Choctaw Nation of Oklahoma Code of Civil Procedure

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Chapter 1. Preliminary Provisions.

Section 1. Title of Chapter

This chapter shall be known as the Code of Civil Procedure of the Choctaw Nation.

Section 2. Force of Common Law and Effect of Tribal Custom

The common law, as modified by constitutional and statutory law, judicial decisions and the condition and wants of the people, shall remain in force in aid of the general statutes of the Choctaw Nation of Oklahoma; but the rule of the common law, that statutes in derogation thereof, shall be strictly construed, shall not be applicable to any general statute of the Choctaw Nation of Oklahoma; but all such statutes shall be liberally construed to promote their object. In matters not covered by statute, traditional tribal customs and usages may be applied.

Section 3. Legislative Purpose

This Code shall be construed so as to protect and ensure the political integrity, the economic security, and the health and welfare of the tribe.

Section 4. Reserved.

Section 5. Reserved.

Section 6. Reserved.

Section 7. Reserved.

Section 8. Reserved.

Section 9. Reserved.

Section 10. Reserved.

Section 11. Reserved.

Section 12. Reserved.

Section 13. Reserved.

Section 14. Reserved.

Section 15. Reserved.

Section 16. Reserved.

Section 17. Reserved.

Section 18. Reserved.

Chapter 1B. Professional Negligence.

Section 19. Affidavit of Consultation with Qualified Expert--Extension--Exemption

A.

1. In any civil action for professional negligence, except as provided in subsection B of this section, the plaintiff shall attach to the petition an affidavit attesting that:

    a. the plaintiff has consulted and reviewed the facts of the claim with a qualified expert,

b. the plaintiff has obtained a written opinion from a qualified expert that clearly identifies the plaintiff and includes the determination of the expert that, based upon a review of the available material including, but not limited to, applicable medical records, facts or other relevant material, a reasonable interpretation of the facts supports a finding that the acts or omissions of the defendant against whom the action is brought constituted professional negligence, and

c. on the basis of the review and consultation of the qualified expert, the plaintiff has concluded that the claim is meritorious and based on good cause.

2. If the civil action for professional negligence is filed:

a. without an affidavit being attached to the petition, as required in paragraph 1 of this subsection, and

b. no extension of time is subsequently granted by the court, pursuant to subsection B of this section, the court shall, upon motion of the defendant, dismiss the action without prejudice to its re-filing.

3. The written opinion from the qualified expert shall state the acts or omissions of the defendant or defendants that the expert then believes constituted professional negligence and shall include reasons explaining why the acts or omissions constituted professional negligence. The written opinion from the qualified expert shall not be admissible at trial for any purpose nor shall any inquiry be permitted with regard to the written opinion for any purpose either in discovery or at trial.

B.

1. The court may, upon application of the plaintiff for good cause shown, grant the plaintiff an extension of time, not exceeding ninety (90) days after the date the petition is filed, except for good cause shown, to file in the action an affidavit attesting that the plaintiff has obtained a written opinion from a qualified expert as described in paragraph 1 of subsection A of this section.

2. If on the expiration of an extension period described in paragraph 1 of this subsection, the plaintiff has failed to file in the action an affidavit as described above, the court shall, upon motion of the defendant, unless good cause is shown for such failure, dismiss the action without prejudice to its re-filing. If good cause is shown, the resulting extension shall in no event exceed sixty (60) days.

C.

1. Upon written request of any defendant in a civil action for professional negligence, the plaintiff shall, within ten (10) business days after receipt of such request, provide the defendant with:

a. a copy of the written opinion of a qualified expert mentioned in an affidavit filed pursuant to subsection A or B of this section, and

b. an authorization from the plaintiff in a form that complies with applicable laws, for the release of any and all medical records related to the plaintiff for a period commencing five (5) years prior to the incident that is at issue in the civil action for professional negligence.

2. If the plaintiff fails to comply with paragraph 1 of this subsection, the court shall, upon motion of the defendant, unless good cause is shown for such failure, dismiss the action without prejudice to its re-filing.

D. A plaintiff in a civil action for professional negligence may claim an exemption to the provisions of this section based on indigency pursuant to the qualification rules established as set forth in Section 4 of this act.

Section 20. Reserved.

Chapter 2. General Provisions

CLERK; RECORDS.

Section 21. Reserved.

Section 22. Books to be Kept by the District Court Clerk.

The clerk of the district court shall keep an appearance docket, a trial docket, a journal and such other records as may be ordered by the court or required by law. Such books and records may be kept electronically.

Section 23. Appearance Docket.

On the appearance docket he shall enter all actions in the order in which they are brought, the date of the summons, the time of the return thereof by the officer, and his return thereon, the time of filing the petition, and all subsequent pleadings and papers, and an abstract of all judgments and orders of the court. An abstract shall contain a very brief description of the order or judgment rendered. It must not be encumbered with a detailed recital of the terms. Proceedings other than those which culminated in an order or judgment shall not be abstracted into the appearance docket. Either the judge or the clerk may prepare an appearance docket entry in the form of a minute, or the content of the entry may be dictated either by the judge or the clerk into an electronic recording device. The clerk shall transcribe onto the appearance docket all minute entries made and all the electronically-recorded abstracts.

Section 24. Journal Record--Instruments to be Entered.

Upon the journal record required to be kept by the clerk of the district court in civil cases exclusive of the small claims docket and juvenile proceedings docket shall be entered copies of the following instruments on file:

1. All items of process by which the court acquired jurisdiction of the person of each defendant in the case; and

2. All instruments filed in the case that bear the signature of the judge and specify clearly the relief granted or order made.

The journal may be kept entirely in microfilm, optical disks, or other appropriate medium. Existing journal records in the custody of the court clerk may be destroyed after being stored on at least two microfilm records, optical disks, or other appropriate medium, one of which shall be placed by the court clerk in some secure place so as to safeguard the contents thereof, or in a bank or other appropriate local depository, and one shall be available for public use in the court clerk's office. In case of functional failure of the record in the court clerk's office the copy in storage shall be made available to anyone requesting access to it. The cost of the storage medium and equipment and for viewing and copying shall be paid out of the court fund upon approval by the Chief Judge of the Court of Appeals. Copies of the journal record reproduced from microfilm, optical disk, and other media and copies of the original instruments that are part of the journal records, when certified by the court clerk having the custody of the original, 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 them.

Section 24.1 Disposal of Records.

Any clerk, upon microfilming the record as above set forth, is directed to destroy the record, provided that such record shall first be offered to the Choctaw Nation Tribal Museum, the Oklahoma Historical Society or a county historical society or museum within the State of Oklahoma.

Section 25. Reserved.

Section 25.1. Reserved.

Section 26. Reserved.

Section 27. Clerk May Collect Judgment and Costs.

Where there is no execution outstanding, the clerk of the court in which the judgment was rendered may receive the amount of the judgment and costs, and receipt therefor, with the same effect as if the same had been paid to the sheriff on an execution; and the clerk shall be liable to be amerced in the same manner and amount as a sheriff for refusing to pay the same to the party entitled thereto, when requested, and shall also be liable on his official bond.

Section 28. Clerks to Issue Writs and Orders—Preparation.

All writs and orders for provisional remedies, and process of every kind shall be prepared by the party or his attorney who is seeking the issuance of such writ, order, or process and shall be issued by the clerk of the court.

Section 29. Clerks to File and Preserve Papers—Refusal to File Sham Legal Process.

A. It is the duty of the clerk of each of the courts to file together and carefully preserve in his office, all papers delivered to him for that purpose, except as provided in subsection B of this section, in every action or special proceeding.

B. The court clerk may refuse to file any document presented for filing if the clerk believes that the document constitutes sham legal process. As used in this section:

1. "Sham legal process" means the issuance, display, delivery, distribution, reliance on as lawful authority, or other use of an instrument that is not lawfully issued, whether or not the instrument is produced for inspection or actually exists, and purports to do any of the following:

2. to be a summons, subpoena, judgment, arrest warrant, search warrant, or other order of a court, a law enforcement officer commissioned pursuant to state or federal law or the law of a federally recognized Indian tribe, or a legislative, executive, or administrative agency established by state or federal law or the law of a federally recognized Indian tribe,

3. to assert jurisdiction or authority over or determine or adjudicate the legal or equitable status, rights, duties, powers, or privileges of any person or property, or

4. to require or authorize the search, seizure, indictment, arrest, trial, or sentencing of any person or property; and

5. "Lawfully issued" means adopted, issued, or rendered in accordance with the applicable statutes, rules, regulations, and ordinances of the United States, a state, Indian Tribe, or a political subdivision of a state.

C.

1. Any person aggrieved by the refusal of a court clerk to file any document provided for in subsection A of this section may petition the district court for a writ of mandamus to compel the clerk to file the tendered document.

2. At the time of refusal, the person aggrieved shall file a notice of refusal with the court clerk for the purpose of tolling any applicable statute of limitations in the event the person prevails in any action so commenced, if the person wishes for the statute of limitations to be tolled. The refusal notice shall be submitted on a form provided by the court clerk, but must be filled out by the aggrieved party. A copy of the instrument that the clerk refused to file must be attached to the notice of refusal. The court clerk shall stamp the date of refusal on the notice of refusal.

The refusal notice shall be in the following form:

IN THE DISTRICT COURT OF THE CHOCTAW NATION

NOTICE OF REFUSAL

The Office of Court Clerk of the Choctaw Nation of Oklahoma, has on_____(date) refused to file a document designated_____(title of document or brief description of document). A copy of the refused document must be attached to this notice of refusal or the clerk cannot accept it for filing.

Signed:_____
Court Clerk

Signed: _____
Aggrieved party or attorney
for aggrieved party

Address:_____

_____

3. The action for mandamus must be filed with the district court within twenty (20) days after the notice of refusal is filed with the court clerk. If the writ of mandamus is granted, the court clerk shall refund the fee for filing the action. Notice of the pendency of a mandamus action filed pursuant to this section shall be filed in accordance with Section 2004.2 of this title. If the court determines that the tendered document is not sham legal process, the court shall order the clerk to file the tendered paper or papers. For any instrument which the court orders to be filed pursuant to this subsection, the date of filing shall be retroactive to the date the notice of refusal was filed.

D. If a court clerk improperly files or refuses to file a document provided for in subsection B of this section, the clerk shall be immune from liability for such action in any civil suit.

E. The clerk shall post a sign, in letters at least one (1) inch in height that is clearly visible to the general public in or near the clerk's office stating that it is a crime to intentionally or knowingly file or attempt to file sham legal process with the clerk. Failure of the clerk to post such a sign shall not create a defense to any criminal or civil action based on sham legal process.

Section 30. Each Case to be Kept Separate--Correction of Case Number or other Identifying Data.

The papers in each case shall be kept in a separate file marked with the title and number of the case. If the court clerk 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 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.

Section 31. Endorsements.

He 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.

Section 31.1. Removal of Records or Files from the Office of the Court Clerk.

