GENERAL CIVIL PACKET

COMANCHE NATION TRIBAL COURT

DISTRICT COURT

The forms in this packet are to be used as a **template**, please re-type the forms and **do not** fill in the blanks. Please read the instructions carefully before completing the forms. The Court Clerks **CANNOT** accept documents that do not conform to the instructions in this packet.

You should refer to the Comanche Nation Tribal Court Codes prior to filing any petition or pleadings for a complete understanding of the rules and procedures governing your case. Should you need assistance in preparing any documents, you must consult with an attorney at your own expense. This court does not have legal aid. The Court Clerks are prohibited by Ethical Code and Court Rules to provide legal advice and help parties prepare or type court documents. Different situations may require special procedures and the Court Clerks **CANNOT** advise you on how to proceed or what forms may be necessary in specific situations.

INSTRUCTIONS FOR FILING

IMPORTANT INFORMATION PLEASE READ!!!

1. Documents must be typed DOUBLE-SPACED and on LETTER SIZE PAPER (8 ½" x 11").

2. Documents must be signed in front of the Court Clerk or a notary public when you are ready to file.

3. Filing fees, copy fees, etc. must be made in the form of a CASHIER'S CHECK or MONEY ORDER and must be payable to "Comanche Nation Tribal Court". Filing fees MUST be paid at the time of filing your petition. If you are unsure of the amount of the filing fees, contact the Court Clerk.

4. Submit original Documents and one (1) copy for each party to be served, and an additional copy if you want a copy of the document for your records. If the Court Clerk makes your copies, you will be charged a copy fee of $0.50 PER PAGE.

5. Documents must have the FULL ADDRESS including street, city, state & zip of the parties to be served. Obtaining this information is **your** responsibility.

6. The forms are a guide to use in preparing the documents. DO NOT fill in the blanks and submit for filing. IT MUST BE RE-TYPED.

7. Petitions filed MUST have a copy of the relevant birth certificate and tribal enrollment card/CDIB and be submitted with the petition when filed. Obtaining these documents is YOUR responsibility.

8. Proof of Service of a Petition is MANDATORY for your case to proceed. Obtaining proof of service is **your** responsibility. If you request the Court Clerks to serve the documents on your behalf, service fees MUST be paid at the time of submitting Request of Service.

Court Clerks WILL NOT accept documents

that do not conform to these Instructions.

Captions

Introduction

INTRODUCTORY COMMENT

This Court requires a caption on any pleading that sets forth the name of the court, the title of the action, the file number, and a designation of the pleading, *e.g.*, "Petition", "Answer", etc. The names of all parties must be listed in the caption of the petition, but in other pleadings it is sufficient to state the name of the first party on each side along with the phrase "et al." to indicate the parties who are not listed by name. Third-party petitions, counterclaims, cross-claims, and petitions in intervention must include the names of the parties asserting the claims and the parties against whom the claims are asserted.

Caption—General form

IN THE COMANCHE NATION TRIBAL COURT
DISTRICT COURT

NAME,	)	
	)	
Plaintiff,	)	
	)	
Vs.	)	Case No. ___-____-_____
	)	*(Court Use Only)*
NAME,	)	
	)	
Defendant.	)	
	)	

PETITION

Caption—Representative capacity

IN THE COMANCHE NATION TRIBAL COURT
DISTRICT COURT

NAME,as guardian of C.D.,a minor,	)	
	)	
Plaintiff,	)	
	)	
Vs.	)	Case No. ___-____-_____
	)	*(Court Use Only)*
NAME,	)	
	)	
Defendant.	)	
	)	

PETITION

Notes

This form should be adapted to reflect the representative's appropriate capacity.

A party may sue or be sued in a representative capacity (*e.g.*, as a guardian, trustee, or class representative). Executors, administrators, guardians, bailees, and trustees of express trusts to sue in their own names without joining the parties for whose benefit the actions are brought.

Caption—Infant by parent and next friend

IN THE COMANCHE NATION TRIBAL COURT
DISTRICT COURT

NAME, a minor, by C.D., his/her Parent and Next Friend, Plaintiff,	)	
Vs.	)	Case No. ___-____-_____
	)	*(Court Use Only)*
NAME, Defendant.	)	

PETITION

Notes
An infant or an incompetent person may sue by a guardian *ad litem* or a next friend, or in the name of his representative, if the representative is a court-appointed general guardian, conservator, or other like fiduciary. Similarly, a suit may be brought against an infant or incompetent person by naming the guardian *ad litem*, next friend, or other representative.

