.

### **Section 712. Probation for Children in Need of Supervision.**

(a) Terms and Conditions of Probation. The terms and conditions of probation shall be specified by rules or orders of the Comanche Nation Tribal Court. The Court, as a condition of probation for a child who is fourteen years of age or older but less than eighteen years of age on the date of the dispositional hearing, has the power to impose a commitment or placement whether continuous or at designated intervals, which shall not exceed forty-five days. Each child placed on probation shall be given a written statement of the terms and conditions of his probation and shall have such terms and conditions fully explained to him.

(b) Review. The Comanche Nation Tribal Court shall review the terms and conditions of probation and the progress of each child placed on probation at least once every six months.

(c) Release from Probation. The Comanche Nation Tribal Court may release a child from probation or modify the terms and conditions of his probation at any time, but any child who has complied satisfactorily with the terms and conditions of his probation for a period of two years shall be released from probation, and the jurisdiction of the Court shall be terminated.

(d) Violation of Probation; Hearing. When it is alleged that a child has violated the terms and conditions of his probation, the Comanche Nation Tribal Court shall set a hearing on the alleged violation and shall give notice to the child and his parents or legal custodian, and any other parties to the proceeding. The child, his parents or legal custodian shall be given a written statement concerning the alleged violation and shall have the right to be represented by counsel at the hearing, at his or their own cost, and shall be entitled to the issuance of compulsory process for the attendance of witnesses. The hearing on the alleged violation shall be conducted as soon as possible.

(e) Action Upon Finding of Violation of Probation. If the Comanche Nation Tribal Court finds that the child violated the terms and conditions of probation, it may modify the terms

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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and conditions of probation, revoke probation, or take such other action permitted by this chapter which is in the best interest of the child and the Nation.

(f) Action Upon Finding of No Violation of Probation. If the Comanche Nation Tribal Court finds that the child did not violate the terms and conditions of his probation as alleged, it shall dismiss the proceedings and continue the child on probation under the terms and conditions previously described.

### **Section 713. New Hearing Authorized.**

(a) Petition for New Hearing of Adjudication. A parent or legal custodian of any child adjudicated under this Code, or any person affected by a decree in a proceeding under this chapter, may petition the Comanche Nation Tribal Court for a new hearing on the following grounds:

(1) That new evidence, which was not known or could not with due diligence have been made available at the original hearing and which might affect the decree, has been discovered;

(2) That irregularities in the proceedings prevented a fair hearing.

(b) Order for New Hearing. If it appears to the Comanche Nation Tribal Court that the motion should be granted, it shall order a new hearing and shall make such disposition of the case as warranted by all the facts and circumstances and the best interest of the child.

**Section 714. Continuing Jurisdiction.** Except as otherwise provided in this chapter, the jurisdiction of the Comanche Nation Tribal Court over any child adjudicated as deprived or abused, in need of supervision or in need of treatment shall continue until he becomes twenty-one years of age unless terminated by court order.

**Section 715. Orders for Support.** Whenever a child is removed from the custody of its parent or legal custodian, the parent or other person shall be ordered by the Comanche Nation Tribal Court to contribute a reasonable amount within their means, or take other reasonable action to provide support for the child. All child support orders issued to a parent by the Comanche Nation Tribal Court or by the Comanche Nation Child Support Program ("CNCSP") in a CNCSP administrative proceeding shall be issued in accordance with all applicable requirements of chapter 15 of this Code.

**Section 716. Review Hearings.** The Comanche Nation Tribal Court shall conduct review hearings no less than every three months following the disposition hearing. All attorneys, including the Prosecutor, and all parties, including children over twelve (12) years of age, shall be notified of their right to appear and be heard at the review hearing. The review hearing may be conducted in conjunction with a permanency plan hearing described in **section 717** of this Code. At the review hearings the Comanche Nation Tribal Court shall review the child's placement, any progress related to the treatment plan, and any other measures for the protection of the health, welfare, and safety of the child. The agency or individual vested with custody of

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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the child shall provide a written report to the Court regarding the child, including a report regarding any change in placement of the child and such other reports as ordered by the Court. The guardian ad litem shall also submit a written report with any recommendations regarding the child's welfare to the Court, based upon an independent investigation. Such reports shall be filed with the Comanche Nation Tribal Court and a copy delivered to the parties or their attorney at or before the review hearing. The Court shall also receive reports regarding the status of the child's parent's compliance with any written plan for reunification of the parent and child at the review hearing.

### **Section 717. Permanency Hearing.**

(a) Permanency Plan Hearing Required. The Comanche Nation Tribal Court shall conduct a permanency plan hearing no less than six months following the disposition hearing. The purpose of the permanency plan hearing is to approve a plan regarding the permanent status of the child. The permanency plan hearing may be conducted in conjunction with a review hearing described in **section 716** of this Code.

(b) Notice. All attorneys, including the Prosecutor, and all parties, including children over twelve (12) years of age, shall be notified of their right to appear and be heard at the permanency plan hearing.

(c) Permanency Planning Reports. The ICWD shall prepare, and any other party or person may prepare, a report to the Comanche Nation Tribal Court for the hearing and the Court's approval. These reports shall be filed, and copies shall be given to all parties or sent to a place calculated to assure receipt, no later than five (5) full days before the hearing, except by order of the Comanche Children's Court. The report shall provide supportive documentation, if appropriate, and shall:

(1) Summarize the history of the case and efforts made to offer services to the child and family;

(2) Detail the child's and family's circumstances, including the case management and casework by the ICWD, since the prior Comanche Nation Tribal Court hearing;

(3) Detail the compliance made or not made by the parent or legal custodian and the ICWD ;

(4) Detail the efforts made to develop a concurrent plan, if necessary, to be implemented in the event the family cannot be reunified, and efforts made to implement that concurrent permanency plan;

(5) Give specific reasons why the particular recommended permanency plan has been chosen, specifying why that plan meets the child's particular needs and best interests, rather than other permanency plans which have not been chosen; and

(6) If required by applicable federal or tribal law, detail the compelling reasons why termination of parental rights is not being recommended as the permanency plan.

(d) Permanency Plans. The Comanche Nation Tribal Court's order shall approve or amend the permanency plan which is the result of the permanency hearing, which may include without limitation any of the following:

(1) Return of Custody: The child will be returned to a parent;

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(2) Termination of Parental Rights; Adoption: A petition for the termination of parental rights will be filed and the permanency plan for the child shall be adoption;

(3) Legal Guardianship: A legal guardian will be appointed for the child;

(4) Permanent Foster Care: The child will be placed in permanent foster care of named custodians;

(5) Long Term Foster Care: The child will be continued in long term foster care while the ICWD continues to identify and effect a permanency plan; or

(6) Long Term Substitute Care: The child, because of his special needs, will be placed in long term substitute care, until such time as the child can accommodate a less restrictive plan.

(e) Parental Rights. In any of the permanency plans identified above, the parent or legal custodian whose parental or custodial rights have not been terminated shall have the following rights, which are to be determined in light of the child's best interests:

(1) Return of Custody: The right to seek return of full legal and physical custody of the child and termination of wardship.

(2) Termination of Parental Rights; Adoption: If parental rights are terminated the parent has no parental rights, except as specified in any termination order or adoption order.

(3) Legal Guardianship: The right to seek visitation and the right to petition the Comanche Nation Tribal Court no more than once a year for return of custody. At any hearing on the petition for return of custody in a guardianship, the petitioner shall show by clear and convincing evidence that there has been a substantial change of circumstances and that it is in the best interests of the child to be returned to parental care. A hearing on the petition will be set only if the petition states a prima facie showing of the foregoing requirements in this paragraph (i.e., statement of facts meeting requirements absent the introduction of contradictory evidence).

(4) Permanent Foster Care: The right to seek visitation and the right to petition the Comanche Nation Tribal Court no more than once a year for return of custody. At any hearing on the petition for return of custody the petitioner shall show by clear and convincing evidence that there has been a substantial change of circumstances and that it is the best interests of the child to be returned to parental care. A hearing on the petition will be set only if the petition states a prima facie showing of the foregoing requirements in this paragraph (i.e., statement of facts meeting requirements absent the introduction of contradictory evidence).

(5) Long Term Foster Care: The right to seek visitation and the right to petition the Comanche Nation Tribal Court no more than once a year for return of custody. At any hearing on the petition for return of custody the petitioner shall show by clear and convincing evidence that there has been a substantial change of circumstances and that it is the best interests of the child to be returned to parental care. A hearing on the petition will be set only if the petition states a prima facie showing of the foregoing requirements in this paragraph (i.e., statement of facts meeting requirements absent the introduction of contradictory evidence).

(6) Long Term Substitute Care: Depending on the circumstances of the case, the right to seek visitation and/or return of custody.

(f) ICWD Role. The ICWD shall assist in implementation of the permanency plan ordered by the Comanche Nation Tribal Court.

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(g) Further Findings Required. In addition, the Comanche Nation Tribal Court shall enter written findings as follows:

(1) Whether the ICWD has made reasonable efforts to prevent removal of the child from parental care, and if removal could not have been prevented, whether the ICWD has made reasonable efforts to alleviate and eliminate the need for removal of the child from parental care. In support of its determination of whether or not reasonable efforts have been made by the ICWD, the Comanche Nation Tribal Court shall enter a description of what preventive and reunification efforts were made and why further efforts could or could not have prevented or shortened the separation of the family;

(2) If necessary, whether the ICWD has engaged in concurrent planning to develop an alternative permanency plan for the child in the event that the parent or legal custodian is unable to improve his circumstances sufficiently to retrieve custody of the child. The Comanche Nation Tribal Court shall state specifically what those concurrent planning efforts have been, and, in the event that concurrent planning was not developed, the reasons why such planning is not necessary.

(3) The Comanche Nation Tribal Court shall specify why permanency plans, other than the one selected, are not in the best interests of the child, and that this is the least restrictive placement for the child; and

(4) In all cases in which the Comanche Nation Tribal Court does not direct the filing of a petition to terminate parental rights, the Comanche Nation Tribal Court shall specify compelling reasons (as defined below) why termination of parental rights should not be sought, and would not be in the best interests of the child. Such findings shall be supported by the ICWD case plan and record.

(h) "Compelling Reasons" Defined. In determining whether compelling reasons exist for not terminating parental rights, the Comanche Nation Tribal Court shall consider, but not be limited to, the following:

- (1) Tribal custom and tradition;
- (2) Tribal policy, whether oral or written and whether by custom, resolution, or law, disfavoring or prohibiting termination of parental rights;
- (3) The relationship between the parent and child;
- (4) The relationship between the child and the Nation;
- (5) The best interests of the child, including, but not limited to, the health and safety of the child;
- (6) The special needs of the child;
- (7) The Nation's interest in maintaining the parent-child status, and the child's contact with the Nation; and
- (8) Any other relevant considerations.

(i) Permanency Plan Review Hearings. The Comanche Nation Tribal Court shall review and change as necessary the permanency plan of a child as follows:

- (1) No Permanency Plan Review Hearing need be held for any child who has been adopted.



## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(2) If the child is a ward of the Court in the custody of a legal custodian appointed by the Court, the legal custodian shall be responsible for submitting a report to the Comanche Nation Tribal Court on a yearly basis. If the Comanche Nation Tribal Court deems a Permanency Plan Review Hearing to be necessary, the said legal custodian is responsible for appearing at, and providing information for, the hearing.

(3) In all other cases in which the child remains a ward of the Court, the Comanche Nation Tribal Court shall hold a hearing at least once every six (6) months to review the Permanency Plan. The ICWD shall be responsible for submitting a report to the Comanche Nation Tribal Court prior to the hearing and is responsible for appearing at, and providing information for a permanency plan review hearing of the child's plan.

(4) The legal custodian shall be responsible for immediately notifying the Comanche Nation Tribal Court of any changes in the child's placement or any substantial changes in the permanency plan.

(j) Findings Required. At the permanency plan review hearing conducted by the Comanche Nation Tribal Court after the establishment of the permanency plan, the Nation Tribal Court shall determine:

- (1) The continued appropriateness of the placement and the permanency plan;
- (2) The extent of compliance with the permanency plan;
- (3) The adequacy of services provided to the child and custodian in the permanent placement; and
- (4) Whether other services are necessary to support the permanency plan, and if such services can be reasonably provided by the Comanche Nation Tribal Court or the ICWD.

### **Section 718. Custody With Authority to Consent to Adoption Following Termination.**

(a) Disposition Following Termination of Rights of One Parent. Upon the entry of a decree terminating the parent-child legal relationship of one parent, the Comanche Nation Tribal Court may:

- (1) Leave the child in the legal custody of the other parent and discharge the proceedings; or
- (2) Make any other disposition provided in this **chapter** that the Court finds appropriate.

(b) Placement with Authority to Consent to Adoption When No Parental Rights Remain. After parental rights of both living parents of a child or the sole living parent of a child have been terminated or after such parent or parents have relinquished parental rights, the Comanche Nation Tribal Court may award custody of the child to any qualified person or agency with authority to consent to the adoption of the child, or the Court, in its discretion, may reserve the authority to consent to the adoption of the child; but the Court cannot consent to or authorize any person or agency to consent to the adoption of a child unless the rights of the living parents have been terminated or relinquished in accordance with the provisions of this Code.

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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### **Section 719. Review of Child's Disposition Following Termination of the Parent-Child Legal Relationship.**

(a) Review Hearing. The Comanche Nation Tribal Court, at the conclusion of a hearing following which it ordered the termination of a parent-child legal relationship, shall order that a review hearing be held not later than ninety days following the date of the termination. At such hearing, the agency or individual vested with custody of the child shall report to the Court what disposition of the child, if any, has occurred, and the guardian ad litem shall submit a written report with recommendations to the Court, based upon an independent investigation, for the best disposition of the child.

(b) Long-term Foster Placement. If no adoption has taken place within a reasonable time and the Comanche Nation Tribal Court determines that adoption is not immediately feasible or appropriate, the Court may order that provision be made immediately for long-term foster placement of the child.

(c) Disposition Following Termination of Rights of One Parent. Upon the entry of a decree terminating the parent-child legal relationship of one parent, the Comanche Nation Tribal Court may:

(1) Leave the child in the legal custody of the other parent and discharge the proceedings; or

(2) Make any other disposition provided in this **chapter** that the Court finds appropriate.

(d) Placement with Authority to Consent to Adoption When No Parental Rights Remain. After parental rights of both living parents of a child or the sole living parent of a child have been terminated or after such parent or parents have relinquished parental rights, the Comanche Nation Tribal Court may award custody of the child to any qualified person or agency with authority to consent to the adoption of the child, or the Court, in its discretion, may reserve the authority to consent to the adoption of the child; but the Court cannot consent to or authorize any person or agency to consent to the adoption of a child unless the rights of the living parents have been terminated or relinquished in accordance with the provisions of this Code.

### **Section 720. Indian Custodian's and Grandparents' Rights.**

(a) Reasonable Visitation. No dispositional order or decree including termination of parental rights and adoption shall divest the child's Indian custodians or grandparents of their right to reasonable visitation with the child and their duty to provide instruction and training to the child regarding tribal customs and traditions.

(b) Enforcement of Rights. The rights and duties of the Indian custodians and grandparents may be enforced by court order whenever it appears in the child's best interest to do so, provided that all interested parties shall be given notice and an opportunity to be heard.

### **Section 721. Review Board. RESERVED.**

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# TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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## CHAPTER EIGHT

### TERMINATION OF PARENTAL RIGHTS

#### **Section 801. Termination of Parental Rights; General.**

(a) Adjudication Not Grounds for Termination. The finding that a child is deprived or abused, in need of supervision or in need of treatment shall not deprive the parents of the child of their parental rights.

(b) Persons Authorized to Petition for Termination. The Prosecutor is authorized to petition the Comanche Nation Tribal Court to terminate the parental rights of a parent or the parents of the child for any of the grounds listed in **subsections (d) through (m)** of this section. A parent consenting to a step-parent adoption, legal custodian of a child or other person having legal custody of the child to be adopted may petition the Comanche Nation Tribal Court to terminate the parental rights of a parent or the parents of a child for any of the grounds listed in **subsections (c), (d) or (f)** of this section. A prior finding by a court that a child is abused, deprived or in need of supervision shall not be required for the filing of such petition by the parent or legal custodian.

(c) Termination Upon Relinquishment. The Comanche Nation Tribal Court may terminate parental rights upon a written relinquishment by a parent, including a parent who is a minor, given in accordance with **section 905** of this Code, who desires to terminate his parental rights; provided that the Court finds that such termination is in the best interests of the child.

(d) Abandonment as Grounds for Termination. The Comanche Nation Tribal Court may terminate parental rights upon a finding that a parent who is entitled to custody of the child has abandoned the child as defined in **section 501(e)(2)** of this Code.

(e) Risk of Death or Serious Emotional or Physical Harm as Grounds for Termination. The Comanche Nation Tribal Court may terminate parental rights upon a finding that:

- (1) The child is deprived or abused as defined in this Code; and
- (2) Such condition is caused by or contributed to by acts or omissions of his parent; and
- (3) The parent has failed to show that the condition which led to the removal of custody of the child from the parent has been corrected although the parent has been given three months to correct the condition; provided, that the parent shall be given notice of any hearing to determine if the condition has been corrected. The Comanche Nation Tribal Court may extend the time in which such parent may show the condition has been corrected, if, in the judgment of the Court, such extension of time would be in the best interest of the child. During the period that the parent has to correct the condition the Court may return the child to the custody of its parent or legal custodian, subject to any conditions which it may wish to impose or the Court may place the child with an individual or an agency; and
- (4) The Comanche Nation Tribal Court determines that continuation of the legal relationship between parent and child is likely to result in grave risk of death or serious emotional or physical injury to the child or that the conduct or condition

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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of the parent or parents renders the parent or parents unable or unwilling to give the child reasonable parental care. The Court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The Court shall review and order, if necessary, an evaluation of the child's physical, mental, and emotional conditions. In determining potential risk of death or emotional or physical injury to the child, the Court shall consider, but not be limited to, the following factors:

- (i) Emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely within a reasonable time to care for the ongoing physical, mental, and emotional needs of the child pursuant to subsection (m) of this section;
- (ii) Conduct towards the child or sibling of the child of a physically or sexually abusive nature pursuant to subsection (i) of this section;
- (iii) History of violent behavior;
- (iv) A single incident of life-threatening or gravely disabling injury or disfigurement of the child;
- (v) Excessive use of intoxicating liquors or narcotic or dangerous drugs which affect the ability to care and provide for the child;
- (vi) The evidence of abuse or neglect of the child or siblings of the child by the parent;
- (vii) Reasonable efforts by childcare agencies which have been unable to rehabilitate the parent or parents.

(f) Failure to Contribute to Support as Grounds for Termination. The Comanche Nation Tribal Court may terminate parental rights upon a finding that a parent who does not have custody of the child has willfully failed to contribute to the support of the child as provided in a decree of divorce or in some other judicial or administrative child support order during the preceding year or, in the absence of such order, consistent with the parent's means and earning capacity.

(g) Criminal Convictions Unrelated to Death. The Comanche Nation Tribal Court may terminate parental rights upon a finding of a criminal conviction of lewd or indecent proposals or acts as to a child under the age of sixteen, child abuse, enabling child abuse, child neglect, enabling child neglect, child sexual abuse, enabling child sexual abuse, child exploitation, enabling child exploitation, permitting or consenting to participation of a minor in child pornography, or rape pursuant to state or federal law.

(h) Criminal Convictions Related to Death or Felonious Assault. The Comanche Nation Tribal Court may terminate parental rights upon a finding of a criminal conviction pursuant to state or federal law that the parent:

- (1) caused the death of a child as a result of the physical or sexual abuse or chronic abuse or chronic neglect of such child,
- (2) caused the death of a sibling of the child as a result of the physical or sexual abuse or chronic abuse or chronic neglect of such sibling,
- (3) committed the murder of any child or aided or abetted, attempted, conspired or solicited to commit murder of any child,
- (4) committed voluntary manslaughter of another child of the parent, or aided or

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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abetted, attempted, conspired or solicited to commit voluntary manslaughter of another child of the parent, or

(5) committed a felony assault that has resulted in serious bodily injury to the child or another child of the parent.

(i) Physical or Sexual Abuse; Failure to Protect. The Comanche Nation Tribal Court may terminate parental rights upon a finding in a child custody proceeding of one or more of the following:

(1) The parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse that is heinous or shocking to the Court,

(2) The child or sibling of such child has suffered severe harm or injury as a result of such physical or sexual abuse,

(3) The parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse subsequent to a previous finding that such parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse,

(4) The child has been adjudicated a deprived child as a result of a single incident of severe sexual abuse, severe neglect or the infliction of serious bodily injury or torture to the child, a sibling of the child, or a child within the household where the child resides, by the parent of the child, or

(5) The parent has inflicted chronic abuse, chronic neglect or torture on the child, a sibling of the child or another child within the household where the child resides.

(k) Child of Rape. The Comanche Nation Tribal Court may terminate parental rights upon a finding in a child custody proceeding that the child was conceived as a result of rape or an act which would constitute rape under the laws of the United States or the State of Oklahoma, no matter where such act was committed. This subsection shall apply only to the parent who committed the rape or act and whose child has been placed out of the home;

(l) Long-Term Incarceration as Grounds for Termination. If in the best interests of the child, the Comanche Nation Tribal Court may terminate parental rights to a child who has been adjudicated as abused, deprived, in need of treatment or in need of supervision and which has been placed outside of the home of a natural or adoptive parent, legal custodian or extended family member, if the parent whose rights are sought to be terminated has been sentenced to a period of incarceration and the continuation of parental rights would result in harm to the child based on consideration of the following factors, among others: the duration of incarceration and its detrimental effect on the parent/child relationship; any previous incarcerations; any history of criminal behavior, including crimes against children; the age of the child; the evidence of abuse or neglect of the child or siblings of the child by the parent; and the current relationship between the parent and the child and the manner in which the parent has exercised parental rights and duties in the past. Incarceration of a parent shall not in and of itself be sufficient to deprive a parent of his parental rights.

(m) Mental Illness or Deficiency as Grounds for Termination. If in the best interests of the child, the Comanche Nation Tribal Court may terminate parental rights to a child who has

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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been adjudicated as an abused child, a deprived child, a child in need of treatment or a child in need of supervision and which has been placed outside of the home of a natural or adoptive parent, legal custodian or extended family member, if the parent whose rights are sought to be terminated has a mental illness or mental deficiency which renders the parent incapable of adequately and appropriately exercising parental rights, duties and responsibilities; the continuation of parental rights would result in harm or threatened harm to the child; and the mental illness or mental deficiency of the parent is such that will not respond to treatment, therapy or medication and, based upon competent medical opinion, the condition will not substantially improve. A finding that a parent has a mental illness or mental deficiency shall not in and of itself deprive the parent of his parental rights.

### **Section 802. Termination of Parental Rights of Presumed, Acknowledged, Adjudicated, or Alleged Father of Child Born Out of Wedlock.**

(a) Termination of Parental Rights of Presumed, Acknowledged, Adjudicated, and Alleged Father of Child Born out of Wedlock. The Prosecutor, child's mother when relinquishing the child for adoption or consenting to a step-parent adoption or the legal custodian may petition for termination of the parental rights of a presumed, acknowledged, adjudicated or alleged father as defined in **section 15-111** of this Code of a child born out of wedlock, provided that the notice requirements of **section 803** are followed. The Comanche Nation Tribal Court shall terminate parental rights if such action is supported by the evidence pursuant to **subsection (c)** of this section.

(b) Oklahoma Putative Father Registry. The Comanche Nation Tribal Court, as necessary, shall order or request the Oklahoma Department of Human Services to provide the person or agency filing the petition with the name and address of any person on the registry who claims to be the father of the child.

(c) Court Decision. The Comanche Nation Tribal Court may make one of the following decisions after the hearing to terminate parental rights of a presumed, acknowledged, adjudicated or alleged father of a child born out of wedlock in accordance with the standard of proof set forth in **section 208** of this Code:

(1) The Court shall terminate the rights of a presumed, acknowledged, adjudicated or alleged father if he fails to appear at the hearing or has waived notice pursuant to **section 803(b)(2)(iii)** of this Code; or

(2) The Court may, if it is in the best interest of the child, accept a relinquishment or consent to adoption executed by the presumed, acknowledged, adjudicated or alleged father of the child; or

(3) The Court may, if it is in the best interest of the child, determine that the presumed, acknowledged, adjudicated or alleged father has failed to establish parental rights to the child and may terminate any parental rights which such presumed, acknowledged, adjudicated or alleged father may claim if:

- (i) Prior to the hearing and having actual knowledge of the birth or impending birth of the child believed to be his child, he fails to acknowledge paternity of the child or to take any action to legally establish his claim to paternity of the child or to exercise parental rights or duties over the child, including the failure to contribute

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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to the support of the mother of the child to the extent of his financial ability during her term of pregnancy; or

- (ii) At the hearing he fails to prove that he is the father of the child; or
- (iii) Having established paternity, he fails to prove that he has exercised parental rights and duties toward the child, unless he proves that prior to the receipt of notice he had been specifically denied knowledge of the child or denied the opportunity to exercise parental rights and duties toward the child after having made a sufficient attempt to discover if he had fathered the child or to exercise parental rights and duties toward the child.

(4) The Court may, if it is in the best interest of the child terminate the parental rights of the presumed, acknowledged, adjudicated or alleged father on grounds set forth in **section 801** of this Code; or

(5) The Court may, if it is in the best interest of the child grant custody of the child to the presumed, acknowledged, adjudicated or alleged father, if the court determines such person to be the father of the child.

### **Section 803. Notice of Hearing to Terminate Parental Rights.**

(a) General Requirements. A parent shall be given actual notice of any hearing to terminate his parental rights. The notice shall indicate the relief requested, and the hearing shall not be held until at least twenty (20) days after the receipt of such notice, except with the consent of the parent, if known. The notice shall be served in the same manner as a summons is required to be served pursuant to **section 609** of this Code. The hearing shall not be held for at least ten (10) days after the date of publication of the notice. Except as otherwise provided by **subsection (b)(2)(iii)** of this section, if a parent has not received actual notice of the hearing at which he is deprived of his parental rights, the order depriving him of those rights shall not become final for a period of six (6) months after the hearing. Nothing in this section shall prevent a court from immediately taking custody of a child and ordering whatever action may be necessary to protect his health or welfare.

(b) Special Notice Provisions for Presumed, Acknowledged, Adjudicated or Alleged Father of Child Born Out of Wedlock.

(1) Notice Requirements. The presumed, acknowledged, adjudicated or alleged father shall be entitled to notice and an opportunity to be heard pursuant to **subsection (a)** of this section. The notice shall also apprise the presumed, acknowledged, adjudicated or alleged father of his legal rights and shall include a clear statement that failure to appear at the hearing shall constitute a denial of interest in the child which denial may result, without further notice of this proceeding or any subsequent proceeding, in the termination of his parental rights and the transfer of the child's care, custody or guardianship or in the child's adoption.

(2) Exceptions to Notice Requirements. The following are exceptions to the notice requirements contained in **subsection (b)(1)** of this section:

- (i) The Comanche Nation Tribal Court may waive notice to a father whose identity is unknown to the mother of the child born out of wedlock if the mother of the child signs a sworn statement before the Court that the identity of the father of

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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the child is unknown and the Court is satisfied, after inquiry into the matter, that his identity is unknown and with due diligence could not be determined; the willful and deliberate falsification of said sworn statement shall be perjury and shall, upon conviction, be punishable as otherwise provided by law. The waiver of notice by the Court pursuant to this paragraph shall not constitute grounds to challenge an adoption of the child.

- (ii) The Comanche Nation Tribal Court may waive notice when the identity of the presumed, acknowledged, adjudicated or alleged father of a child born out of wedlock is known but his whereabouts is unknown and the Court, after inquiry, is satisfied that after diligent search his whereabouts remains unknown. The Court may order that notice be given by publication as provided in **section 609** of this Code and a copy mailed to the last-known address, if known, of such presumed, acknowledged, adjudicated or alleged father. When notice is given by publication, the order terminating parental rights shall not become final for a period fifteen (15) days from the date of the order.
- (iii) A person may waive his right to notice under this subsection. Such waiver signed by such person shall include a statement affirming that the persons signing such waiver understands that said waiver shall constitute grounds for the termination of his parental rights pursuant to the provisions of this section and **section 801** of this Code.

**Section 804. Burden of Proof in Termination Proceedings.** A finding that the requirements for termination of parental rights have been met must be supported by evidence in accordance with the applicable standard of proof required by **section 208** of this Code.

### **Section 805. Appointment of Counsel.**

(a) **Parent's Right to Counsel; Appointment.** After a petition for termination of a parent-child legal relationship is filed pursuant to this chapter, the parent or parents shall be advised of the right to counsel, at their own expense. If the child or his parents or legal custodian requests an attorney and is found to be without sufficient financial means, counsel, to the extent funds are available or counsel is available at no fee, shall be appointed by the Comanche Nation Tribal Court in proceedings wherein the Nation is a party. The Court may appoint counsel without such request if it deems representation by counsel necessary to protect the interest of the child or other parties.

(b) **Child's Right to Counsel.** An attorney, who shall be the child's previously appointed guardian ad litem whenever possible, shall be appointed to represent the child's best interest in any hearing determining the involuntary termination of the parent-child legal relationship. Additionally, said attorney shall be experienced, whenever possible, in matters involving child custody proceedings. Such representation shall continue until an appropriate permanent placement of the child is effected or until the Comanche Nation Tribal Court's jurisdiction is terminated. If a respondent parent is a minor, a guardian ad litem shall be appointed and shall serve in addition to any counsel requested by the parent.



## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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### **Section 806. Effect of Termination of Parental Rights**

(a) Effect of Decree. The termination of parental rights pursuant to this chapter terminates the parent-child relationship, including the parent's right to the custody of the child, the parent's right to visit the child, the parent's right to control the child's training and education, the parent's right to the earnings of the child, and the parent's right to inherit from or through the child. After termination the former parent is not entitled to any notice of proceedings for the adoption of the child by another, nor has he any right to object to the adoption or to otherwise participate in such proceedings, nor has he any standing to appear in any other legal proceeding concerning the child, with the exception of timely appeal; provided that:

(1) No termination of parental rights shall affect a child's enrollment status as a member of a tribe, or a child's degree of blood quantum, or a child's rights of inheritance under applicable law from biological parents who die intestate;

(2) A child's relationship with extended family members may be as allowed by the adoptive parents, or as ordered by the Comanche Nation Tribal Court if such relationship is determined to be in the best interests of the child; and

(3) The Comanche Nation Tribal Court may condition the order to permit continued contact between the child and his biological parents after termination, if the Comanche Nation Tribal Court determines it is in the best interests of the child and according to such terms and conditions as the Court may require.

(b) No Effect on Inheritance. Nothing in this section shall in any way affect the right of the child to inherit from the parent or disentitle a child to any benefit due him from any third person, including, but not limited to, any Indian Nation, any agency, any state, or the United States.

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# TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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## CHAPTER NINE

### ADOPTIONS

**Section 901. Jurisdiction Over Adoptions.** The Comanche Nation Tribal Court shall possess jurisdiction over adoptions of children pursuant to the provisions of **sections 201 and 202** of this Code. The Comanche Nation Tribal Court may exercise jurisdiction over an adoption between two adults who submit to the jurisdiction of the Court regardless of residence or domicile pursuant to the provisions of **section 917**.

**Section 902. Purpose of Adoptions.** The purpose of an adoption is to establish a formal and legal family relationship between two or more persons which after adoption, shall exist as if the parties were born into the adoptive relationship by blood. Adoptions pursuant to this Code shall be so recognized by every agency and level of the government except in eligibility for enrollment determinations which shall continue to be based upon biological parentage.

**Section 903. Types of Adoptions.** There shall be three types of adoptions recognized by the Comanche Nation, namely:

- (a) Statutory adoptions pursuant to **chapter 9** of this Code;
- (b) Statutory adoptions under the laws of some other tribe, State, or nation having jurisdiction over the parties and the subject matter; and
- (c) Traditional adoptions which may be for the purpose of establishing any traditionally allowed family relationship between any persons, and which shall be governed by the Nation's common law.

**Section 904. Persons Eligible to Adopt by Statutory Process.** The following persons are eligible to adopt a child pursuant to statutory law, subject to the placement preferences of **section 403** of this Code:

- (a) A husband and wife jointly;
- (b) Either the husband or wife if the other spouse is a parent of the child;
- (c) An unmarried person who is at least twenty-one (21) years old; or
- (d) A married person who is legally separated from the other spouse and at least twenty-one (21) years old.

**Section 905. Relinquishment or Consent to Statutory Adoption.**

(a) **Relinquishment.** Any parent or legal custodian may relinquish any rights he may have to the care, custody, and control of the child. A relinquishment shall be made by filing a petition in the Comanche Nation Tribal Court with notice to the ICWD, Prosecutor, Indian

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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custodians, and the parents who are not petitioners. The petition may relinquish rights generally, in which case the Court shall assume jurisdiction over the child; or may relinquish rights specially to a particular person for adoption. A relinquishment shall be valid only if it meets the requirements of **subsections (c) and (d)**, and shall be subject to withdrawal only in accordance with **subsections (e) and (f)** of this section.

(b) Relinquishment or Consent Requirement. Adoption of a child may be decreed following relinquishment of parental rights or consent to such adoption only if such relinquishment or consent has been executed and filed in the Comanche Nation Tribal Court in accordance with the following requirements:

(1) Consent or relinquishment shall be given by both parents, if living, or the surviving parent, unless their parental rights have been terminated by judicial decree.

(2) A parent less than sixteen (16) years of age may give his consent or relinquishment only with the written consent of one of the minor parent's parents, legal guardian, or a guardian ad litem of the minor parent appointed by the Court.

(3) If both parents be deceased, or if their parental rights have been terminated by judicial decree, then one of the following may consent to the adoption: the Indian custodian having physical custody of said child for the preceding six (6) month period; the guardian ad litem of the child if authorized to exercise consent by court order; the executive head of an agency having custody of the child by judicial decree with the specific authority granted by the Court to consent to the adoption of the child; or any legal custodian having legal custody of a child by court order, provided that the court having jurisdiction of the custody of the child must consent to adoption, and a certified copy of its order shall be attached to the adoption petition.

(c) Requirements Related to Validity of Consent or Relinquishment. Where any parent or Indian custodian voluntarily consents to an adoption or relinquishes parental rights, such consent or relinquishment shall not be valid unless executed before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall certify that the parent or Indian custodian either fully understood the explanation in English, or that it was interpreted into a language that the parent or Indian custodian understood.

(d) Consent Prior to Ten Days. Any consent or relinquishment given prior to or within ten days after the birth of a child shall not be valid.

(e) Withdrawal of Consent or Relinquishment Prior to Adoption Decree. Any consent given for adoption or relinquishment of parental rights to a child may be withdrawn at any time prior to the entry of a final decree of adoption or termination as the case may be and the child may be returned to the parent by order of the Comanche Nation Tribal Court.

(f) Withdrawal of Consent or Relinquishment Following Adoption Decree. After the entry of a final decree of adoption the parent may withdraw consent thereto or relinquishment of parental rights for purposes of the adoption upon the grounds that consent or relinquishment was obtained through fraud or duress and may petition the Comanche Nation Tribal Court to vacate such decree, provided that the adoption decree was entered no more than two years preceding the filing of the petition to vacate. Upon a finding that such consent or relinquishment was obtained through fraud or duress, the Comanche Nation Tribal Court shall vacate such

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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decree and return the child to the parent.

(g) Duty of Support. A parent who consents to adoption or relinquishment of a child shall not be relieved of the duty to support the child until an adoption decree becomes final.

### **Section 906. When Consent or Relinquishment of Parents Unnecessary.**

(a) Termination Prior to Filing Adoption Petition. Adoption of a child may be decreed without parental consent or relinquishment of parental rights if the parent has had his parental or custodial rights terminated by a decree of a court of competent jurisdiction prior to the filing of the adoption petition. A certified copy of the termination order shall be attached to the petition.

(b) Termination Based on Abandonment or Failure to Provide Support. Adoption of a child may be decreed without parental consent or relinquishment if a consenting parent, legal guardian or person having legal custody of the child to be adopted secures termination of parental rights by filing a separate application for termination of parental rights in the adoption proceeding based on the grounds of abandonment set forth in **section 801(d)** or based on the grounds of failure to contribute to support as set forth in **section 801(f)**.

(c) Termination Based on Failure to Establish Parental Rights. Adoption of a child born out of wedlock may be decreed without consent of the alleged, presumed, acknowledged or adjudicated father when the mother who has custody of the child executes a relinquishment for the purpose of the adoption, and the person or agency to whom such relinquishment was made secures the termination of parental rights by filing a petition for the termination of the parental rights of the alleged, presumed, acknowledged or adjudicated father or father based on the grounds of failure to establish parental rights to a child born out of wedlock pursuant to **section 802** of this Code, unless such rights have been previously terminated or relinquished. Adoption of a child born out of wedlock may also be decreed without parental consent if a consenting parent, legal guardian or other person having legal custody of the child to be adopted secures termination of parental rights by filing a separate application for termination of parental rights in the adoption proceeding, based on the grounds of failure to establish parental rights to a child born out of wedlock pursuant to **section 802** of this Code.

(d) Requirements for Application for Termination of Parental Rights for Adoption Purposes. The application shall contain the name of the child to be adopted, the time, date, and place of the hearing, the grounds for the termination of parental rights, and notice that the adoption may be ordered if the parent or legal custodian does not appear at the hearing and show cause why his consent is necessary. The application and notice shall be served on the parent whose termination of rights is sought pursuant to **section 803** of this Code. The application shall be set for hearing at a date and time certain and shall be at least twenty-four hours prior to the hearing on the adoption.

**Section 907. Consent of Child.** Whenever a child is of sufficient maturity and understanding the Comanche Nation Tribal Court may, and in every case of a child over ten years of age the Court shall, require the consent of the child, expressed in such form as the Court shall direct, prior to the entry of a decree of adoption. Whenever possible, the Court should interview such child in private concerning the adoption prior to approving the child's consent.

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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### **Section 908. Petition.**

A petition for adoption shall be filed in duplicate, verified by the petitioners, and shall specifically state:

(a) The full names, ages, and places of residence of the petitioners, and, if married, the place and date of their marriage.

(b) Their relationship with the child, if any, and their tribal affiliation by blood and membership, if any.

(c) When and from whom the petitioners acquired or intend to acquire physical custody of the child.

(d) The names of the child's biological parents and their tribal affiliation by blood and membership, including tribal roll numbers, if known.

(e) The date and place of birth of the child including the jurisdiction issuing the birth certificate for said child, the child's sex, race, and tribal affiliation by blood and membership, including tribal roll number, if known.

(f) The name used for the child in the proceeding, and, if a change in name is desired, the new name.

(g) A statement that the petitioners desire that the relationship of parent and child be established between them and the child, and that they agree to maintain ties with the Comanche Nation, and, if applicable, to comply with any signed agreement between them and the biological parents.

(h) A full description and statement of the value of all property owned or possessed by the child.

(i) The facts, if any, which excuse the consent of the parents or either of them to the adoption.

(j) Any required consents to the adoption or termination order may be attached to the petition, or filed with the Court prior to entry of a decree of adoption.

(k) The facts which bring the child within the jurisdiction of the Comanche Nation Tribal Court.

### **Section 909. Investigation.**

(a) Responsible Agency or Investigator. Upon the filing of a petition for adoption, the Comanche Nation Tribal Court shall order an investigation to be made:

(1) By the agency having legal custody of the child; or

(2) In other cases, by the State, Bureau of Indian Affairs, or ICWD; or

(3) By a person qualified by training or experience, designated by the Court.

(b) Report Deadline. The Comanche Nation Tribal Court shall further order that a report of such investigation shall be filed with the Court by the designated investigator within

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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the time fixed by the Court which shall be no more than sixty (60) days from the issuance of the order for investigation, unless time therefore is extended by the Court.

(c) Required Information. Such investigation shall include the conditions and antecedents of the child for the purpose of determining whether he is a proper subject for adoption; appropriate inquiry to determine whether the proposed home is a suitable one for the child, including a background check in accordance with **section 401** of this Code; and any other circumstances and conditions which may have bearing on the adoption and of which the Comanche Nation Tribal Court should have knowledge; and in this entire matter of investigation, the Court is specifically authorized to exercise judicial knowledge.

(d) Separate Investigations. The Comanche Nation Tribal Court may order agencies named in **subsection (a)** of this section located in one or more jurisdictions to make separate investigations on separate parts of the inquiry, as may be appropriate.

(e) Recommendation Required. The report of such investigation shall become a part of the files in the case, and shall contain a definite recommendation for or against the proposed adoption and state reasons therefore.

(f) Investigation Reports Prepared Prior to Filing of Adoption Petition. In the event that a report made within the six months preceding the filing of the petition for adoption is filed with the Comanche Nation Tribal Court and is deemed adequate for the purpose by the Comanche Nation Tribal Court, the Court, in its discretion, may waive the making of an additional investigation and the filing of an additional report.

(g) Notice of Filing of Report; Notice. Upon the filing of the investigation report, the investigator shall serve written notice upon the petitioners that the report has been filed with the Comanche Nation Tribal Court, provided that the report shall remain confidential and the contents of the report shall not be divulged to the petitioners except upon the consent of the investigating officer and the Court, and except to the ICWD and the Prosecutor.

**Section 910. Adoption Hearing.** At any time after the written investigation report has been filed, the Comanche Nation Tribal Court, upon motion or request of the petitioners, or upon its own motion, shall fix a time for hearing the petition for adoption. The adoptive parent or parents and adoptive child shall appear personally at the hearing. All other persons whose consent is necessary to the adoption and who have not filed their written consents shall be duly notified and may appear or be represented by an attorney or by an unpaid personal representative at their request with the approval of the Court. The Judge shall examine all persons appearing separately, and if satisfied as to the suitability of the child for adoption, the financial ability and moral and physical fitness and responsibility of the adoptive parents, and that the best interest of the child will be promoted by the adoption, may enter a final decree of adoption, or may place the child in the legal custody of the petitioners for a period of not more than six months prior to entering a final decree of adoption, or if the Court is satisfied that the adoption will not be in the best interests of the child, the petition shall be denied and suitable arrangements for the care of the child shall be made, which may include appointment of a legal custodian if necessary, and the Court may request the ICWD, Federal agencies, or other agencies to provide services to assist in the placement and the care of the child, or, in case of need, refer the matter to the ICWD and Prosecutor for the purpose of determining whether a petition seeking appropriate protection

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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of the child should be filed.

**Section 911. Report and Final Decree of Adoption.** If the Comanche Nation Tribal Court does not enter a final decree of adoption at the time of the hearing for adoption, but places the child in the legal custody of the petitioners, within six months after the child has been in the custody of the petitioner, the Court shall request a supplementary written report as to the welfare of the child, the current situation and conditions of the adoptive home and the adoptive parents. If the Court is satisfied that the interests of the child are best served by the proposed adoption, a final decree of adoption may be entered. No final order shall be entered by the Court unless it appears to the Court that the adoption is in the best interests of the child. In any case where the Court finds that the best interest of the child will not be served by the adoption, suitable arrangements for the care of the child shall be made, which may include appointment of a legal custodian if necessary, and the Court may request tribal agencies or federal agencies or other agencies authorized to provide services to assist in the placement and the care of the child.

**Section 912. Contents of Adoption Order.** The final order of adoption shall include such facts as are necessary to establish that the child is within the jurisdiction of the Court and eligible for adoption and that the adoptive parents and home are adequate and capable for the proper care of the child, as shown by the investigation reports and the findings of the Court upon the evidence adduced at the hearings, the new name of the child, if any, a provision for extended family contacts, if appropriate, and for tribal contacts, and a statement that the relationship of parent and child exists between the petitioners and the child. If the adoption includes a signed agreement between the adoptive parents and the biological parents concerning the maintenance of a relationship between the adoptive parents, biological parents and the child as specified in the agreement, the Comanche Nation Tribal Court, upon finding that such agreement is in the child's best interests, shall incorporate the agreement into the adoption decree, and shall enter an order compelling compliance with the agreement and providing judicial review in the event of noncompliance.

**Section 913. Effect of Final Decree of Statutory Adoption.**

(a) **Relationship Between Adopted Child and Adopted Family.** After a final decree of adoption is entered, the relationship of parent and child, and all the rights, duties, and other legal consequences of the natural relation of a child and parent shall thereafter exist between such adopted child, the adopting parents, and the kindred of the adopting parents. The adopted child shall inherit real and personal property from the adopting family and the adopting family shall inherit from the child in accordance with law as if such child were the natural child of the adopting parents.

(b) **Relationship Between Adopted Child and Parents Whose Rights Have Been Terminated.** After a final decree of adoption is entered, the natural parents of the adopted child, unless they are the adoptive parents or the spouse of an adoptive parent, shall be relieved and terminated from all parental rights and responsibilities for said child, including the right to inherit from the child, provided, that the child shall remain eligible to inherit from said natural parents, and retain all rights to membership in the Nation by virtue of his birth to said natural parents.

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(c) Grandparent Visitation. Unless the Indian custodians and grandparents of a child have given their consent to the adoption of the child, or have had their custodial rights terminated in the same manner that a parent consents or has their rights terminated, the Comanche Nation Tribal Court, at any time within two years after the final decree of adoption or refusal of the adoptive parents to allow visitation, whichever is later, may, upon application of a natural Indian custodian or a natural grandparent, order reasonable visitation rights in favor of said person if the Court deems such visitation in the best interest of the child. The Court may enforce such visitation rights and make orders thereto at any time after timely filing of an application therefore. Notice of such application shall be served upon the adoptive parents as a summons is served.

(d) Preservation of Approved Parent/Adoptive Parent Agreements. Nothing in this section shall be interpreted as affecting any provisions of an approved agreement between the adoptive parents and the biological parents pursuant to **section 912** of this Code.

**Section 914. Records and Hearings Confidential.** Unless the Comanche Nation Tribal Court shall otherwise order:

(a) Closed Hearing. All hearings held in adoption proceedings shall be confidential and shall be held in closed court without admittance of any person other than the interested parties, including Indian custodians, representatives of the ICWD when deemed necessary by the Court, persons whose presence is requested by the parties in private before the Court after the exclusion of all other persons, and the counsel for the parties, Indian custodians, and the ICWD.

(b) Preservation of Adoption Records; Confidentiality. All papers, records, and files pertaining to the adoption shall be kept as a permanent record of the Court and withheld from inspection. No person shall have access to such records except:

(1) Upon order of the Court for good cause shown.

(2) Upon the adopted person reaching the age of eighteen, the adopted person may review the records unless the natural parents have by affidavit requested anonymity in which case their names and identifying characteristics, not including tribal membership and degree of blood, shall be deleted prior to allowing the adopted person access to the records.

(3) The Indian custodians and natural grandparents shall have access to the records unless the natural parents have, by affidavit, requested anonymity, in which case, the names and identifying characteristics shall be deleted prior to allowing them access to the records as in the preceding paragraph. If the adopting parents request anonymity by affidavit, the Indian custodians and natural grandparents may have access to the records only by order of the Court for good cause shown, and then only if the Court deems such request in the best interest of the child.

(4) For the purpose of obtaining the enrollment of the child with another Indian Nation, the Court may upon request of an enrollment officer of that Nation, certify to that officer pertinent facts to enable that officer to determine the eligibility of the child for membership in that Nation subject to the written guarantee, with an undertaking if deemed necessary by the Court, that such facts will remain confidential and divulged only to those persons who must



## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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know the facts to obtain the enrollment of the child. In the alternative, and in cases where the natural or adoptive parents have, by affidavit, requested anonymity, the Court may certify a copy of the record of the case to a Judge of the Court of the other Nation for an in camera review only, or allow such Judge to review the record in the Comanche Nation Tribal Court, in camera, for the purpose of said Judge certifying to his Nation that the child is eligible for membership in that Nation.

### **Section 915. Certificates of Adoption.**

(a) Certificate of Adoption Decree. For each adoption or annulment of adoption, the Comanche Nation Tribal Court shall prepare, within thirty days after the decree becomes final, a certificate of such decree on a form furnished by the registrar of vital statistics of the State or other jurisdiction having issued the birth certificate of said child, and shall attach thereto certified copies of the petition and decree of adoption, and any other information required by law by the registrar.

(b) Delivery to Registrar of Vital Statistics. Such form and certified copies, along with any other pertinent information requested by the jurisdiction having issued the birth certificate shall be forwarded forthwith to the registrar of vital statistics of the jurisdiction.

**Section 916. Foreign Decree.** When the relationship of parent and child has been created by a decree of adoption of any court of competent jurisdiction of any other nation, or its political subdivisions having authority to enter such decrees, the rights and obligations of the parties as to matters within the jurisdiction of this Nation shall be determined.

### **Section 917. Adoption of Adults.**

(a) Procedure; Effect. An adult person may be adopted by any other adult person with the consent of the person to be adopted, or his legal custodian, if the Comanche Nation Tribal Court shall approve, and with the consent of the spouse of the adopting parent, if any, filed in writing with the Court. The consent of the adopted adult's parents shall not be necessary unless said adult has been adjudicated incompetent, nor shall an investigation be made. Such adoption shall follow the procedure otherwise set forth in this chapter. Such adoption shall create the relationship of parent and child between the parties, but shall not destroy the parent-child relationship with the biological parents, unless specifically requested by the adopted adult in writing in open Court. Unless so requested, the legal effect of such decree, for all purposes, including inheritance, but not including tribal enrollment eligibility, shall be that the adopted person is the child of both sets of parents equally.

(b) Open Record. Proceedings and records relating to the adoption of an adult shall be open to the public as are the records of other civil cases.

# TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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## CHAPTER TEN

### GUARDIANSHIPS

#### **Section 1001. Purpose**

(a) General Procedure. The Comanche Nation Tribal Court, when it appears necessary or convenient, may appoint guardians for the persons and/or property of either children under the Court's jurisdiction or incompetents who have no guardian legally appointed by will or deed. Such appointment may be made on the petitioner, an extended family member or other person on behalf of the child or incompetent, or a petition of a child if at least fourteen (14) years of age. Before making such an appointment, the Comanche Nation Tribal Court shall cause such notice as the Court deems reasonable to be given to any person having the care of the child, and to such other extended family members of the child as the Court may deem proper, and in cases of adult incompetents, the Court may cause notice to be given to the incompetent at least five (5) working days before hearing the petition.

(b) Nomination of Guardian. If a child is under the age of fourteen (14) years, the Comanche Nation Tribal Court may nominate or appoint his guardian. If he is fourteen (14) years of age or older, he may nominate his own guardian who, if approved by the Comanche Nation Tribal Court, shall be appointed accordingly. If the guardian nominated by the child is not approved by the Comanche Nation Tribal Court, or if the child resides outside of the reservation, or if, after being duly cited by the Comanche Nation Tribal Court, he neglects for ten (10) days to nominate a suitable person, the Comanche Nation Tribal Court may nominate and appoint the guardian in the same manner as if the child were under the age of fourteen (14) years. When a guardian has been appointed by the Comanche Nation Tribal Court for a child under the age of fourteen (14) years, the child at any time after he attains that age, may nominate his own guardian, subject to the approval of the Comanche Nation Tribal Court.

(c) Duties and Authority of Guardian. A guardian appointed may as specified by the Comanche Nation Tribal Court have the custody and care of the education of the child and the care and management of his property until such child arrives at the age of eighteen (18), marries, is emancipated by the Comanche Nation Tribal Court under **chapter 11** of this Code, or until the guardian is legally discharged, provided, however, that said guardian shall not have the authority, without express written consent of the Comanche Nation Tribal Court, to dispose of any real or personal property of the child in any manner, including, but not limited to, the child's Individual Indian Money Account or other similar account. Said guardian shall also have the authority to consent to the medical care and treatment of the child.

(d) Payments. The Comanche Nation Tribal Court may order that the Court disburse monthly reimbursement payments to the person or agency to whom custody is granted under this Code, provided sufficient funds have been appropriated by the Business Committee. Said disbursements shall be used by the person or agency with custody of the child for the sole purpose of covering expenses incurred in the care and custody of said child and shall not be used for any other purpose. The use of said funds for any purpose than that described in this section shall subject said person or agency to contempt of court and to any criminal and civil penalties or remedies provided by applicable law or regulation.

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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**Section 1002. Types Of Guardianship.** The types of guardianship shall include guardianship of property and/or guardianship of the person. Guardianship of the person shall include both temporary and permanent guardianship.

**Section 1003. Guardianship Of Property.** The Comanche Nation Tribal Court may appoint a guardian of the property of the child or incompetent person under such terms and conditions as the Court sets forth in the written order. The guardianship may cover all property until the child reaches eighteen (18) years of age or if adjudged to be delinquent or in need of supervision until the child reaches twenty-one (21) years of age or until the incompetent person becomes competent or it may be limited to only specific property or a specific legal action as set forth in the written order. A temporary or permanent guardianship of the person may also include guardianship of the child's property if set forth in the written order.

**Section 1004. Permanent Guardianship.** The Comanche Nation Tribal Court may appoint a permanent guardian for the child under such terms and conditions as the Court sets forth in the written order. Permanent guardianship provides for permanent custody of a child to someone other than the parent(s), although there is no termination of the parental rights of the parent. There shall be a presumption of continued permanent guardianship in order to provide stability for the child. Permanent guardianship shall only be terminated based upon the unsuitability of the permanent guardian(s) rather than the competency or suitability of the parent(s). The parent(s) and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the Court.

**Section 1005. Temporary or Special Guardianship.** The Comanche Nation Tribal Court may appoint a temporary or special guardian under such terms and conditions as the Court sets forth in the written Order. A temporary or special guardianship may be terminated if the Comanche Nation Tribal Court determines that it is in the best interest of the child to change custody from the temporary guardian to a new guardian or to return the child to the parent, guardian or custodian. The parent(s) and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the Court.

**Section 1006. Who May File Guardianship Petition.** Any person may file a petition for guardianship. The petition shall be initiated either by the proposed guardian or by the child if at least fourteen (14) years of age.

**Section 1007. Contents Of Guardianship Petition.**

(a) **Contents.** The petition for guardianship shall include the following, to the best information and belief of the petitioner.

- (1) The full name, address and tribal affiliation, if any, of the petitioner;

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(2) The full name, sex, date and place of birth, residence and tribal affiliation of the proposed ward;

(3) The basis for the Comanche Nation Tribal Court's jurisdiction;

(4) The relationship of the proposed guardian to the proposed ward;

(5) The name and address of the person or agency having legal or temporary custody of the proposed ward;

(6) The type of guardianship requested;

(7) In the case of alleged incompetent persons, the grounds for incompetency; and

(8) A full description and statement of value of all property in which the proposed ward has an interest (if guardianship of property is requested).

(b) Execution. All petitions shall be signed and dated by the petitioners, and shall be notarized or witnessed by a notary public or the Court Clerk/Court Administrator.

(c) Form. The Comanche Nation Tribal Court will adopt a form for the guardianship petition but will allow usage of other formats which meet the requirements of this **section**.

### **Section 1008. Guardianship Report.**

(a) Investigation. Upon the filing of a guardianship petition, the Comanche Nation Tribal Court shall immediately request that the Social Services Department or other qualified agency conduct a guardianship report on the proposed guardian and report on the proposed ward. The guardianship report shall contain all pertinent information necessary to assist the Comanche Nation Tribal Court in determining the best interests of the proposed ward, including a background check in accordance with **section 401(a)** of this Code.

(b) Submission. No determination can be made on a petition for guardianship until the report has been completed and submitted to and considered by the Comanche Nation Tribal Court. The guardianship report shall be submitted to the Court no later than ten (10) days before the hearing. The Court may order additional reports as it deems necessary.

### **Section 1009. Management of Property**

(a) Bond. In the event that any guardian shall receive any money or funds of any child or incompetent person during his term of office as guardian, before taking and receiving into custody such money or funds, the Comanche Nation Tribal Court shall require of such a person a bond with sufficient surety to be approved by the Court and in such sum as he shall order, conditioned that the guardian will faithfully execute the duties of his trust, and the following conditions shall form the part of such bond without being expressed therein:

(1) To make an inventory of all estate of his ward that comes into his possession or knowledge and to return the same within such time as the Court may order, and;

(2) To dispose of and manage the estate according to law and for the best interests of the ward, and faithfully to discharge his trust in relation thereto, and also in relation to care, custody and education of the ward, and;

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(3) To render an account on oath of the property, estate and money of the ward in his hands and all the proceeds or interests derived therefore, and of the management and disposition of the same, within three (3) months after his appointment, and at such other times as the Comanche Nation Tribal Court directs, and at the expiration of his trust, to settle his accounts with the Court or Judge or with the ward if he be of full age, or his legal representative and to pay over and deliver all the estate, monies and effects remaining in his hands, or due from him on such settlement to the person who is legally entitled thereto.

(b) Use of Child's Funds. The funds of any child or incompetent shall be used by his guardian solely for the support and education of such child and for the support of such incompetent, and shall be expended by the guardian in a reasonable manner according to the circumstances and station in life of such ward, and in such a manner as can reasonably be afforded according to the income and estate of said ward. If determined to be appropriate by the Comanche Nation Tribal Court, the written order may set forth that the child's property may not be used for the child's care, but rather to be managed for the child until the child reaches the age of eighteen (18) years, or is emancipated by the Court.

### **Section 1010. Incompetent Persons.**

(a) Requirements for Appointment. In cases of incompetent persons, if after a full hearing and examination upon such petition, and upon further proof by the certificates of at least two qualified physicians showing that any person is incompetent as defined in this Code, it appears to the Comanche Nation Tribal Court that the person in question is not capable of taking care of himself and of managing his property, the Court shall appoint a guardian as before specified within the powers and duties specified in this chapter.

(b) Duties of Guardian; Bond. Every guardian of an incompetent person appointed as provided herein has the care and custody of the person of his ward and the management of his estate until such guardian is legally discharged, he shall give bond to such ward in like manner and with like conditions as before specified with respect to the guardianship of a child.

(c) Restoration to Capacity. A person who has been declared insane or incompetent or the guardian, or any extended family member of such person, may apply by petition to the Comanche Nation Tribal Court in which he was declared insane, to have the fact of his restoration to capacity judicially determined. The petition shall be verified and shall state that such person is then sane or competent. The Comanche Nation Tribal Court shall require notice to be given of a hearing upon said petition at some date after said petition has been filed, and at the hearing upon said petition, witnesses shall be examined and a determination made by the Comanche Nation Tribal Court as to whether the petition should be granted and the insane or incompetent person be declared of sound mind and capable of taking care of himself and his property, his restoration to capacity shall be adjudged and the guardianship of such person, if such person shall not be a child, shall cease.

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# TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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## CHAPTER ELEVEN

### EMANCIPATION

**Section 1101. Emancipation Requirements.** The Comanche Nation Tribal Court may declare a child emancipated either pursuant to a petition or as a dispositional alternative if the child wishes to be free from parental control and protection and no longer needs that control and protection, and all of the following exist:

- a. The child is sixteen (16) years of age or older;
- b. Is self-supporting;
- c. Understands the consequences of being free from parental control and protection;  
and
- d. Has an acceptable plan for independent living.

**Section 1102. Procedure for Emancipation.**

(a) **Petition.** A minor may petition the Comanche Nation Tribal Court for a declaration of full or partial emancipation. The petition shall be verified and shall state specific facts which will support a declaration of emancipation.