Only officers of the court, persons authorized by court rule or judicial order, or other authorized court personnel may remove records or case files from the office of the court clerk for a period not to exceed twenty-four (24) hours. Rules for the removal of records or case files shall be promulgated by the District Court. Any previously authorized person who was able to remove court files may have such authorization revoked by the court clerk or by the court for failure to follow this rule.

Section 32. Entry on Return of Summons.

The court clerk shall, upon the return of every summons, enter upon the appearance docket whether or not service has been made; and, if the summons has been served, the name of the defendant or defendants summoned and the day and manner of the service upon each one. The entry shall be evidence in case of the loss of the summons.

Section 32.1. Material for Record.

The record shall be made up from the petition, the process, return, the pleadings subsequent thereto, reports, decisions, orders, judgments, and all material acts and proceedings of the court; but if the items of an account, or the copies of papers attached to the pleadings, be voluminous, the court may order the record to be made by abbreviating the same, or inserting a pertinent description thereof, or by omitting them entirely. Evidence must not be recorded.

Section 32.2. Reserved.

Section 32.3. Reserved.

Section 33. Clerk to Keep Court Records, Books and Papers--Statistical and Other Information for the Court of Appeals and the Tribal Council.

The court clerk shall keep the records and books and papers appertaining to the court and record its proceedings. The clerk is directed to furnish without cost to the Court of Appeals and the Tribal Council such statistical and other information as the court or the Tribal Council may require, including, but without being limited to, the number and classification of cases:

1. Filed with the court;

2. Disposed of by the court, and the manner of such disposition; and

3. The number of cases pending before the court, at each term of the court.

Section 34. Applicable to What Courts.

The provisions of this article shall, as far as they are applicable, apply to the clerks of all courts of the Choctaw Nation of Oklahoma.

Section 35. Powers and Duties of Clerks--Statistical and Other Information for the Court of Appeals and the Tribal Council.

The clerks of each of the courts shall exercise the powers and perform the duties imposed upon them by the statutes of the Choctaw Nation of Oklahoma and by the common law. The clerks of each of the courts of record shall furnish without cost to the Court of Appeals and to the Tribal Council such statistical and other information as the court or Tribal Council may require, including, but without being limited to, the number and classification of cases:

1. Filed with the court;

2. Disposed of by the court, and the manner of such dispositions; and

3. The number of cases pending before the court, at each term of the court.

Section 35.1. Reserved.

Section 36. Reserved.

Section 37. Reserved.

Section 38. Seal of the Clerk of the District Court

A. The clerk of the district court shall keep and use a seal that shall be furnished by the court.

B. Every instrument, document, record, paper or other thing required to be certified by the court or by the court clerk shall contain the seal of the court clerk. Where electronic transmission of a document is allowed, the document shall be deemed certified if it contains a digital signature or equivalent signing technology, as approved and supplied by the Court of Appeals. The Court of Appeals shall be the guardian of digital signatures or equivalent signing technology and shall govern all rules as to validity and authenticity.

C. Any person who uses the seal of the court clerk with the intent to deceive or mislead any person as to the authenticity of the seal, a certification required by subsection B of this section, or the thing to which the seal is applied shall be guilty of a misdemeanor.

D. Electronic transmittals of documents shall be allowed if safeguards are in place to protect against unauthorized users and if agents intended to receive the transmittals have agreed to electronic processing of the documents.

Section 39. Reserved.

Section 40. Reserved.

Section 41. Reserved.

Section 42. Reserved.

Section 43. Reserved.

Section 44. Reserved.

Section 45. Reserved.

Section 46. Reserved.

Section 47. Reserved.

Section 48. Reserved.

Section 49. Reserved.

Section 50. Reserved.

PROCESS, SUMMONS, SUBPOENAS AND SERVICE.

Section 51. Style of Process

A. For purposes of this Article, "Process" shall mean any documents used by the court to acquire or exercise its jurisdiction over a person or specific property including all means whereby the court compels the appearance of a person or compliance with its demands. Service of process as defined in this Article includes process in both civil and criminal matters.

B. For the purpose of this Article, "subpoena" and "subpoena *duces tecum"* shall be collectively referred to as "subpoena".

C. The style of all Process shall be "The Choctaw Nation to:" and all process shall be under the seal of the court clerk and shall be signed by the court clerk, and dated the day it is issued.

Section 52. Appointment of a Substitute for Service of Process.

The court or judge thereof, or the clerk in the absence of the judge upon his oral or written order, for good cause, may appoint a person to serve a particular process or order, who shall have the same power to execute it which the tribal police have. The person may be appointed on the application of the party obtaining the process or order, and the return must be verified by affidavit. He shall be entitled to the same fees allowed to the tribal police for similar services.

Section 53. Tribal Police or Process Server to Endorse the Time of Receipt on Process.

The tribal police officer or the process server shall endorse upon every summons, order of arrest, or for the delivery of property or of attachment or injunction, the day and hour it was received by him.

Section 54. Tribal Police or Process Server must Execute and Return Process—Penalties for Failure to Execute or Return Process.

The tribal police officer or process server shall execute every summons, order or other process, and return the same as required by law; and if he fail to do so, unless he make it appear to the satisfaction of the court that he was prevented by inevitable accident from so doing, he shall be amerced by the court in a sum not exceeding One Thousand Dollars ($1,000.00), upon motion and ten (10) days' notice, and shall be liable to the action of any person aggrieved by such failure.

Section 55. Reserved.

Section 56. Reserved.

Section 57. Reserved.

Section 58. Reserved.

Section 59. Reserved.

Section 60. Reserved.

BONDS -- SURETIES

Section 61. Justification of Surety

A ministerial officer whose duty it is to take security in any undertaking provided for by this Code or by other statutes shall require the person offered as surety to make an affidavit of his qualifications, which affidavit may be made before such officer, and shall be endorsed upon or attached to the undertaking. The taking of such an affidavit shall not exempt the officer from any liability to which he might otherwise be subject for taking insufficient security.

Section 62. Qualifications of Surety

The surety in every undertaking provided for by this Code or other statutes, unless a surety company, must be a resident of this state and worth double the sum to be secured, over and above all exemptions, debts and liabilities. Where there are two or more sureties in the same undertaking they must in the aggregate have the qualifications prescribed in this section.

Section 63. Real Estate Mortgage as Bond

In every instance in this jurisdiction where bond, indemnity or guaranty is required, a first mortgage upon improved real estate within this jurisdiction shall be accepted: Provided, that the amount of such bond, guaranty or indemnity shall not exceed fifty percent (50%) of the reasonable valuation of such improved real estate, exclusive of all buildings thereon; Provided, further, that where the amount of such bond, guaranty or indemnity shall exceed fifty percent (50%) of the reasonable valuation of such improved real estate, exclusive of all buildings, then such first mortgage shall be accepted to the extent of such fifty percent (50%) valuation.

Section 64. Valuation of Real Estate

The officer, whose duty it is to accept and approve such bond, guaranty or indemnity shall require the affidavits of two freeholders versed in land values in the community where such real estate is located to the value of such real estate. Said officer shall have the authority to administer the oaths and take said affidavits.

Section 65. Reserved.

Section 66. Tribe as a Party--Bond Not Required--Automatic Stay--Payment of Costs

A. Whenever an action is filed in any of the courts of the Choctaw Nation where the Choctaw Nation of Oklahoma, or any of its departments, subsidiaries or agencies are a party, no bonds or other obligation of security shall be required from the tribe or from any party acting under the direction of the tribe, either to prosecute, answer, or appeal the action. The execution of a judgment or final order of any judicial tribunal against the tribe or any of its departments, subsidiaries or agencies is automatically stayed without the execution of a supersedeas bond until any appeal of such judgment or final order has finally been determined. In case of an adverse decision, such costs as by law are taxable against the tribe, or against the party acting by its direction, shall be paid out of the funds of the department under whose direction the proceedings were instituted or defended.

B. Costs shall be paid to the court fund of the district court in which an action is filed from the first funds collected in satisfaction of any judgment obtained by the tribe or any party acting under the direction of the tribe, except when the funds are collected pursuant to a judgment, or pursuant to any civil forfeiture action. No action filed by the tribe or by any party acting under the direction of the tribe shall be dismissed with unpaid costs of the action without the prior notification of the district court clerk.

Section 67. Reserved.

Section 68. Appearance Bond--Application of Penalty--Right to Enforce

If a bench warrant or command to enforce a court order by body attachment is issued in a case for dissolution of marriage, legal separation, annulment or alimony, or in any civil proceeding in which a judgment debtor is summoned to answer as to assets, and the person arrested, pursuant to the authority of such process, makes a bond for his appearance at the time of trial or other

proceeding in the case, the bond made shall be disbursed by the court clerk upon order of the court to the party in the suit who has procured the bench warrant or command for body attachment rather than to the Choctaw Nation of Oklahoma. The penalty on the bond, or any part thereof, shall, when recovered, first be applied to discharge the obligation adjudicated in the case in which the bond was posted. The party who is the obligee on such bond shall have the right to enforce its penalty to the same extent and in the same manner as the tribe may enforce the penalty on a forfeited bail bond.

Section 69. Reserved.

Section 70. Reserved.

MISCELLANEOUS PROVISIONS

Section 71. Deputy May Perform Official Duties

Any duty enjoined by this Code upon a ministerial officer, and any act permitted to be done by him, may be performed by his lawful deputy.

Section 72. Affirmation

Whenever an oath is required by this Code, the affirmation of a person, conscientiously scrupulous of taking an oath shall have the same effect.

Section 73. Reserved.

Section 74. Court of Appeals Rules

The Judges of the Court of Appeals shall meet at least every two (2) years during the month of June and revise their general rules, and make such amendments thereto as may be required to carry into effect the provisions of this Code, and shall make such further rules consistent therewith as they may deem proper. The rules so made shall apply to the Court of Appeals and the district courts and all other courts of record.

Section 75. Publications in —Patent Insides‖

All publications and notices required by law to be published in newspapers in this jurisdiction if published in newspapers having one side of the paper printed away from the office of publication, known as patent outsides or insides, shall have the same force and effect as though the same were published in newspapers printed wholly and published in the county where such publication shall be made, if one side of the paper is printed in said county where said notices are required to be published.

Section 76. Action on Official Bond

When an officer, executor or administrator, by misconduct or neglect of duty, forfeits his bond or renders his sureties liable, any person injured thereby, or who is, by law, entitled to the benefit of the security, may bring an action thereon in his own name, against the officer, executor or administrator and his sureties, to recover the amount to which he may be entitled by reason of the delinquency. The action may be instituted and proceeded in on a certified copy of the bond, which copy shall be furnished by the person holding the original thereof.

Section 77. May be Several Actions on Same Security

A judgment in favor of a party for one delinquency does not preclude the same or another party from an action on the same security for another delinquency.

Section 78. Immaterial Errors to be Disregarded

The court, in every stage of action, must disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the adverse party; and no judgment shall be reversed or affected by reason of such error or defect.

Section 79. Reserved.

Section 80. Reserved.