Caption—Corporation and corporate officer

IN THE COMANCHE NATION TRIBAL COURT
DISTRICT COURT

A.B., Inc., an Oklahoma corporation, and C.D., as President of A.B., Inc., Plaintiff,	)	
Vs.	)	Case No. ___-____-_____
	)	*(Court Use Only)*
NAME, Defendant.	)	

Caption—Plaintiff with fictitious name

IN THE COMANCHE NATION TRIBAL COURT
DISTRICT COURT

John Doe, Anonymous, Plaintiff,	)	
Vs.	)	Case No. ___-____-_____
	)	*(Court Use Only)*
NAME, Defendant.	)	

PETITION

Notes
Although the names of all parties are to be included in the caption of a petition, in some circumstances a plaintiff may be allowed to proceed anonymously.

Introduction

INTRODUCTORY COMMENT

Every pleading, written motion or other paper filed with an Oklahoma state court must be signed by at least one attorney of record. If a party is not represented by counsel, the party's signature must appear on every paper filed in the action. An attorney must sign in his or her own name, rather than as a member of a firm, and the signature must include the Oklahoma Bar Association identification number. The evident purpose of requiring a signature in the attorney's individual name is to single out the individual attorney for strict accountability for a violation of the rules. If the signature is omitted from a paper, the paper will be stricken unless it is signed promptly after the attorney or party is made aware of the omission.

Certification Requirement. An attorney's or unrepresented party's signature on a pleading or other paper constitutes a certification of a number of matters. First, the attorney or party has made reasonable inquiry into the factual and legal basis of the paper. Second, the attorney or party is not presenting it for an improper purpose, such as harassment, causing unnecessary delay or needlessly increasing the cost of litigation. Third, there is a basis in existing law or a non-frivolous argument for the extension, modification or reversal of existing law for the legal contentions in the paper. Fourth, there is evidentiary support for the allegations and factual contentions in the paper, or at least specified allegations likely to have evidentiary support after reasonable investigation or discovery. Fifth, denials of factual contentions are either warranted on the evidence, or if specifically identified, are reasonably based on a lack of information and belief. In addition, if the attorney or party files or submits the paper to the court, or advocates it to the court, the same certifications are made, even if the attorney or party did not sign the paper.

Sanction. An attorney or party is subject to an appropriate sanction for a violation of the certification requirement. The sanction may be imposed either upon motion or on the court's own initiative, but notice and a hearing must be given before imposition of the sanction. If sanctions are sought by motion, the motion must be made separately from other motions or requests, and it must be served on the offending party at least twenty-one days before it is filed with the court. During the twenty-one day period before the filing of the motion, the offending party has the opportunity to withdraw or correct the paper that is the subject of the motion in order to avoid being subject to sanctions. If sanctions are imposed on the court's own initiative, the court must issue an order to show cause for imposing sanctions before the voluntary dismissal or settlement of the case.

The sanction must be limited to "what is sufficient to deter repetition of [the violation] or comparable conduct by others similarly situated." If a court imposes a sanction it must describe the conduct that constituted the violation, and it must also explain the basis for imposing the sanction. Sanctions may include directives of a non-monetary nature, an order to pay a penalty into court, an award to the moving party of the reasonable expenses and attorney fees incurred in bringing the motion, or an order directing payment of some or all of the reasonable attorney fees incurred as a direct result of the violation. Monetary sanctions may be imposed on the attorneys, law firms or parties who were responsible for the violation. However, monetary sanctions may not be imposed against a represented party for a violation of the certification that the legal contentions in a paper are warranted by law.

Verifications. Unless specifically required by statute, pleadings do not need to be verified or accompanied by an affidavit.

Entry of Appearance and Withdrawal of Attorneys

Introduction

INTRODUCTORY COMMENT

Entry of Appearance. Every party to any civil action must file an entry of appearance by counsel or personally, if not represented by an attorney. The entry of appearance should be the first paper filed in the action by a party or should accompany the first paper filed in the action. Each time a party changes, adds or substitutes counsel, a new entry of appearance must be immediately filed. The entry of appearance must include the name and signature of counsel or the unrepresented party, the name of the party represented by counsel, the mailing address, telephone and fax numbers, Bar Association number and name of the law firm of counsel, if any. A party filing an entry of appearance must serve it on all other parties of record. A party who files an entry of appearance does not waive any defenses.