(b) **Notice.** Before the petition is heard, notice shall be given to the minor's parents or legal custodian as required by this law.

(c) **Findings.** If the Comanche Nation Tribal Court finds that the requirements of **section 901** are met, the Nation Tribal Court may grant all or part of the petition, unless, after having considered all of the evidence, it finds that emancipation would not be in the best interests of the child.

(d) **Declaration.** If the Comanche Nation Tribal Court grants all or part of the petition, it shall immediately issue a declaration of emancipation.

(e) **Purpose for Emancipation.** An emancipated minor shall be considered an adult over the age of eighteen (18) for all purposes. The emancipated minor shall remain subject to Comanche Nation laws and rules governing the disbursement of tribal monetary benefits.

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# TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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## CHAPTER TWELVE

### PATERNITY ESTABLISHMENT

**Section 1201. Purpose and Guidelines; Judicial and CNCSP Administrative Proceedings.** This chapter governs the establishment of paternity, including the establishment of paternity in judicial proceedings before the Comanche Nation Tribal Court and Comanche Nation Child Support Program ("CNCSP") administrative proceedings conducted in accordance with this chapter and chapter 15 of this Code. This chapter is generally based on the guidelines of the Uniform Parentage Act to establish paternity through a presumption of paternity, voluntary acknowledgment of paternity and genetic tests. If this chapter is silent on an issue before the Comanche Nation Tribal Court or before the CNCSP in CNCSP administrative proceedings, the Court or CNCSP may use, but is not bound to use, the guidelines established by the Uniform Parentage Act, or may consider relevant state law.

**Section 1202. Definitions.**

(a) Unless the context otherwise requires, as used in this chapter the following terms shall be defined as set forth below:

(1) **Acknowledged Father.** "Acknowledged Father" means a man who has established paternity by signing and having notarized an acknowledgment of paternity or who has established a father/child relationship for a period of at least two years.

(2) **Adjudicated Father.** "Adjudicated Father" means a man, who has been adjudicated by a court of competent jurisdiction to be the father of a child.

(3) **Administrative Procedure.** "Administrative Procedure" means a method by which support orders are made and enforced by an administrative authority established by tribal or state law, rather than by courts and judges.

(4) **Alleged Father.** "Alleged Father" means any of the following men alleged to be the genetic father or a possible genetic father of a child, but whose paternity has not been determined: a man who alleges himself to be the genetic father, or a man who has been identified as the child's father by the mother in a sworn statement. The term does not include a presumed father, a man whose parental rights have been terminated or declared not to exist, or a male donor.

(5) **Child.** "Child" means an individual of any age whose paternity may be established in accordance with this chapter or who is entitled to child support under chapter 15 of this Code. A minor child means such an individual who is younger than eighteen years of age.

(6) **Child Support.** "Child Support" means the financial support paid by a parent to help support a child or children of whom they do not have custody. Child support can be entered into voluntarily or ordered through Court or administrative action depending on tribal or state laws, including **chapter 15** of this Code.

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## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(7) Child Support Order and Child Support Obligation. "Child Support Order and Child Support Obligation" means - a judgment, decree or order, whether temporary, final or subject to modification, issued through court or administrative action for the support and maintenance of a child. Support orders can provide for monetary support, medical and dental insurance, moorages, or reimbursement of costs and fees, interest and penalties, income withholding, and other forms of relief

(8) "Child Support and Related Proceedings." "Child support and Related Proceedings," means Nation Tribal Court judicial proceedings or CNCSP administrative proceedings for the establishment of paternity for purposes of child support and/or for the establishment, modification, enforcement, and termination of child support orders, and such other related actions and proceedings as authorized by **chapter 15** of this code and as authorized by this chapter.

(9) CNCSP. "CNCSP" means the Comanche Nation Child Support Program:

(10) CNCSP Administrative Proceedings. "CNCSP administrative proceedings" means administrative child support and related proceedings conducted by the Comanche Nation Child Support Program.

(11) Genetic Testing. "Genetic Testing" means an analysis of genetic markers to exclude or identify a man as a father or a Woman as the mother of the child. The term includes an analysis of one or a combination of the following: deoxyribonucleic acid and blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins, or red-cell enzymes.

(12) Mother. "Mother" means a woman who gives birth to a child and is the biological mother of the child, unless otherwise expressly provided by law.

(13) Paternity. "Paternity" means the legal determination of fatherhood.

(14) Presumed Father. "Presumed Father" means a man who, by operation of law, is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding.

(15) Signatory. "Signatory" means an individual who authenticates a record and is bound by its terms.

**Section 1203. No Discrimination Based on Marital Status: Liability to Support and Educate Child.** A child born to parents who are not married to each other has the same rights under the law as a child born to parents who are married to each other. An individual who is the acknowledged father under § 1205, who is the presumed father under § 1204(a), or who has been otherwise legally, judicially or administratively determined to be the father of a child pursuant to this chapter shall be liable for the support and education of the child to the same extent as the mother and a father of a child born in wedlock.

**Section 1204. Rebuttable Presumption of Paternity.**

(a) Circumstances Establishing Presumption. A man shall be presumed to be the father of a child if:

(1) He and the mother of the child are married to each other and the child was born during the marriage;



## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(2) He and the mother of the child were married to each other and the child was born within three hundred (300) days after the marriage was terminated by death, annulment, declaration of invalidity, divorce or dissolution of marriage, or decree of separation is entered by a court of competent jurisdiction;

(3) Before the child's birth, he and the mother of the child married each other in apparent compliance with the law, even if the attempted marriage was or could be declared invalid, and the child was born during the invalid marriage or within 300 days after its termination by death, annulment, declaration of invalidity, divorce or dissolution of marriage, or decree of separation entered by a court of competent jurisdiction; and

(4) After the child's birth, he and the mother of the child married each other in apparent compliance with law, and:

- (i) he voluntarily asserted his paternity of the child and the assertion is on record filed with the state agency maintaining birth records;
  - (ii) he consented to have his name as the father on the child's birth certificate or he promised in a record to support the child as his own; or
  - (iii) for the first two (2) years of the child's life, he resided in the same household with the child and represented to others that the child was his own.
- (b) Rebuttal of Presumption. The presumptions of paternity set forth in subsection (a) may be rebutted by the following actions:

(1) The execution and notarization of a denial of paternity affidavit by the presumed father, and the filing of paternity acknowledgment forms by the mother and another alleged father acknowledging that alleged father's identity as the father;

(2) Proof of non-paternity by genetic testing; and/or

(3) Issuance of an order finding non-paternity in a judicial or administrative proceeding.

### **Section 1205. Voluntary Acknowledgement of Paternity; Rescission.**

(a) Joint Acknowledgment. The mother of a child and a man claiming to be the biological father of the child may sign an acknowledgment of paternity with the intent to establish the man's paternity. The voluntary acknowledgment of paternity shall be notarized.

(b) Filing with State Agency. A valid acknowledgment of paternity signed and filed with state agency maintaining birth records shall be equivalent to an adjudication of paternity of a child.

(c) Rescission; Timing. A signatory may rescind an acknowledgment of paternity before the earlier of sixty (60) days from the date of the acknowledgment or from the date of the first hearing in a judicial or administrative proceeding to which the signatory is a party and involving an issue relating to the child, including a proceeding that establishes support. Notwithstanding the foregoing, a signatory who was a minor at the time of execution of the acknowledgment may rescind an acknowledgment of paternity within sixty (60) days after reaching the age of eighteen.

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(d) Challenge After Expiration of Period for Rescission. After the period for rescission under this section has expired, a signatory of a valid acknowledgment of paternity may commence a proceeding to challenge the paternity of the acknowledged father within three (3) years after the acknowledgment was filed with the state agency maintaining the birth record, but only on the basis of fraud, duress, or material mistake of fact. Such party shall have the burden of proof to establish non-paternity.

### **Section 1206. Special Provisions Related to Cases in which CNCSP Seeks Determination of Paternity for Purposes of Establishment of Child Support Obligations.**

(a) Applicability of Section. This section shall apply to cases in which CNCSP seeks a judicial or administrative determination of paternity for the sole purpose of establishing obligations for payment of child support; provided that all CNCSP administrative proceedings shall be conducted in accordance with the following requirements:

(1) CNCSP shall conduct such proceedings in accordance with the requirements of this chapter and chapter 15 of this Code;

(2) In the event that a party makes a timely request for transfer of the CNCSP administrative proceedings to the Comanche Nation Tribal Court in accordance with section 15-107 of this Code, the proceedings shall be transferred to the Nation Tribal Court; and

(3) All CNCSP final paternity orders shall be subject to review and approval of the Nation Tribal Court and shall be filed with the Court Clerk/Court Administrator.

(b) Applicability of Tribal Law, Code, and/or Custom. In all cases described in subsection (a), CNCSP shall use the process established under this chapter and chapter 15 of the Comanche Children's Code. The Nation Tribal Court and CNCSP shall also consider Comanche tribal custom governing establishment of paternity if such custom is clearly established by expert witness testimony in judicial or CNCSP administrative proceedings for determination of paternity. (See 45 C.F.C. § 309.100).

(c) Opportunity to Voluntarily Acknowledge Paternity. In all cases described in subsection (a), CNCSP shall provide an alleged father the opportunity to voluntarily acknowledge paternity in accordance with § 1205. In all such cases, the CNCSP shall provide the mother and alleged father written materials about paternity establishment, a written notice and oral notice which may be made through the use of video or audio equipment, of the alternatives to, the legal consequences of, and the rights and responsibilities of acknowledging paternity, and an opportunity to speak with staff, either by telephone or in person, who shall be trained to clarify information and answer questions about paternity establishment. The CNCSP shall also provide the forms for the voluntary acknowledgment of paternity in accordance with federal and Comanche laws.

(d) Genetic Testing. In all cases described in subsection (a) and involving contested paternity (unless otherwise barred by tribal law), the child and all other parties shall be required to submit to genetic tests upon the request of any such party, if the request is supported by a sworn statement as described in section 1209(a) of this Code. When genetic testing is used to establish paternity, the CNCSP must identify and use accredited laboratories which perform, at reasonable cost, legally and medically accepted genetic tests which intend to identify the father

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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or exclude the alleged father. Such genetic testing shall meet the requirements of § 1210 of this chapter.

(e) Exceptions to Establishment. The CNCSP need not attempt to establish paternity in any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending, if, in the opinion of the CNCSP, it would not be in the best interest of the child to establish paternity.

(f) No Effect on Tribal Membership. Establishment of paternity under this section shall have no effect on tribal enrollment or membership.

**Section 1207. Full Faith and Credit.** The Comanche Nation Tribal Court and CNCSP in CNCSP administrative proceedings shall give full faith and credit to a valid acknowledgment of paternity in another tribe or state if the acknowledgment has been signed and is otherwise in compliance with any applicable federal law or any applicable law of the other state or tribe. The Nation Tribal Court shall give full faith and credit to a valid determination of paternity issued by a court or administrative agency of competent jurisdiction in another tribe or state if it is in compliance with any applicable federal law or any applicable law of the other state or tribe.

**Section 1208. Proceedings to Determine Paternity; Jurisdiction; Procedures; Record.**

(a) Jurisdiction. The Comanche Nation Tribal Court in judicial proceedings and the CNCSP in CNCSP administrative proceedings shall have jurisdiction to determine the paternity of a child involving an individual who is the subject of such proceedings if one or more of the following prescribed conditions are fulfilled:

(1) The individual is an Indian or a non-Indian who resides within Indian country as defined by section 107(o) of this Code;

(2) The individual is personally served with summons within such Indian country;

(3) The individual resided with the child in such Indian country;

(4) The individual resided in such Indian country and provided prenatal expenses or support for the child;

(5) The child resides in such Indian country as a result of the acts or directives of the individual;

(6) The individual engaged in sexual intercourse in such Indian country and the child may have been conceived by that act of intercourse;

(7) The individual asserted parentage in the putative father registry maintained in the State of Oklahoma by the appropriate agency;

(8) The individual is a member of the Comanche Nation of Oklahoma or the child is a member or is eligible for membership in the Comanche Nation;

(9) The individual submits to the jurisdiction of the Nation Tribal Court or CNCSP by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction; or

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(10) There is any other basis consistent with the Constitutions of the Comanche Nation, the United States, or the State of Oklahoma for the exercise of personal jurisdiction.

(b) Personal Jurisdiction Over All Interested Parties Not Required. Lack of personal jurisdiction over a child and the custodial parent does not preclude the Nation Tribal Court or the CNCSP in CNCSP administrative proceedings from making a child support order binding on the noncustodial parent who is subject to the child support order.

(c) Governing Law. The proceeding shall be governed by this Code and by all applicable Comanche Nation Tribal Court Rules.

(d) Persons and Entities Authorized to Seek Paternity. Any one or more of the following persons or entities may file an action to adjudicate paternity:

- (1) a child;
- (2) the mother of a child;
- (3) a man whose paternity of the child is to be adjudicated;
- (4) the CNCSP; and/or
- (5) a representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor.

(e) Notice; Service. After the paternity petition is filed, the Comanche Nation Tribal Court or CNCSP in CNCSP administrative proceedings shall issue notice of a hearing to all interested parties, including the alleged father. Notice shall be served in accordance with the requirements for service of summons set forth in section 609(b) and (c) of this Code. When a person who is subject to the jurisdiction of the Comanche Nation Tribal Court is outside Indian country, the person may also be served by any method that is authorized by the law of the jurisdiction where he is served.

(f) Joinder of Parties. The mother of the child and the alleged father shall be joined as parties to adjudicate paternity.

(g) Admission of Paternity Authorized. A respondent in a proceeding to establish paternity may admit to the paternity of a child by filing a pleading to that effect or by admitting paternity under penalty of perjury when making an appearance or during a hearing

(h) No Jury. The Nation Tribal Court or CNCSP, without a jury, shall adjudicate the paternity of a child.

(i) Genetic Testing. If the alleged father fails to appear, the Comanche Nation Tribal Court or CNCSP may issue an order for genetic testing in accordance with section 1209 and continue the hearing pending such testing. If the alleged father appears and does not admit paternity, then the Comanche Nation Tribal Court or CNCSP may enter an order directing genetic testing to determine paternity. The conduct and use of genetic testing shall be governed by this section and sections 1209 through 1216 of this chapter.

(j) Determination of Paternity. The Comanche Nation Tribal Court or CNCSP shall make a determination consistent with the genetic testing results. If it is not possible to complete genetic testing or the genetic testing results are indeterminate, the Comanche Nation Tribal Court or CNCSP shall make a determination consistent with all relevant evidence before the

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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Court or CNCSP, based on a preponderance of the evidence. Any such determination by CNCSP shall be subject to review and approval by the Comanche Nation Tribal Court in accordance with chapter 15 of this Code.

(k) Default Order. If after proper notice and service, an alleged father fails to appear at a court hearing or administrative child support conference to establish paternity, the Nation Tribal Court or CNCSP may hold the alleged father in default and adjudicate him to be the father of the child, based on all relevant evidence before the Court or CNCSP; provided that prior to such adjudication, any other alleged father has been excluded from paternity through genetic testing or other relevant evidence. Any such default order shall describe the manner of service of notice and include a finding that it complied with the requirements of section 609 (b) and (c) of this Code. Any such default order issued by CNCSP shall be subject to review and approval by the Comanche Nation Tribal Court in accordance with chapter 15 of this Code.

(l) Confidential Proceedings. A paternity hearing shall be closed to the public unless all parties agree otherwise.

(m) Timing. A proceeding to adjudicate the paternity of a child having no presumed father, acknowledged father, adjudicated father, or adoptive father may be commenced at any time, even after:

- (1) The child becomes an adult, but only if the child initiates the proceeding; or
- (2) An earlier proceeding to adjudicate paternity has been dismissed based upon the application of a statute of limitation then in effect.

(n) Final Order Public; Other Records Confidential. Only the final order in a paternity proceeding shall be available for public inspection. All other papers and records are private and confidential and available only with the consent of all affected parties or an order of the Nation Tribal Court for good cause.

### **Section 1209. Order for Genetic Testing.**

(a) Sworn Statement Required. Except as otherwise provided, the Nation Tribal Court or CNCSP may order the child and other designated individuals to submit to genetic testing if a party requests a genetic test and/or if an alleged father denies paternity. The request for testing is supported by a sworn statement by a party to the proceeding:

- (1) alleging paternity, and setting forth facts establishing a reasonable possibility of the requisite sexual contact between parties; or
- (2) denying paternity, and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties.

(b) Limitation. Genetic testing shall not be required to establish paternity of an adjudicated father or adoptive father. Testing shall not be required to establish paternity of a presumed or acknowledged father unless paternity of such person is contested in Nation Tribal Court or CNCSP administrative proceedings by such presumed or acknowledged father, the mother, or another person claiming paternity.

(c) Objections. Any traditional and customary objections to genetic testing shall not be a basis for refusal to undergo such testing to establish paternity.

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(d) Rescheduling Test; Court Hearing. An alleged father may reschedule a genetic test once. If an alleged father misses a second scheduled genetic test, the CNCSP shall schedule a hearing before the Nation Tribal Court.

### **Section 1210. Requirements for Genetic Testing: Report.**

(a) Testing Qualifications. Genetic testing shall be of a type reasonably relied upon by experts in the field of genetic testing and performed by an accredited genetic testing laboratory that performs, at reasonable cost, legally and medically accepted genetic tests which intend to identify the father or exclude the alleged father.

(b) Specimens. A specimen used in genetic testing may consist of one or more samples, or a combination of samples of blood, buccal cells, bone, hair, or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each individual undergoing genetic testing.

(c) Signature on Report. A report of genetic testing shall be in a record and signed under penalty of perjury by a designee of the testing lab.

(d) Self-Authenticated Report. A report shall be self-authenticating if it has:

- (1) the names and photographs of the individuals whose specimens have been taken;
- (2) the names of the individuals who collected the specimen, and the place and dates the specimens were collected;
- (3) the names of the individuals who received the specimens in the testing laboratory, and
- (4) the date the specimens were received.

### **Section 1211. Genetic Testing Results.**

(a) Probability Percentage; Manner of Rebutting. A man shall be rebuttably identified as the father of a child if the genetic test results disclose that the man has at least a ninety-nine (99%) percent probability of paternity. Such identification of a man as the father of the child may be rebutted only by other genetic testing which excludes the man as the genetic father of the child or identifies another man as the possible father of the child.

(b) Provision of Results to Parties; Additional Test. Within five business days after receiving the test results back from the lab, the CNCSP shall send the results to both parties. If a party contests the genetic tests results, the party shall notify CNCSP in writing no later than fourteen (14) days from said party's receipt of the test results. The Nation Tribal Court or CNCSP in CNCSP administrative proceedings shall order additional genetic testing on the request of the party who contests the result of the original testing provided that said party provides advance payment for the testing within thirty (30) days from the time he/she receives the original test results.

(c) Identification of Multiple Fathers. If more than one man is identified by genetic

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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testing as the possible father of the child, the Nation Tribal Court or CNCSP in CNCSP administrative proceedings shall order them to submit to further genetic testing to identify the genetic father.

### **Section 1212. Genetic Testing When Specimen Not Available.**

(a) Unavailability of Specimen. Subject to subsection (b) of this section, if a genetic-testing specimen is not available from a man who may be the father of a child, for good cause and under circumstances the Nation Tribal Court or CNCSP in CNCSP administrative proceedings considers to be just, the Nation Tribal Court or CNCSP may order the following individuals to submit specimens for genetic testing:

- (1) the parents of the man;
- (2) brothers and sisters of the man;
- (3) other children of the man and their mothers;
- (4) any relatives of the man necessary to complete genetic testing; and
- (5) any other custodians of genetic material.

(b) Finding Prior to Order. Issuance of an order under this section requires a finding that a need for genetic testing outweighs the legitimate interests of the individual sought to be tested.

(c) Testing of Deceased Person. For good cause shown, the Nation Tribal Court or CNCSP in CNCSP administrative proceedings may order genetic testing of a deceased individual.

**Section 1213. Identical Brothers.** The Nation Tribal Court or CNCSP in CNCSP administrative proceedings may order genetic testing of a brother of a man identified as the father of a child if the man is commonly believed to have an identical brother and evidence suggests that the brother may be the genetic father of the child. If each brother satisfies the requirements as the identified father of the child under section 1211 without consideration of another identical brother being identified as the father of the child, the Nation Tribal Court or CNCSP may rely on non-genetic evidence to adjudicate which brother is the father of the child.

### **Section 1214. Admissibility of Results of Genetic Testing.**

(a) Admissibility of Records. Except as otherwise provided in **subsection (c)** of this section, a record of a genetic testing expert shall be admissible as evidence of the truth of the facts asserted in the report unless a party objects to its admission within fourteen (14) days after its receipt by the objecting party and cites specific grounds for exclusion. The admissibility of the report shall not be affected by whether the testing was performed:

- (1) voluntarily or pursuant to an order of the Nation Tribal Court or CNCSP in CNCSP administrative proceedings; or
- (2) before or after the commencement of the proceeding.

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(b) Expert Witnesses. A party objecting to the results of genetic testing may call one or more genetic-testing experts to testify in person or by telephone, videoconference, deposition or another method approved by the Nation Tribal Court or CNCSP. Unless otherwise ordered by the Nation Tribal Court or CNCSP, the party offering the testimony bears the expense for the expert testifying.

(c) Inadmissibility of Test Results. If a child has a presumed father or acknowledged father, the results of genetic testing are inadmissible to adjudicate paternity unless performed pursuant to an order of the Nation Tribal Court or CNCSP.

### **Section 1215. Consequences of Declining Genetic Testing.**

(a) Contempt. An order for genetic testing shall be enforceable by contempt.

(b) Adjudication. If an individual whose paternity is being determined declines to submit to genetic testing ordered by the Nation Tribal Court or CNCSP, the Court or CNCSP may adjudicate paternity contrary to the position of that individual.

(c) Testing of Mother. Genetic testing of the mother of a child shall not be a condition precedent to testing the child and a man whose paternity is being determined. If the mother is unavailable or declines to submit to genetic testing, the Nation Tribal Court or CNCSP in CNCSP administrative proceedings may order the testing of the child and every man whose paternity is being adjudicated.

**Section 1216. Results Excluding Alleged Father.** Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man excluded as the father of a child by genetic testing shall not be adjudicated to be the father of the child.

**Section 1217. Change of Birth Certificate Information.** When the Comanche Nation Tribal Court or CNCSP in CNCSP administrative proceedings makes a determination as to the parentage of any person in any civil proceeding, the Court Clerk/Court Administrator shall transmit to the appropriate State Commissioner of Health, on a form prescribed by the Commissioner, a written notification of such entry together with such other facts as may assist in identifying the birth record of the person whose parentage was in issue. The Court Clerk/Court Administrator shall also transmit a notification of the paternity determination, including the name and address of the person whose parentage was determined and the person who was determined to be the father, to the Oklahoma Department of Human Services or similar agency of another state for recordation in any paternity registry established pursuant to state law on a form prescribed by the receiving agency. The parent or legal custodian of a child may request any State Registrar of Vital Statistics to afford full faith and credit to any order of the Nation Tribal Court or any CNCSP administrative order approved by the Nation Tribal Court and to: (1) remove the name of the person listed as the father from the birth certificate upon notice that such person has been judicially or administratively determined not to be the father; or (2) if paternity is established, to correct its records and amend the birth certificate to reflect the father's name.



## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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**Section 1218. Changing Child's Name to Paternal Surname.** At any time after a determination of paternity, the Comanche Nation Tribal Court may upon request of a parent order that the surname of the child be changed to the surname of the child's father or changed to a combination of the mother's maiden name and the father's surname. Any such order changing the surname may be issued separately or may be included in the decree of paternity.

# TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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## CHAPTER THIRTEEN

### NAME CHANGES

**Section 1301. Right to Petition for Change of Name.** Any natural person, who has been domiciled in Indian country for more than thirty (30) days, and has been an actual resident of Indian country for more than thirty (30) days, preceding the filing of the action, may pay a \$15 filing fee and petition for a change of name in the Comanche Nation Tribal Court. If the person be a child, the action may be brought by guardian or next friend; provided that any such action involving a child shall be subject to all other requirements for name changes of a child set forth in this Code, which shall be controlling over any inconsistent provision of this chapter.

**Section 1302. Petition.** The petition shall be verified and shall state: (a) the name and address of the petitioner; (b) the facts as to domicile and residence; (c) the date and place of birth; (d) the birth certificate number, and place where the birth is registered, if registered; (e) the name desired by petitioner; (f) a clear and concise statement of the reasons for the desired change; (g) a positive statement that the change is not sought for any illegal or fraudulent purpose, or to delay or hinder creditors; and (h) in the case of a non-Indian petitioner, a statement of consent to the jurisdiction of the Comanche Nation Tribal Court.

**Section 1303. Notice; Protest; Hearing Date; Continuance.** Notice of filing of such petition shall be given by publishing the same one time at least ten (10) days prior to the date set for hearing in some newspaper authorized by law to publish legal notices printed in the county where the petitioner resides if there be any printed in such county, and if there be none, then in some such newspaper printed in this state of general circulation in that county. The notice shall contain the style and number of the case, the time, date and place where the same is to be heard, and that any person may file a written protest in the case prior to the date set for the hearing. The hearing date may be any day after completion of the publication. The court or judge, for cause, may continue the matter to a later date.

**Section 1304. Evidence; Determination.** The material allegations of the petition shall be sustained by sworn evidence, and the prayer of the petition shall be granted unless the court or judge finds that the change is sought for an illegal or fraudulent purpose, or that a material allegation in the petition is false.

**Section 1305. Judgment.** The judgment shall recite generally the material facts and the change granted, or if denied, the reasons for the denial. A certified or authenticated copy of such judgment may be filed in any office, where proper to do so, and shall be regarded as a judgment in a civil action.

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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**Section 1306. Illegal or Fraudulent Purpose.** Any person who obtains a judgment under this chapter willfully intending to use the same for any illegal or fraudulent purpose, or who thereafter willfully and intentionally uses such judgment, or a copy thereof, for any illegal or fraudulent purpose, shall be deemed guilty of a misdemeanor.

**Section 1307. Exclusiveness of Statutory Remedy.** No natural person domiciled and residing in Indian country may change his name in the Comanche Nation Tribal Court except as provided in this chapter and **section 1218** of this Code, other than by marriage or decree of divorce or by adoption.

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# TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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## CHAPTER FOURTEEN

### MARRIAGE

**Section 1401. Marriage Defined.** Marriage is a personal relation arising out of a civil contract between two legally competent persons. A marriage shall be valid only when commenced or maintained in accordance with any applicable law of the Comanche Nation, any other Indian nation or any state or country. Except as stated in the preceding sentence of this section, the requirements of this chapter shall apply only to persons who apply for and/or obtain a marriage license from the Comanche Nation Tribal Court Clerk/Court Administrator.

**Section 1402. Who May Marry.**

(a) **Incestuous Marriage Prohibited.** No person who has a blood relationship with his father, mother, grandparent, aunt, uncle, brother, sister, child or first cousin shall marry such person.

(b) **Persons Aged Eighteen and Older.** Any unmarried person of the age of eighteen (18) or older and not otherwise disqualified by mental incompetency or disability may consent to marriage with another person of the opposite sex; provided that in the case of a non-Indian petitioner, a statement of consent to the jurisdiction of the Comanche Nation Tribal Court.

(c) **Persons Aged Less than Sixteen Years.** No person aged less than sixteen years may enter into a marriage relation, except in situations involving an unmarried female who is pregnant or who has given birth to a child out of wedlock, in which event the Comanche Nation Tribal Court may approve such marriage subject to the consent of the child's parent or legal custodian given in accordance with **subsection (d), paragraphs (1), (2), (3) and (4)** of this section in all such cases; provided that if such consent is refused, notice of the hearing shall be given to the parent or legal custodian of such minor, and such parent or legal custodian shall be afforded an opportunity to present evidence prior to the Comanche Nation Tribal Court's decision to approve or deny approval of the marriage.

(d) **Persons Under Age Eighteen and Sixteen Years or Older.** No person under the age of eighteen (18) years shall enter into marriage, nor shall the Court Clerk/Court Administrator issue a marriage license pursuant to this chapter unless one of the following requirements is met:

(1) The parent or guardian of such underage applicant expressly gives consent and authority for the marriage in the presence of the Court Clerk; or

(2) The parent or guardian of such underage applicant executes a written consent to the marriage that is acknowledged in person before the Court Clerk; or

(3) The written and verified consent of a parent or guardian is presented to the Court Clerk with an accompanying notarized medical certificate of a duly licensed medical doctor or osteopath, stating that such parent or guardian is unable by reason of health or incapacity to be present in person; or

(4) The written consent of a parent or guardian on active duty with the Armed Forces of the United States is present to the Court Clerk/Court Administrator, acknowledged by military personnel authorized to administer oaths, accompanied by a certificate executed by a commissioned officer in command of said applicant, to the effect that said parent or guardian is

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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on active duty in the Armed Forces of the United States; or

(5) The affidavits of three (3) reputable persons are presented to the Court Clerk/Court Administrator, stating that both parents of said minor are deceased, or mentally incompetent, or their whereabouts are unknown to the minor, and that no guardian has been appointed for said minor, in which case the Comanche Nation Tribal Court may in its discretion consent to said marriage in the same manner as in all cases in which consent may be given by a parent or guardian and with the same effect.

### **Section 1403. Marriage License.**

(a) Marriage License Required. No person shall enter into or contract the marriage relation, nor shall any person perform or solemnize the ceremony of any marriage in the Comanche Nation without a marriage license being first issued by the Court Clerk/Court Administrator or by other licensing authority under the law of any other jurisdiction authorizing the marriage between the persons named in such license.