Section 81. Payments into Court for Minor or Incompetent Person--Disposition

Where any amount of money not exceeding Five Hundred Dollars ($500.00) shall be deposited and paid into any court of the Choctaw Nation of Oklahoma by virtue of any judgment, order, settlement, distribution or decree for the use and benefit of, and to the credit of, any minor or incompetent person having no legal guardian of his estate within this state, and no person shall within ninety (90) days thereafter become the legal and qualified guardian of the estate of such minor or incompetent person, if it appears to the court that such money is needed for the support of such minor or incompetent person or that it is otherwise for the best interest of such minor or incompetent person, the court may, in its discretion, order payment of such funds to be made to any proper and suitable person as trustee for such minor or incompetent person, with bond, as the court may direct, to be expended for the support, use, and benefit of such minor or incompetent person. Such order may be made by the court in the original cause in which the funds are credited upon the application of any interested person; and the court may direct the clerk of the court to make payment of the same to be made in installments or in one lump sum as may seem for the best interests of such minor or incompetent person.

Section 82. Reserved.

Section 83. Conserving Monies Obtained for or on Behalf of Persons under Eighteen Years of Age in Court Proceedings.

A. Monies recovered in any court proceeding by a next friend or guardian ad litem for or on behalf of a person who is less than eighteen (18) years of age in excess of One Thousand

Dollars ($1,000.00) over sums sufficient for paying costs and expenses including medical bills and attorney's fees shall be deposited, by order of the court, in one or more federally insured banking, credit union or savings and loan institutions, or invested by a bank or trust company having trust powers under federal or state law, approved by the court; provided, that the court may approve a structured settlement, by the terms of which the proceeds of a settlement may be invested by the plaintiff or the defendant in an annuity to be paid to or for the benefit of the minor by an insurance company licensed in this state.

B. Until the person becomes eighteen (18) years of age, withdrawals of monies from the account or accounts shall be solely pursuant to order of the court made in the case in which recovery was had.

C. When an application for the order is made by a person who is not represented by an attorney, the judge of the court shall prepare the order.

D. This section shall not apply if a legal guardian has been appointed for the minor prior to any award of monies pursuant to subsection A of this section. If a legal guardian is appointed after any award of monies pursuant to subsection A of this section, the legal guardian may petition the district court for an order directing the bank, credit union or savings and loan to transfer the funds to the legal guardian. The district court may make the granting of the request to transfer funds subject to reasonable safeguards.

Section 84. Reserved.

Section 85. Reserved.

Section 86. Reserved.

Section 87. Reserved.

Section 88. Reserved.

Section 89. Reserved.

Section 90. Reserved.

Chapter 2A.--Appendix. Rules for the District Court.

Rule 1. Effect of Code on Pending Actions.

The Choctaw Nation Pleading Code governs all proceedings in actions pending on the day that it takes effect, except to the extent in the opinion of the court its application in a particular action would not be feasible or would work injustice, in which event the former procedure applies. Pleadings, motions and other instruments that were filed prior to the effective date of the Code and that were sufficient at the time they were filed shall continue to be effective after the Code takes effect, and if at the time the Code takes effect a party is required to file or serve a pleading

or motion to take other action, the time to take such action shall not be shortened by any provision of the Code. Although an action is commenced before the effective date of the Code, Section 2011 in regard to the signing of pleadings and motions shall apply to all pleadings and motions that are served or filed on or after the effective date of the Code, and Section 2013A in regard to compulsory counterclaims shall apply to all answers, answers to cross-claims, answers to third-party claims and answers to claims asserted by plaintiffs against third party defendants that are served or filed on or after the effective date of the Code.

Rule 2. Service and Proof of Service.

A. The person serving the process shall state in his proof the name of the person served and the date, place and method of service. See 12 C.N.S. Section 2004(G).

B.

1. defendants, third-party defendants and persons who are joined as parties to an action shall file their responsive pleading with the court clerk and serve copies on all opposing parties within 20 days after being served with process unless the time is extended by the service and filing of a motion or by the entry of an appearance, and they shall serve copies of their responsive pleading promptly thereafter on all other parties to the action. When a summons and petition are served by mail, a defendant shall serve his responsive pleadings within twenty (20) days after the date of receipt or, if service has been refused, then within twenty (20) days after the date acceptance was refused. Except as otherwise provided by statute or an order of the court, subsequent pleadings and all motions and other instruments shall be served on the opposing party within the prescribed time, and either before or promptly thereafter copies of the pleading shall be filed with the court clerk and served on all other parties to the action. This provision applies to amended pleadings except that an amendment that is made because a pleading failed to show a right to relief shall be filed with the court clerk within the time prescribed by the court, and either before or promptly thereafter copies of the amended pleading shall be served on all parties to the action. 12 C.N.S. Section 2004(G).

2. (ii) Except where a pleading is served with a summons, service of a pleading, motion or other instrument on a party shall be made by service on his attorney of record where there is one. 12 C.N.S. Section 2005A and B.

3. Where service of a pleading, motion or other instrument is made by delivery, the delivery shall be performed by any person who is 18 years of age or older. Proof of service, whether made by delivery or mail, shall be made by the certificate of an attorney of record, or if made by any other person, by the affidavit of such person. Such certificate or affidavit shall set forth the name of the person served and the date, place and method of service, and it shall be filed with the court clerk or it shall be endorsed upon the pleading, motion or instrument that is filed with the clerk. The provisions of this paragraph do not apply to the service of a summons or the pleading that is served with the summons.

Rule 3. Objections to Service and Venue.

Objections to the jurisdiction of the court over the person, to the issuance or service of the summons or to the venue of the action are waived and a party submits himself to the jurisdiction of the court if he asks for affirmative relief on a claim which is asserted in a permissive counterclaim, in a cross-claim, or in a third-party petition. The assertion of a compulsory counterclaim against a plaintiff does not waive any of the above objections.

Rule 4. Motions.

A. Where various objections and defenses have been consolidated pursuant to Section 2012(E) of Title 12, the court should hear jurisdictional objections and defenses first. If the court grants a motion on one of the grounds stated therein, the court may pass over other grounds. If an amendment is filed, the adverse party may renew any ground that was passed over and may object to defects in the amended pleading which did not exist in the initial pleading.

B. In a motion a party must specifically state the grounds therefor and the relief or order sought even where the party relies on defects or deficiencies apparent on the face of the pleading, motion or other instrument.

C. Motions raising fact issues shall be verified by a person having knowledge of the facts, if possible; otherwise, a verified statement by counsel of what the proof will show will suffice until a hearing or stipulation can be provided.

Every motion shall be accompanied by a concise brief or a list of authorities upon which movant relies. Unless the court directs otherwise, neither a brief nor a list of authorities shall be required with respect to any of the following motions:

1. Motions for extensions of time, if the request is made before expiration of the time period originally prescribed, or as extended by previous orders,

2. Motions to continue a hearing, pretrial conference or trial,

3. Motions to amend pleadings or file supplemental pleadings,

4. Motions to appoint a guardian ad litem,

5. Motions for physical or mental examinations,

6. Motions to add or substitute parties,

7. Motions to enter or vacate default judgments,

8. Motions to confirm sales,

9. Motions to stay proceedings to enforce judgments,

10. Motions to shorten a prescribed time period, and

11. Motions for scheduling conferences and other settings.

D. If the motion does not comply with the requirements of b and c above, the motion may be denied without a hearing, and if a responsive pleading is required, the moving party shall serve any pertinent responsive pleading within twenty (20) days after notice of the court's action. Motions not requiring briefs shall state whether opposing parties agree or object to the request and shall be accompanied by a proposed order granting the relief requested.

If there are no opposing parties, or if they cannot be reached, the movant shall so state with particularity. The proposed order shall be served together with the motion upon all parties in the matter. Objections to motions not requiring briefs shall be served and filed within fifteen (15) days after service of the motion or the motion may be deemed confessed.

E. Any party opposing a motion, except those enumerated in Section c above, shall serve and file a brief or a list of authorities in opposition within fifteen (15) days after service of the motion, or the motion may be deemed confessed.

F. If the grounds supporting a motion are not presented for hearing when called, the court, in its discretion, may continue the hearing or rule on the motion or the motion may be denied as having been withdrawn or abandoned. Where a party consents to the denial of his motion, the motion shall be deemed to have been withdrawn. Motions that are not contested may be disposed of by the announcement of one party without the necessity of all counsel appearing.

Where a motion is denied for failure to present or is deemed to have been withdrawn or abandoned, the party asserting the motion waives the objection, and if a responsive pleading is required, the moving party shall be required to serve it within twenty (20) days after notice of the court's action.

The ruling of the court on a motion shall be memorialized by an order prepared by the moving party, or as directed by the court, and shall be filed in the case.

G. Except with the permission of the court after good cause has been shown, a party cannot present any defect or deficiency at the hearing on his motion which was not specifically stated therein, but if the court permits other grounds to be presented, the motion shall be amended in writing, by interlineation if possible, to include the new grounds. This subdivision is not applicable to hearings on new trial motions which are subject to Rule 17.

H. Motions may be decided by the court without a hearing, and where this is done, the court shall notify the parties of its ruling by mail.

I. The denial of a motion to dismiss for failure to state a claim upon which relief can be granted, or of a motion to strike a defense because it is insufficient, or of a motion for a summary judgment, or of a motion for a summary disposition of issues will not be reviewed on appeal after the action has been tried on its merits.

J. Joint motions shall be deemed to be joint and several as to all counts in the prior pleading and as to all parties joining in the motion, and where proper grounds are presented to the court, the court must rule on the sufficiency of each claim or defense as to each party.

K. A negative pregnant or a conjunctive denial is not a ground for objecting to the sufficiency of a defense, but the issues raised shall be determined at the pretrial conference.

L. Motions for judgment on the pleadings, motions for a more definite statement, motions to strike redundant, immaterial, impertinent, scandalous or similar matter from a pleading, and objections to the introduction of evidence that are made at the commencement of a trial to test the sufficiency of the pleadings shall not be made. If such motions or objections are made, the court shall summarily deny them without a hearing, and the making of such motions or objections shall not extend the time to serve or file a responsive pleading or take other required action.

M. Appeals from orders granting judgment on motion for summary judgment or summary disposition or dismissal on motion to dismiss for failure to state a claim or for lack of jurisdiction will be subject to accelerated appellate review under Rule 1.36 of the Choctaw Nation Court of Appeals. The record on appeal will be limited to:

1. the memorialized entry of dismissal order; in multi-party or multi-claim cases the judgment or dismissal order must *either* (1) dispose of all claims and all parties or (2) entirely dispose of at least one claim or one party *and* contain the express determination that there is no just reason for delay with the express direction by the trial judge that judgment be filed. See 12 C.N.S. Section 994.

2. pleadings proper as defined by 12 C.N.S. Section 2007(A);

3. the instrument(s) upon which the dismissal is rested;

4. the motion(s) to dismiss and any supporting brief(s);

5. any responsive brief by the party asserting the claim;

6. any other item on file which, according to some recitation in the trial court's dismissal order or in some other order, was considered in its decision;

7. any other order dismissing the claim or determining the issues as to some but not all parties or claims;

8. any transcripts of the hearing on the motion; and

9. any motions, along with supporting and responsive briefs, for new trial (re-examination) of the dismissal order.