An appearance entitles a party to receive copies of all pleadings and papers filed in the action. Once an attorney enters an appearance on behalf of a party, copies of all pleadings and papers that are filed must be sent to the attorney, rather than the party.

Notice of Change of Address. The address provided on the entry of appearance is the address of record for any attorney or party, and service of notice to the address of record will be considered valid service for all purposes. An attorney or party has a duty to maintain a current address with the court. All attorneys and unrepresented parties must provide immediate notice to the court of a change of address by filing notice with the court clerk. The notice of the change of address must contain the same information as provided in the entry of appearance. It must be served on all parties, and a copy should be provided to the assigned judge.

Withdrawal of Attorney. After entering an appearance, an attorney may withdraw from representing a client if the withdrawal can be accomplished without material adverse effect to the client's interests Leave of court or consent of the client and opposing counsel may also be required.

No counsel may withdraw from a pending case without leave of the court. A motion to withdraw may be filed at any time. It must be accompanied by a proposed order. A copy of the motion must be served on the client and all attorneys of record. The motion must either be signed by the client or contain a certificate of counsel that 1) the client has knowledge of the counsel's intent to withdraw, or 2) the counsel has made a good faith effort to notify the client and the client cannot be located.

In civil actions a court may grant a motion to withdraw in the absence of successor counsel only if the motion contains the name and address of the party. The order allowing withdrawal must notify the unrepresented party to file an entry of appearance either pro se or by substitute counsel within thirty days from the date of the order. The order must also indicate that the failure to prosecute or defend the case may result in a dismissal without prejudice or a default judgment. If no entry of appearance is filed within thirty days, the unrepresented party, other than a corporation, is deemed to be acting pro se.

In all cases, counsel seeking to withdraw should advise the court whether the case is currently set for a motion docket, pretrial conference or trial.

Notice of change of address

IN THE COMANCHE NATION TRIBAL COURT
DISTRICT COURT

NAME,	)	
	)	
Plaintiff,	)	
	)	
Vs.	)	Case No. ___-____-_____
	)	*(Court Use Only)*
NAME,	)	
	)	
Defendant.	)	
	)	

NOTICE OF CHANGE OF ADDRESS

To: All parties of record
Clerk of the Court

Please Take Notice that on *[Date]*, the undersigned counsel for **Plaintiff/Defendant**, *[Name]*, moved **his/her** law offices to *[new address and telephone number]*. You are requested to serve all future pleadings, notices and orders upon **Plaintiff/Defendant** at this address.

*[Signed]*_____
[Typed Name]
Attorney for
Plaintiff/Defendant
[Bar Association Number]
[Mailing Address]
[Telephone and Fax Numbers]

Notes

Notes On Use

Counsel for a party has a duty of maintaining a current address with the court and a duty to notify the court of a change of address. A notice of a change of address must be filed with the court and served on all parties of record.

Motions, Orders and Briefing

Introduction

INTRODUCTORY COMMENT

A party may request an order from the court by motion, which must be in writing unless the motion is made during trial or at a hearing. There are countless varieties of motions that may be of use during the course of a lawsuit. A motion may be used to request a court order even though there is no specific authority or precedent for it.

A written motion, other than one which may be heard *ex parte*, and notice of the hearing must be served at least five days before the time specified for the hearing, unless a different period is fixed by the court rules, or by order of the court. An order fixing a different period may for cause shown be entered on an *ex parte* application. When a motion is supported by affidavit, the affidavit may be served with the motion.

Hearings on Motions. If a motion is not opposed, a statement to that effect should appear in a prominent location on the motion, since an unopposed motion will not require a hearing. Otherwise, the attorney who is making the motion should present an Order Setting Hearing on Motion to the judge's clerk. After the judge sets a date for the hearing, the Motion and Order Setting Hearing on Motion should be filed and served on opposing counsel.