(b) Application. Persons desiring to be married under the laws of the Comanche Nation shall submit an application for a marriage license in writing signed and sworn to in person before the Court Clerk/Court Administrator by both of the parties setting forth the following information:

(1) Each party's place of residence;

(2) Each party's full name and age as it appears on one or more of the following documents, a copy of which shall be provided with the application: the party's Comanche Nation citizenship card, a certified copy of a birth certificate, a current motor vehicle operator's, chauffeur's or commercial license, a current voter's registration certificate, a current passport or visa, or any other certificate, license or document issued by or existing pursuant to the laws of any nation or of any state or other governmental subdivision thereof accepted as proof of identity and age;

(3) A statement that the parties are not disqualified from or incapable of entering into the marriage relation;

(4) A statement that at least one (1) of the persons to be married is a citizen of the Comanche Nation; and

(5) A statement of consent to the jurisdiction of the Comanche Nation Tribal Court for purposes of receiving a marriage license by any person to be married who is not a citizen of the Comanche Nation.

(c) Additional Information. If the Court Clerk/Court Administrator is in doubt of the legal capacity of the parties for whose marriage a license is sought to enter into the marriage relation, the Court Clerk/Court Administrator shall require additional evidence to that contained in the application, and may swear and examine witnesses or require affidavits in proof of the legality of such marriage, and unless satisfied of the legality thereof, the Court Clerk shall not issue a marriage license.

(d) Fee. The Court Clerk/Court Administrator shall charge a fee in the amount of \$50 for issuance of a marriage license

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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### **Section 1404. Issuance of Marriage License.**

(a) Waiting Period for Certain Licenses. In the event that one or both of the parties are under legal age, the marriage license shall not be issued until the application has been on file in the Court Clerk/Court Administrator's office for a period of not less than seventy-two (72) hours, unless at the time of application for the license, the parent or guardian of such underage applicant or other person authorized by this chapter to give consent has signed a waiver, waiving the seventy-two hour waiting period.

(b) Issuance of License. Upon application and the payment of the required fee pursuant to this chapter, the Court Clerk shall issue the marriage license if the Court Clerk/Court Administrator is satisfied of the truth and sufficiency of the application and is satisfied that there is no legal impediment to the marriage.

(c) Contents of License. The marriage license shall contain the date of its issuance, the Comanche Nation Tribal Court name, the full names of the persons to be married, their ages and their places of residence. The marriage license shall be directed to any person authorized by law to perform and solemnize the marriage ceremony; shall state the time that the license shall be returned to the Court Clerk/Court Administrator, which shall not be more than thirty (30) days from the date of its issuance; and shall contain a blank certificate to be made out by the person performing the marriage ceremony.

(d) Delivery of License. Any person obtaining a marriage license from the Court Clerk/Court Administrator shall deliver the license within ten (10) days from the date of issuance to a person qualified under **section 1405(c)** of this chapter to officiate the marriage ceremony.

### **Section 1405 Solemnization of Marriage.**

(a) Ceremony. All marriages shall be contracted by a formal ceremony performed or solemnized in the presence of at least two adult, competent persons as witnesses.

(b) Prerequisites to Performance of Ceremony. No person shall perform a marriage ceremony unless (1) the marriage license has been delivered into his possession; and he has good reason to believe the persons presenting themselves before him for marriage are the identical persons named in the license and for whose marriage the license was issued, and that there is no legal objection or impediment to the marriage.

(c) Credentials for Officiating at Marriage Ceremony. The marriage ceremony shall be performed by a person who is at least eighteen (18) years of age and who is a Judge or retired Judge of the Comanche Nation Tribal Court, a Judge or retired Judge of a court of any other jurisdiction authorizing such action, or an ordained or authorized preacher or minister, priest or other ecclesiastical dignitary of any denomination who has been duly ordained or authorized by the faith to which he belongs. The credentials of the person performing a marriage ceremony shall either be on file with the Court Clerk/Court Administrator or shall be submitted with the completed marriage license when it is returned to the Court Clerk/Court Administrator in accordance with **section 1406** of this chapter.

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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### **Section 1406. Endorsement and Return of License.**

(a) Endorsement by Person Officiating at Ceremony. The person performing or solemnizing the marriage ceremony shall immediately upon the completion of the ceremony endorse upon the marriage license his name, signature, official or clerical designation and the court of which he is a Judge or retired Judge or the congregation or body of which he is a pastor, preacher, minister or dignitary.

(b) Endorsement by Witnesses. The witnesses to the ceremony shall endorse the marriage license with their names and addresses.

(c) Return to the Court Clerk/Court Administrator. The completed marriage license shall be returned to the Court Clerk/Court Administrator within five (5) days succeeding the date of the performance of the marriage.

### **Section 1407. Records; Return; Inspections.**

(a) Records. The Court Clerk/Court Administrator shall make a complete record of the application, license and certificate thereon in a book kept by the Clerk for that purpose, properly indexed, which, subject to availability of funds, shall also be maintained electronically and/or on an optical disc, microfilm, microfiche. The record of the marriage license shall be made before it is delivered to the persons who are the subjects of the marriage license, and the record of the certificate shall be made upon the return of the license.

(b) Return of Original License. After recording of the original license and completed certificate, it shall be returned to the persons who are the subjects of the license with the issuing officer's certificate on the back showing the book and page where it is recorded.

(c) Inspections. All records pertaining to the issuance of marriage licenses shall be open to public inspection during regular office hours of the Court Clerk/Court Administrator.

**Section 1408. Copy of Marriage Record; Admission as Evidence.** Any copy of any marriage record required to be kept under **section 1407** of this chapter that is certified by the Court Clerk/Court Administrator under his official signature and seal shall be admissible into evidence in the Comanche Nation Tribal Court and in any other court of competent jurisdiction.

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# TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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## CHAPTER FIFTEEN

### CHILD SUPPORT

#### ARTICLE 1

#### GENERAL, JURISDICTION, CNCSP ADMINISTRATIVE PROCEEDINGS, NOTICE, HEARING, APPEALS, AND DEFINITIONS

**Section 15-101. Title.** This chapter may be referred to as the "Comanche Nation Child Support Enforcement Code" or "Child Support Code."

**Section 15-102. Authority.** Article VI Section 7 (j) of the Constitution of the Comanche Nation authorizes the Comanche Nation Business Committee to "promulgate and enforce ordinances and codes governing law and order to protect the peace, health, safety and general welfare on land determined to be within the Comanche tribal jurisdiction."

**Section 15-103. Purpose.** The purpose of this chapter is to:

- (a) establish a tribal child support enforcement program as authorized under section 455 (f) of the Social Security Act;
- (b) designate the Comanche Nation Child Support Program (CNCSP) as the tribal child support enforcement agency for the Comanche Nation of Oklahoma with the authority granted to it in accordance with Title IV-D of the Social Security Act, 42 U.S.C. §651 et. seq., as amended, and Title IV-D rules and regulations;
- (c) provide for the establishment of paternity in accordance with chapter 12 of the Children's Code, through either Nation Tribal Court or CNCSP administrative proceedings;
- (d) provide for the establishment, modification, and termination of child support orders through either Nation Tribal Court or CNCSP administrative proceedings;
- (e) provide for the enforcement of child support orders through either Nation Tribal Court or CNCSP administrative proceedings;
- (f) provide for the collection and distribution of child support payments;
- (g) provide for the location of parents and assets; and
- (h) provide for the administrative and judicial procedures for the establishment, modification, termination, and enforcement of child support.

**Section 15-104. Construction, Uniformity and Interpretation: Severability.**

- (a) **Interpretation.** This chapter shall be liberally construed to provide child support for minor children under the jurisdiction of the Comanche Nation.
- (b) **Consistency with Other Laws.** This Chapter and Chapters 12 of this Code



## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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establishes Comanche Nation child support laws as mandated under Title IV-D of the Social Security Act and in a form generally consistent with Oklahoma statutes concerning child support, in order to provide uniformity in the child support laws applied by the Nation, other tribes and the State of Oklahoma, unless otherwise expressly provided.

(c) Other Laws. If there is a child support issue that this chapter and chapter 12 do not address, the Nation Tribal Court or CNCSP shall apply any other applicable law of the Comanche Nation and any federal law concerning such child support issue to the extent mandated by Title IV-D of the Social Security Act. If a child support issue is still not addressed by the Nation's law or federal law, the Nation Tribal Court or CNCSP may consider any state law concerning such child support issue as a guideline to make a determination in a child support action.

(d) Severability. If any provision of this chapter is determined by a court of competent jurisdiction to be invalid for any reason, the remainder of the provisions shall remain in full force and effect and shall not be affected.

### **Section 15-105. Jurisdiction.**

(a) General. The Comanche Nation Tribal Court in judicial proceedings and CNCSP in CNCSP administrative proceedings shall have jurisdiction over child support and related proceedings as defined in section 15-107(ii) of this chapter involving an individual who is the subject of such proceedings if one or more of the following prescribed conditions are fulfilled:

(1) The individual is an Indian or a non-Indian who resides within Indian country as defined by section 107(o) of this Code;

(2) The individual is personally served with summons within such Indian country;

(3) The individual resided with the child in such Indian country;

(4) The individual resided in such Indian country and provided prenatal expenses or support for the child;

(5) The child resides in such Indian country as a result of the acts or directives of the individual;

(6) The individual engaged in sexual intercourse in such Indian country and the child may have been conceived by that act of intercourse;

(7) The individual asserted parentage in the putative father registry maintained in the State of Oklahoma by the appropriate agency;

(8) The individual is a member of the Comanche Nation of Oklahoma or the child is a member or is eligible for membership in the Comanche Nation;

(9) The individual submits to the jurisdiction of the Nation Tribal Court or CNCSP by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction; or

(10) There is any other basis consistent with the Constitutions of the Comanche Nation, the United States, or the State of Oklahoma for the exercise of personal jurisdiction.

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(b) Personal Jurisdiction Over All Interested Parties Not Required. Lack of personal jurisdiction over a child and the custodial parent does not preclude the Nation Tribal Court or the CNCSP in CNCSP administrative proceedings from making a child support order binding on the noncustodial parent who is subject to the child support order.

**Section 15-106. Venue.** Venue shall be the seat of the Comanche Nation Tribal Court.

### **Section 15-107. CNCSP Administrative Proceedings: Basic Requirements.**

(a) CNCSP Authority to Conduct Child Support and Related Proceedings. CNCSP shall be authorized to conduct administrative child support and related proceedings CNCSP shall conduct such proceedings in accordance with the general authorizations and requirements of this section, section 15-108 of this chapter, and such other authorizations and requirements as expressly stated in chapter 12 and this chapter.

(b) CNCSP Subpoena. CNCSP may issue a subpoena to a person or entity that has financial or other information needed for purposes of child support and related proceedings. A person or entity receiving an administrative subpoena shall comply with the subpoena. If a person or entity does not comply with the administrative subpoena, the CNCSP may seek an order from the Nation Tribal Court for compliance with the subpoena.

(c) CNCSP Conferences. CNCSP conferences conducted in accordance with chapter 12 and this chapter shall serve as hearings for the purpose of resolving issues related to child support and related proceedings involving an individual who is the subject of such proceedings. The CNCSP Director, or the Director's designee, shall serve as the hearing officer at all CNCSP conferences. Such conferences shall be held to discuss issues involving child support and related proceedings only, and shall not address or decide issues of custody, visitation, alimony, or property settlements. The parties shall be entitled to notice of the conferences in accordance with section 15-108(a) of this chapter. The notice shall contain sufficient information to inform the parties of the purpose, procedures, and consequences of the conference in accordance with chapter 12 and this chapter and the written policies and procedures of CNCSP, as applicable. The CNCSP hearing officer may continue or reschedule a conference on his or her own motion or upon request of a party or parties. The parties shall be afforded a reasonable opportunity to attend the CNCSP conference and present their positions, including evidence, at the CNCSP conference.

(d) CNCSP Conference Records. Records related to the CNCSP conferences shall be maintained by CNCSP in accordance with written policies and procedures of CNCSP.

(e) Transfers to Nation Tribal Court. The CNCSP hearing officer shall transfer CNCSP child support and related proceedings to the Nation Tribal Court if a party requests such transfer in writing at or prior to the first scheduled CNCSP conference for which notice has been provided to the party, or by such other deadline as specified in chapter 12 or this chapter.

(f) Vacation of CNCSP Order. The CNCSP hearing officer may vacate a CNCSP order at any time before the order is approved by the Nation Tribal Court. If the CNCSP vacates a CNCSP order, another administrative child support conference may be scheduled or a Children's

Court hearing may be scheduled with notice issued to all parties through one of the following

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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methods: (i) first-class mail to the obligor's last known address with a certificate of mailing; (ii) certified mail, return receipt, restricted delivery; or (iii) personal service with proof of service certificate.

(g) Appeal of CNCSP Order to Nation Tribal Court. A party may appeal a CNCSP final order to the Nation Tribal Court, and request an evidentiary hearing before the Nation Tribal Court by submitting an appeal notice to CNCSP. Such appeal notice shall be submitted to CNCSP in writing no later than seven (7) days from the date of issuance of the CNCSP order. No later than seven (7) days from receipt of such appeal notice, the CNCSP shall file the appeal notice with the Nation Tribal Court Clerk and shall schedule a hearing and provide notice to each party through one of the following methods: (i) first-class mail to the obligor's last known address with a certificate of mailing; (ii) certified mail, return receipt, restricted delivery; or (iii) personal service with proof of service certificate. An appeal of a CNCSP order shall stay any Comanche Nation Tribal Court approval of such order. When an appeal has been filed, the Nation Tribal Court shall hold a hearing no later than thirty (30) days after the date the appeal was submitted to CNCSP, unless the hearing is rescheduled in the Court's discretion.

(h) Appeal Hearing; Final Order; Failure to Appear; Default Order. After an appeal hearing regarding a CNCSP order, the Nation Tribal Court shall approve the child support order and enter the order as an order of the Nation Tribal Court if the Court determines that the order meets the requirements of this chapter or chapter 12, as applicable. If the Nation Tribal Court finds that the order does not meet the requirements of this chapter and chapter 12, as applicable, the Nation Tribal Court may remand the matter to CNCSP for a supplemental CNCSP conference upon agreement of the parties, or issue a final order regarding the issue or issues before it and replacing the CNCSP order, based on all relevant evidence and applicable portions of the record before the Court. If the party who requested the hearing fails to appear at the hearing, the Nation Tribal Court may conduct the hearing and take such action as authorized by this subsection. Nothing herein shall prevent the Nation Tribal Court from continuing an appeal hearing in its discretion.

(i) Nation Tribal Court Approval of Final CNCSP Orders. If a notice of appeal of a final CNCSP order was not filed by a party, the CNCSP final order shall be subject to review and approval of the Nation Tribal Court in accordance with the following procedure:

(1) Within three (3) days after issuance of the CNCSP order, the CNCSP shall submit the order and all other relevant documents to the Comanche Nation child support attorney for review and signature. The CNCSP shall present sufficient information to the Comanche Nation child support attorney demonstrating that the parties have been afforded due process and that the CNCSP order was issued in compliance with chapter 12 if applicable, with this chapter, and/or with applicable CNCSP policies and procedures when seeking Nation Tribal Court approval of a CNCSP order.

(2) The Comanche Nation child support attorney shall review the order and other relevant documents to determine compliance with all applicable requirements of this chapter and/or chapter 12 of this Code, and/or with applicable CNCSP policies and procedures, no later than four (4) days from date of receipt of a CNCSP order. If the attorney approves the order for submission to the Nation Tribal Court, the attorney shall sign both the order and any other supporting documents, such as a child support computation form, and return it to

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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the CNCSP. If the attorney does not approve the order, the attorney shall return it to the CNCSP with a description of any deficiencies, in which case the CNCSP shall take appropriate action, including a new conference and a new order, as necessary.

(3) On approval of the order by the Comanche Nation child support attorney, the CNCSP shall submit the order, and other relevant documents to the Nation Tribal Court for Court approval no later than three (3) days after the attorney delivers the approved and signed order to CNCSP. The CNCSP shall not be required to record or provide a transcript of CNCSP conferences to the Nation Tribal Court for purposes of obtaining Nation Tribal Court approval of a CNCSP order. The CNCSP shall present sufficient information to the Nation Tribal Court demonstrating that the parties have been afforded due process and that the CNCSP order was issued in compliance with chapter 12 if applicable, with this chapter, and with applicable CNCSP policies and procedures when seeking Nation Tribal Court approval of a CNCSP order.

(4) The Nation Tribal Court shall have ten (10) days from date of receipt of the CNCSP administrative order to approve or disapprove the order. Upon approval by the Nation Tribal Court, the CNCSP shall file the order with the Nation Tribal Court Clerk. Once the documents are filed with the Court Clerk, the CNCSP shall send each party a copy of the order by first-class mail to the party's last known address with a certificate of mailing.

(j) CNCSP Orders as Valid Nation Tribal Court Orders. A final CNCSP order that is confirmed by the Comanche Nation Tribal Court shall be a valid order of the Nation Tribal Court and shall have the same full force and effect as an order of the Court and may be enforced through the CNCSP or by any other tribe or state court or administrative court with the authority to enforce the order under applicable tribal or state law.

(k) Establishment of Paternity and Child Support without CNCSP Conference. Notwithstanding any other provision of this chapter, if paternity has been acknowledged and the parties have agreed to the terms of a proposed administrative paternity establishment and child support order, and each party has signed the order, computation form, and a waiver of right to service of process, the CNCSP may present the order, computation form, and waiver to the Nation Tribal Court for approval without conducting a CNCSP administrative conference.

### **Section 15-108. Notice: Hearing: Other Procedures.**

(a) Notice: Service. When child support and related proceedings are initiated, the Comanche Nation Tribal Court or CNCSP in CNCSP administrative proceedings shall issue notice of a Nation Tribal Court hearing or a CNCSP conference to all interested parties. Notice of the first hearing or conference shall be served in accordance with the requirements for service of summons set forth in section 609(b) and (c) of this Code, unless otherwise expressly provided in this chapter or chapter 12, as applicable. Thereafter, notice of any subsequent conference or subsequent enforcement proceeding may be served by any of the following methods, unless otherwise expressly provided in this chapter: (i) first-class mail to the party's last known address with a certificate of mailing; (ii) certified mail with return receipt, restricted delivery; or (iii) personal delivery with a proof of service certificate. When a person who is subject to the jurisdiction of the Comanche Nation Tribal Court is outside Indian country, the person may also be served by any method that is authorized by the law of the jurisdiction where he is served. The notice shall contain statements of purpose of the hearing or conference, the consequences of failure to appear at the hearing, and such other information as required by this chapter and by

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## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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CNCSP written policies and procedures. Upon receipt of notice of the initiation of child support and related proceedings, each party shall be responsible for ensuring that CNCSP has a current address for such person.

(b) Hearing. The Comanche Nation Tribal Court or CNCSP in a CNCSP administrative proceeding shall conduct a hearing without a jury. At said hearing, a determination shall be made whether proper notice has been given to the parties. If paternity is an issue related to the determination of child support obligations, the Nation Tribal Court or CNCSP shall conduct the proceedings and issue orders in accordance with the requirements of chapter 12 of this Code. The parties may provide evidence related to the determination of child support obligations and amounts at the initial hearing voluntarily or if so directed in the notice of hearing, the hearing may be continued in order to afford the parties an opportunity to provide such evidence. The CNCSP shall assist the Nation Tribal Court and the parties in all child support and related proceedings before the Nation Tribal Court and shall provide a computation of the child support obligation amount based upon the child support schedules and worksheets attached to this Code as Appendix 4.

(c) Other Applicable Procedures. All other applicable procedures established by the Comanche Children and Family Relations Code for proceedings of the Comanche Nation Tribal Court and administrative actions of the CNCSP, as well as rules of the Comanche Nation Tribal Court, shall be followed in all child support and related proceedings before the Comanche Nation Tribal Court. Such procedures shall also be applicable in all CNCSP administrative proceedings, unless otherwise expressly provided in this chapter or in chapter 12 of this Code.

**Section 15-109. Appeals.** Until such time as the Comanche Nation establishes a Comanche appeals court with authority to review final judgments of the Comanche Nation Tribal Court, the forum for all appeals by a party of a final judgment of the Nation Tribal Court, including any order of the CNCSP approved by the Nation Tribal Court, shall be the Court of Indian Appeals established in accordance with 25 C.F.R. Part 11, consisting of a three-judge tribunal. All such appeals shall be conducted in accordance with the applicable appeal procedures contained in Part 11 of the Code of Federal Regulations and the Rules of the Court of Indian Appeals.

**Section 15-110. Filing Fees.** The Court Clerk shall not charge filing fees for pleadings filed by and for the Comanche Nation Child Support Program.

**Section 15-111. Definitions.**

Unless the context otherwise requires, as used in this chapter the following terms shall be defined only for purposes of this chapter as follows:

(1) IV-D Services. "IV-D Services" means the services that are authorized or required for the establishment of paternity, and establishment, modification, termination, and enforcement of support orders, and location of noncustodial parents under Title IV-D of the Social Security Act.

(2) Account. "Account" means a demand deposit account, checking or negotiable

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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withdrawal order account, savings account, time deposit or money market mutual fund account or brokerage account.

(3) Administrative Procedure. "Administrative Procedure" means a method by which support orders are made and enforced by an administrative authority established by tribal or state law, rather than by courts and judges.

(4) Arrearage. "Arrearage" means past due unpaid child support owed by a noncustodial parent. If the parent has arrearages, she or he is said to be "in arrears." The term may be used interchangeably with past due support.

(5) Assignment. "Assignment" means any transfer of rights to child support by a custodial parent to a tribal, state or federal agency.

(6) Basic Visitation. "Basic Visitation" means a custody arrangement whereby one parent has physical custody and the other parent has visitation with the children of the parties less than thirty-five percent of the time.

(7) Child and Minor Child. "Child" means an individual of any age whose paternity may be established in accordance with chapter 12 of this Code or entitled to child support under this chapter. "Minor Child" means such an unemancipated individual who is younger than eighteen years of age or who otherwise qualifies for the payment of child support under section 15-302 of this chapter.

(8) Children of the Parties. "Children of the parties" means the natural or adopted child or children of the parties to the action before the court, but shall not include the natural or adopted child or children of only one of the parties.

(9) Child Support. "Child Support" means the financial support paid by a parent to help support a child or children of whom the parent does not have custody. Child support can be entered into voluntarily or ordered through court or administrative action depending on tribal or state laws.

(10) Child Support Order and Child Support Obligation. "Child Support Order and Child Support Obligation" means a judgment, decree or order, whether temporary, final or subject to modification, issued through court or administrative action for the support and maintenance of a child. Support orders can provide for monetary support, medical and dental insurance, arrearages, or reimbursement of costs and fees, interest and penalties, income withholding, and other forms of relief.

(11) Child Support and Related Proceedings. "Child support and related proceedings" means Nation Tribal Court judicial proceedings or CNCSP administrative proceedings for the establishment of paternity for purposes of child support and/or for the establishment, modification, enforcement, and termination of child support orders, and such other related actions and proceedings as authorized by chapter 12 of this code and as authorized by this chapter.

(12) CNCSP. "CNCSP" means the Comanche Nation Child Support Program.

(13) CNCSP Administrative Proceedings. "CNCSP administrative proceedings" means administrative child support and related proceedings conducted by the Comanche Nation Child Support Program.

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(14) Consumer Credit Protection Act (CCPA). "Consumer Credit Protection Act (CCPA)" means the federal law that limits the amount that may be withheld from earnings to satisfy child support obligations under §303(b) of the CCPA, 15 USC §1673(b).

(15) Consumer Reporting Agency. "Consumer Reporting Agency" means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports under 15 USC §1681a (f).

(16) Comanche Children's Court or Children's Court. "Comanche Nation Tribal Court" or "Nation Tribal Court" means the Comanche Nation Tribal Court as described in the Comanche Children's and Family Relations Code.

(17) Custodial Parent. "Custodial Parent" means the parent with legal custody of the child(ren) or who exercises physical custody of the child(ren), may be a parent, relative, legal guardian, or custodian appointed by a court.

(18) Delinquency. "Delinquency" means any payment under an order for support which becomes due and remains unpaid. See arrearage.

(19) Enforcement. "Enforcement" means the application of remedies to obtain payment of child support or obligations contained in a child support order. Examples of remedies include income withholding, liens, revocation of license (e.g., drivers, business, medical, and other types of licenses), and denial or revocation of United States passports.

(20) Income Assignment. "Income Assignment" means an assignment by operation of law or by court or administrative order of a portion of the monies, income or periodic earning of the noncustodial parent to the person entitled to the support or to another person designated by the support order or assignment. An income assignment may be for payment of current support, arrearages, or both.

(21) Income Withholding. "Income Withholding" means the procedure by which automatic deductions are made from wages or income to pay a debt such as child support. Income withholding usually is incorporated into the child support order and may be voluntary or involuntary. An employer shall withhold support from a noncustodial parent's wages and transfer that withholding to the appropriate agency. Sometimes referred to as wage withholding.

(22) Indian Tribe. "Indian Tribe" means any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe and includes in the list of federally recognized Indian Tribal governments as published in the Federal Register pursuant to 25 U.S.C. 479a-1.

(23) Intercept. "Intercept" means a method of securing child support by taking a portion of non-wage payments, such as federal tax refunds, state tax refunds, unemployment benefits, disability benefits, or federal retirement benefits that are made to a noncustodial parent.

(24) Joint Custody. "Joint Custody" means a custody arrangement whereby each parent provides a suitable home for the children of the parties, when the children spend at least thirty-five percent of the year in one home and the parents significantly share the duties, responsibilities and expenses of parenting.

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(25) Location. "Location" means information concerning the physical whereabouts of the noncustodial parent, or the noncustodial parent's employer(s), other sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a case.

(26) Lien. "Lien" means a claim upon property to prevent sale or transfer of that property until a debt is satisfied.

(27) Medical Support. "Medical Support" means health or dental insurance coverage or health benefits ordered to be paid by a parent(s) for the benefit of a minor child(ren).

(28) Noncustodial Parent. "Noncustodial Parent" means a parent who does not have legal or physical custody of the child(ren) and has an obligation to pay child support.

(29) Non-Cash Support. "Non-Cash Support" means support provided to a family in the nature of goods and/or services, rather than in cash, that has a certain and specific dollar value.

(30) Obligation. "Obligation" means amount of money to be paid as support by an obligor.

(31) Obligee. "Obligee" means a person or entity to whom child support is owed.

(32) Obligor. "Obligor" means the means the person who is obligated to pay child support.

(33) Offset. "Offset" means an amount of money intercepted from a noncustodial parent's state or federal tax refund or from an administrative payment, such as federal retirement benefits, to satisfy a child support debt.

(34) Past-due support. "Past-due support" means the amount of support determined under a court order for support of a child which has not been paid. (See definition of "Arrearage.")

(35) Paternity. "Paternity" means the legal determination of fatherhood.

(36) Public Assistance. "Public Assistance" means benefits granted from tribal, federal or state programs to aid eligible recipients (eligibility requirements vary between particular programs). Applicants for certain types of public assistance (e.g. Temporary Assistance for Needy Families) are automatically referred to their tribal or state IV-D agency for child support services.

(37) Presumed Father. "Presumed Father" means a man who, by operation of law, is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding.

(38) State. "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(39) Title IV-D. "Title IV-D" means Title IV-D of the Social Security Act, U.S.C 42

§651 et seq., as amended, that establishes the federal government's Child Support Enforcement Program, including the federal government's Tribal Child Support Enforcement Program.



## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(40) Tribal Title IV-D agency. "Tribal Title IV-D agency" means the organizational unit in the tribe or Tribal organization that has the authority for administering or supervising the Tribal IV-D program under section 455(f) of the Social Security Act.

(41) Temporary Assistance for Needy Families. "Temporary Assistance for Needy Families" means assistance payments made pursuant the Temporary Assistance for Needy Families program as found at section 401 et seq. of the Social Security Act (42 U.S.C. 601 et seq.).

(42) Written Payment Plan. "Written Payment Plan" means a plan approved through a judicial or administrative process or a child support enforcement agency to make periodic payments of past due support. A payment plan usually consists of a monthly payment plan that includes current support and past due support.

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# TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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## ARTICLE 2

### COMANCHE NATION CHILD SUPPORT PROGRAM; RECORDS; CHILD SUPPORT ATTORNEY

**Section 15-201. Designation of Comanche Nation Child Support Program as a Title IV-D Agency.** The Comanche Nation Child Support Program (CNCSP) shall be the designated Title IV-D agency for the Comanche Nation with all the authority granted to it in accordance with Title IV-D of the Social Security Act, 42 U.S.C. §651 et seq., Title IV-D rules and regulations, and applicable laws of the Comanche Nation, including this Code.

**Section 15-202. Powers and Duties of the CNCSP.** The CNCSP shall be authorized to provide Title IV-D child support services that include, but are not limited to:

- (a) administer and manage the plan and services of its tribal Title IV-D program;
- (b) establish administrative procedures for paternity establishment consistent with chapter 12 of the Children's Code, and the establishment, modification, termination, and enforcement of child support orders consistent with chapters 12 and 15 of this Code;
- (c) establish paternity through court or administrative action in accordance with chapter 12 of the Children's Code;
- (d) establish, modify, and terminate child support orders through court or administrative action;
- (e) enforce child support orders through court or administrative action;
- (f) initiate legal action to provide child support services, including appeals;
- (g) adopt policies and procedures for the CNCSP for child support services;
- (h) adopt rules and regulations for child support services, subject to approval of the Comanche Nation Business Committee;
- (i) negotiate agreements and or contracts as necessary for child support services under tribal and federal law, subject to approval of the Comanche Nation Business Committee;
- (j) establish and maintain CNCSP records, files and accounting;
- (k) provide location services for parents and assets; and
- (l) collect and distribute child support payments.