Rule 4.1. Time to Assert Various Claims.

A plaintiff may assert a claim against a third-party defendant within twenty days after service on him of a copy of the third-party petition. Thereafter he must obtain leave of court.

A third-party defendant may assert a claim against the plaintiff within twenty days after he has been served with a third-party petition. Thereafter he must obtain leave of court.

A party shall serve his reply to a counterclaim in an answer to a third-party petition or in an answer to a cross-claim within twenty days after service of the pleading containing the counterclaim.

Rule 5. Pretrial Proceedings.

A. **Docket**. A pretrial conference shall be held in all civil actions except:

1. where the defendant is in default; or,

2. where the defendant has waived his right to appear or plead; or,

3. in an action for the recovery of money or personal property where the amount or value in controversy is less than $5000.00; or,

4. actions under the small claims procedure. A judge may hold more than one pretrial conference in any case, or he may excuse a case from the pretrial docket.

B. **Notice.** At least twenty (20) days' notice of the setting of a case for an initial pretrial conference shall be given to the parties and to the attorneys of record by the court clerk.

C. **Scheduling.** As soon as any civil case is at issue, the court may schedule any conference it deems appropriate and enter a scheduling order which establishes, insofar as feasible, the time:

1. to join other parties and to amend the pleadings; and,

2. to file and hear motions; and,

3. to complete discovery; and,

4. to have a medical examination of a party; and,

5. for conferences before trial, a pretrial conference, and trial; and,

6. to file proposed findings of fact and conclusions of law; and,

7. for accomplishing any other matters appropriate in the circumstances of the case.

The scheduling order shall issue as soon as feasible after the case is at issue. A schedule shall not be modified except upon written application by counsel and by leave of the judge assigned to the case upon a showing of good cause.

D. **Judge Presiding.** Unless waived by the parties, the pretrial conference shall be conducted by the judge who will try the case. Unless waived by the parties, the judge shall take an active part in the conference and shall conduct it in an informal manner in chambers whenever possible.

E. **Pretrial Conferences; Objectives.** The scheduling and conduct of the conferences and the scheduling of matters to be accomplished should be designed to:

1. expedite the disposition of the action;

2. establish early and continuing control so that the case will not be protracted because of lack of management;

3. discourage wasteful pretrial activities;

4. improve the quality of the trial through more thorough preparation; and,

5. facilitate the settlement of the case.

F. **General Guidelines for Conducting Pretrial Conference.** The following guidelines should be followed by counsel and District Court in preparing and conducting a complete and adequate pretrial conference:

1. Attorneys shall confer prior to the pretrial conference and prepare a single suggested pretrial order for use during the pretrial conference;

2. Whenever feasible, all amendments to pleadings and stipulations should be filed in the case before the pretrial conference;

3. Stipulate in writing to as many facts and issues as possible;

4. List in writing the facts and law that are disputed;

5. Discuss the possibility of settlement;

6. Attorneys for the parties should be prepared to advise the trial judge at the pretrial conference as to whether a settlement judge is requested.

7. **Subjects to be Discussed at Pretrial Conferences.** In accordance with the objectives of a pretrial conference, the participants under this rule should have taken action to:

a.the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;

b.the necessity or desirability of amendments to the pleadings;

c.the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding authenticity of documents, and advance rulings from the court on the admissibility of evidence;

d.the avoidance of unnecessary proof and of cumulative evidence;

e. the identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;

f. the possibility of settlement or the use of extrajudicial procedures to resolve the dispute;

g.the form and substance of the pretrial order;

h.the disposition of pending motions;

i. the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems; and,

j. such other matters as may aid in the disposition of the action.

8. **Final Pretrial Conference.** Any final pretrial conference shall be held as close to the time of trial as is reasonable under the circumstances. The participants at any such conference shall formulate a plan that will streamline the trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties, unless a substitute attorney is authorized by the court, and by any unrepresented parties.

9. **Pretrial Orders.** After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference shall be modified only to prevent manifest injustice. The order shall substantially conform to the form adopted by the Court of Appeals. The District Court may modify the form if necessary to include additional claims between the parties or as otherwise necessary to fit the needs of the case.

The pretrial order shall include the results of the conference and advice to the court regarding the factual and legal issues, including details of material questions of law in the case. All exhibits must be marked, listed and identified in the pretrial order. If there is objection to the admission of any exhibits, the grounds for the objection must be

specifically stated. Absent proper objection, the listed exhibit is admitted when offered at trial or other proceeding. Attorneys for all parties will approve the order. The order shall be presented to the District Court for signature. The contents of the pretrial order shall supersede the pleadings and govern the trial of the case unless departure therefrom is permitted by the court to prevent manifest injustice. Proposed pretrial order shall not be filed.

10. **Default.** Failure to prepare and file a scheduling order or pretrial order, failure to appear at a conference, appearance at a conference substantially unprepared, or failure to participate in good faith may result in any of the following sanctions:

a. the striking of the pleading;

b. a preclusion order;

c. staying the proceeding;

d. default judgment;

e. assessment of expenses and fees (either against a party or the attorney individually);

f. or such other order as the court may deem just and appropriate.

11. **After Pretrial.** After pretrial, if additional exhibits or writings are discovered, the party intending to use them shall immediately mark them for identification and furnish copies to opposing counsel. These shall be deemed admitted unless written objection is served and filed within ten (10) days of receipt, stating the specified grounds for objection. If additional witnesses are discovered, opposing counsel shall be notified immediately in writing and furnished their names, addresses and the nature of the testimony. Copies of the additional documents, exhibits, writings, or list of witnesses shall also be mailed to the clerk of the court to be filed in the case. No exhibit or witness may be added to the final pretrial order once the same has been prepared and signed and filed by the court without a showing to the court that manifest injustice would be created if the party requesting the addition of such evidence or testimony was not permitted to add such final pretrial order.

12. **Settlement Conferences.** The court, may upon its own motion or at the request of any of the parties, order a settlement conference at a time and place to be fixed by the court. A judge other than the trial judge will normally preside at such settlement conference. At least one attorney for each of the parties who is fully familiar with the case and who has complete authority to settle the case shall appear for each party. If no attorney has complete settlement authority, the party or person with full settlement authority shall also attend the settlement conference. The settlement conference judge may allow the party having full settlement authority to be telephonically available, if justifiable cause is shown why attendance in person would constitute a hardship. The parties, their representatives and attorneys are required to be completely candid with the settlement conference judge so that he may properly guide settlement

discussions, and the failure to attend a settlement conference or the refusal to cooperate fully within the spirit of this Rule may result in the imposition of any of the sanctions mentioned in Paragraph J of this Rule. The judge presiding over the settlement conference may make such other and additional requirements of the parties as to him shall seem proper in order to expedite an amicable resolution of the case. The settlement judge will not discuss the substance of the conference with anyone, including the judge to whom the case is assigned.

IN THE DISTRICT COURT OF THE CHOCTAW NATION

_____)

_____, Plaintiff)

v.) NO. _____

_____)

_____, defendant.)

PRE-TRIAL CONFERENCE ORDER

1. **Appearances:**

2. **General Statement of Facts:**

3. **Plaintiff's Contentions:**

   A. List All Theories of Recovery and the Applicable Statutes, Ordinances, and Common Law Rules Relied Upon.

   B. List Damages or Relief Sought.

4. **Defendant's Contentions:**

List All Theories of Defense and the Applicable Statutes, Ordinances, and Common Law Rules Relied Upon.

5. **Defendant's Claims for Relief:**

List Any Claims of Relief Sought (By Cross-Claim, Counterclaim, or Set-Off), and the Applicable Statutes, Ordinances, and Common Law Rules Relied Upon.

6. **Miscellaneous:**

   A. Is Additional Discovery Requested?

   B. A trial brief (is/is not) required by the court.

Due by:_____.

C. Other Matters:

7. Plaintiff's Exhibits:

A. List by Number and Description.

B. As to Each Numbered Exhibit, State Any Objection and Its Basis.

8. Defendant's Exhibits:

A. List by Number and Description.

B. As to Each Numbered Exhibit, State Any Objection and Its Basis.

9. **Plaintiff's Witnesses:** List Names, Addresses, and Substance of Testimony.

10. **Defendant's Witnesses:** List Names, Addresses, and Substance of Testimony.

11. Estimated Trial Time:

12. Stipulations:

13. **Settlement:** Has the Possibility of Settlement Been Explored?

14. TRIAL DATE SET FOR:_____.m.,_____, 20____.

Dated: _____

Judge of the District Court

Approved:

_____

_____

Attorney for Plaintiff

_____

_____

Attorney for defendant

_____

_____

Attorney for _____

IN THE DISTRICT COURT OF THE CHOCTAW NATION

_____)

_____, Plaintiff)

v.) NO. _____

_____)

_____, defendant.)

SCHEDULING ORDER

IT IS ORDERED that the following must be completed within the time fixed:

1. ADDITIONAL PARTIES to be joined and AMENDED PLEADINGS to be filed by: _____.
2. Parties shall exchange PRELIMINARY LISTS OF WITNESSES AND EXHIBITS by: _____.
3. DISCOVERY must be completed by:_____.
4. DISPOSITIVE MOTIONS will not be considered if filed after:_____.
5. SETTLEMENT CONFERENCE OR MEDIATION DATE & TIME :_____.
6. PRE-TRIAL CONFERENCE DATE & TIME:_____.
7. TRIAL DATE:_____.
8. ESTIMATED TIME FOR TRIAL:_____.
9. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW must be filed by: _____.
10. TRIAL BRIEF must be filed by: _____.

11. ADDITIONAL ORDERS:

MEDICAL EXAMINATION OF_____shall be completed no later than_____.

THE MEDICAL EXAMINER shall submit the report to counsel requesting the examination, who shall submit a complete copy to all counsel, no later than_____.

No date set by this Order can be changed except for good cause and upon written Order of this court.

Dated: _____

Judge of the District Court

Approved:

_____

_____

Attorney for Plaintiff

_____

_____

Attorney for Defendant

_____

_____

Attorney for _____

Rule 7. Motions to Confirm Sales.

No confirmation of a law enforcement officer's or receiver's sale shall be made by the court until a period of three (3) days shall have elapsed following the sale.

Rule 8. Dissolution of Marriage, Separate Maintenance and Annulment Cases; Waivers.

No dissolution of marriage, separate maintenance or annulment case shall be heard on its merits until the petition shall have been on file for at least ten (10) days if there are no minor children of

the parties or at least thirty (30) days if there are minor children of the parties, except in the case of an emergency duly shown by application setting forth good cause, in the opinion of the trial court, for an earlier hearing. All entries of appearance and waivers must be in writing, must be duly signed and witnessed or acknowledged at least one (1) day after the filing of the petition, and must be filed in the action. When an entry of appearance and waiver is filed as provided herein, the court shall not grant greater relief than is requested in the petition unless the defendant consents in writing filed in the action.

Rule 8.1. Payment of Certain Fees and Costs through the Office of the Court Clerk.