Every motion, unless specifically excepted, must be accompanied by a brief. Briefs are not required for motions:

1. for the extension of time;
2. to continue a pretrial conference, hearing, or trial;
3. to amend pleadings;
4. to file supplemental pleadings;
5. to appoint a next friend or guardian ad litem;
6. to substitute a party;
7. to conduct physical or mental examinations;
8. to add additional parties;
9. to stay proceeding to enforce a judgment; or
10. for admission *pro hac vice*; so long as each such motion states whether the other parties concur or object to the motion.

Response briefs must be filed within fifteen days of the filing of the motion. Reply briefs may be filed within eleven days of the filing of the response. Any failure to comply with these time requirements will constitute a confession of the motion or waiver of objection.

Briefs may not exceed twenty-five pages without permission of the court. Briefs exceeding fifteen pages must contain a table of contents and a table of authorities.

If a brief relies upon municipal ordinances, governmental regulations, or statutes foreign to the court's jurisdiction, a copy of such authority must be appended to the brief.

Notes

An appealable order must include the caption of the case, the file number of the case, and the title of the instrument. It also must include a statement of the disposition of the action, including the relief awarded, and be signed by the judge. Although not mandatory, it would be good legal practice for other orders to also satisfy these requirements.

A motion that is unopposed should be accompanied by an order for the judge to sign upon granting the motion. Some courts do not allow proposed orders to be submitted by mail, and instead require them to be presented by attorneys or licensed legal interns who have sufficient familiarity with the case to answer questions from the court.

A contested motion may be accompanied by a proposed order, but it may be difficult to predict the court's decision in advance of the hearing, and therefore, it is often necessary for the attorneys to prepare an order after the hearing that memorializes the ruling.

The preparation of an order following a hearing on a contested motion is done by the moving party, unless the court directs otherwise. If an order is prepared after a hearing, all attorneys should approve the form of the order before it is submitted for the judge's signature. If the attorneys cannot agree on the form of the order, another hearing may be required.

The trial court may decide a motion without a hearing. Often, however, the trial court will set a motion for hearing and hear argument of counsel, receive evidence, or both. The order should reflect whether the court decided the motion without a hearing, heard argument of counsel, or heard argument of counsel and received evidence.

The party who prepared the order should mail a file-stamped copy of it to all parties who are not in default for failure to appear in the action. If the order is appealable, the time for appeal begins from the date the order is filed with the court clerk, provided that a file-stamped copy of the order is mailed to all parties within three days of the filing of the order. If a file-stamped copy of the order is not mailed to the parties within three days of the filing of the order, the appeal time does not begin to run until a file-stamped copy of the order is mailed to all parties.

Statements Under Penalty of Perjury and Affidavits

Introduction

INTRODUCTORY COMMENT

A statement under penalty of perjury may be used whenever any law, rule or order permits a matter to be supported, established or proved by a sworn statement, declaration, verification, certificate, oath or affidavit (other than a deposition, oath of office, oath required to be taken before a specified official other than a notary public, or an acknowledgment of an instrument affecting real property). 12 Okla. Stat. Ann. § 426. The matter may be established or proved by the unsworn statement of the person made and signed under penalty of perjury setting forth the date and place of execution and that it is made under the laws of Oklahoma. The signed statement constitutes a legally binding assertion that the contents of the statement to which it refers are true.

While a statement under penalty of perjury may now be the most convenient method in many circumstances for offering proof, an affidavit may still be used as well. An affidavit is "a written declaration, under oath, made without notice to the adverse party." Affidavits must be sworn to before a notary public who is duly licensed either in Oklahoma or elsewhere. The certificate of the notary public at the end of the affidavit is called a jurat. Both affidavits and statements under penalty of perjury are alternatives to live testimony for proof of facts to the court. They may be used in a variety of circumstances, such as to prove service of process, to establish territorial jurisdiction over a nonresident defendant, and to prove facts in connection with a motion. Whenever a motion raises factual issues, the motion should be supported by either an affidavit or a statement under penalty from a person having knowledge of the facts, if possible.

One of the more common uses of an affidavit or a statement under penalty of perjury is for proof of facts in connection with a motion for summary judgment. Because both are substitutes for live testimony, all statements in either of them must comply with the Oklahoma Evidence Code in order to be considered by a court. Consequently, either an affidavit or a statement under penalty of perjury should include a foundational showing of personal knowledge, and inadmissible hearsay and improper lay opinion should be avoided. An affidavit or statement under penalty of perjury must state facts positively, rather than on information and belief, unless the belief of the affiant or maker is relevant to the lawsuit.