**Section 15-203. Services.**

(a) **Services Provided by CNSP.** The CNCSP may provide the following Title IV-D services that include, but are not limited to:

- (1) the location of parents and their assets through local, state and federal agencies and private sources;
- (2) the establishment of paternity through court or administrative action in

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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accordance with chapter 12 of the Children's Code;

(3) the establishment and modification of child support obligations through court or administrative action;

(4) the enforcement of child support orders through court or administrative action;

(5) a review of child support orders for modification; and

(6) the collection and distribution of child support payments.

(b) Services Not Provided by CNCSP. The CNCSP shall not provide services for the following:

(1) the establishment or modification of visitation rights or custody;

(2) the establishment or modification of spousal support;

(3) dissolution of a marriage;

(4) enforce marital property settlements, or

(5) provide legal advice to custodial and noncustodial parties.

(c) Termination of Services. The CNCSP may terminate child support services under the following circumstances:

(1) when the CNCSP receives a written request for termination of services from the person to whom services are being provided;

(2) when the minor child is no longer eligible for child support or entitled to child support, or

(3) when an applicant receiving services has violated any term or condition set by the CNCSP.

### **Section 15-204. Eligibility, Assignment.**

(a) Eligibility and Application. Child support services are available to an applicant who qualifies under Title IV-D laws and regulations. To apply for CNCSP services, an applicant shall submit a completed and signed application provided by the CNCSP.

(b) Assignment. An applicant for child support services shall assign her or his child support rights to the CNCSP, which shall distribute the payment to the appropriate agency or individual.

(c) CNCSP Priority. An assignment of child support to the CNCSP shall have first priority over any prior or subsequent assignments.

**Section 15-205. Application Fee.** The CNCSP may charge an application fee not to exceed twenty-five (\$25.00) dollars to an applicant whose family does not receive public assistance from any tribal, state, or federal agency. An application fee shall not be charged to an individual who receives public assistance from any tribe, state or federal agency. A fee may not be charged in an intergovernmental case referred to the CNCSP for services.

### **Section 15-206. Confidentiality of Records and Release of Information.**

(a) Confidentiality. Except as otherwise provided, all files, reports, and records

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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received and maintained by the CNCSP shall be private and confidential. This includes all information concerning any person in regard to any proceedings or actions to establish paternity; or to establish, modify or enforce child support orders.

(b) Release of Information. Except as otherwise provided, the CNCSP may use or release information for purposes directly connected with the administration of the child support program and child support services, including the disclosure of information to other tribal and state agencies pursuant to Title IV-D laws and regulations.

(c) Prohibited Release of Information. The CNCSP shall not release information on the location of a person if:

(1) a protective order has been entered with respect to the person or the child; or

(2) there is reason to believe that the release of information may result in physical or emotional harm to the person or child.

(d) Fines. The release of an unauthorized disclosure of information is a misdemeanor punishable by a \$500 fine. An employee who discloses unauthorized release of information shall be subject to disciplinary action by the CNCSP pursuant to Comanche Nation employment policies and procedures.

(e) Orders as Public Records. Child support orders are public records.

**Section 15-207. Maintenance of Records.** The CNCSP shall maintain records necessary for the proper and efficient operation of the program, and shall retain them for a minimum of three years, including records regarding:

(a) Applications for child support services;

(b) Efforts to locate noncustodial parents;

(c) Action taken to establish paternity and obtain and enforce support;

(d) Amounts owed, arrearages, amounts and source of support collections, and the distribution of such collections;

(e) IV-D program expenditures;

(f) Any fees charged and collected, if applicable; and

(g) Statistical, fiscal, and other records necessary for reporting and accountability required by the Secretary.

### **Section 15-208. Attorneys.**

(a) CNCSP Attorneys. An attorney employed by or under contract with the CNCSP shall represent and act on behalf of the Comanche Nation when providing child support services. An attorney-client relationship shall not exist between the attorney and any other party other than the Comanche Nation, regardless of the name in which the action is brought.

(b) No Representation of Parties by CNCSP Attorneys. An attorney employed to represent CNCSP in child support and related proceedings shall not provide any form of

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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legal representation to any person who is a party, an interested party, or a beneficiary in a matter in which the CNCSP is providing services. Such attorney shall not represent any party, an interested party, or a beneficiary in any other legal matters or proceedings unless such representation is permissible under the Oklahoma Rules of Professional Conduct.

(c) Information to be Provided to Applicants and Recipients Regarding Legal Representation. The CNCSP shall inform each applicant or recipient of services for child support services that no attorney-client relationship exists between the attorney and the applicant or recipient and that the attorney does not provide legal representation to the applicant.

**Section 15-209. Process Service.** The CNCSP may contract with a private process server to serve a notice, petition, summons, subpoena, order, or any other document required or appropriate under law to be served on a party.

**Section 15-210. Locating Parents.**

(a) Parent Locator Service. The CNCSP parent locator service may be used to obtain information for paternity establishment in accordance with chapter 12 of the Children's Code, and for child support and related proceedings.

(b) Attempts to Locate. Attempts to locate custodial or noncustodial parents and/or sources of income and assets shall be made when location is required to take necessary action in a case. Reasonably available sources of information and records shall be used to locate custodial or noncustodial parents and their sources of income and assets.

**Section 15-211. Financial Disclosure.** The parents shall provide a complete disclosure of assets on a financial affidavit for purposes of child support and related proceedings, except as otherwise provided.

**Section 15-212. Applicant Cooperation.** An applicant shall cooperate with the CNCSP in child support and related proceedings. Non-cooperation may result in the closure of the applicant's case for failure to cooperate. If notification is required for non-cooperation by other state, tribal or federal agencies, the CNCSP shall notify the appropriate agency of the non-cooperation of the applicant.

**Section 15-213. Intergovernmental Procedures.** The CNCSP shall extend its services available under its Title IV-D plan to respond to requests from other tribal and state Title IV-D agencies.

**Section 15-214. Full Faith and Credit.** The CNCSP shall recognize child support orders issued by other tribal and state IV-D agencies pursuant to the Full Faith and Credit

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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for Child Support Orders Act, 28 U.S.C. 1738B.

**Section 15-215. Reimbursement of Costs.** The CNCSP may seek reasonable costs against a party in child support and related proceedings. These costs include, but are not limited to: court filing fees, process server fees, mailing fees, and genetic tests performed in accordance with chapter 12 of this Code.

**Section 15-216. Case Closure.** The CNCSP may close a child support case pursuant to Title IV-D laws and regulations.

**Section 15-217. Transfer of Cases.** The CNCSP may accept transfer cases from another tribal and/or state Title IV-D agency. The CNCSP may transfer cases to another tribal and/or state Title IV-D agency.

**Section 15-218. Informational Materials.** The CNCSP may disseminate informational materials to the public which explains the program's eligibility and child support services.

**Section 15-219. Overpayment.** When an obligor has overpaid a child support obligation and there are no arrearages, the CNCSP shall refund the amount from the obligee.

# TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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## ARTICLE 3

### ESTABLISHMENT OF A CHILD SUPPORT OBLIGATION; INCOME ASSIGNMENTS

#### **Section 15-301. General.**

(a) Applicability. This article governs the establishment of child support for a minor child as defined in section 15-111(7) of this chapter.

(b) Orders. In all child support cases, the Nation Tribal Court or CNCSP shall order the payment of child support pursuant to the child support guidelines established in this chapter and the child support schedule attached as Appendix 4 to this Code.

(c) Initiation of Action. The CNCSP, mother, father, guardian, custodian, child, or other agency responsible for the support of the child may initiate an action for child support.

(d) Age Requirement. An action to establish child support shall be initiated before the minor child reaches the age of eighteen (18) years of age.

(e) Parent Requirement. Child support shall only be established for a biological or legally adopted child of the parents.

(f) No Support of Stepchildren Required. A parent shall not be responsible or liable for the support of a stepchild(ren).

(g) Adopted Children. Parents have the same legal duty of support for an adopted child as for a biological child.

(h) Obligors and Obligees. In the payment and receipt of child support, the noncustodial parent or the person responsible for the payment of child support shall be designated the "obligor" and the custodial parent or the person who receives the child support shall be designated the "obligee."

#### **Section 15-302. Child Support, Age of Majority, Minor Parents, Emancipation.**

(a) Age Limitation. A child shall be entitled to support by his/her parents until such child reaches eighteen (18) years of age or is emancipated. If a child is regularly enrolled and attending high school or an alternative high school education program as a full-time student, the child shall be entitled to support by the parents until the child graduates from high school, is emancipated, or reaches the age of twenty (20) years, whichever occurs first. Full time attendance shall include regularly scheduled breaks from the school year. No hearing or further order shall be required to extend support pursuant to this subsection after the child reaches the age of eighteen (18).

(b) Minor Parents. Minor parents are responsible for the financial support of their child.

(c) Emancipation. A child shall be considered emancipated when said child either reaches the age of eighteen (18) or is regularly enrolled and attending high school until the age of twenty (20) whichever occurs first pursuant to subsection (a) of this section; or when the child enlists in the military, or marries, or is emancipated by an order from a court.

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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### **Section 15-303. Child Support Obligations and Guidelines.**

(a) Purpose. The purposes of the child support guidelines are to:

(1) Establish as policy an adequate standard of support for minor children, subject to the ability of parents to pay;

(2) Make support payments more equitable by ensuring more consistent treatment of persons in similar circumstances; and

(3) Improve the efficiency of the court process by promoting settlements and giving guidance in establishing levels of child support to the Nation Tribal Court, the CNCSP in CNCSP administrative proceedings, and the parties.

(b) Shared Income Model. Both parents have a duty and responsibility to provide financial support for a minor child(ren), based on their respective financial resources. The child support guidelines are based on a Shared Income Model, which is predicated on the concept that children should receive the same proportion of parental income that they would have received if the parents lived together. The guidelines establish a child support obligation that includes a base monthly child support amount, medical and dental insurance, unreimbursed medical expenses, childcare, and travel expenses. The amount of the child support obligation shall be calculated in compliance with all provisions of this section, using the Instructions, Worksheets, and Child Support Guideline Schedule included as Appendix 4 to this Code. For basic visitation situations, the basic child support obligation shall be calculated using the Basic Child Support Schedule Worksheet A and instructions contained in Appendix 4 of this Code; provided that the child support order may provide for a partial abatement of child support for visitation of 30 days or longer. For joint custody arrangements, the basic child support obligation shall be calculated using the Basic Child Support Schedule Worksheet B and instructions contained in Appendix 4 of this Code.

(c) Use of Child Support Guidelines. In any action to establish or modify child support, the child support guidelines as set forth in this section shall be applied to determine the child support due and shall be a rebuttable presumption for the amount of such child support. The child support guidelines shall be used for temporary and permanent orders, separations, dissolutions, and support decrees arising despite non-marriage of the parties. The child support guidelines shall be used as the basis for reviewing the adequacy of child support levels in non-contested cases as well as contested hearings. A specific amount of child support should always be ordered, no matter how minimal, to establish the principle of that parent's obligation to provide monetary support to the child.

(d) Base Monthly Child Support Amount. A child support obligation shall provide for a base monthly child support amount, which shall be calculated using the Shared Income Model, including the child support computation schedule, the computation formula, and income guidelines for employed and self-employed parents, as well as for parents who have joint custody, shared parenting, or sole custody. The computation formula computes the base monthly child support amount based on the adjusted gross income of both parents, which shall be calculated in accordance with subsections (e) and (f) of this section. The percentage share of



## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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each parent for the purpose of establishing the base monthly child support amount shall be allocated by computing the percentage contribution of each parent to the combined adjusted gross income and allocating that same percentage to the child support obligation to determine the base monthly child support amount of each parent, in accordance with the schedule in Appendix 4 of this Code. In joint custody situations, each parent retains the percentage of the basic support obligation equal to the number of twenty-four-hour days of responsibility spent by each child with each respective parent divided by three hundred sixty-five.

(e) Sources for Determination of Gross Income Amounts. Gross income shall be derived, but shall not be limited, to the following sources: salaries, wages, tips, commissions, bonuses, severance pay, dividends, pensions, interest income, trust income, annuities, capital gains, alimony or maintenance received, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes, Individual Indian Money accounts, and per capita payments. For income from self-employment, rent, royalties, proprietorship of a business or joint ownership of a partnership or closely held corporation, "gross income" means gross receipts minus ordinary and necessary expenses required to produce such income; provided that ordinary and necessary expenses do not include expenses determined by the Nation Tribal Court or by CNCSP in administrative proceedings to be inappropriate for purposes of calculating child support. If the parent is unemployed, the minimum wage rate shall be used to compute the income of that parent, if the parent is physically capable of working, unless otherwise provided under these guidelines.

(f) Excluded Sources for Determination of Gross Income Amounts. Gross income shall not be derived from the following sources: actual child support received for children not before the Nation Tribal Court or CNCSP; Temporary Assistance for Needy Families (TANF); Supplemental Security Income (SSI); food stamps; general assistance, and state supplemental payments for the aged, blind and disabled.

(g) Computation of Adjusted Gross Income. The adjusted gross income to be used for the purpose of determining the base monthly child support amount described in subsection (b) of this section shall be calculated as follows:

(1) In computing gross income for a child support obligation from sources such as those described in subsection (e) of this section, the one of the following types of income may be used, whichever is most equitable: (i) all earned and passive income; (ii) all passive income and earned income equivalent to a forty-hour week plus such overtime and supplemental income as the Nation Tribal Court or CNCSP in administrative proceedings deems equitable; (iii) the average of the gross monthly income for the time actually employed during the previous three years; or, (iv) the minimum wage paid for a forty-hour work week. If a party is unemployed, the CNCSP may impute a minimum wage for income. If a parent is permanently, physically or mentally incapacitated, the child support obligation shall be computed on the basis of actual monthly gross income.

(2) The amount of any preexisting court order for current child support for children not before the Nation Tribal Court or CNCSP in administrative proceedings shall be deducted from gross income, if actually paid. The amount of reasonable expenses of debt service for preexisting, jointly acquired debt of the parents may be deducted from gross income, if actually paid.

(h) Basic Child Care Obligation. A child support order shall provide for child care

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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expenses reasonably necessary to enable both parents to be employed, seek employment, or attend school or training to enhance employment income. The actual child care costs incurred shall be allocated and paid monthly in the same proportionate share as the child support. Upon reasonable request by the obligor, the obligee shall provide the obligor with timely documentation of any change in the amount of the child care costs. If the Nation Tribal Court or CNCSP in administrative proceedings finds that it will not cause detriment to the child or will not cause undue hardship to either parent, in lieu of payment of child care expenses incurred during employment, employment search, or while the obligee is attending school or training, the obligor may provide care for the child during that time.

(i) Basic Medical Support Obligation. A child support obligation shall provide for medical and dental insurance and unreimbursed medical and dental expenses. Medical support may be provided through employer insurance or group insurance or through an alternative private source or through the Indian Health Service. The actual medical and dental premiums are to be allocated between the parents in the same proportion as their adjusted gross income and added to the base child support obligation. An Indian Health Service facility, including such facility operated by an Indian tribe, and/or services may be used for both medical and/or dental services, if agreed by both the obligor and obligee.

(j) Other Expenses Not Covered by Basic Child Support Obligations.

(1) *Medical Expenses Not Covered by Insurance.* Reasonable and necessary medical, dental, orthodontic, optometric, psychological, or any other physical or mental health expenses of the child incurred by either parent and not reimbursed by insurance shall be allocated in the same proportion as the parents' adjusted gross income as separate items that are not added to the base child support obligation. The parent who incurs the expense shall be reimbursed by the other parent within thirty (30) days of receipt of documentation of the expense. If a clinic, hospital, or program provides health services as described in this subsection utilizing direct or contract health care funding provided through the Indian Health Service, both parties shall be liable for any medical and dental expenses resulting from, but not covered by, such services, or otherwise unreimbursed with funding through the Indian Health Service, in the same proportionate share as the child support.

(2) *Travel Expenses.* A child support obligation may provide for transportation and communication expenses necessary for long distance visitation or time divided in proportion to each parent's adjusted gross income.

(3) *Extraordinary Educational Expenses.* A child support order may provide for any extraordinary educational expenses for children of the parties

(k) Deviations. The Comanche Nation Tribal Court or CNCSP in administrative proceedings may order child support in an amount different from that which is provided in these guidelines, if:

(1) (i) There is a presumption of hardship because application of the child support guidelines would require the non-custodial parent to pay the custodial parent more than forty percent of his gross income for a single child support obligation for current support; (ii) a minor custodial and noncustodial parent are regularly attending high school; (iii) the court makes a finding that the parents of the minor parents are responsible for the financial support of the child; or (iv) application of the guidelines would be inappropriate or unjust in the particular case due to other circumstances; and

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(2) Deviation is in the best interest of the children for whom the child support obligation is being established; and

(3) The award order states the amount the award would be if it were calculated by application of the guidelines; and

(4) The award order states the amount of child support which is actually awarded after the deviation; and

(5) The award order contains written findings regarding items (1) through (4) above.

### **Section 15-304. Address Requirement, Service.**

(a) Address Information. All child support orders shall require the parties to keep the CNCSP informed of their current addresses and an address of record for service. An address of record for service may be different from a party's physical address.

(b) Change of Address. Any change of address shall be provided to the CNCSP within thirty (30) days of the change. The address of record shall be subject to disclosure to a party or custodian upon request pursuant to this chapter and CNCSP procedures. The CNCSP may refuse to disclose the address of record if evidence of domestic violence or child abuse is found or the CNCSP determines that disclosure could be harmful to a party or child.

(c) Service. The address of record may be used for service of notices and orders in accordance with § 15-108(a) of this chapter.

**Section 15-305. Disclosure of Social Security Numbers.** A person who is a party to an action to establish paternity or to establish or modify a child support order shall disclose his or her social security number to the Nation Tribal Court and/or to the CNCSP. The social security number shall be placed in the records relating to child support. The person's social security number shall be confidential and shall not be open to the public, except the social security number may be disclosed in accordance with Title IV-D laws and regulations for child support services.

### **Section 15-306. Child Support Order.**

(a) Contents of Child Support Order. A child support order, whether issued through the Nation Tribal Court or through the CNCSP administrative proceedings shall provide the following:

(1) the names of the obligor and obligee;

(2) the name or names of the child or children before the Nation Tribal Court or before CNCSP in administrative proceedings;

(3) a provision for the monthly child support amount;

(4) a provision for the amount of any past due support and a payment plan for the past due support, if applicable;

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(5) a provision for a judgment for past due support and a payment plan for the past due support, if applicable;

(6) a provision for medical and dental insurance;

(7) a provision for unreimbursed medical expenses;

(8) a provision for immediate income withholding;

(9) a provision for child care costs, if applicable;

(10) a provision for a current address and an address for service; and

(11) such other information or requirements within the Nation Tribal Court's jurisdiction as additionally required by this chapter or as determined pertinent by the Court or by CNCSP in administrative proceedings.

(b) Commencement of Obligation. The obligations shall commence, unless otherwise ordered, on the first day of the month immediately following the month in which the child support order was issued.

(c) Statement of Amount. The amount of a child support order shall not be construed to be an amount per child unless specified by the Nation Tribal Court or by CNCSP in administrative proceedings. If there is more than one child in the child support order and one of the children has attained the age of majority or is no longer entitled to support, the child support order may be modified.

(d) Support of the Child. The child support order may include a provision, if the Nation Tribal Court or CNCSP in administrative proceedings deems it appropriate, to assure that the child support payment shall be used for the support of the child.

**Section 15-307. Arrearage.** A judgment for arrearage may be included in each child support order if there is past due child support owed as well as a payment schedule for the judgment. Failure to state a past due amount in the order does not bar collection of the amount.

### **Section 15-308. Non-cash Support.**

(a) Non-cash Support. The Nation Tribal Court or CNCSP in administrative proceedings may allow part of the child support obligation to be paid with non-cash support, if the obligee agrees to the use of a noncash payment being used, and the child support order states:

(1) the specific dollar amount of the support obligation; and

(2) the type and amount of non-cash support that will be permitted to satisfy the child support obligation.

(b) Satisfaction of Public Assistance Monies. Non-cash payments shall not be permitted to satisfy any tribal, state or federal public assistance monies.

**Section 15-309. Payments.** Child support payments shall be made to the CNCSP, except as otherwise provided. When payments are made to CNCSP, CNCSP shall distribute the

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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payment to the appropriate agency or individual.

**Section 15-310. Judge's Signature.** The judge shall sign the child support order and the child support computation form which establishes or modifies child support.

**Section 15-311. Voluntary Agreement.** Parents may establish child support through a voluntary agreement in accordance with the child support guidelines through either Nation Tribal Court action or through CNCSP administrative proceedings. In the event of such agreement, the parties shall sign and date the child support order, the child support computation form, and a waiver of right to service of process before submission to the court. Once signed, the CNCSP may present the order, computation form, and waiver to the Nation Tribal Court for approval and signature, including any evidence, for approval without the parties being present at a court hearing.

**Section 15-312. Rebuttable Presumption.** There shall be a rebuttable presumption in any proceeding for child support that the amount of the award is the correct amount of child support to be awarded.

**Section 15-313. Liability For Past Support.** In an establishment case for child support, the liability for child support provided for the child shall be imposed for a period commencing on the date that is five years preceding the filing of the action, unless the child is less than five years old, in which case the liability shall be imposed from the date of the birth of the child.

**Section 15-314. Termination of Parental Rights. Adoption.**

(a) **Termination of Parental Rights.** When a parent terminates his or her parental rights, the termination does not end the duty of either parent to support his or her child. The duty ends when a court terminates the parent's duty to support his or her child, or if there is a signed written agreement between the parties to terminate the duty to support and approved by a court. If there is a child support arrearage, the arrearage shall be due until paid in full unless waived by a court or by a signed written agreement between the parties that waives the past arrearage and that is approved by a court.

(b) **Adoption.** If an adoption of a child is pending, a child support order shall remain in effect until notice is received that the final decree of adoption has been entered by the applicable court. If there is a child support arrearage, the arrearage shall be due until paid in full, unless waived by the court or by a signed written agreement between the parties that waives the arrearage and approved by the court.

**Section 15-315. Modification.**

(a) **Petition to Modify.** The Nation Tribal Court may modify a child support order

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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previously issued by that Court or CNCSP administrative action, upon petition of an obligor, an obligee or CNCSP. CNCSP may modify a child support order previously issued by the Nation Tribal Court or CNCSP, upon petition of an obligor or obligee, provided that said order is approved by the Nation Tribal Court.

(b) Modification Upon Material Change in Circumstances. Child support orders may be modified upon a material change in circumstances that includes, but is not limited to:

- (1) a 15% increase or decrease in either parent's income;
- (2) when a child in the child support order reaches the age of majority or no longer qualifies for child support under section 15-302 of this chapter;
- (3) when there is a change in medical and dental insurance; or
- (4) the child is no longer entitled to support.

(c) Effective Date of Modification. An order of modification shall be effective upon the date the motion to modify was filed, unless the parties agree to another date or the Nation Tribal Court or CNCSP finds that the material change of circumstance did not occur until a later date.

(d) Voluntary Modification. The parents may voluntarily agree on the modification based on child support guidelines, subject to approval of the Nation Tribal Court or approval of CNCSP in CNCSP administrative proceedings.

**Section 15-316. No Retroactive Modification.** A child support order shall not be modified retroactively.

**Section 15-317. Temporary Orders.**

(a) Temporary Order. Upon proper application by a party, the Nation Tribal Court may establish temporary orders for child support based on child support guidelines.

(b) Termination of Temporary Order. Temporary orders terminate when the final judgment is ordered or when the action is dismissed.

**Section 15-318. Redirection of Child Support Upon Change in Physical Custody.** Whenever physical custody of the child is changed, the child support payments shall be redirected to the new custodian, except for the amount of unpaid support still owed to the previous custodian or to the CNCSP or other tribal or state child support agency.

**Section 15-319. No Statute of Limitations.** Court ordered child support shall be owed until paid in full and it shall not be subject to a statute of limitation.

**Section 15-320. TANF Money Owed to a State Or Tribe.** When a state or tribe expends TANF money for the benefit of a dependent child, the payment of the TANF money creates a support debt owed to a state or tribe by the person(s) responsible for the support of the

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## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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dependent child. The amount of the support debt shall be equal to the amount of TANF money expended for the benefit of the dependent child, unless otherwise provided through a court or administrative order.

### **Section 15-321. Review of Child Support Orders.**

(a) Review. The CNCSP shall conduct a review of child support orders at least once every four (4) years to ensure that the child support obligation is in accordance with the current child support guidelines.

(b) CNCSP Request to Modify. If the CNCSP determines that a child support obligation is not in accordance with current child support guidelines, the CNCSP may initiate action to modify the child support order either through court action, or through CNCSP administrative proceedings.

(c) Obligor or Obligee Request to Modify. An obligor or obligee may request a review of the child support order, not to exceed more than one request every eighteen (18) months.

**Section 15-322. Review of Guidelines.** The CNCSP shall conduct a review of the child support guidelines at least once every four (4) years to insure that the guidelines provide an appropriate award for child support and are in accordance with Title IV-D laws and regulations.

### **Section 15-323. Income Assignment and Withholding.**

(a) Immediate Income Assignment. All child support orders and orders for modification shall provide for an immediate income assignment that withholds the current monthly child support obligation and any past due amount, regardless of whether support payments are in arrears.

(b) Income Exempt from Withholding. Income shall not be subject to withholding in any case where:

(1) Either the custodial or noncustodial parent demonstrates, and the Nation Tribal Court or CNCSP in administrative proceedings finds, that there is good cause not to require income withholding; or

(2) A signed written agreement is reached between the noncustodial and custodial parent, which provides for an alternative arrangement, subject to Nation Tribal Court review and approval or subject to or CNCSP review and approval in administrative proceedings.

(c) No Need for Amendment of Order. Except as provided, all child support orders are subject to an immediate income assignment without the need for any amendment to the support order or a need for a hearing by the Nation Tribal Court or CNCSP in administrative proceedings.

(d) Maximum Amount. The total amount to be withheld under this section shall not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. 1673(b).

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(e) Multiple Income Withholding. In cases where an obligor has multiple income withholding orders, the CNCSP shall allocate income withheld across all withholding orders to ensure that each order is implemented and an amount paid. In no case shall an allocation result in a withholding order not being implemented for a child support obligation.

(f) Termination. An income withholding order shall be terminated when there is no longer a current order for support and all arrearages have been satisfied.

(g) Processing. Upon request from other Title IV-D agencies, the CNCSP shall receive and promptly process income withholding orders from other tribes and states providing Title IV-D services.

(h) Refund. In a case where income withholding has been overpaid, the CNCSP shall promptly refund the amount from the obligee.

(i) Voluntary Income Assignment. An obligor may initiate a voluntary income assignment at any time. The voluntary assignment shall be filed with the Nation Tribal Court Clerk and the CNCSP and shall take effect after service on the employer.

### **Section 15-324. Registration of Foreign Income Withholding Order.**

(a) Registration. A foreign income withholding order shall be registered with the Comanche Nation Tribal Court to enforce the income withholding with regard to Comanche Nation employees and employees of other persons or entities located or providing services in Indian country. The registration shall contain all information necessary to carry out the withholding that includes a certified copy of the support order and certified statement of the amount to be withheld.

(b) Burden of Proof. An obligor who challenges a foreign income withholding order has the burden of proof to establish it is not a valid order from an issuing tribe or state.

### **Section 15-325. Income Withholding by Employer.**

(a) Notice. Notice of the income withholding shall be sent to the employer using the standard federal form prescribed by United States Secretary of Department of Health and Human Services. Service of the notice may be by first-class mail with a certificate of mailing or by certified mail, return receipt. For income withholding notices or orders for the Comanche Nation, the CNCSP may hand deliver the notice/orders to the Comanche Nation Personnel Office.

(b) Effective Date. The income withholding shall take effect on the next pay period of the obligor after the employer receives notice. The employer shall withhold each pay period the amounts specified in the notice. The amounts withheld shall be sent to the CNCSP within seven

(7) business days after the date upon the obligor is paid. The employer shall include with each payment a report that states the date the child support amount was withheld from the obligor's income.

(c) Amount. The amount withheld, including any fee under this section, by the employer shall not exceed the limits permitted under §303(b) of the Consumer Credit Protection Act, 15 U.S.C. §1673 (b).



## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(d) Notice. The employer shall notify the CNCSP within ten (10) days of the date when the obligor terminates employment and shall provide the obligor's last known address and the name and address of the obligor's new employer, if known.

(e) Liability. If the employer fails to withhold in accordance with the provisions of the income withholding order, the employer shall be liable for the accumulated amount the employer should have withheld and paid from the obligor's income.

(f) No Discipline. The employer may not discipline, suspend, discharge or refuse to employ an obligor because of an income assignment executed pursuant to this section. Any employer who violates this section shall be subject to a fine of \$200 per offense for the unlawful discipline, suspension, discharge, or refusal to employ an obligor.

(g) Combination of Amounts. The employer may combine withheld amounts from two or more obligors' income in a single payment to each appropriate agency requesting withholding and separately identify the portion of the single payment which is attributable to each individual obligor.

(h) Release. The income assignment shall be binding on the employer until released by the CNCSP or by order of the court that approved the child support order.

(i) Priority. An income assignment executed pursuant to this section shall have priority over any other subsequent garnishments against the same income.

(j) Costs. The employer may deduct from an income of the obligor a sum not exceeding Five Dollars (\$5.00) per pay period but not to exceed Ten Dollars (\$10.00) per month as reimbursements for costs incurred by the employer in complying with the income assignment.

(k) Application. The income withholding executed pursuant to this section applies to any current or subsequent employer who is provided notice in accordance with this section.

(l) No Civil Liability. An employer who complies with an income withholding notice that is regular on its face shall not be subject to civil liability to any individual or agency for conduct in compliance with the notice.

(m) Concurrent Assignments. Two or more income assignments may be levied concurrently. Any current support due shall be paid before the payment of any arrearages or support debt payment.