No judicial order, judgment or decree shall direct the payment of attorney fees, child support, alimony, temporary support or any similar type payment through the office of the court clerk, except in the case of necessity duly shown by evidence presented to the court. All such payments when ordered to be paid through the office of the court clerk shall be made only by money order, government check or cashier's check payable to the payee to receive such payment. The court clerk shall make an entry of such payment on the appearance docket, then transmit the money order, government check or cashier's check to the payee. Such payments shall not be subject to the poundage fee. This rule shall be effective for all orders issued after March 13, 1981, and all prior orders unless such prior orders expressly provide otherwise.

Rule 8.2. Reserved.

Rule 8.3. Indirect Contempt for Failure to Pay Child Support--Purge Fee.

When a person is found guilty of indirect contempt of court for failure to pay child support, day care expenses or unreimbursed medical, dental, orthodontic, psychological, optometric, or any other physical or mental health expenses, that person may purge the contempt by:

A. Making all future payments for child support, day care expenses and unreimbursed medical, dental, orthodontic, psychological, optometric, or any other physical or mental health expenses as required by the current order for child support; and

B.

1. paying the full amount of the arrearage, or some portion thereof, as a lump sum if the court determines the contemnor has the financial ability to do so, and

2. if the full amount of the arrearage is not paid in a lump sum, then by making additional monthly payments in an amount equal to one-half of the current monthly child support obligation, exclusive of day care expenses.

All payments made pursuant to this Subsection (B)(2) shall be applied to reduce the amount of child support arrearage which was the subject of the contempt action. Payments made in accordance with the provisions of this Subsection (B)(2) shall bear interest as set forth in child support statutes.

C. The total amount of the payments required to be made pursuant to Subsections (a) and (b) above shall not exceed 40% of the contemnor's current gross monthly income. For purposes of

this Subsection, the contemnor's gross income shall be determined in accordance with the provisions of the child support statutes. If the total amount of the payments required to be made exceeds 40% of the contemnor's gross monthly income, then the amount required to be paid under Subsection (b)(2) above shall be reduced such that the total payments required under Subsections (a) and (b)(2) shall equal 40% of the contemnor's gross monthly income.

D. The payments required to be made pursuant to this section shall continue until the child support arrearage, which was the subject of the contempt action, has been paid in full, at which time the contempt shall be deemed purged.

E. If a contemnor is incarcerated to serve the sentence imposed by the court, the contemnor may thereafter only be discharged from custody:

1. upon payment in full of the adjudicated arrearage; or

2. upon serving the full sentence; or

3. upon the making of a subsequent agreement by the parties as to payment of the arrearages, which agreement has been approved by the court and entry of a court order that the contemnor be released from incarceration with the balance of the sentence to be conditionally suspended, subject to performance of the terms of the agreement and the provisions of the court order for release. Persons incarcerated pursuant to the provisions of this Section shall not be entitled to credit for good time, blood time, trustee time, or any other credit for time served. Persons incarcerated pursuant to the provisions of this section shall serve flat time in all cases.

Rule 9. Diligence in Prosecution.

A. In any case in which summons is not issued or waiver filed within ninety (90) days after the filing of the petition, or alias summons is not issued within thirty (30) days after return of the summons not served, the action may be dismissed by the court without notice to the plaintiff.

B. Where an action is not diligently prosecuted, the court may require the plaintiff to show why the action should not be dismissed. If the plaintiff does not show good cause why the action should not be dismissed, the court shall dismiss the action without prejudice. A court shall dismiss actions in which no action has been taken for a year as provided in 12 C.N.S. Section 1083.

Rule 10. Notice of taking Default Judgment.

In matters in default in which an appearance, general or special, has been made or a motion or pleading has been filed, default shall not be taken until a motion therefore has been filed in the case and five (5) days notice of the date of the hearing is mailed or delivered to the attorney of record for the party in default or to the party in default if he is unrepresented or his attorney's address is unknown. If the addresses of both the party and his attorney are unknown, the motion

for default judgment may be heard and a default judgment rendered after the motion has been regularly set on the motion and demurrer docket. It shall be noted on the motion whether notice was given to the attorney of the party in default, to the party in default, or because their addresses are unknown, to neither.

Notice of taking default is not required where the defaulting party has not made an appearance. Also, notice of taking default is not required in the following cases even if the defaulting party has made an appearance: 1)Any case, whether a matrimonial action or otherwise, in which waiver of summons and entry of appearance has been filed; 2) any case prosecuted under the small claims procedure for money judgment or possession of personal property; 3) any forcible entry and detainer case, whether or not placed on the small claims docket; 4) any probate or juvenile proceeding; 5) any case that is at issue and has been regularly set on the trial docket in which neither the other party nor his or her attorney appears at the trial; 6) any case as to any party who has filed a disclaimer; 7) any garnishment proceeding; and 8) any statutory proceeding following the rendition of final judgment in a case, including but not limited to, enforcement proceedings, or proceedings initiated by a motion or delayed petition for new trial, or by any motion, petition or application to correct, open, modify or vacate the judgment, whether filed in the same action or as a separate action.

Rule 11. Judges; Uniformity of Rulings.

When a question of law, fact or procedure has been presented to a judge, the same question, so far as it relates to the same case, shall not thereafter knowingly be presented to another judge sitting in the district without apprising the subsequent judge of the former judge's ruling or, if no ruling has been made, that such question has already been presented to the first judge. Where this rule has been violated, an order that is issued by the second judge may be vacated by him at any time before the entry of a final judgment.

Rule 12. Reserved.

Rule 13. Summary Judgment or Summary Disposition of Issues.

A. A party may move for either summary judgment or summary disposition of any issue on the merits on the ground that the evidentiary material filed with the motion or subsequently filed with leave of court show that there is no substantial controversy as to any material fact. The motion shall be accompanied by a concise written statement of the material facts as to which the movant contends no genuine issue exists and a statement of argument and authority demonstrating that summary judgment or summary disposition of any issues should be granted. Reference shall be made in the statement to the pages and paragraphs or lines of the evidentiary materials that are pertinent to the motion. Unless otherwise ordered by the court, a copy of the material relied on shall be attached to the statement.

The motion may be served at any time after the filing of the action, except that, if the action has been set for trial, the motion shall be served at least twenty (20) days before the trial date unless an applicable scheduling order establishes an earlier deadline. The motion shall be served on all parties and filed with the court clerk.

B. Any party opposing summary judgment or summary disposition of issues shall file with the court clerk within fifteen (15) days after service of the motion a concise written statement of the material facts as to which a genuine issue exists and the reasons for denying the motion; provided, however, that a responsive statement shall not be due from a party earlier than forty-five (45) days after service of the first summons by, or upon, that party. Unless otherwise ordered by the court, the adverse party shall attach to the statement evidentiary material justifying the opposition to the motion, but may incorporate by reference material attached to the papers of another party. In the statement, the adverse party or parties shall set forth and number each specific material fact which is claimed to be in controversy and reference shall be made to the pages and paragraphs or lines of the evidentiary materials. All material facts set forth in the statement of the movant which are supported by acceptable evidentiary material shall be deemed admitted for the purpose of summary judgment or summary disposition unless specifically controverted by the statement of the adverse party which is supported by acceptable evidentiary material. If the motion for summary judgment or summary disposition is granted, the party or parties opposing the motion cannot on appeal rely on any fact or material that is not referred to or included in the statement in order to show that a substantial controversy exists.

C. The affidavits that are filed by either party shall be made on personal knowledge, shall show that the affiant is competent to testify as to the matters stated therein, and shall set forth matters that would be admissible in evidence at trial. The admissibility of other evidentiary material filed by either party shall be governed by the rules of evidence. If there is a dispute regarding the authenticity of a document or admissibility of any submitted evidentiary material, the court may rule on the admissibility of the challenged material before disposing of the motion for summary judgment or summary disposition. A party challenging the admissibility of any evidentiary material submitted by another party may raise the issue expressly by written objection or motion to strike such material. Evidentiary material that does not appear to be convertible to admissible evidence at trial shall be challenged by objection or motion to strike, or the objection shall be deemed waived for the purpose of the decision on the motion for summary judgment or summary disposition. If a trial of factual issues is required after proceedings on a motion for summary judgment or summary disposition, evidentiary rulings in the context of the summary procedure shall be treated as rulings *in limine*.

D. Should it appear from an affidavit of a party opposing the motion that for reasons stated the party cannot present evidentiary material sufficient to support the opposition, the court may deny the motion for summary judgment or summary disposition without prejudice 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. A motion filed pursuant to this paragraph shall not be deemed a consent to the exercise by the court of jurisdiction over the party, or a waiver of the right to file a motion to dismiss the action.

E. If it appears to the court that there is no substantial controversy as to the material facts and that one of the parties is entitled to judgment as a matter of law, the court shall render judgment for said party. If the court finds that there is no substantial controversy as to certain facts or issues, the court may enter an order specifying the facts or issues which are not in controversy and direct that the action proceed for a determination of the remaining fact or issues.

An order denying either summary judgment or summary disposition is interlocutory and is not reviewable on appeal prior to final judgment.

F. The serving of a motion for either a summary judgment or summary disposition of issues before a responsive pleading is served where a responsive pleading is permitted does not preclude the opposing party from amending the pleading without leave of court. If a motion for either a summary judgment or summary disposition is served after the case is at issue, the hearing on the motion and the pretrial conference may, in the discretion of the court, be held at one time. A court may decide a motion for either a summary judgment or summary disposition without a hearing, and where this is done, the court shall notify the parties of its ruling by mail.

G. The pleadings or the pretrial conference order may be amended either before or during the hearing on a motion for either summary judgment or summary disposition under this rule, and the court may continue the hearing to a subsequent time. After a court grants a judgment under this rule, neither the pleadings nor the pretrial conference order may be amended by the addition of allegations in regard to any fact which was known to the party and which could have been presented at the hearing on the motion, and a motion for a rehearing or for a new trial on the ground of newly discovered evidence must comply with the provisions of 12 C.N.S. Section 655.

H. Judgments entered on motion for summary judgment or appealable summary disposition are subject to accelerated appellate review under Rule 1.36 of the Rules of the Court of Appeals. The record on appeal will be limited to:

1. the memorialized entry of judgment; in multi-party or multi- claim cases the judgment or dismissal order must *either* (1) dispose of all claims and all parties or (2) entirely dispose of at least one claim or one party *and* contain the express determination that there is no just reason for delay with the express direction by the trial judge that judgment be filed. See 12 C.N.S. Section 994.

2. pleadings proper as defined by 12 C.N.S. Section 2007(A);

3. applicable instruments on file, including the motion and response with supporting briefs and materials filed by the parties as prescribed by subsections (a) and (b);

4. any other item on file which, according to some recitation in the trial court's written journal entry or in some other order, was considered in its decision;

5. any other order dismissing the claim or determining the issues as to some but not all parties or claims;

6. any transcripts of the hearing on the motion; and

7. any motions, along with supporting and responsive briefs, for new trial (re- examination) of summary judgment or appealable summary disposition process.

Rule 14. Reserved.

Rule 15. Disqualification of Judges in Civil and Criminal Cases.