Introduction

INTRODUCTORY COMMENT

Stipulations are agreements between counsel to facilitate trial and pretrial procedure, *e.g.*, eliminating the need for proof of uncontested matters or providing for the use of particular procedures. The parties are not allowed to stipulate, however, with respect to discovery if the stipulation would interfere with any time set by the court for completion of discovery. In addition, stipulations may not be used where judicial approval is necessary, such as where the parties seek to alter the time to respond to pleadings. Instead, a party should file an appropriate motion to obtain a court order.

Stipulations may be entered into either orally in open court or in writing. Once made, a stipulation is binding on the parties and the court, unless the court permits the stipulation to be withdrawn. The standards for allowing withdrawal of a stipulation differ according to whether the stipulation is substantive or procedural. A compromise on a controverted issue in a case is a substantive stipulation, which is tantamount to a contract and may be withdrawn only on grounds that would warrant nullifying a contract, such as fraud or violation of public policy. A procedural stipulation, such as one concerning the identity of parties, may be withdrawn by leave of court upon a showing of cause, such as that the fact stipulated to is clearly untrue. In contrast to ordinary contracts, no consideration is required for a stipulation to be enforceable.

Introduction

INTRODUCTORY COMMENT

Computation of Time. In computing any period of time under the rules of the court, an order of the court, or any applicable statute, the following rules apply:

1. The day of the act, event or default from which the designated period of time begins to run is not included.
2. The last day of the period computed is included unless it is a legal holiday or any other day the office does not remain open until the regularly scheduled closing time.
3. When the last day of the period falls on one of these days, the period runs until the end of the next day that is not a legal holiday or any other day on which the office does not remain open until the regularly scheduled closing time.
4. When the period of time allowed is less than eleven days intermediate legal holidays and any other days the office does not remain open until the regularly scheduled closing time are excluded from the computation.
5. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him by mail, three days are added to the prescribed period.

Enlargement of Time. The court may enlarge the time required to perform an act for cause shown either before or after the expiration of the prescribed period. However, the court may not enlarge the time: for taking an appeal, for seeking a new trial or judgment notwithstanding the verdict, or seeking to correct, open, modify, vacate or reconsider a judgment, decree or appealable order, except as otherwise authorized by statute.

Extensions of time are not a matter of right and cause must be shown to secure an extension of time both before and after the expiration of the originally prescribed period. While the court has broad discretion over the granting of extensions of time, after the expiration of the prescribed period, an extension of time may be granted only upon a showing that the failure to act was the result of "excusable neglect." Thus, when additional time is needed, it is advisable to present the request for extension before the expiration of the prescribed period.

A stipulation by the parties extending time without an order of the court is not binding on the court. While such a stipulation will not deprive the court of its discretion, as a practical matter, it will likely result in the court's granting an extension of time.

It is advisable to make a request for additional time before the originally prescribed period has expired. A request for additional time made before expiration of the deadline may be granted without motion or notice to the opposing party, no brief or list of authorities is required to accompany a motion for additional time made before expiration of the deadline. Additionally, the trial court's discretion is virtually unlimited if the motion is made before expiration of the originally prescribed period.

Although stipulations between counsels are not effective to extend time by themselves, opposing counsel should be consulted concerning an extension of time, because the trial judge may wish to know whether opposing counsel objects to the extension. Counsel should be considerate in consenting to reasonable requests for extensions of time. If opposing counsel does object, however, the judge may wish to hold a hearing in order to consider the objection, and an order setting a hearing should accompany the request for the extension.

For the trial judge's convenience, an Order Extending Time should accompany the motion.

After the expiration of the prescribed period, the court may enlarge the time for action only upon motion and only if the failure to act was due to excusable neglect. The United States Court of Appeals for the Tenth Circuit held in In re Four Seasons Securities Laws Litigation, 493 F.2d 1288, 1291 (10th Cir.1974), that "a finding of excusable neglect under Rule 6(b)(2) requires both a demonstration of good faith by the parties seeking the enlargement and also it must appear that there was a reasonable basis for not complying within the specified period."

For the trial judge's convenience, an Order Extending Time should accompany the motion.