(n) Verification. The employer shall verify the obligor's address, employment, earnings, income, benefits and dependent health insurance information upon request of the CNCSP or designated Title IV-D agency.

(o) Recipient of Payments. All payments under this section shall be made to the CNCSP or its designee. CNCSP shall distribute the payment to the appropriate agency or individual.

### **Section 15-326. Initiation of Income Withholding, Notice, Hearing.**

(a) Initiation. In a case where income withholding has not been ordered, the CNCSP shall initiate an income assignment when the obligor has failed to make a child support payment at least equal to the support payable for one month, without regard to whether there

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## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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is an arrearage.

(b) Contesting Income Assignment. The only basis for contesting an income assignment under this section shall be a mistake of fact which means an error in the amount of current or overdue support or in the identity of the alleged obligor.

(c) Notice. In a case where the CNCSP initiates an income assignment, the CNCSP shall send the obligor notice that the initiated income withholding has begun. Notice shall be served on the obligor through one of the following methods: (i) first-class mail to the obligor's last known address with a certificate of mailing; (ii) certified mail, return receipt, restricted delivery; or (iii) personal service with proof of service certificate. The notice shall inform the obligor:

- (1) the withholding has commenced;
- (2) the amount of wages that will be withheld for current child support and any overdue support;
- (3) the provision for withholding applies to any current or subsequent employer or period of employment;
- (4) the procedures available for contesting the withholding, and the only basis for contest of such withholding shall be a mistake of fact;
- (5) the information that will be provided to the employer;
- (6) the withholding shall remain as long as the order is in effect;
- (7) the payment of any support monies will not prevent an income assignment from taking effect; and
- (8) The obligor shall be required to keep the CNCSP informed of the name and address of his or her current employer.

(d) Hearing Request. If the obligor challenges the income assignment, the obligor may request a hearing by sending a signed written request to the CNCSP. The obligor has fifteen

(15) calendar days from the date of service of the notice to request a hearing. On receipt of the request for a hearing, the CNCSP shall schedule the request on the next available court date.

(e) Hearing. The Comanche Nation Tribal Court or CNCSP in administrative proceedings shall hear the matter and unless the obligor proves there is a mistake of fact, the Court or CNCSP shall enter an order that grants an income assignment and a judgment for arrearage, if any, and a payment schedule for the arrearage.

(f) Final Judgment. The order shall be a final judgment for purposes of appeal.

(g) Failure to Request Hearing. If within fifteen (15) calendar days of date of service of the notice, the obligor fails to request a hearing, pursuant to this section, or after having requested a hearing fails to appear at the hearing, the Nation Tribal Court or CNCSP in administrative proceedings shall enter an order that grants an income assignment and a judgment for arrearage, if any, and a payment schedule for the arrearage.

(h) Notice of Order. A copy of the order shall be served on the obligor through one of the following methods: (i) first-class mail to the obligor's last known address with a

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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certificate of mailing; (ii) certified mail, return receipt, restricted delivery; or (iii) personal service with proof of service certificate.

(i) Voluntary Request. The obligor may voluntarily request an income assignment be initiated for the next due date, or earlier.

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# TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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## ARTICLE 4

### ENFORCEMENT

#### **Section 15-401. General.**

- (a) **Applicability of Chapter.** This chapter governs the enforcement of a child support order
- (b) **Initiation of Action.** The CNCSP has the authority to initiate enforcement of a child support order issued by the Nation Tribal Court or issued by CNCSP in CNCSP administrative proceedings, or by any other tribal or state court or administrative agency pursuant to Title IV-D laws and regulations.
- (c) **Enforcement Actions.** An enforcement proceeding or action may include, but is not limited to: revocation or suspension of a license (drivers, professional, or occupational); the use of state and federal income tax refund intercept programs; reporting the obligor for passport denial, use of lien or levy, initiation of contempt proceedings, and any other civil remedy available by law for the enforcement of a child support order or judgment.
- (d) **Type of Action.** An action or proceeding for the enforcement of a child support order may be initiated by the CNCSP, obligee or guardian through either court or administrative action.

**Section 15-402. Judgment For Arrearage.** When an obligor fails to pay current child support and an arrearage accumulates, a party or CNCSP may initiate action to obtain a judgment for the arrearage through Nation Tribal Court proceedings, or through CNCSP administrative proceedings.

#### **Section 15-403. Voluntary and Involuntary Written Payment Plans.**

(a) **Voluntary Plan.** An obligor who is in arrears for child support may enter into a voluntary written payment plan to pay the past due amount through the Nation Tribal Court or CNCSP administrative proceedings.

(b) **Agreement.** The parties may submit a stipulated payment plan for the arrearage, subject to approval by the Nation Tribal Court or CNCSP in administrative proceedings.

(c) **Involuntary Written Payment Plan.** When an obligor fails to pay current child support and an arrearage accumulates in an amount greater than three times the obligor's total monthly support payments, the CNCSP shall establish a written payment plan for the arrearage to submit for approval by the Nation Tribal Court. Once the CNCSP has established the payment plan, the CNCSP shall send the obligor notice through one of the following methods: (i) first-class mail to the obligor's last known address with a certificate of mailing; (ii) certified mail, return receipt, restricted delivery; or (iii) personal service with proof of service certificate. The notice shall include the following:

- (1) the name of the obligor;
- (2) the name of the obligee and the child or children for whom support is owed;
- (3) the telephone number and contact name for the CNCSP;

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(4) statements that:

- (i) the obligor is in noncompliance with a court or administrative child support order and the amount of the past due support;
- (ii) the CNCSP has prepared a written payment plan that includes the amount of the current monthly child support payment, the judgment amount to be paid, and the due date has been established;
- (iii) the written payment plan is attached and will be submitted to the Nation Tribal Court for approval unless timely contested by the obligor;
- (iv) a contest shall be limited to a mistake in the amount of the arrears or a mistake in the identity of the obligor; and
- (v) the obligor has the right to appeal a CNCSP payment plan to the Nation Tribal Court within the time set forth in section 15-107(g) of this chapter.

(d) Considerations; Contents. A payment plan may take into consideration the amount of the arrearages, the amount of the current support due, and the earnings of the obligor. The proposed payment plan shall set a reasonable payment amount that considers the financial circumstances of the obligor, and shall specify the current support due, the amount of the judgment for the arrearage, and a payment schedule for both the current support and the judgment or arrearage.

(e) Failure to Comply. Failure to comply with a written payment plan shall be grounds for enforcement proceedings.

### **Section 15-404. Waiver of Arrearage.**

(a) Past Due Support Waiver. The obligee may waive all or some of the past due child support of an obligor by signing a written statement that waives a specific dollar amount of the arrearage.

(b) No Waiver as to Public Assistance Funds. An obligee and the CNCSP shall not waive any public assistance monies provided by a tribal, federal or state agency.

(c) Gifts Not Child Support. If an obligor gives money to his or her child instead of to the obligee or guardian responsible for the support of the minor child, the money shall be considered a gift to the child and not child support. A gift shall not be credited toward child support, unless the obligee or guardian gives credit for the gift or waives a specific dollar amount for the gift.

**Section 15-405. No Interest.** No interest shall be charged to the obligor for a past due child support amount.

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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### **Section 15-406. Judgment By Operation of Law.**

(a) **Payment Not Made.** Any payment or installment of support under any child support order that is not made on or before the date it is due shall become a judgment by operation of law with the full force and effect of a judgment of the Nation Tribal Court and shall be enforceable until paid in full.

(b) **Full Faith and Credit.** A judgment by operation of law shall be entitled to full faith and credit as a judgment of the Nation Tribal Court and with other tribal or state courts.

(c) **No Retroactive Modification.** A judgment by operation of law shall not be subject to retroactive modification by the Nation Tribal Court or by any other tribal or state court except that the Nation Tribal Court may permit a modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given to the obligee or (where the obligee is the petitioner) to the obligor.

(d) **No Dormancy.** A child support judgment shall not become dormant for any purpose. The recording of a judgment and extension of a judgment shall comply with applicable tribal, state or federal statutes.

(e) **Annual Notice.** The CNCSP may send an annual notice to obligors who have an arrearage, including such information as required by the policies and procedures of CNCSP. Any such notice shall be served on the obligor through one of the following methods: (i) first-class mail to the obligor's last known address with a certificate of mailing; (ii) certified mail, return receipt, restricted delivery; or (iii) personal service with proof of service certificate. To schedule a child support conference to review or contest the arrears, the obligor shall notify the CNCSP in writing no later than twenty (20) days after the date the notice was delivered. The obligor shall be responsible for the documentation to support his or her contest.

### **Section 15-407. Liens.**

(a) **General.** Past due child support amounts become a lien by operation of law upon the real and personal property of the obligor at the time they become past due.

(b) **Full Faith and Credit.** A lien shall be accorded full faith and credit.

(c) **Recording and Service.** The recording and service of a lien or extension of a lien on personal and real property shall comply with applicable tribal, state or federal statutes, except such rules may not require judicial notice or hearing prior to the enforcement of such a lien.

(d) **Release.** When the lien for the past due child support is paid in full, the lien shall be released.

(e) **Enforcement.** An obligee or CNCSP may enforce the liens created pursuant to this section and execute releases or partial releases of the liens.

(f) **No Sale of Exempt Property.** The provisions of this section shall not authorize a sale of any property to enforce a lien which is otherwise exempted by tribal, federal or state statutes.

(g) **Workers Compensation Liens.** A judgment for a child support arrearage or the

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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accrual of past due child support becomes a lien upon the benefits payable as a lump sum from a workers' compensation claim of the obligor. The filing for a workers' compensation claim for child support shall follow applicable state or tribal workers' compensation statutes.

**Section 15-408. Exempted Property.** Individual or tribal religious and ceremonial property, trust lands or property, and Individual Indian Money (IIM) accounts are exempted from liens.

**Section 15-409. Levy.**

(a) **General.** If there is a court-ordered judgment or if the obligor is in arrears equal to three months of child support, the Nation Tribal Court or CNCSP may levy an account or accounts of the delinquent obligor pursuant to tribal, state and federal laws and regulations.

(b) **Notice to Obligor.** Notice shall be sent to the obligor of the levy within three days after the levy notice is sent to the financial institution. The notice shall be served on the obligor through one of the following methods: (i) first-class mail to the obligor's last known address with a certificate of mailing; (ii) certified mail, return receipt, restricted delivery; or (iii) personal service with proof of service certificate. The notice shall include the following information:

- (1) the name of the obligor;
- (2) the amount of the arrearage;
- (3) the telephone number and contact name for the CNCSP; and

(4) a statement that the Nation Tribal Court or CNCSP has initiated a levy on his/her account for a certain amount at his/her financial institution; and a statement of the deadline for requesting a contest, the grounds for a contest, avoidance of levy by payment, and the consequences of failure to pay or to contest a levy, all as described in subsections (c), (d), (e) and (f) of this section.

(c) **Deadline.** The obligor shall have ten (10) days after the date the notice was delivered to request in writing a CNCSP conference or Nation Tribal Court hearing to review or contest the levy.

(d) **Grounds for Contest.** A contest shall be limited to a mistake in the amount of the arrears or a mistake in the identity of the obligor.

(e) **Payment.** The obligor may avoid the levy by making a payment equal to the amount that could be obtained from the account of the financial institution.

(f) **Notice to Remit Funds.** If the obligor does not request a review or contest the levy within ten (10) days after the date of delivery, or pay the amount of the arrearage that would have been taken from the account, the CNCSP may send notice to the financial institution to remit funds.

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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**Section 15-410. Bond.** The Nation Tribal Court or CNCSP in administrative proceedings may require that an obligor post a bond, security or give some other guarantee to secure payment of past due child support.

**Section 15-411. Revocation or Suspension of Licenses.**

(a) **Circumstances.** The CNCSP may seek the suspension or revocation of a professional license, hunting and fishing license, or driver's license of an obligor who is in noncompliance of a child support order or a written payment plan with the appropriate state or tribal court. The CNCSP shall comply with applicable state or tribal law, rules and procedures for the revocation or suspension of a license.

(b) **Notice.** Before the CNCSP initiates an action or proceeding for a license revocation or suspension, the CNCSP shall notify the obligor that the CNCSP intends to seek the revocation or suspension of his or her license(s). The notice shall be served on the obligor through one of the following methods: (i) first-class mail to the obligor's last known address with a certificate of mailing; (ii) certified mail, return receipt, restricted delivery; or (iii) personal service with proof of service certificate.

(c) **Contents of Notice.** The notice shall, at a minimum, include:

- (1) the name of the obligor and the amount of past due support;
- (2) a description of the type of license(s) (i.e. driver's license, fishing license) the CNCSP is seeking to revoke or suspend;
- (3) a statement that action for the suspension or revocation of a license will be made within thirty (30) days after the date of service of the notice unless the obligor enters into a written payment plan or pays the entire past-due support and/or complies with all subpoenas and orders regarding child support and/or paternity;
- (4) a statement that he/she may enter a written payment plan for the past due support;  
and
- (5) a statement that if the obligor elects not to enter a written payment plan with the CNCSP, he or she shall request a court hearing within twenty (20) days after the date of service of the notice.

(d) **Scheduling of Hearing.** Upon receipt of the request for a hearing, the CNCSP shall schedule a hearing to be conducted within (30) day from the receipt of the request.

(e) **Failure to Respond.** If the CNCSP does not receive a request for a hearing or the obligor does not enter into a written payment plan within twenty (20) days after the date of service of the notice, the CNCSP may seek the suspension or revocation of a license.



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## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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### **Section 15-412. Hearing For Revocation or Suspension of Licenses.**

(a) **Hearing.** At the hearing requested by the obligor, upon finding that the obligor is in arrears in court-ordered child support in an amount equal to or greater than three times the obligor's total monthly support, the Nation Tribal Court or CNCSP in administrative proceedings shall order the revocation or suspension of the license at issue unless the Nation Tribal Court or CNCSP determines the obligor is in compliance with a written payment plan with the Court or CNCSP.

(b) **Failure to Contact.** If an obligor fails to contact the CNCSP to enter into a written payment plan or fails to request a hearing or fails to appear at a scheduled hearing, the Nation Tribal Court or CNCSP shall enter an order of suspension or revocation of the license(s) at issue.

### **Section 15-413. License Reinstatement, Termination of Orders.**

(a) **Request for Reinstatement.** An obligor whose license is suspended or revoked may request in writing to the CNCSP that his/ her license be reinstated. The CNCSP may initiate action to reinstate the license upon proof the obligor is in full compliance with other provisions of the support order or any subpoenas, and has paid either:

(1) the current child support and monthly past due payment for the current month and two months immediately preceding, or

(2) an amount equivalent to three months of child support and past due payments.

(b) **Notice.** If the CNCSP initiates an order to terminate the revocation or suspension of a license, the obligor and obligee shall be served notice of the pending action. The notice shall be served on the obligor and obligee through one of the following methods: (i) first-class mail to the parties' last known address with a certificate of mailing; (ii) certified mail, return receipt, restricted delivery; or (iii) personal service with proof of service certificate.

(c) **Order.** If the license is reinstated by the Nation Tribal Court or CNCSP, a copy of the order shall be sent to the obligee and obligor.

(d) **Submission of Order.** The obligor shall be responsible for submitting the order to the appropriate state or tribal licensing boards.

(e) **Additional Actions.** If the obligor's license is reinstated and he/she fails to make child support payments, the CNCSP may again initiate action to revoke or suspend the obligor's license.

(f) **Termination of Suspension Order.** The CNCSP shall proceed to terminate an order for suspension or revocation when the obligor has paid his child support debt in full.

**Section 15-414. Passport Denial.** The CNCSP may refer an obligor's judgment for past due child support in excess of the amount set forth in 42 U.S.C. 654(31) to appropriate state and/or federal agencies for passport denial, revocation or restriction pursuant to federal law and regulations.

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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**Section 15-415. Unemployment Compensation.** The CNCSP may proceed through Nation Tribal Court or through CNCSP administrative proceedings to have child support **withheld** from the obligor's unemployment compensation. Applicable tribal, state and federal laws and regulations shall be followed for unemployment compensation withholding.

**Section 15-416. Reporting to Consumer Reporting Agency.**

(a) Report. The CNCSP may report to a consumer reporting agency the name of the obligor who is in arrears of his or her child support payment.

(b) Notice. Notice shall be sent to the obligor of the intent to report his or her name to a consumer reporting agency. The notice shall be served on the obligor through one of the following methods: (i) first-class mail to the obligor's last known address with a certificate of mailing; (ii) certified mail, return receipt, restricted delivery; or (iii) personal service with proof of service certificate.

(c) Request for Review. The obligor has fifteen (15) days after the date the notice was delivered to request a review of the reporting or to contest the reporting.

(d) Grounds for Contest. A contest shall be limited to a mistake in the amount of the arrears or a mistake in the identity of the obligor.

(e) No Release Pending Final Determination. If the obligor contests the reporting, the CNCSP shall not release the report to the consumer reporting agency pending a final determination at the review.

(f) Failure to Request Review. If the obligor fails to request a review or to contest the release of information within fifteen (15) days after the date of delivery, the information may be released to the consumer reporting agency thirty (30) days from the date of mailing of the notice.

(g) Fee. The CNCSP may charge a consumer reporting agency a reasonable fee for making information available under this section.

(h) Evidence of Status of Agency. Before releasing information to a consumer reporting agency, that agency shall furnish evidence it is a consumer reporting agency as so defined in 15 U.S.C. §1681a(f).

**Section 15-417. Tax Intercepts, Administrative Offset.**

(a) General. The CNCSP may use any state or federal tax intercept or administrative offset program to collect child support debts.

(b) Notice. Notice shall be sent to the obligor of the arrearage being referred for any tax intercept or administrative offset. The notice shall be served on the obligor through one of the following methods: (i) first-class mail to the obligor's last known address with a certificate of mailing; (ii) certified mail, return receipt, restricted delivery; or (iii) personal service with proof of service certificate.

(c) Deadline. The obligor has ten (10) days after the date of notice was delivered to request a review of an intercept or to contest an intercept.

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## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(d) Contest. A contest shall be limited to a mistake in the amount of the arrears or a mistake in identity of the obligor.

(e) Initiation of Action. If the obligor does not request a review or does not contest the action within ten (10) days after the date of delivery, the CNCSP may initiate action for the intercept or offset.

### **Section 15-418. Indirect Contempt.**

(a) General. If a person obligated to provide support fails to pay court ordered child support, the CNCSP or the obligee may petition the Nation Tribal Court to find the obligor in contempt of the court order. An obligor may be cited for indirect contempt if his or her arrears on court-ordered child support in an amount greater than three times the obligor's total monthly support payments. Service on the obligor shall be made through one of the following methods:

(i) first-class mail to the obligor's last known address with a certificate of mailing; (ii) certified mail, return receipt, restricted delivery; or (iii) personal service with proof of service certificate.

(b) Evidence. In a proceeding for indirect civil contempt, prima facie evidence of an indirect civil contempt of court shall be held when there is:

(1) Proof that:

- (a) The child support order was made, filed and served on the obligor; or
- (b) The obligor had actual knowledge of the existence of the order; or
- (c) The order was granted by default after proper notice to the obligor; or
- (d) The obligor was present in court at the time the order was announced; and

(2) Proof of noncompliance with the order.

(c) Sanctions. Unless otherwise provided by law, sanctions for direct or indirect contempt shall be the imposition of a fine in a sum not exceeding Five Hundred Dollars (\$500.00) or by imprisonment in jail not exceeding six (6) months, or by both, at the discretion of the Nation Tribal Court.

(d) Jail. If a contemnor is released to the custody of the sheriff to serve the jail sentence, the contemnor may be released from the custody of the sheriff:

- (1) Upon full payment of the arrearage;
- (2) Upon serving the full sentence; or

(3) Upon a written agreement by the parties for payment of the arrearages with the balance of the sentence to be conditionally suspended subject to performance of the agreement and court order for release. Persons incarcerated pursuant to this section shall serve flat time in all cases.

### **Section 15-419. Purge Requirements.**

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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(a) General. When a person is found guilty of indirect contempt of court for failure to pay child support, that person may purge the contempt by:

- (1) making all future payments for child support, and
- (2) making a written payment plan for the arrearage or making a lump sum payment to pay the arrearage.

(b) Payment Schedule. The Nation Tribal Court or CNCSP in administrative proceedings shall set a reasonable payment schedule for the current and past due support.

(c) Compliance. When all the arrearage has been paid, the contempt shall be deemed purged.

(d) Failure to Comply. If the obligated person fails to comply with conditions for purging contempt, the Nation Tribal Court or CNCSP in administrative proceedings shall find the obligated person in contempt under this section and impose punishment.

### **Section 15-420. Employment. Find-Job Order.**

(a) Employment Requirement. By law a person who is ordered to pay child support through either court or administrative action shall be required to maintain employment to meet his or her child support obligation.

(b) Action for Order for Employment. If an obligor is in arrears for child support in an amount greater than three times the obligor's total monthly support payments and is not in compliance with a written payment plan, and the obligor claims inability to pay court-ordered child support because of unemployment or underemployment, the CNCSP in Nation Tribal Court proceedings or in administrative proceedings may initiate action to obtain an order to require an unemployed or underemployed obligor to find employment through job search programs or job-training programs. To initiate such action, the CNCSP must schedule an administrative child support conference with the obligor or a Nation Tribal Court hearing to determine if he or she is in noncompliance because of unemployment or underemployment.

(c) Notice to Obligor. Notice of the administrative conference or Nation Tribal Court hearing shall be sent to the obligor in noncompliance with a child support order because of unemployment or underemployment through one of the following methods: (i) first-class mail to the obligor's last known address with a certificate of mailing; (ii) certified mail, return receipt, restricted delivery; or (iii) personal service with proof of service certificate. The notice shall include the following information:

- (1) the name of the obligor;
- (2) the name of the obligee and the child or children for whom support is owed;
- (3) the telephone number and contact name for the CNCSP;
- (4) statements that the obligor is in noncompliance with a court or administrative child support order and the amount of the past due support; the time, date and place of a Nation Tribal Court hearing or CNCSP administrative conference set in said matter, the consequences of the obligor's failure to appear at the said hearing or conference, the obligor's burden of proof at the hearing or conference, and a description of the order that may be issued following the

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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hearing or conference, all as set forth in sub-sections (d) and (e) of this section; and

(5) a statement that if a CNCSP administrative conference has been set, the obligor has the right to request transfer of the proceedings to the Nation Tribal Court prior to the conference, or to appeal a CNCSP administrative find-job order to the Nation Tribal Court following a CNCSP conference within the time set forth in section 15-107(e) of this chapter.

(d) Hearing; Order. The obligor shall be responsible for providing documentation for good cause not to participate in an employment search or job training program. If the obligor fails to appear at the hearing or appears and is determined to be unemployed or underemployed, the Nation Tribal Court or CNCSP in administrative proceedings shall enter a find-job order setting forth such findings and directing the obligor to participate in job-finding or job-training programs and accept available employment. Such order may require the obligor to register with a state and/or tribal employment agency for employment or job training. The order shall require the obligor to file a weekly report with the CNCSP showing at least five (5) attempts to find employment, including the name, address and phone number of a contact person with whom the obligor sought employment. The CNCSP shall submit the order to the Nation Tribal Court for approval. A copy of the order will be mailed to the obligor by first-class mail with a certificate of mailing.

(e) Failure to Comply. If an obligor fails to report or otherwise comply with a find-job order without good cause, enforcement proceedings may be initiated against the obligor. The obligor shall be responsible for the verification of any reason for noncompliance with a find-job order.

(f) Order Duration. The duration of the order shall not exceed three (3) months.

### **Section 15-421. Publication Of Delinquent Obligor.**

(a) Publication. The CNCSP may publish a list of names and other information of obligors who cannot be located by the CNCSP to enforce a child support order and who have not made a voluntary child support payment in the last twelve (12) months and have a bench warrant issued for his or her arrest. For this section to apply, the amount of the delinquent child support must be in excess of five thousand (\$5,000) dollars.

(b) Release of Information. Information that may be released include the obligor's name, last known address, amount owed, date of birth, photograph, and the number of children for whom support is owed. The CNCSP may not disclose information that is by law required to remain confidential. Information may be disseminated on posters, the Internet, the Comanche tribal newspaper, or other cost effective media.

(c) Notice. Notice shall be sent to the obligor of the intent to publish his or her name through one of the following methods: (i) first-class mail to the obligor's last known address with a certificate of mailing; (ii) certified mail, return receipt, restricted delivery; or (iii) personal service with proof of service certificate.

(d) Deadline for Request for Review. The obligor has ten (10) days after the date the notice was delivered to request a review of the intent to publish his or her name or to contest the publication.

(e) Grounds for Contest. A contest shall be limited to a mistake in the amount of the

## TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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arrears or a mistake in identity of the obligor.

(f) Removal of Name from List. The obligor may remove his or her name from a list of names to be published by entering into a written payment agreement and keeping payments current or by paying the arrearage in full.

(g) Failure to Request Review or Contest. If the obligor does not request a review or does not contest the action within ten (10) days after the date of delivery, the CNCSP may publish the information that may be released under subsection (b) of this section.

### **Section 15-422. Exceptions to Enforcement Proceedings.**

(a) Obligors Receiving TANF Payments. The CNCSP may not initiate enforcement proceedings against an obligor who is currently receiving TANF payments.

(b) Physical or Mental Health Problems. The CNCSP may not initiate enforcement proceedings against an obligor who is not able to work because of a physical or mental health problem. The obligor shall provide documentation of participation in an active treatment plan which includes an estimate of the duration of the mental or physical health problem. Treatment plans may include, but are not limited to, care provided by state licensed physicians, mental health professionals, or substance abuse professionals.

(c) Physical or Mental Disability. The CNCSP may not initiate enforcement proceedings against an obligor who is not able to work because of a physical or mental disability. The obligor shall provide documentation that he or she has obtained a disability determination from the federal Social Security Administration and has filed an application with the state department of rehabilitation services for assistance in becoming employable. In the event that such obligor provides documentation to CNCSP of an application for a disability determination from the federal Social Security Administration and other evidence that no determination has been made on such application, the CNCSP shall postpone enforcement proceedings for a reasonable period of time, based upon the information timely provided by the obligor and any other relevant information obtained by the CNCSP.

### **Section 15-423. Foreign Orders. Full Faith and Credit.**

(a) Enforcement of Foreign Order. Upon request by another tribe or state, the CNCSP shall enforce a valid state or tribal child support order pursuant to the Full Faith and Credit for Child Support Orders Act (28 U.S.C. 1738B).

(b) Registration of Foreign Order. Before enforcement begins, the foreign order shall be registered with the Comanche Nation Tribal Court. A certified copy of the support order and a certified statement of the amount of past due child support shall be submitted with the pleadings.

(c) Modification of Foreign Order. A modification to a foreign child support order shall be made pursuant to the Full Faith and Credit for Child Support Orders Act.

**TITLE 5**  
**COMANCHE**  
**NATION CIVIL**  
**INFRACTIONS**

GENERAL PROVISIONS

SCOPE AND PURPOSE OF RULES

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

DEFINITIONS

For the purposes of this Title:

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



## TITLE 5 COMANCHE NATION CIVIL INFRACTIONS

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

### Duties and Authority of Officers; Warrants not Required

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

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

## OFFENSES

### Property

#### Trespass

A person commits the infraction of trespass if he:

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

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

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

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

#### Vandalism

A person commits the infraction of vandalism if he:

(a) Injures, defaces, damages or destroys;

## TITLE 5 COMANCHE NATION CIVIL INFRACTIONS

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

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

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

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

### PUBLIC ORDER

#### False Reporting

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

#### Use or Possession of Alcohol Beverage at Public Locations

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

#### Harassment

A person commits the infraction of harassment if:

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

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

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

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

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

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

#### Cruelty to Animals

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

(1) Maliciously kills maims or wounds any animal;

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

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

## TITLE 5 COMANCHE NATION CIVIL INFRACTIONS

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

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

### PUBLIC HEALTH, SAFETY AND WELFARE

#### Public Nuisance

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

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

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

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

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

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

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

## TITLE 5 COMANCHE NATION CIVIL INFRACTIONS

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

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

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

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

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

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

(c) For third infraction:

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

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

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

### Selling or Giving Tobacco Products to Minors

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

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

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

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

## TITLE 5 COMANCHE NATION CIVIL INFRACTIONS

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

### Littering

A person commits the infraction of littering if he:

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

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

### Violation of Tribal Law

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

### Comanche Nation Grounds

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

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

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

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

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

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

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

### NOTICE OF INFRACTION

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

## TITLE 5 COMANCHE NATION CIVIL INFRACTIONS

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

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

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

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

### INITIATION OF INFRACTION CASES

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

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## TITLE 5 COMANCHE NATION CIVIL INFRACTIONS

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

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

(2) By the Tribal Prosecutor.

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

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

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

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

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

(e) Return of Service.

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

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

TITLE 5 COMANCHE NATION CIVIL INFRACTIONS

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

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

RESPONSE TO NOTICE

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

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

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

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

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

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

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

I hereby state as follows:

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

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

\_\_\_\_\_

(Date and Place) (Signature)

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



## TITLE 5 COMANCHE NATION CIVIL INFRACTIONS

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

I hereby state as follows:

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

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

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(Date and Place) (Signature)

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

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

### FAILURE TO RESPOND

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

### SCHEDULING OF HEARINGS

(a) Contested Hearings.

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

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

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

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

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

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

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

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

#### CONTESTED HEARINGS-PRELIMINARY PROCEEDINGS

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

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

## TITLE 5 COMANCHE NATION CIVIL INFRACTIONS

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

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

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

### FAILURE TO APPEAR

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

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

### SUSPENSION OF MONETARY PENALTY

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

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

### FAILURE TO PAY OR COMPLETE COMMUNITY RESTITUTION

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

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

## TITLE 5 COMANCHE NATION CIVIL INFRACTIONS

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

(b) Failure To Pay or Complete Community Restitution.