A. Before filing any motion to disqualify a judge, an *in camera* request shall first be made to the judge to disqualify or to transfer the cause to another judge. At such *in camera* hearing all parties and/or their attorneys shall have the opportunity to attend and the judge shall be orally advised of the party's or parties' concern. If the judge declines to disqualify, the party or parties shall file a motion to disqualify with the judge and have an evidentiary hearing on the record. If the judge continues to decline to enter an order disqualifying, the matter shall be appealed to the Appellate Court within ten (10) days of denial of the motion. The decision of the Appellate Court shall be based on the record and shall be final.

B. Any interested party who deems himself aggrieved by the refusal of a judge to grant a motion to disqualify or transfer a cause to another judge shall institute a proceeding in the Court of Appeals for a writ of mandamus. The Court of Appeals will not entertain an original proceeding to disqualify a judge or to direct a judge to transfer a cause to another judge unless it is shown that the relief sought was previously denied by the judge to whom the matter was represented in accordance with this rule. An order favorable to the moving party may not be reviewed by appeal or other method.

C. Reserved.

Rule 16. Default Judgment against defendant Served Solely by Publication.

When a default judgment sought in any action against a party-defendant who was served solely by publication (i.e., upon whom no notice by mailing was effected), the judge shall conduct an inquiry either in open court or in chambers to determine judicially whether plaintiff, or someone acting in his behalf, did make a diligent and meaningful search of all reasonably available sources at hand and failed to ascertain from it the following data:

1. the whereabouts or mailing address of every person named as defendant who was so served in the action; or if publication service was directed in the alternative to a named defendant if living, or if dead, to the "unknown heirs, executors, administrators, trustees, devisees and assigns, if any;"

2. the whereabouts or mailing address of every person named as defendant if living;

3. whether such person is living or dead;

4. and if dead, the individual identity and whereabouts of his "heirs, executors, devisees, trustees or assigns, if any;" or if publication service was directed to the unknown heirs, executors, administrators, devisees, trustees and assigns, immediate and remote, of a deceased person;

5. the individual identity and whereabouts or mailing address of persons who were so served; or if publication service was directed to the unknown successors, trustees or assigns, if any, of any dissolved corporation; or to the unknown successors of any party designated in any record as a trustee; or to the unknown holders of special assessment or improvement bond, sewer warrant or tax bill; or to any corporation whose continued legal existence is alleged to be in doubt but the fact of its dissolution is not known;

6. the individual identity and whereabouts or mailing address of such unknown successors, trustees, etc. of any dissolved corporation;

7. the individual identity and whereabouts or mailing address of any successor of one designated in any record as trustee;

8. the individual identity and whereabouts or mailing address of any holders of special assessment or improvement bond, sewer warrant or tax bill;

9. whether the corporate defendant continues to have legal existence or not; whether it has officers or not, and the officers" individual identity and whereabouts or mailing address; or the identity and whereabouts or mailing address of successors, trustees or assigns, if any, if defendant corporation was in fact dissolved.

At the inquiry required by this rule plaintiff should show by competent evidence that all reasonably available sources, where applicable, were in fact searched and failed to yield the information necessary to establish;

1. the whereabouts or mailing address of the named defendant;

2. or the individual identity and whereabouts or mailing address of his heirs, successors, etc.;

3. or the status of a corporation and the whereabouts of its officers or successors.

In all cases affecting interest in or title to land, the following shall be searched as primary sources:

1. local assessor's records

2. local county treasurer's records

3. local deed records as to the property involved for return address on recorded instruments

4. local probate records if applicable.

An evidentiary affidavit by a bonded abstracter detailing the records and other sources searched by him and the information yielded by the search may be admitted as evidence at the inquiry conducted in compliance with this rule. 12 C.N.S. Section 431.

If, after hearing the evidence the judge finds that plaintiff did in fact exercise due diligence in conducting a meaningful search, the following recitation should be included in the journal entry of judgment:

"The court conducted a judicial inquiry into the sufficiency of plaintiff's search to determine the names and whereabouts of the defendants who were served herein by publication, and based on the evidence adduced the court finds that plaintiff has exercised due diligence and has conducted a meaningful search of all reasonably available sources at hand. The court approves the publication service given herein as meeting both statutory requirements and the minimum standards of state and federal due process."

Rule 17. Motion for New Trial.

A motion for a new trial must contain every ground on which the moving party intends to rely in the trial court. Each error, including error in the giving or refusal to give specified instructions irregularity, abuse of discretion, misconduct, accident, surprise and other ground on which the moving party is relying to obtain a new trial, must be separately stated with specificity except that errors in the admission and exclusion of evidence may be asserted under the statement of errors in the admission and exclusion of evidence without such errors being separately stated. Where the moving party is relying on the Fourth or Fifth ground of Section 651 of Title 12, he must indicate whether the damages are excessive or inadequate or are too large or too small.

At the hearing on the motion or on appeal the movant may not rely on errors which are not fairly embraced in the specific grounds stated in the timely-filed motion for new trial. Lack of specificity in any ground of a timely-filed new-trial motion will be regarded as effectively cured where the record shows that, at the hearing on that motion, without any objection by the opposite party the movant precisely identified each error or point of law which is fairly comprised in the defective general ground or grounds of the motion.

A motion seeking reconsideration, re-examination, rehearing or vacation of a judgment or final order, which is filed within 10 days of the day such decision was rendered, may be regarded as a new trial motion. After expiration of the statutory time for filing a motion for new trial, a timely-filed motion may be amended to clarify the grounds originally set out but not to set up new and independent grounds.

A motion, however styled, which is filed after the expiration of ten days following the decision is ineffective as a motion for new trial and will not extend appeal time. 12 C.N.S. Section 653.

It is not necessary for the moving party to except to the rulings of the court either before, during, or after the trial, but he must have made known to the court the action which the court should take or the party's ground for objecting to the action of the court.

Rule 18. Parole Revocation—Juveniles.

In parole revocation proceedings involving juveniles, the District Court shall: 1) advise the juvenile, his parents, custodians or guardians, of their rights in the premises; 2) determine eligibility for and amount of bail; 3) decide any intermediate custody issue; and 4) establish eligibility for appointment of counsel and fix the amount of his compensation to be paid by the court fund. The court shall also timely issue such other orders as may be necessary to assure due process and fair treatment, including but not limited to issuance of compulsory process for the attendance of witnesses.

This rule shall not preclude the District Court from acting concurrently with parole revocation proceedings in the exercise of its own jurisdiction nor shall it prevent a new petition from being brought on allegations identical to those on which parole is sought to be revoked.

Rule 19. Vacation of Final Judgments.

A. In any proceeding to vacate, modify or reopen a final judgment that is commenced more than thirty days after its rendition, (1) proceeding by motion instead of by petition or by petition instead of by motion, or (2) failure to verify the petition, or (3) incorrect service of process or the required notice is waived if the opposing party appears in the proceeding but does not immediately object thereto; and such defects are waived by any party in default who had actual notice of the proceeding.

B. In any proceeding to vacate, modify or reopen a judgment, whether by a motion, petition or application, jurisdictional grounds are not waived by being joined with non-jurisdictional grounds in the motion, petition or application or by raising non-jurisdictional defenses in an accompanying pleading.

Rule 20. Direct Contempt.

A. **Power of the Court.** The court has the power to punish any contempt in order to protect the rights of the parties and the interests of the public by assuring that the administration of justice shall not be thwarted. The trial judge has the power to cite and if necessary punish summarily anyone who, in his presence in open court, willfully obstructs the court or judicial proceedings after an opportunity to be heard has been afforded.

B. **Admonition and Warning.** No sanction other than censure should be imposed by the trial judge unless (i) it is clear from the identity of the offender and the character of his acts that disruptive conduct was willfully contemptuous, or (ii) the conduct warranting the sanction was preceded by a clear warning that the conduct is impermissible and that specified sanctions may be imposed for its repetition.

C. **Notice of Intent to Use Contempt Power; Postponement of Adjudication.** (a) The trial judge should, as soon as practicable after he is satisfied that courtroom misconduct requires contempt proceedings, inform the alleged offender of his intention to institute such proceedings. (b) The trial judge should consider the advisability of deferring adjudication of

contempt for courtroom misconduct of a defendant, an attorney or a witness until after the trial, and should defer such a proceeding unless prompt punishment is imperative.

D. **Notice of Charges and Opportunity to be Heard.** Before imposing any punishment for contempt, the judge should give the offender notice of the charges and at least a summary opportunity to adduce evidence or argument relevant to guilt or punishment.

E. **Referral to Another Judge.** The judge before whom courtroom misconduct occurs may impose appropriate sanctions, including punishment for contempt, but should refer the matter to another judge, if his conduct was so integrated with the contempt that he contributed to it or was otherwise involved, or his objectivity can reasonably be questioned.

Rule 21. Reserved.

Rule 22. Garnishee Summons.

The issuing authority for a Garnishee Summons shall be determined as follows:

Prejudgment Garnishment

The judge shall be the issuing authority when:

1. Plaintiff prevails at a hearing on defendant's written objection to Notice of Issuance of Garnishee Summons. 12 C.N.S. Section 777, *et seq.*

2. The court determines the defendant cannot be given Notice of Issuance of Garnishee Summons and the plaintiff proves the probable merits of his cause and the truth of his Affidavit's Assertions. 12 C.N.S. Section 777, *et seq*.

The court clerk shall be the issuing authority when:

1. The defendant, who was served with notice, files no written objection to Issuance of Garnishee Summons. 12 C.N.S. Section 777, *et seq*.

Post-judgment Garnishment

The court clerk shall be the issuing authority in all instances as no hearing is contemplated. 12 C.N.S. Section 28.

Rule 23. Orders of Attachment.

The issuing authority for Orders of Attachment shall be determined as follows:

A judge of the court in which the principal action is brought shall issue the Order of Attachment when:

1. There has been filed in the office of the court clerk an application therefore, meeting the requirements of 12 C.N.S. Section 769;

2. The defendant has been served with notice provided for in 12 C.N.S. Section 769, together with a copy of the above application;

3. Either the plaintiff prevails at a hearing held on defendant's written objection to the application for the order, or the court determines at a hearing that the defendant could not be given notice of the application for the order and at the hearing the plaintiff also proves the probable merits of his cause and the truth of the assertions in the application for the order, all as provided for in conformity with 12 C.N.S. Section 769; and

4. The bond, if any, required by 12 C.N.S. Section 770, has been filed.

The clerk of the court in which the principal action is brought shall issue the Order of Attachment only when:

1. Steps (a), (b) and (d) above have been completed, and

2. The defendant, having been given notice as required by 12 C.N.S. Section 769, files no written objection as provided for by the statute.

Rule 24. Reserved.

Rule 25. Reserved.

Rule 26. Transcripts in Criminal Cases.

A transcript of the court reporter's notes, upon request and for the use of an indigent defendant or a prosecutor, may not be charged to the court fund unless, before its preparation, the cost to be incurred was authorized by written judicial order.

When a judge authorizes or orders a transcript of the court reporter's notes of any proceeding to be prepared at the expense of the court fund, or where a prosecuting attorney orders such a transcript at public or court fund expense and the accused as an indigent is constitutionally entitled to a free copy of the transcript, a reporter shall prepare an original and two copies of the transcript so ordered and file it with the clerk of the trial court. The court reporter shall immediately notify the prosecutor and the defendant of the date the transcript was filed. The prosecutor and the defendant shall each have access to the copies of the transcript on such terms as the trial court may impose. The district judge may prescribe rules for access to or disposition of the copies of the transcript.

In addition to the copies mentioned in this section, a party who desires a copy shall be furnished a copy by the court reporter upon payment of the costs for that copy by said party.

Rule 27. Matters Taken Under Advisement.

In any matter taken under advisement, a decision shall be rendered within sixty (60) days of the date on which the matter was taken under advisement or, if briefs are to be submitted, within sixty (60) days of the date of the filing of the final brief.

When a trial court takes a matter under advisement, the judge shall specify the date by which a decision shall be rendered. If briefs are to be submitted, the dates for filing such shall also be specified.

The Chief Judge of the Court of Appeals may extend the deadline for a decision upon sworn application for an extension of time of the trial judge setting forth with specificity the reasons therefor.

Upon entering and filing the decision with the court clerk, in a matter taken under advisement, it shall be the duty of the judge to see that file-stamped copies of the minute order or judgment setting out such decision are mailed by the court clerk to counsel in the case and to any party appearing *pro se*.

The court may direct a party to mail file-stamped copies of the judgment or order to the other parties.

The copies of the order or judgment mailed under this rule shall bear the notation of the date of mailing, and the clerk or party mailing shall file a certificate of mailing with the district court clerk. See, Rules of Appellate Procedure in Civil Cases, Rule 1.61.

Rule 28. Reserved.

Rule 29. Indigent defendant in Civil Contempt Action--Right to Counsel--Attorney Fees.

In a civil contempt action which may result in the incarceration of a defendant who appears without counsel, the court must inform the defendant that he has a right to counsel and that if he is financially unable to employ counsel and desires such, the court must assign counsel to defend him. Only after receiving notice of this right, can the defendant knowingly and intelligently waive his right to counsel.

A defendant who desires counsel and can establish indigency under the normal standards for appointment of counsel in a criminal case, shall have an attorney appointed to represent him.

The attorney shall represent the defendant until final disposition of the civil contempt action and shall receive compensation, payable from the local court fund, in an amount set by the trial court, not to exceed $1,000.00.

Rule 30. Reserved.

Chapter 3. Limitation of Actions.

Section 91. Actions Barred not Revived.

Any right of action, which shall have been barred by any statute heretofore in force, shall not be deemed to be revived by the provisions of this article, nor shall the prior statutes of limitation be extended as to any cause of action which has accrued prior to the time this article shall take effect.

Section 92. Limitations Applicable.

Civil actions can only be commenced within the periods prescribed in this article, after the cause of action shall have accrued; but where, in special cases, a different limitation is prescribed by statute, the action shall be governed by such limitation.

Section 93. Limitations of Real Actions.

Actions for the recovery of real property, or for the determination of any adverse right or interest therein, can only be brought within the periods hereinafter prescribed, after the cause of action shall have accrued, and at no other time thereafter:

1. An action for the recovery of real property sold on execution, or for the recovery of real estate partitioned by judgment in kind, or sold, or conveyed pursuant to partition proceedings, or other judicial sale, or an action for the recovery of real estate distributed under decree of district court in administration or probate proceedings, when brought by or on behalf of the execution debtor or former owner, or his or their heirs, or any person claiming under him or them by title acquired after the date of the judgment or by any person claiming to be an heir or devisee of the decedent in whose estate such decree was rendered, or claiming under, as successor in interest, any such heir or devisee, within five (5) years after the date of the recording of the deed made in pursuance of the sale or proceeding, or within five (5) years after the date of the entry of the final judgment of partition in kind where no sale is had in the partition proceedings; or within five (5) years after the recording of the decree of distribution rendered by the district court in an administration or probate proceeding; provided, however, that where any such action pertains to real estate distributed under decree of district court in administration or probate proceedings and would at the passage of this act be barred by the terms hereof, such action may be brought within one (1) year after the passage of this act; this proviso shall not be construed to revive any action barred by paragraph 4 of this section.

2. An action for the recovery of real property sold by executors, administrators, or guardians, upon an order or judgment of a court directing such sale, brought by the heirs or devisees of the deceased person, or the ward of his guardian, or any person claiming

under any or either of them, by the title acquired after the date of judgment or order, within five (5) years after the date of recording of the deed made in pursuance of the sale.

3. An action for the recovery of real property sold for taxes, within five (5) years after the date of the recording of the tax deed, except where lands exempt from taxation by reason of any Act of the Congress of the United States of America have been sold for taxes, in which case there shall be no limitation; provided, nothing herein shall be construed as reviving any cause of action for recovery of real property heretofore barred nor as divesting any interest acquired by adverse possession prior to the effective date hereof.

4. An action for the recovery of real property not hereinbefore provided for, within fifteen (15) years.

5. An action for the forcible entry and detention or forcible detention only of real property, within two (2) years.

6. Numbered paragraphs 1, 2, and 3 shall be fully operative regardless of whether the deed or judgment or the precedent action or proceeding upon which such deed or judgment is based is void or voidable in whole or in part, for any reason, jurisdictional or otherwise; provided that this paragraph shall not be applied so as to bar causes of action which have heretofore accrued, until the expiration of one (1) year from and after its effective date.

Section 94. Persons under Disability--Time to Sue to Recover Realty.

Any person entitled to bring an action for the recovery of real property, who may be under any legal disability when the cause of action accrues, may bring his action within two (2) years after the disability is removed.

Section 95. Limitation of Other Actions.

A. Civil actions other than for the recovery of real property can only be brought within the following periods, after the cause of action shall have accrued, and not afterwards:

1. Within three (3) years: An action upon any contract, agreement, or promise in writing;

2. Within two (2) years: An action upon a contract express or implied not in writing; an action upon a liability created by statute other than a forfeiture or penalty; and an action on a foreign judgment;

3. Within two (2) years: An action for trespass upon real property; an action for taking, detaining, or injuring personal property, including actions for the specific recovery of personal property; an action for injury to the rights of another, not arising on contract, and not hereinafter enumerated; an action for relief on the ground of fraud -- the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud;

4. Within one (1) year: An action for libel, slander, assault, battery, malicious prosecution, or false imprisonment; an action upon a statute for penalty or forfeiture, except where the statute imposing it prescribes a different limitation;

5. An action upon the official bond or undertaking of an executor, administrator, guardian, sheriff, or any other officer, or upon the bond or undertaking given in attachment, injunction, arrest, or in any case whatever required by the statute, can only be brought within five (5) years after the cause of action shall have accrued;

6. An action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of childhood sexual abuse incidents or exploitation as defined by the Choctaw Nation Statutes or incest can only be brought within the latter of the following periods:

a. within two (2) years of the act alleged to have caused the injury or condition, or

b. within two (2) years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by the act or that the act caused the injury for which the claim is brought.

Provided, however, that the time limit for commencement of an action pursuant to this paragraph is tolled for a child until the child reaches the age of eighteen (18) years or until five (5) years after the perpetrator is released from the custody of a state, federal, tribal, or local correctional facility or jail, whichever is later. No action may be brought against the alleged perpetrator or the estate of the alleged perpetrator after the death of such alleged perpetrator, unless the perpetrator was convicted of a crime of sexual abuse involving the claimant. An action pursuant to this paragraph must be based upon objective verifiable evidence in order for the victim to recover damages for injuries suffered by reason of such sexual abuse, exploitation, or incest. The evidence should include both proof that the victim had psychologically repressed the memory of the facts upon which the claim was predicated and that there was corroborating evidence that the sexual abuse, exploitation, or incest actually occurred. The victim need not establish which act in a series of continuing sexual abuse incidents, exploitation incidents, or incest caused the injury complained of, but may compute the date of discovery from the date of discovery of the last act by the same perpetrator which is part of a common scheme or plan of sexual abuse, exploitation, or incest. Provided further, any action based on intentional conduct specified in paragraph 7 of this section must be commenced within twenty (20) years of the victim reaching the age of eighteen (18);

7. An action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of criminal actions, as defined by the Choctaw Nation Statutes, may be brought against any person incarcerated or under the supervision of a state, federal, tribal, or local correctional facility on or after November 1, 2003:

a. at any time during the incarceration of the offender for the offense on which the action is based, or

b. within five (5) years after the perpetrator is released from the custody of a state, federal, tribal or local correctional facility, if the defendant was serving time for the offense on which the action is based;

8. An action to establish paternity and to enforce support obligations can be brought any time before the child reaches the age of eighteen (18);

9. An action to establish paternity can be brought by a child at any time;

10. court-ordered child support is owed until it is paid in full and it is not subject to a statute of limitations;

11. All actions filed by an inmate or by a person based upon facts that occurred while the person was an inmate in the custody of one of the following:

a. the Choctaw Nation of Oklahoma, or

b. a contractor of the Choctaw Nation of Oklahoma, to include, but not be limited to, the revocation of earned credits and claims for injury to the rights of another, shall be commenced within one (1) year after the cause of action shall have accrued; and

12. An action for relief, not hereinbefore provided for, can only be brought within three (3) years after the cause of action shall have accrued.

Section 96. Persons under Disability in Actions other than to Recover Realty--Exceptions--Personal Injury to Minor Arising from Medical Malpractice.

If a person entitled to bring an action other than for the recovery of real property, except for a penalty or forfeiture, be, at the time the cause of action accrued, under any legal disability, every such person shall be entitled to bring such action within one (1) year after such disability shall be removed, except that, after the effective date of this section, an action for personal injury to a minor under the age of twelve (12) arising from medical malpractice must be brought by the minor's parent or guardian within seven (7) years of infliction of the injury, provided a minor twelve (12) years of age and older must bring such action within one (1) year after attaining majority, but in no event less than two (2) years from the date of infliction of the injury, and an action for personal injury arising from medical malpractice to a person adjudged incompetent must be brought by the incompetent person's guardian within seven (7) years of infliction of the injury, provided an incompetent who has been adjudged competent must bring such action within one (1) year after the adjudication of such competency, but in no event less than two (2) years from the date of infliction of the injury.

Section 97. Reserved.

Section 98. Absence or flight of defendant--Effect of other laws.

When a cause of action accrues against a person and that person is out of the Choctaw Nation or has concealed himself, the period limited for the commencement of the action shall not begin to run until he comes into the state, or while he is concealed. If, after a cause of action accrues against a person and that person leaves the state or conceals himself, the time of his absence or concealment shall not be computed as any part of the period within which the action must be brought. Provided, however, that if any statute which extends the exercise of personal jurisdiction of courts over a person or corporation based upon service outside the Choctaw Nation, or based upon substituted service upon an official of the State of Oklahoma or any other state or nation, or based upon service by publication permits the courts of the Choctaw Nation to acquire personal jurisdiction over the person, the period of his absence or concealment shall be computed as part of the period within which the action must be brought.

Section 99. Reserved.