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

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

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

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

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

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

### APPEAL TO APPELLATE COURT

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

### FEES

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

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

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

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

**TITLE 6**  
**COMANCHE**  
**NATION CIVIL**  
**TRAFFIC CODE**

## TITLE 6. COMANCHE NATION CIVIL TRAFFIC CODE

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### CHAPTER A. JURISDICTION

#### Sec. 1 Jurisdiction

- a. The Tribal Court shall have jurisdiction over all vehicles owned or operated within the territorial boundaries of the Comanche Nation Indian Country
- b. The Tribal Police shall have jurisdiction over all vehicles and drivers, Indian or non-Indian within the boundaries of the Comanche Nation Indian Country, and outside the boundaries of the Comanche Nation Indian Country when in fresh pursuit.

#### Sec. 2 Power to Regulate

The Comanche Nation shall have the power to regulate all matters involving the ownership or operation of vehicles, including but not limited to, registration of and licensing of operators and vehicles, parking, speed limits, and other traffic controls, traffic offenses and enforcement, and trial and punishment of Indian traffic offenders.

### CHAPTER B. DEFINITIONS

#### Sec. 1 Authorized Emergency Vehicle

- a. Any publicly owned ambulance, or any privately owned ambulance being used to respond to an emergency call; or,
- b. Any vehicle operated by or with the authority of a police department, sheriff's department or the Oklahoma Highway Patrol; or,
- c. Any vehicle operated by a forestry or fire department of Tribal, Federal, State, or local government, or agency thereof; or,
- d. Any vehicle which the Comanche Business Committee has authorized as an emergency vehicle.

Sec. 2 Bicycle. Any mechanical device propelled solely by human power.

Sec. 3 Driver. A person who drives or is in actual physical control of a vehicle.

Sec. 4 Farm Vehicle. Any vehicle primarily used in connection for a farming or ranching purpose.

Sec. 6 Owner. A person to whom the real and beneficial use of a vehicle belongs.

Sec. 7 Person. Any person subject to the jurisdiction of the Tribal Court.

Sec. 8 Police Officer. Any person empowered by Comanche Business Committee Resolution to enforce the tribe's Law and Order Code.

Sec. 9 Right of Way. The privilege of the immediate use of the road.

## TITLE 6. COMANCHE NATION CIVIL TRAFFIC CODE

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Sec. 10 Road. All paved, gravel, or dirt streets, roads, or highways within the Comanche Nation Indian Country which are provided for public use or which are commonly used by the public.

Sec. 11 School Bus. Any vehicle clearly marked as a school bus.

Sec. 12 Special Mobile Equipment. Any vehicle which is not used primarily for the purpose of transporting passengers or cargo, including but not necessarily limited to: tractors, bulldozers, rollers, graders, scrapers, etc., that are generally used in the construction industry.

Sec. 13 Traffic. Vehicles, bicycles, pedestrians, or domestic animals moving along a road.

Sec. 14 Valid Driver's License

- a. Any current and valid driver's license issued by:
- (1) the Government of the United States of America;
  - (2) any State of the United States of America; or,
  - (3) the Government of any foreign country.

Sec. 15 Valid License Plate

- a. Any current and valid license plate issued by:
- (1) the Comanche Nation;
  - (2) the governing body of a Federally recognized Indian Tribe;
  - (3) the Government of the United States of America;
  - (4) any State of the United States of America; or,
  - (5) the Government of any foreign country.

Sec. 16 Vehicle. Every mechanical device which may be used for transportation or driven by a person upon a road, including but not limited to: trucks, cars, other four wheeled vehicles, motorcycles, motor scooters, motor bikes, and other two or three wheeled vehicles, but not including mechanical devices propelled solely by human power.

### CHAPTER C. DUTIES IMPOSED BY THIS TITLE

Sec. 1 Duties and Authority of Authorized Police Officers

- a. All Police Officers authorized by the Comanche Business Committee shall have the general duty and authority to enforce this Title.
- b. Police Officers shall have the specific duty and authority:
- (1) to issue civil and criminal citations for violation of this Title to Indians and non-Indians for traffic citations..
  - (2) to arrest Indians who violate this Title, and to take the accused violators into custody as provided in this Title, or to arrest and take into custody non-Indians who violate the provisions of this Title within the boundaries of the Comanche Nation Indian Country.
  - (3) to investigate and prepare a written Report on any incident resulting in a citation or infraction, occurring on a road and involving a vehicle, that results in property damage or personal injury, and to file all such reports with the Tribal Court Clerk within 24 hours after completing an investigation; and,

## TITLE 6. COMANCHE NATION CIVIL TRAFFIC CODE

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(4) to have a badge indicating his official authority conspicuously display upon his person while on duty or while exercising his authority.

c. If a Police Officer fails to perform his duty under this Title, a civil action may be brought against him in Tribal Court to recover the damages resulting from such failure. Such an action may be brought by either the Comanche Business Committee or any person suffering damages, and shall be maintained in accordance with this Code.

### Sec. 2 Duties of Drivers and Owners

a. It is the duty of all drivers and owners to comply with the provision of this Title.

b. It is the duty of all drivers to exercise due care in operating any vehicle on the Comanche Nation Indian Country, in order to avoid injury to or interference with persons, property, and the peace and quiet of the Comanche Nation Indian Country.

c. If a driver or owner fails to fulfill his duty, under this Title, a civil action may be brought against him in Tribal court to recover the damages resulting from such failure. Such an action may be brought by any person suffering damages, and shall be maintained in accordance with this Code.

## CHAPTER D. ENFORCEMENT PROCEDURE

### Sec. 1 Citations Issued to Indians

a. Initiating Proceedings - Proceedings against a defendant shall be initiated by issuing a civil citation to the defendant. Issuing of a civil citation constitutes a civil summons to appear in Court. A copy of the citation shall be filed with the Court Clerk, and a second copy shall be retained by the citing officer. When filed with the Court Clerk, the citation shall serve as a civil complaint.

b. Issuance - The citation shall be issued to the defendant personally, except that if the offense is a non-moving violation, then issuance may be made by affixing the citation to a visible location on the offending vehicle.

c. Other Applicable Code Provisions - Criminal Procedure, dealing with citation, are also applicable to proceeding under this Title, when the defendant is an Indian charged with a criminal violation.

### Sec. 2 Immediate Arrest of Indian Defendants

a. Standards - An Indian defendant shall be taken into custody and brought before the Tribal Court without reasonable delay, if:

(1) He or she refuses to sign the citation, promising to appear in Court; or to post the cash equivalent to the maximum civil forfeiture scheduled for the violation(s).

(2) He or she is accused of a serious offense against the safety of persons or property.

### Sec. 3 Citations Issued to Non-Indians

a. Initiating Proceedings - Proceedings against a non-Indian defendant shall be initiated by issuing a civil citation to the non-Indian defendant. Issuing of a civil citation constitutes a civil summons to appear in Court. A copy of the citation shall be filed with the Court Clerk, and a second copy shall be retained by the citing officer. When filed with the Court Clerk, the citation shall serve as a civil complaint.



## TITLE 6. COMANCHE NATION CIVIL TRAFFIC CODE

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b. Issuance - The citation shall be issued to the defendant personally, except that if the offense is a non-moving violation, then issuance may be made by affixing the citation to a visible location on the offending vehicle.

c. Other Applicable Code Provisions – When the Comanche Nation lacks criminal jurisdiction over a non-Indian who violates a section of Title 2, Comanche Nation Criminal Code and Procedures, the violation shall be considered a civil violation and be subject to the rules and procures within this Code.

### Sec. 4 Civil Forfeiture

a. Availability - The Tribal Court may release a defendant who has been taken into custody upon the posting of a cash equivalent to the civil forfeiture set forth in the offense.

b. Civil Forfeiture Schedule - Each offense is subject to the civil forfeiture incorporated within. Where no civil forfeiture is assigned the offense shall be subject to the following:

i. For a first offense, civil forfeiture shall be no less than one hundred dollars (\$100.00) and no more than three hundred dollars (\$300.00).

ii. For a second offense, civil forfeiture shall be no less than three hundred dollars (\$300.00) and no more than six hundred dollars (\$600.00).

iii. For a third or subsequent offense, civil forfeiture shall be no less than six hundred dollars (\$600.00) and no more than nine hundred dollars (\$900.00).

c. Forfeiture of Cash - the cash equivalent to the civil forfeiture set for an offense, may be forfeited by written agreement or a failure to appear for trial.

## CHAPTER E. TRIAL OF TRAFFIC OFFENDERS

The trial of defendants in traffic cases shall be governed by the provisions on Civil procedures in all cases.

## CHAPTER F. TRAFFIC OFFENSES

### Sec. 1 In General

Violation of this Code subjects the offender to civil forfeiture in the amount set in the civil forfeiture schedule.

### Sec. 2 Driving Under the Influence of Alcohol

a. Offense - No person, who is under the influence of an intoxicating liquor, or under the combined influence of an intoxicating liquor and any drug, shall drive a vehicle upon any road. A judgment by the Court that a person has violated this section shall result in a civil forfeiture of no less than \$300.00 for the first offense, no less than \$600 for the second offense, and \$900.00 for the third and subsequent offenses.

b. Presumption:

(1) If, at the time of the alleged offense, there was 0.08 percent or more by weight of alcohol in the blood of the accused, it shall be presumed that the accused was under the influence of an intoxicating liquor at that time.

## TITLE 6. COMANCHE NATION CIVIL TRAFFIC CODE

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(2) The foregoing provision shall not be construed as limiting the introduction of any other evidence bearing upon the question of whether the accused was under the influence of an intoxicating liquor at the time of the alleged offense.

c. Implied Consent - Any driver who is operating a vehicle upon the Comanche Nation Indian Country, shall be considered to have consented to a scientific test to determine blood alcohol level when reasonably requested to do so by a police officer. If a driver refuses to submit to a blood alcohol test, it shall be presumed that the accused was under the influence of an intoxicating liquor at that time.

### Sec. 3 Drinking Alcoholic Beverages in a Motor Vehicle

No person shall drink any intoxicating beverage while in a vehicle, when such vehicle is upon a road. Violation of this Section will result in a civil forfeiture of no less than \$300.00 for the first offense, no less than \$600 for the second offense, and \$900.00 for the third and subsequent offenses.

### Sec. 4 Driving Under the Influence of Drugs

a. Controlled Substance - No person, who is under the influence of any controlled substance listed in this Code, United States Code, Section 812, or any successor legislation to the schedules shall drive a vehicle upon any road. Violation of this Section shall result in a civil forfeiture of no less than \$300.00 for the first offense, no less than \$600 for the second offense, and \$900.00 for the third and subsequent offenses.

b. Non-Narcotic Drug - No person, who is under the influence of any drug other than a controlled substance as specified above, to a degree which renders him incapable of safely driving a vehicle, shall drive a vehicle upon any road. Violation of this Section shall result in a civil forfeiture of no less than \$100.00 but not more than \$300.00 for the first offense, no more than \$600 for the second offense, and no more than \$900.00 for the third and subsequent offenses.

### Sec. 5 Depositing Matter on the Road (Littering)

No person shall deposit upon any road or public lands any bottles, cans, garbage, glass, nails, paper, wire, lit substances, or any other substance from a motor vehicle likely to injure or damage traffic using the road or the land itself. Violation of this Section shall result in a civil forfeiture of no less than \$100.00 but not more than \$300.00 for the first offense, no more than \$600 for the second offense, and no more than \$900.00 for the third and subsequent offenses.

### Sec. 6 Obstruction of Right of Way

It shall be unlawful to stand, stop or park a vehicle so as to obstruct a right of way. Violation of this Section shall result in a civil forfeiture of no less than \$100.00 but not more than \$300.00 for the first offense, no more than \$600 for the second offense, and no more than \$900.00 for the third and subsequent offenses.

### Sec. 7 Reckless Driving

Anyone who drives a vehicle upon a road in a manner so as to endanger any person or property shall be guilty of reckless driving. Violation of this Section shall result in a civil forfeiture of no

## TITLE 6. COMANCHE NATION CIVIL TRAFFIC CODE

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less than \$100.00 but not more than \$300.00 for the first offense, no more than \$600 for the second offense, and no more than \$900.00 for the third and subsequent offenses.

### Sec. 8 Speeding

a. Speeding Restrictions - It shall be unlawful for any person to operate any vehicle upon the Comanche Nation Indian Country at a speed exceeding a posted speed limit or exceeding 30 miles per hour when no speed limit is posted, or at a speed greater than is reasonable and proper due to exist road and weather conditions, regardless of the posted speed limit. Violation of this Section shall result in a civil forfeiture of no less than \$100.00 but not more than \$300.00 for the first offense, no more than \$600 for the second offense, and no more than \$900.00 for the third and subsequent offenses.

b. Exception to Speed Restrictions - The speed restrictions, designated in this Code, shall not apply to authorized emergency vehicles responding to an emergency call. This provision does not relieve the driver of an authorized emergency vehicle of the duty to drive with due regard for the safety of all persons using the road.

### Sec. 9 Driving on the Wrong Side of the Road

a. A driver shall operate his vehicle upon the right half of any road, except when that half of road is out for repair or impassable, or when the driver's vehicle is safely overtaking and passing another vehicle. Violation of this Section shall result in a civil forfeiture of no less than \$100.00 but not more than \$300.00 for the first offense, no more than \$600 for the second offense, and no more than \$900.00 for the third and subsequent offenses.

b. An authorized mail carrier of the United State Post Office shall be authorized to drive on the wrong side of the road when necessary to deliver mail, when the carrier may safely do so without endangering or interfering with oncoming traffic.

### Sec. 10 Unlawful Passing

a. Offense - it shall be unlawful to overtake and pass a moving vehicle:

- (1) On a bridge, overpass, tunnel, railway crossing, underpass, or at an intersection;
- (2) when coming up to the top of a hill or on a curve where one does not have an unobstructed view 500 feet ahead;
- (3) When there is a solid yellow line in the driver's lane;
- (4) When an oncoming vehicle is so close, that it is unsafe to cross the centerline.

b. Violation of this Section shall result in a civil forfeiture of no less than \$100.00 but not more than \$300.00 for the first offense, no more than \$600 for the second offense, and no more than \$900.00 for the third and subsequent offenses.

### Sec. 11 Failure to Signal

a. Mechanical Signals - Except as provided by Subsection "b", of this Section, when a driver of a vehicle slows, turns, changes lanes or stops, he shall give the proper mechanical signal in sufficient time to indicate his intentions to other drivers and pedestrians. Turn signals must be given for the driver(s) approaching, as well as for the driver(s) behind him. Violation of this Section shall result in a civil forfeiture of no less than \$100.00 but not more than \$300.00 for the

## TITLE 6. COMANCHE NATION CIVIL TRAFFIC CODE

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first offense, no more than \$600 for the second offense, and no more than \$900.00 for the third and subsequent offenses.

b. When mechanical signals are not given, signals must be given with the left arm as follows:

(1) For stopping - arm extended downward;

(2) For left turn - arm extended horizontally;

(3) For right turn - arm extended at a 90 degree angle.

c. Violation of this Section shall result in a civil forfeiture of no less than \$100.00 but not more than \$300.00 for the first offense, no more than \$600 for the second offense, and no more than \$900.00 for the third and subsequent offenses.

### Sec. 12 Improper U-Turns

A driver shall not make U-turn where it is unsafe to do so, or where there is a "No U-Turn" sign. Violation of this Section shall result in a civil forfeiture of no less than \$100.00 but not more than \$300.00 for the first offense, no more than \$600 for the second offense, and no more than \$900.00 for the third and subsequent offenses.

### Sec. 13 Failure to Yield Right of Way

a. A vehicle approaching an intersection shall yield the right of way to a vehicle which has entered the intersection.

b. If two or more vehicles approach or enter an intersection from different roads at the same time, the driver on the left shall yield the right of way to the driver on the right.

c. All vehicles shall yield the right of way to pedestrians.

d. All vehicles about to enter or cross a road, shall yield the right of way to vehicles on the road.

e. Violation of this Section shall result in a civil forfeiture of no less than \$100.00 but not more than \$300.00 for the first offense, no more than \$600 for the second offense, and no more than \$900.00 for the third and subsequent offenses.

### Sec. 14 Failure to Yield Right of Way to Emergency Vehicle

Upon the approach of any authorized emergency vehicle displaying flashing red or red and blue lights and/or giving an audible signal by siren, the driver of every other vehicle shall immediately stop as far as possible off the right hand edge of the road, and parallel to the right hand edge or curve of the road, clear of any intersection or other roads, and shall remain stopped until the authorized emergency vehicle has passed or unless otherwise directed by a police officer. The provision of this Section apply equally to a vehicle being approached from behind by an authorized emergency vehicle or a vehicle being approached from the front by an authorized emergency vehicle. Violation of this Section shall result in a civil forfeiture of no less than \$100.00 but not more than \$300.00 for the first offense, no more than \$600 for the second offense, and no more than \$900.00 for the third and subsequent offenses.

### Sec. 15 Improper Passing of a School Bus

It shall be unlawful for any vehicle to pass a school bus, displaying flashing red lights, that is stopped for the purpose of receiving or discharging children, or to proceed past the school bus until the flashing red lights are turned off and it is safe to do so, or unless the school bus driver

## TITLE 6. COMANCHE NATION CIVIL TRAFFIC CODE

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plainly gives a visual signal that it is all right to pass the school bus (i.e. - if the red lights have malfunctioned and can not be turned off). Violation of this Section shall result in a civil forfeiture of no less than \$100.00 but not more than \$300.00 for the first offense, no more than \$600 for the second offense, and no more than \$900.00 for the third and subsequent offenses.

### Sec. 16 Failure to Obey Traffic Control Device

All drivers, while driving a vehicle, shall obey all legal traffic control devices. Violation of this Section shall result in a civil forfeiture of no less than \$100.00 but not more than \$300.00 for the first offense, no more than \$600 for the second offense, and no more than \$900.00 for the third and subsequent offenses.

### Sec. 17 Operation of an Unsafe Vehicle

a. It shall be unlawful to operate any vehicle which is in an unreasonably dangerous condition.

b. Whenever a federal safety standard is established under the National Traffic and Motor Vehicle Act of 1968 (15 USC, Section 1382, et. seq.), no person shall sell or offer for sale a vehicle of item of equipment to which the standard is applicable unless:

- (1) The vehicle or equipment conforms to the applicable federal standard; or,
- (2) The vehicle or equipment displays a certification by the manufacturer or distributor that the vehicle or equipment complies with the applicable federal standards.
- (3) Vehicles manufactured prior to 1968 are exempt from this requirement, but are required to maintain original manufactured equipment on the vehicle in good operating order. ]

b. Violation of this Section shall result in a civil forfeiture of no less than \$100.00 but not more than \$300.00 for the first offense, no more than \$600 for the second offense, and no more than \$900.00 for the third and subsequent offenses.

### Sec. 18 Equipment Violations

a. Headlights and Taillights:

- (1) During darkness, every vehicle shall be equipped with and have in operation two functioning headlights, except that motorcycles and off-road vehicles designed with one headlight, shall be equipped with and have in operation one functioning headlight
- (2) During darkness, every vehicle shall be equipped with and have in operation one or more functioning tail lights. Tail lights shall be red in color and shall be plainly visible within 500 feet of the rear of the vehicle.

b. Brakes Lights - Every vehicle shall be equipped with one or more functioning brake light and they shall be plainly visible within 300 feet of the rear of the vehicle during normal sunlight and at night.

c. Backup Light - All vehicles, other than motorcycles, snowmobiles, all terrain vehicles, etc., shall be equipped with one or more properly functioning backup light, if such lights were standard equipment on the vehicle as manufacture.

d. Turn Signals - All vehicles shall be equipped with a mechanical turn signal system capable of clearly indicating an intention to turn either right or left, with the exception of certain antique vehicles which were not so equipped when originally manufactured.

e. Brakes:

## TITLE 6. COMANCHE NATION CIVIL TRAFFIC CODE

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(1) Every vehicle shall be equipped with a service brake system and every vehicle, with more than two wheels shall be equipped with a parking brake system. The two systems shall be constructed so that failure of any part except for failure of drums, brakeshoes, or other mechanical part of the wheel brake assembly, shall not leave the vehicle without operative brakes.

(2) All brakes and component parts shall be maintained in good condition and in working order.

(3) Upon application of the service brake system, every vehicle, at any time and under all conditions of loading, shall be capable of stopping within 40 feet from an initial speed of 20 miles per hour.

f. Windshield - Every vehicle with more than two wheels, except farm and off-road vehicles, shall be equipped with an adequate windshield.

g. Horn - Every vehicle, when operated upon a road, shall be equipped with a horn in good working order and capable of emitting a sound audible under normal conditions from a distance of 200 feet. Vehicles which were not originally equipped with a horn are exempted.

h. Tires - No person shall use a vehicle with a pneumatic tire is worn to less than 1/32 of an inch of tread depth in any two adjacent grooves at any location on the tire.

i. Mufflers - Every vehicle shall, at all times, be equipped with an adequate muffler in constant operation and properly maintained to prevent excessive or unusual noise.

j. Violations of any of the Subsections of this Section shall result in a civil forfeiture of no less than \$100.00 but not more than \$300.00 for the first offense, no more than \$600 for the second offense, and no more than \$900.00 for the third and subsequent offenses.

### Sec. 19 Joy Riding

No person shall take or use any vehicle without the owner's permission. The fact that such person did not intend to permanently deprive the owner of said vehicle, shall not be a defense to a charge brought against the person under this Section. Violation of this Section shall result in civil forfeiture of no less than \$300.00 for the first offense, no less than \$600 for the second offense, and \$900.00 for the third and subsequent offenses.

### Sec. 20 Negligent Injury to Animals on the Road

The driver of a vehicle shall exercise reasonable and due care to avoid injuring wild or domestic animals on the roadway, under normal circumstances. Violation of this Section shall result in a civil forfeiture of no less than \$100.00 but not more than \$300.00 for the first offense, no more than \$600 for the second offense, and no more than \$900.00 for the third and subsequent offenses.

### Sec. 21 Following Too Close

The driver of a vehicle shall not follow another vehicle so close as to create a substantial danger of an accident, taking into account the speed of the vehicle involved, the amount of the traffic, and the road conditions. Violation of this Section shall result in a civil forfeiture of no less than \$100.00 but not more than \$300.00 for the first offense, no more than \$600 for the second offense, and no more than \$900.00 for the third and subsequent offenses.

### Sec. 22 Leaving the Scene of an Accident

## TITLE 6. COMANCHE NATION CIVIL TRAFFIC CODE

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- a. The driver of any vehicle involved in an accident resulting in injury or death of any person, or damage to a vehicle or property, shall immediately stop as close as possible to the scene of the accident. Violation of this Subsection shall result in a civil forfeiture of no less than \$300.00 for the first offense, no less than \$600 for the second offense, and \$900.00 for the third and subsequent offenses.
- b. If personal injury has occurred, or if the damaged vehicle or property is attended by any person, the driver shall give his name, address, vehicle registration information of the vehicle he is driving, the name(s) and address(es) of the owners of said vehicle, and shall show his driver's license and exchange the information thereon, with the driver or passenger of the other vehicle, or give said information to the person attending the damaged vehicle or property. The driver shall give to any person injured in the accident reasonable assistance. Violation of this Subsection shall result in a civil forfeiture of no less than \$300.00 for the first offense, no less than \$600 for the second offense, and \$900.00 for the third and subsequent offenses.
- c. The driver of the vehicle involved in an accident resulting in injury or death of any person or apparent property damage shall give immediate notice of the accident to the Tribal Police. For the purpose of this Subsection, immediate notice means "as soon as possible". If the driver is unable to give said notice, then a responsible person who is a passenger in one of the accident vehicles shall notify the Tribal Police. Violation of this Subsection shall result in a civil forfeiture of no less than \$300.00 for the first offense, no less than \$600 for the second offense, and \$900.00 for the third and subsequent offenses.
- d. The driver of any vehicle which hits another vehicle or other property, which is unattended, shall immediately stop and attempt to locate and notify the driver or owner of such vehicle or his name and address. If the driver, after reasonable effort, cannot locate the owner or driver, he shall leave in a safe and conspicuous place or attached to the damaged vehicle or property, a note giving his name and address. Violation of this Subsection shall result in a civil forfeiture of no less than \$300.00 for the first offense, no less than \$600 for the second offense, and \$900.00 for the third and subsequent offenses.

### Sec. 23 Registration Offenses

- a. Offense - No driver shall operate any vehicle on any road within the jurisdiction of the Comanche Business Committee unless the driver has, in his possession, a valid certificate of registration for such vehicle and unless the vehicle displays a valid license plate mounted on the rear of such vehicle.
- b. Farm Vehicle Exemption (also known as "Implements of Husbandry") - This Subsection shall not apply to farm vehicles which are being driven on a road in connection with a farming or ranching purpose.
- c. Special Mobile Equipment Exemption - Vehicles classified under an applicable Tribal, State or Federal law or regulation as special mobile equipment (generally construction equipment such as tractors, tracked vehicles, cranes, graders, scrapers, etc.) are exempt from the provisions of this Section.

## TITLE 6. COMANCHE NATION CIVIL TRAFFIC CODE

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d. Violation of this Section shall result in a civil forfeiture of no less than \$100.00 but not more than \$300.00 for the first offense, no more than \$600 for the second offense, and no more than \$900.00 for the third and subsequent offenses..

### Sec. 24 Driver's License Offenses

a. No driver shall operate a vehicle, required to be registered under Section 23 of this chapter, without a valid driver's license in possession.

b. No person shall possess or display a canceled, revoked, suspended, fictitious or fraudulently altered driver's license or a valid driver's license not issued to him.

c. No person shall allow another to use his driver's license for identification.

d. No person shall cause or knowingly permit any unlicensed person to operate a vehicle, except a farm vehicle or special mobile equipment, on a road.

e. Violations of this Section shall result in a civil forfeiture of no less than \$100.00 but not more than \$300.00 for the first offense, no more than \$600 for the second offense, and no more than \$900.00 for the third and subsequent offenses.

## CHAPTER G. OFF ROAD VEHICLES

### Sec. 1 Regulations for Off-Road Vehicles

a. It shall be unlawful to operate a vehicle at a speed or in a manner causing excessive disturbance to land, terrain, wildlife, or vegetation.

b. It shall be unlawful to operate a vehicle in a restricted use area in any manner not permitted therein.

c. It shall be unlawful to operate a vehicle in an area where off-road use is prohibited.

d. Violation of this Section shall result in a civil forfeiture of no less than \$100.00 but not more than \$300.00 for the first offense, no more than \$600 for the second offense, and no more than \$900.00 for the third and subsequent offenses.

### Sec. 2 Restricted Areas

The Comanche Business Committee shall have the power to designate areas of Tribal land where off-road vehicle operations are prohibited or restricted. In the absence of a specific designation, all Tribal lands shall be considered closed to the operation of off-road vehicles.

### Sec. 3 Permitted Use Areas

The Comanche Business Committee may designate areas where off-road vehicle use is permitted. Such areas shall be designated by conspicuously posted signs advising of the locations and boundaries of the use areas and the regulations governing the use of said areas.

### Sec. 4 Exemption for Vehicle Operations on Private Land

Drivers of vehicles operating on privately owned land, with the consent of the land owner tenant, are exempt from the regulations of this Title.



**COMANCHE NATION  
DOMESTIC VIOLENCE AND PREVENTION OF  
DOMESTIC ABUSE ACT  
TITLE 7**

<b>CHAPTER</b>	<b>SECTION</b>
<b>1 DOMESTIC VIOLENCE AND PREVENTION OF DOMESTIC ABUSE</b>	
Title of Code	101
Objective	102
Authority of the Tribe to Regulate Domestic Violence Within its Jurisdictional Boundaries	103
Definitions	104
Rights of Victim of Domestic Violence	105
Crime Involving Domestic Violence Defined	106
Mandatory Arrest for Crimes Involving Domestic Violence, Determination of Predominant Aggressor	
Required Report	107
Officials Who Batter, Including Law Enforcement Officers; Procedure	108
Prosecution Responsibility	109
Authority of Law Enforcement Officers to Seize Weapons	110
Immunity	111
Conditions for Pre-Trial Release	112
Mandatory Arrest for Violations of Condition Of Release	113
Role of the Court; Sentencing, Probation Conditions	114
Probation Violations, Process for Revocation, Consequences	115
Civil Sanctions Sought in the Name of the Comanche Nation	116
Spousal Privileges Inapplicable to Criminal Proceedings Involving Domestic Violence	117
Advocate-Victim Privilege Applicable in Cases Involving Domestic or Family Violence	118
Self-Defense, Judicial Safeguards for Victims	119

Protective Order Petition, Form, Filing/Fees, Preparation	120
Hearing, Service of Process, Emergency Ex Parte Orders, Protective Order	
Hearing, Service of Process, Emergency Ex Parte Orders, Protective Orders, Period of Relief, Title To Real Property	121
Police to be Sent a Copy of the Protective Order	122
Violation of Protective Order – Punishment	123
Validity of Orders	124
Warrantless Arrest – Procedure	125
Foreign Protective Orders	126
Address Confidentiality Program	127
Mandatory Training	128
Severability Clause	129

**CHAPTER ONE  
DOMESTIC VIOLENCE &  
PREVENTION OF DOMESTIC ABUSE ACT**

**Section 7.101      Title of Code**

This Title shall be known as the Domestic Violence and Prevention of Domestic Abuse Act of the Comanche Nation.

**Section 7.102      Objective**

The Domestic Violence and Prevention of Domestic Abuse Act shall be construed to promote the following:

- (A) That violence against family members is not in keeping with Comanche Nation traditional and/or contemporary values. It is the expectation that the criminal justice system shall respond to victims of domestic violence with fairness, compassion, and in a prompt and effective manner. The objective of this Title is to provide victims of domestic violence, stalking, and harassment with safety and protection. Ultimately, this Title shall hold batterers accountable.
- (B) It is also the objective of this Title to utilize the criminal justice system to set standards of behavior within the family that are consistent with traditional Comanche Nation Tribal values, and, as such, the criminal justice system will be utilized to impose legal consequences upon offenders for behaviors that violate traditional Comanche Nation Values, which consider familial relationships as sacred. These legal consequences are designed to protect the victims of domestic violence, while also providing offenders the opportunity to make positive changes in their behavior.
- (C) The prevention of future violence in all families through crime prevention and public education programs that promote cultural teachings and traditional Comanche Nation values so as to nurture non-violence within Native families and respect for Native women, in particular.
- (D) This Act shall repeal and revoke Title 2 of the Comanche Nation Tribal Code, Part X Crimes of Domestic or Family Abuse, Title 2 of the Comanche Nation Tribal Code, Section 1.01(J), and (K) Definitions of “Dating Violence” and Domestic Violence,” and Title 2 of the Comanche Nation Tribal Code, Section 5.01 Rights of Crime Victims Involving Domestic Abuse, Sexual Assault, Stalking and Dating Violence.

**Section 7.103      Authority of the Comanche Nation to Regulate Domestic Violence Within its Jurisdictional Boundaries**

The Comanche Nation shall exercise its inherent authority to protect its political integrity and provide for the welfare of its members, and others who choose to live or conduct business within its territories, by fulfilling the following purposes:

- (A) Domestic violence within Comanche Nation boundaries seriously impacts the ability of the Comanche Nation to provide for the health and well-being of its members and threatens the political integrity of the Nation.
- (B) Domestic violence is also being perpetrated by persons who are not members of the Tribe. These activities of non-member Indians and non-Indians, who have entered into consensual relations with Tribal members, will be regulated under this Title just as the activities of Tribal members in accordance with federal law.
- (C) The Comanche Nation has the inherent right to exclude members, non-member Indians, and non-Indians as well as the inherent authority to protect its political integrity and provide for the welfare of its members and others who choose to live or conduct business within its territories.
- (D) The Comanche Nation Tribal Court is vested with jurisdiction to enforce all provisions of this Title against any person who has committed an act of Domestic Violence against a victim within Comanche Nation Indian Country, provided if the perpetrator is a non-Indian, he or she must have sufficient ties to the Comanche Nation.

A non- Indian has sufficient ties to the Comanche Nation for purposes of jurisdiction if they:

- (1) Reside within Comanche Nation Indian country;
- (2) Are employed within Comanche Nation Indian country; or
- (3) Are a spouse, intimate partner, or dating partner of either:
  - (a) A member of the Comanche Nation, or
  - (b) A non-member Indian who resides in the Comanche Nation Indian country.

## **Section 7.104      Definitions**

As used in this Title:

- (C) “Domestic Violence” means the occurrence of one or more of the following acts committed by a person against a family or household member, and/or a dating partner:
  - (1) Attempting to cause or causing physical harm, or
  - (2) Placing such person in fear and/or reasonable apprehension of physical harm, or
  - (3) Causing such person to engage in involuntary sexual activity by force, threat of force, or duress.
  
- (B) “Stalking” means the willful, malicious, and repeated following of a person, by an adult, emancipated minor or minor thirteen years of age or older, with the intent of placing the person in reasonable fear of death or great bodily injury. Stalking also means using intimidating acts against a person or personal property, using substantial intimidation or placing a person at a substantial safety risk, whether in person or by any other electronic means; or the use of a third person to carry out acts that if done by the person using such person would result in stalking.
  
- (C) “Harassment” means unwanted contact and or any of the following;
  - (1) A knowing and willful course or pattern of conduct by a family or household member directed at a specific person which seriously alarms or annoys the person, and which serves no legitimate purpose.
  - (2) The “course of conduct” must be such as would cause a reasonable person to suffer substantial emotional distress or embarrassment. “Harassment” shall include, but not be limited to telephone calls which are obscene or are threatening in nature.
  
- (D) “Family or Household members” means:
  - (1) spouses,

- (2) ex-spouses,
  - (3) present spouses of ex-spouses,
  - (4) parents, including grandparents, stepparents, adoptive parents and foster parents,
  - (5) children, including grandchildren, stepchildren, adopted children and foster children,
  - (6) persons otherwise related by blood or marriage,
  - (7) persons living in the same household, as intimate partners, or who formerly lived in the same household, as intimate partners,
  - (8) persons who are the biological parents of the same child, regardless of their marital status, or whether they have lived together at any time.
  - (9) And any other person listed, or defined, as victims under the authority of the Violence Against Women Act (VAWA), 25 USC §1304(a).
- (E) “Dating Partner” means a person who is or has been in a social, dating relationship of a romantic or intimate nature with the abuser. The existence of such a relationship is based on a consideration of:
- (1) The length of the relationship; and
  - (2) The type of relationship; and
  - (3) The frequency of interaction between the persons involved in the relationship.
- (F) “Protective Order” means any valid order of protection issued by a court of competent jurisdiction including, but not limited to, emergency, ex parte, temporary, or permanent protective orders, prohibiting Domestic Violence, Stalking, and/or Harassment.
- (G) “Foreign Protective Order” means any valid order of protection issued by a court of another state or a Tribal court.
- (H) “Mutual Protective Order” means a final protective order or orders issued to both a plaintiff who had filed a Petition for a Protective Order and a defendant included as the defendant in the plaintiff’s Petition restraining the parties from committing domestic violence, stalking, harassment or sexual assault against one another.

## **Section 7.105      Rights of Victim of Domestic Violence**

A victim of domestic violence or dating violence is entitled to all rights granted to victims of crime, including but not limited to the right to:

- (A) Be informed of all hearing dates, continuances, probation proceedings, and any release or escape of the alleged or convicted perpetrator;
- (B) Provide the court with a victim-impact statement, victim-opinion statement, and an assessment of the risk of future harm;
- (C) Be present at sentencing and address the court;
- (D) Advise the court of conditions of probation and parole required to ensure the safety of the victim and other family or household members;
- (E) Restitution for losses sustained as a direct result of any criminal conduct.
- (F) Or any relief the Court deems necessary.

The victim's advocate shall notify any victim of domestic violence of his/her rights set forth in this section, in writing. For notice to be meaningful, it should be actual, timely and written in a language which the victim understands.

## **Section 7.106      Crime Involving Domestic Violence Defined**

The purpose of this Title is to clarify that domestic violence is a separate and distinct category of crime that includes elements of the following underlying offenses and to acknowledge that when the following crimes are committed against a family or household member, as defined in Section 7.104(D), a finding of such shall trigger the application of this Title. The crime of "Domestic Violence" or "Dating Violence" occurs when a person commits one or more of the following offenses against a family or household member or former family or household member or dating partner:

1. Arson
2. Assault or Battery Offenses
3. Burglary, Breaking and Entering
4. Destruction of Property, Criminal Mischief
5. Homicide

6. Kidnapping, Abduction
7. Sex Offenses
8. Theft
9. Weapons Law Violations, 18 USC § 922(g)(9)
10. Disorderly Conduct
11. Non-violent family offenses
12. Stalking
13. Trespass of Real Property
14. Public Intoxication
15. Harassment in a civil or criminal context: Title 2, Part XV, Section 4.151

The use and/or presence of drugs and alcohol shall not be used to mitigate the seriousness of the domestic violence offense.

**Section 7.107      Mandatory Arrest for Crimes Involving Domestic Violence  
Determination of Predominant Aggressor, Required Report**

- (A) A law enforcement officer shall arrest any person, with or without a warrant, whom he has probable cause to believe committed any crime involving domestic violence as defined in this Title. The officer shall promptly, within one business day, file a report with the prosecutor's office. Thereafter, the Comanche Nation Prosecutor has up to seventy-two (72) hours to hold the defendant without bond and file a Criminal Complaint alleging the crime. If there are no charges filed within seventy-two (72) hours of arrest, the offender shall be released.
- (B) If a law enforcement officer receives a complaint of domestic violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine who was the predominant aggressor. If the officer determines that one person was the predominant aggressor, the officer need not arrest the opposing person alleged to have committed domestic violence. In determining whether a person is the predominant aggressor, the officer shall cumulatively consider the following factors:
  - (1) The history of domestic violence, both documented prior complaints and



convictions and the law enforcement officer's own prior knowledge of the family;

- (2) The relative severity of the injuries inflicted on each person evidenced by who in the relationship poses the most danger to the other person;
  - (3) The likelihood of future injury to each person;
  - (4) Whether one of the persons acted in self-defense or defense of another;
  - (5) The degree to which one of the persons has acted with more deliberate intent to control, isolate, intimidate, emotionally demean, cause injury or pain or fear of harm to the person or third person.
- (E) The law enforcement officer shall consider the dynamics of domestic violence and the definition of predominant aggressor in determining which party to arrest.

### **Section 7.108      Law Enforcement Officers Who Batter; Procedure**

Law enforcement officers who are suspected of committing the crime of domestic violence shall be subject to all provisions of this code.

Upon receiving a report or notification that a law enforcement officer is a possible perpetrator of domestic violence:

- (A) The responding officer shall immediately notify the on-duty supervisor or designate.
- (B) The supervisor shall respond to the call and will notify the chief or designate.
- (C) Line officers will secure the scene and ensure the safety of all parties.
- (D) Under no circumstances will line officers be responsible for or be assigned to investigate calls regarding other officers of equal rank or superior officers. Someone of higher rank than the alleged perpetrator shall be involved in responding.
- (E) The domestic violence investigator or designate shall be notified of the call.
- (F) Once the preceding is complete the line officer shall await the response of a superior.

### **Section 7.109      Prosecution Responsibility**

The Comanche Nation Attorney General or Prosecutor designee shall be responsible for initiating, presenting, and prosecuting any domestic violence criminal case.

**Section 7.110      Authority of Law Enforcement Officers to Seize Weapons**

Incident to an arrest, or in the course of securing a crime scene involving domestic violence a law enforcement officer:

- (C) Shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of a crime or any weapon in the immediate vicinity of the alleged commission of the offense. The immediate vicinity is not limited to the “wingspan” of the perpetrator and can include additional rooms of the home if weapons are reasonably suspected to be present.
- (C) Shall seize a weapon that is in the plain view or which is located during a search authorized by a person entitled to consent to the search. The seizure of weapons is without regard to ownership of the weapons; weapons owned by a third party are subject to seizure when officers conclude that the weapon must be seized to protect law enforcement, victims of domestic violence or others.
- (C) These weapons shall be receipted and inventoried and returned to the proper owner of the weapon at the closing of the case or by Judge’s orders.

**Section 7.111      Immunity**

Any law enforcement officer shall have immunity from any liability, civil or criminal, in making arrests or exercising any authority granted under this Code, if the law enforcement officer acts in good faith and has probable cause based on the totality of the circumstances upon the best information so as to provide protection for victims of domestic violence. Law enforcement officers shall have the same immunity with respect to participation in any court proceedings resulting from arrests made for domestic violence or any crimes involving domestic violence.

**Section 7.112      Conditions for Pre-Trial Release**

- (A) No person arrested for a crime of domestic violence or violation of protective order shall be released until they make an initial appearance before the judge or magistrate. The initial appearance shall be held within forty-eight (48) hours of arrest, excluding weekends or holidays in which the courthouse is closed. Bond may be set at the initial appearance.

- (B) No person arrested for the crime of domestic violence or violation of protective order shall be allowed a temporary release before initial appearance except for good cause as determined by the judge, and provided such release does not represent an imminent danger to the perpetrator's spouse/partner, immediate family or others.
- (C) The use or abuse of alcohol and/or other chemicals by the alleged perpetrator shall be considered, not only in relationship to the alleged offense but as alcohol and/or other chemicals relate to the alleged perpetrator's overall lifestyle, in the likelihood that alcohol and/ or other chemicals greatly increase the likeliness or unlikeliness of a person to appear in court, potential for lethality, or enhances the possibility of further threats or injury to the victim.
- (D) Before releasing a person arrested for a charge with a crime involving domestic violence, or a violation of protective order, the court shall make findings on the record, and may impose conditions to the release or bail on the person to protect the alleged victim of domestic violence and to ensure the appearance of the person at subsequent court proceedings. These conditions may include, but are not limited to the following:
  - (1) An order enjoining the person from threatening to commit or committing acts of domestic violence against the alleged victim or other family or household members.
  - (2) An order prohibiting the person from harassing, annoying, telephoning, contacting, or otherwise communicating with the alleged victim, either directly or indirectly through family, relations by marriage, friends or co-workers.
  - (3) An order directing the person to stay away from the home of the alleged victim and/or child(ren) and to stay away from any location where the victim is likely to be.
  - (4) An order prohibiting the person from using or possession of a firearm or other weapons specified by the Court. The Court shall order weapons turned into the Comanche Nation Police Department as a requirement of bond.
  - (5) An order prohibiting the person from possession or consumption of alcohol or controlled substances; and
  - (6) Any other order required to protect the safety of the alleged victim and to assure the appearance of the person in court.

- (E) If conditions of release are imposed, the court shall:
  - (1) Issue a written order for conditional release;
  - (2) Provide law enforcement and/or public safety with any available information concerning the location of the perpetrator in a manner that protects the safety of the victim;
  - (3) Inform the person being released that he is to be monitored by a probation officer for compliance with his conditions on release, and that a violation of these conditions may cause his conditional release to be revoked.
  
- (G) The clerk of courts shall provide a copy of the conditions to the arrested person upon his or her release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the person has been provided other notice of the conditions.

**Section 7.113      Mandatory Arrest for Violations of Condition of Release**

If a law enforcement officer or domestic violence officer has probable cause to believe that a person on domestic violence probation, parole, or other supervised released has violated a condition of release imposed in accordance with Section 14-1-112 herein, the officer shall, without a warrant, arrest the alleged perpetrator whether the violation was committed in the presence of the officer or not.

**Section 7.114      Role of the Court; Sentencing, Probation Conditions**

In responding to the crime of domestic violence the court shall consider;

- (A) The range of punishment for the crime of domestic violence.
  - (1) For first time offenders, the defendant can be incarcerated for a period of time not to exceed one (1) year. The fine for such an offense is to be no more than five thousand dollars (\$5,000.00) and/or banishment. The punishment of Banishment from the Tribe will be in accord with Tribal law.
  - (2) For second and subsequent offenses, the defendant can be incarcerated for a period not to exceed three (3) years. The fine for such an offense is to be no more than fifteen thousand dollars (\$15,000.00) and/or banishment.
  - (3) The punishment of Banishment from the Tribe will be in accordance with Comanche Nation law.

- (B) Noncompliance: In the event that the offender does not comply with the conditions of probation, the court may, in addition to revoking his suspended sentence, and in addition to civil contempt, recommend criminal contempt be filed which may require any sentence for contempt to be served consecutively to the imposition of the offenders original sentence for the underlying offense.

**Section 7.115      Probation Violations, Process for Revocation, Consequences**

- (A) The court may recognize the signed affidavit of the probation officer and accompanying documentation outlining any violation of probation conditions as probable cause to issue a warrant for the perpetrator's arrest.
- (B) Upon arrest for a violation of probation, the person on probation may be held without bond until their initial appearance.
  - (1) If a person is arrested for a second criminal offense while on probation for a Domestic Violence offense, the prosecutor must call a Comanche Nation Judge to determine bond amount, if any.
- (C) The police department shall report to the Attorney General or the prosecutor of any person arrested for any crime who is also on probation for a crime of domestic violence, when they have such knowledge.

**Section 7.116      Civil Sanctions Sought in the Name of the Comanche Nation**

- (A) Removal and Exclusion.
  - (2) The prosecutor for the Tribe may file a civil complaint against the perpetrator for removal and exclusion from the businesses and land of the Comanche Nation. It is necessary to understand that exclusion is a proper remedy to ensure the safety and well being of victims of domestic violence.
- (B) Civil Forfeitures
  - (1) Any weapon, vehicle, or item of personal property used by a native or non-native in the furtherance of an attempt or perpetration of a crime of domestic violence is subject to forfeiture by the Tribal authorities. The requirement for forfeiture is a filing of a civil petition and proof by a

preponderance of the evidence that the particular item sought to be forfeited was used in an attempt to commit or in the perpetration of a crime of domestic violence.

- (2) Any third-party lawful owner of such property may petition the court for return of such property. Upon a finding that the third party participated in or acknowledged that their property would be used for violation of the Comanche Nation's Domestic Violence and Prevention code, the court has the discretionary authority to return the property, or order it to be disposed of, used, or sold for the benefit of the Tribe.
- (C) Contempt of Court: All civil remedies can be enforced by Contempt of Court. This fine is in addition to any other fines imposed upon the perpetrator of domestic violence.
- (D) Appellate Review: Appeals under this Section shall be pursuant to the Rules of Civil Procedure.

**Section 7.117      Spousal Privileges Inapplicable to Criminal Proceedings Involving Domestic Violence**

The following evidentiary privileges do not apply in criminal proceedings in which a spouse or other family member is the victim of an alleged crime involving domestic violence perpetrated by the other spouse:

- (A) The privilege of confidential communications between spouses.
- (B) The testimonial privilege of spouses.

**Section 7.118      Advocate-Victim Privilege Applicable in Cases Involving Domestic or Family Violence**

- (A) Except as otherwise provided in Subsection (B), confidential oral communications between a victim of domestic violence or family violence and domestic violence/family violence advocate, and written records and reports concerning the victims are privileged. The privilege can be claimed by:
  - (1) The victim; or
  - (2) The person who was the advocate at the time of the confidential

communication, except that the advocate may not claim the privilege if the victim is deceased or if the privilege has been waived by the victim.

- (B) The privilege does not relieve a person from a duty imposed under the Comanche Nation Code or federal laws requiring the reporting of violence against children.

### **Section 7.119      Self-Defense, Judicial Safeguards for Victims**

In the event of a dual arrest for domestic violence, the presiding judge will take judicial notice of all factors in the case, including evidence determining who is the predominant aggressor, before entering a guilty plea by an alleged perpetrator. Indications of self-defense shall be sufficient reason for a judge to order a hearing to show cause before proceeding with a domestic violence charge against the alleged perpetrator. Such procedure and hearing shall take place to determine the possibility of self-defense, with or without concurrence of the prosecutor.

During such hearing to show cause, the presiding judge will entertain any pertinent information and/or testimony of domestic violence advocates pertaining to domestic violence or any other factors relating to the self-defense characteristics displayed in domestic violence cases.

### **Section 7.120      Protective Order Petition, Form, Filing/Fees, Preparation**

- (A) Any victim of domestic violence, a victim of stalking, a victim of harassment, a victim of sexual assault, or a victim of dating violence may file a Petition for protective order with the Comanche Nation District Court.
  - (1) If the person believes that they are a victim defined by this Title, the person seeking relief must file a report against the defendant with the proper law enforcement agency before filing a petition for a protective order with the court, or provide good cause why the report was not filed.
  - (2) The filing of a petition for protective order shall not require the court to have jurisdiction or venue of the criminal offense.
- (B) The petition forms shall be provided by the clerk of the court. The court clerk shall develop a standard form for the Petition. If the plaintiff has retained counsel for the filing of the protective order, the attorney may substitute his Petition for the standard Petition prepared by the Clerk of the court.
- (C) Except as otherwise provided by this section, no filing fee, service of process fee, attorney fees or any other fee or costs shall be charged the plaintiff or victim at any time for filing a petition for a protective order whether the protective order is granted or not granted. The court may assess court costs, service of process fees, attorneys fees, other fees and filing fees against the defendant at the hearing on

the petition, if a protective order is granted against the defendant; provided the court shall have authority to waive the costs and fees if the court finds that the party does not have the ability to pay costs and fees.

If the court makes a specific finding that a petition for protective order has been filed frivolously and no victim exists, the court may assess attorney fees and court costs against the plaintiff.

The person seeking relief shall prepare the petition, or at the request of the plaintiff, the court clerk, or the victim advocate, shall prepare or assist the plaintiff in preparing the petition.

**Section 7.121      Hearing, Service of Process, Emergency Ex Parte Orders, Protective Orders, Period of Relief, Title to Real Property**

- (A) A copy of the petition, notice of hearing and copy of the ex-parte order issued by the court shall be served upon the defendant in the same manner as a bench warrant, provided any identifying victim contact or location information is redacted.
- (B) Emergency ex parte orders shall be given priority for service and can be served twenty-four (24) hours a day when the location of the defendant is known. When the Comanche Nation's Police Department cannot perform service, service may be acquired by another law enforcement officer, private investigator, private process server, or any other means deemed appropriate.
- (C) The return of service shall be filed in the court and submitted to the court file prior to the hearing date.
- (D) Within twenty (20) days of the filing of the petition for protective order, the court shall schedule a full hearing on the petition. If the court finds sufficient grounds within the scope of this Title to hold a hearing, such hearing shall be scheduled regardless of whether an emergency ex parte order has previously been issued, requested or denied.
- (E) The court may, in its discretion, schedule a full hearing on the petition for protective order within seventy-two (72) hours when the court issues an emergency ex parte order suspending child visitation rights due to physical violence or threats of abuse.
- (F) If service has not been made on the defendant at the time of the hearing, the court may continue the hearing and the validity of the ex parte order.
- (G) A petition for protective order shall automatically renew every twenty (20) days until the defendant is served. A petition for protective order shall not expire and



must be dismissed by court order.

- (H) Failure to serve the defendant shall not be grounds for dismissal of a petition or an ex parte order, upon the finding that the defendant is eluding service and good faith attempts have been made to serve the defendant, unless the plaintiff or victim requests dismissal.
- (I) At the hearing, the court may impose any terms and conditions in the protective order that the court reasonably believes are necessary to bring about the cessation of domestic abuse against the victim or stalking or harassment of the victim or the victim's immediate family and may order the defendant to obtain a domestic violence inventory or to seek domestic violence counseling as well as drug or alcohol treatment.
- (J) Final protective orders authorized by this section shall be on a standard form developed by the court.
- (K) After notice and hearing, protective orders authorized by this section may require the plaintiff and defendant or both to undergo treatment or participate in court-approved counseling to bring about the cessation of domestic violence.
- (L) Either party or both may be required to pay the costs of such treatment or counseling services. The court shall not be responsible for such costs.
- (M) Any protective order issued shall be valid for a period not to exceed three (3) years unless extended or modified by the protected party, or vacated or rescinded by the Court.
- (N) The court shall notify the parties at the time of the issuance of the protective order of the duration of the protective order.
- (O) Upon the filing of a motion by either party to modify, extend, or vacate a protective order, a hearing shall be scheduled and notice given to the parties. At the hearing, the issuing court may take such action as is necessary under the circumstances.
- (P) Upon extension of a protective order the protective order shall be given a new number reflective of the issuing year. An extended protective order shall be valid for three years.
- (Q) No person shall knowingly and willingly seek a protective order against a spouse or ex-spouse for purposes of harassment, undue advantage, intimidation or limitation of child visitation rights in any divorce proceedings or separation action without just cause demonstrated, or the person may be subject to civil sanctions.

- (R) A protective order shall not in any manner:
  - (1) affect title of real property;
  - (2) purport to grant to the parties a divorce or legal separation;
  - (3) or division of property;
  - (4) award child support.
  
- (S) A protective order may temporarily affect:
  - (1) a child custody and visitation order from any jurisdiction.
  
- (T) When granting a protective order for the protection of a minor child from violence or threats of abuse, the court shall allow visitation only under conditions that provide adequate supervision and protection to the child while maintaining the integrity of a divorce decree or temporary order.
  
- (U) The court shall refrain from issuing any mutual protective orders, as defined in this title. If both parties allege domestic abuse by the other party, the parties shall do so by separate petitions. The court shall review each petition separately, in an individual or a consolidated hearing and grant or deny each petition on its individual merits. If the court finds cause to grant both motions, the court may do so by separate orders and with specific findings justifying the issuance of each order.
  
- (V) The court may consolidate a hearing if:
  - (1) The court makes specific findings that:
    - (a) Sufficient evidence exists of domestic abuse, stalking, harassment, or sexual assault against each party, and
    - (b) Each party acted primarily as aggressors, and
  - (2) The defendant filed a petition with the court for a protective order no less than three (3) days, not including weekends or holidays, prior to the first scheduled full hearing on the petition filed by the plaintiff, and
  - (3) The original plaintiff had not less than forty-eight (48) hours prior notice to the full hearing on the petition filed by the original

defendant.

- (W) The court may allow a plaintiff or victim to be accompanied by a victim support person at court proceedings and such person may speak on the plaintiff's behalf with leave of court.

**Section 7.122      Police To Be Sent a Copy of The Protective Order**

- (A) Within twenty-four (24) hours of the return of service of any ex parte or final protective order, the clerk of the issuing court shall send certified copies thereof to all appropriate law enforcement agencies. A certified copy of any extension, modification, vacation, cancellation or consent agreement concerning a final protective order shall be sent within thirty-six (36) hours by the clerk of the court to those law enforcement agencies receiving the original orders pursuant to this section and to any law enforcement agencies designated by the court.
- (B) The Comanche Nation Police Department shall maintain a data base which is accessible twenty-four hours to provide information to any law enforcement agency seeking information regarding the validity of any protective orders issued by the court.

**Section 7.123      Violation of Protective Order-Punishment**

- (A) Any person who has been served with an ex parte or final protective order and is in violation of such protective order, upon conviction shall be guilty of Violation of the protective order and shall be punished by a fine not exceeding five thousand dollars (\$5,000.00) or by a term of imprisonment of not more than one (1) year, or both.
- (B) Any person who has been found guilty of violation of a protective order in Tribal or state court and is found guilty of a subsequent violation shall be guilty of a Violation of protective order second or subsequent offense and shall be punished by a fine not exceeding fifteen thousand dollars (\$15,000.00) or by a term of imprisonment of not more than three years, or both. In addition, the crime of violation of protective order second or subsequent violation also carries the punishment of banishment from the Comanche Nation.

**Section 7.124      Validity of Orders**

All orders issued pursuant to this code shall comply with the Violence Against Women Act's full faith and credit provision (18 USC § 2265) and are enforceable throughout Oklahoma, all fifty states, U.S. Territories, Tribal Lands, and the District of Columbia, unless specifically

modified or terminated by a judge of the district court, or Supreme Court Justice. In addition, all orders issued pursuant to this code shall be entered into a database accessible to all law enforcement officers, all orders entered into said database are presumed valid.

### **Section 7.125      Warrantless Arrest-Procedure**

- (A) A law enforcement officer, without a warrant, may arrest and take into custody a person if the law enforcement officer has probable cause to believe that:
  - (1) An emergency, ex parte, temporary, or final protective order has been issued by a Tribal Court or State District Court anywhere in the United States; and
  - (2) There is proof of the issuance of the protective order in a database accessible to all law enforcement officers; and
  - (3) The person named in the order has received notice of the order and has had a reasonable time to comply with such order; and
  - (4) The person named in the order has violated, or failed to comply with, the protective order.

### **Section 7.126      Foreign Protective Orders**

Foreign protective orders shall be enforceable upon Tribal property. Until a foreign protective order is declared invalid by a court of competent jurisdiction it shall be given full faith and credit by all law enforcement officers and courts within the Tribe's jurisdiction.

Law enforcement officers need not obtain a Tribal Judge's approval to enforce a foreign protective order pursuant to Section 7.125 of this Title. Report enforcement of a foreign protective order to the prosecutor's office within seventy-two (72) hours of such enforcement when arrest occurs.

### **Section 7.127      Address Confidentiality**

- (A) Persons attempting to escape from actual or threatened domestic violence, sexual assault, or stalking establish new addresses in order to prevent their assailants or probable assailants from finding them. The purpose of this section is to enable Tribal organizations to respond to requests for public records without disclosing the locations of Victims of Domestic Violence and to enable cooperation with the State of Oklahoma in providing confidentiality for Victims of Domestic Violence, and to enable the Tribal office of domestic violence to accept mailings for victims and to act as a substitute address. It is the duty of the victim to keep the Tribal

office of domestic violence and the court clerk informed of contact information.

- (B) As used in this section:
  - (1) “Address” means a residential street address, school address, or work address of an individual, who is a Victim of Domestic Violence;
  - (2) “Victim of Domestic Violence or Protected Person” means a person seeking protection through a Protective Order.
  - (3) “Domestic abuse” means any act of Domestic Violence as defined in Section 7.104 of this Code.
- (C) All persons with access to petitions or applications for protective orders are responsible for address confidentiality.
- (D) Disclosure of victim’s confidential information is a civil infraction punishable by up to a five thousand dollar (\$5,000.00) fine.

**Section 7.128      Mandatory Training**

All employees and contractors of the Comanche Nation Tribal Court, including the Judges, Prosecutors, and Public Defenders, as well as the Family Assistance Center and law enforcement shall participate in adequate annual training that may include, but not be limited to:

- (A) The dynamics of domestic violence, the impact of victimization, offenders’ reeducation programs, coordinated system response in order to facilitate the goals of this Title. In addition, law enforcement and prosecutor training shall include the technical aspects in making a domestic violence arrest including probable cause, self-defense, mutual arrest, evidence gathering, evidence-based prosecution and report writing.
  - (1) Reporting:
    - (a) Law enforcement will report to the training manager annually by December 31.
    - (b) All others will report to the Chief Judge of the Comanche Nation District Court annually by December 31.
  - (2) Training costs shall be paid through available grant funds, and/or through the appropriate department. Under no circumstances shall contractors or law enforcement officers be personally responsible for the costs of the mandatory training under this Title.

- (B) The Comanche Nation Tribal Court has the authority to order personnel attend appropriate training, subject to the availability of funding.

**Section 7.129      Severability Clause**

If any clause, section or part of this code is declared invalid by the Tribal court, such shall not render invalid the remainder thereof, but shall be confined in its operation to the offending section.