Section 100. Limitation of New Action after Reversal or Failure Otherwise than on the Merits.

If any action is commenced within due time, and a judgment thereon for the plaintiff is reversed, or if the plaintiff fail in such action otherwise than upon the merits, the plaintiff, or, if he should die, and the cause of action survive, his representatives may commence a new action within one (1) year after the reversal or failure although the time limit for commencing the action shall have expired before the new action is filed.

Section 101. Extension of Limitation--Part Payment, Acknowledgment or New Promise.

In any case founded on contract, when any part of the principal or interest shall have been paid, or an acknowledgment of an existing liability, debt or claim, or any promise to pay the same shall have been made, an action may be brought in such case within the period prescribed for the same, after such payment, acknowledgment or promise; but such acknowledgment or promise must be in writing, signed by the party to be charged thereby.

Section 102. Statutory Bar Absolute—Exception.

When a right of action is barred by the provisions of any statute it shall be unavailable either as a cause of action or ground of defense, except as otherwise provided with reference to a counterclaim or setoff.

Chapter 4. Reserved.

Chapter 5. Reserved.

Chapter 6. Reserved.

Chapter 7. Parties.

Section 221. Parties, Plaintiff and defendant; Capacity.

A. **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 statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute of the Choctaw Nation so provides, an action for the use or benefit of another shall be brought in the name of the Choctaw Nation.

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.

B. **Capacity to Sue or be Sued.** Except as otherwise provided by law, every person, corporation, partnership, or incorporated association shall have the capacity to sue or be sued in its own name in the courts of the Choctaw Nation, and service may be had upon unincorporated associations and partnerships by providing service upon a managing or general partner, or upon an officer of an unincorporated association, in accordance with Choctaw law.

C. **Infants or Incompetent Persons.** Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like 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.

D. **Assignment of Tort Claims Prohibited.** Claims arising in tort may not be assigned and must be brought by the injured party, provided, that this Subsection D shall not preclude subrogation of the proceeds of such tort claims for the benefit of any person, including insurance companies, who have compensated the injured party for their injuries, including property damage, to the extent of the payment made by the third party.

E. **Definitions.** For the purposes of this Section, the term "Infant" means and includes every natural person less than eighteen (18) years of age not declared emancipated from his parent or guardian by order of a court of competent jurisdiction; and the term "Incompetent Person" means and includes every natural person who has been legally declared incompetent by a court of competent jurisdiction by reason of mental incapacity, habitual or addictive abuse of alcohol or other drugs, or other cause as provided by law.

Section 222. Joinder of Claims, Remedies, and Actions.

A. **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 may have against an opposing party.

B. **Joinder of Remedies; Fraudulent Conveyances.** Whenever a claim is one heretofore cognizable only after another Claim has been prosecuted to a conclusion, the two (2) claims may be joined in a single action; but the court shall grant relief in that action only in accordance with 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.

C. **Joinder of Actions by the Court.** Whenever it appears to the court that separate actions are pending between the same parties, or involving the same facts or law, the court may, if the parties will not be prejudiced thereby, order said actions joined for all, or a portion of, the further proceedings.

Section 223. Joinder of Persons Needed for Just Adjudication.

A. **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:

a. as a practical matter impair or impede his ability to protect that interest, or

b. leave any of the persons 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 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.

B. **Determination by Court Whenever Joinder is not Feasible**. If a person as described in Paragraphs (A)(1) and (2) above 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 in making such determination include:

1. to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties;

2. the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided;

3. whether a judgment rendered in the person's absence will be adequate; and

4. whether the plaintiff will have an adequate remedy if the action is dismissed for non-joinder.

C. **Pleading Reasons for Non-Joinder.** A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in Paragraphs (A)(1) and (2) above, who are not joined, and the reasons why they are not joined.

Section 224. Permissive Joinder of Parties.

A. Permissive Joinder.

1. All persons may join in one (1) 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, or if any question or fact common to all these persons will arise in the action, or if the claims are connected with the subject matter of the action.

2. All persons may be joined in one (1) 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, or if any question of law or fact common to all defendants will arise in the action, or if the claims are connected with the subject matter of the action.

3. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one (1) or more of the plaintiffs according to their

respective rights to relief, and against one (1) or more defendants according to respective liabilities.

4. In actions to quiet title or actions to enforce mortgages or other liens upon property, persons who assert an interest in the property that is the subject of the action may be joined although their interest does not arise from the same transaction or occurrence.

B. **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, or who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

Section 225. Misjoinder and Non-Joinder of Parties.

Misjoinder of parties is not ground 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. Leave of the court shall not be required when the pleader amends his pleadings within the time period for amendment of pleadings without leave of the court. Any claim against a party may be severed and proceeded with separately upon order of the court.

Section 226. Interpleader.

A. 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 Section supplement and do not in any way limit the joinder of parties permitted in Section 224.

B. The provisions of this Section shall be applicable to actions brought against a law enforcement officer or other officer for the recovery of personal property taken by him under execution or for the proceeds of such property so taken and sold by him; and the defendant in such action shall be entitled to the benefit of this Section against the party in whose favor the execution issued.

C. The court may make an order for the safekeeping of the subject of the action or for its payment or delivery into the court or to such person as the court may direct, and the court may order the person who is seeking relief by way of interpleader to give a bond, payable to the clerk of the court, in such amount and with such surety as the court may deem proper, conditioned upon the compliance with the future order or judgment of the court with respect to the subject matter of the controversy. Where the party seeking relief by way of interpleader claims no interest in the subject of the action and the subject of the action has been deposited with the court or with a person designated by the court, the court should discharge him from the action and

from liability as to the claims of the other parties to the action with costs and, in the discretion of the court, a reasonable attorney fee.

D. In cases of interpleader, costs may be adjudged for or against any party, except as provided in Subsection C above.

E. Reserved

Section 228. Intervention.

A. **Intervention of Right.** Upon timely application anyone shall be permitted to intervene in an action:

1. when a statute of the Choctaw Nation 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, unless the applicant's interest is adequately represented by existing parties.

B. **Permissive Intervention.** Upon timely application anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies, as grounds of claim or defense, upon any statute or executive order administered by a Choctaw Nation, federal or state governmental officer or agency, that officer or agency may, upon timely application, be permitted to intervene in the action. 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.

C. **Procedure.** A person desiring to intervene shall serve a motion to intervene upon the parties. 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. If the motion to intervene is granted, all other parties may serve a responsive pleading upon leave of the court.

D. **Intervention by the Choctaw Nation.** In any action, suit, or proceeding to which the Choctaw Nation or any agency, officer, or employee thereof is not a party in their official capacity, wherein the constitutionality or enforceability of any statute of the Choctaw Nation affecting the public interest is drawn in question, the parties, and upon their failure to do so, the court shall certify such fact to the Chief of the Choctaw Nation, the prosecutor, and the Choctaw Tribal Council. The court shall permit the Choctaw Nation to intervene for presentation of evidence, if the evidence is otherwise admissible in the case, and for argument on the question of constitutionality or enforceability of the Choctaw Nation laws at issue. It shall be the duty of the party raising such issue to promptly give notice thereof to the court either orally upon the record in open court and served upon all parties, and to state in said notice when and how notice of the pending question will be or has been certified to the Choctaw Nation as provided above.

Section 229. Substitution of Parties.

A. Death.

1. If a party dies, 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 and upon persons not parties in the manner provided for the service of a summons, and may be served within or without the jurisdiction of the Choctaw Nation. Unless the motion for substitution is made not later than ninety (90) days after the death is suggested upon the record, the action shall be dismissed as to the deceased party.

2. In the event of the death of one (1) or more of the plaintiffs or of one (1) 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 suggested upon the record and the action shall proceed in favor of or against the surviving parties.

3. Actions for libel, slander, and malicious prosecution shall abate at the death of the defendant.

4. Other actions, including actions for wrongful death shall survive the death of a party.

B. **Incompetency.** If a party becomes incompetent, the court upon motion served as provided in Subsection A above may allow the action to be continued by or against his representative.

C. **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 Subsection A above.

D. 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 offer 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.

Chapter 8. Reserved.

Chapter 9. Reserved.

Chapter 10. Evidence.

Section 421. Modes of Taking Testimony.

The testimony of witnesses is taken in three modes:

First. By affidavits.

Second. By deposition.

Third. By oral examination.

Section 422. Affidavit defined.

An affidavit is a written declaration, under oath, made without notice to the adverse party.

Section 423. Reserved.

Section 424. Reserved.

Section 425. Reserved.

Section 426. Statement under Penalty of Perjury.

Whenever, under any law of the Choctaw Nation or under any rule, order, or requirement made pursuant to the law of the Choctaw Nation, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn statement, declaration, verification, certificate, oath, or affidavit, in writing of the person making the same (other than a deposition, or any oath of office, or an oath required to be taken before a specified official other than a notary public), the matter may with like force and effect be supported, evidenced, established, or proved by the unsworn statement in writing 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 the Choctaw Nation. The statement under penalty of perjury may be substantially in the following form:

"I state under penalty of perjury under the laws of the Choctaw Nation of Oklahoma that the foregoing is true and correct.

_____ _____

(Date and Place) (Signature)"

The signed statement under penalty of perjury shall constitute a legally binding assertion that the contents of the statement to which it refers are true. This section shall not affect any requirement for acknowledgment of an instrument affecting real property.

AFFIDAVITS AND DEPOSITIONS

Section 431. Use of Affidavit.

An affidavit may be used to verify a pleading, to prove the service of a summons, notice or other process in an action, to obtain a provisional remedy, an examination of a witness, a stay of proceedings, or upon a motion or in any other case permitted by law.

Section 432. Where and before whom taken.

An affidavit may be made in and out of the Choctaw Nation, before any person authorized to administer oaths.

Chapter 11. Trial.

Section 551. Trial Defined.

A trial is a judicial examination of the issues, whether of law or fact, in an action.

Section 552. How Issues Arise—Kinds of Issues.

Issues arise on the pleadings, where a fact or conclusion of law is maintained by one party, and controverted by the other. There are two kinds: First, of law; Second, of fact.

Section 553. Reserved.

Section 554. Reserved.

Section 555. Reserved.

Section 556. Trial of Issues.

All issues of law and fact arising in an action must be tried to the court without the aid of a jury.

Section 557. Reserved.

Section 558. Reserved.

Section 559. Reserved.

Section 560. Reserved.

Section 561. Reserved.

Section 562. Reserved.

Section 563. Reserved.

Section 564. Reserved.

Section 565. Reserved.

Section 566. Reserved.

Section 567. Reserved.

Section 568. Reserved.

Section 569. Reserved.

Section 570. Reserved.

Section 571. Reserved.

Section 572. Reserved.

Section 573. Reserved.

Section 574. Reserved.

Section 575. Reserved.

Section 576. Reserved.

Section 577. Order of Trial.

The trial shall proceed in the following order, unless the court for special reasons otherwise directs:

First. The party on whom rests the burden of the issues may briefly state his case, and the evidence by which he expects to sustain it.

Second. The adverse party may then briefly state his defense, and the evidence he expects to offer in support of it.

Third. The party on whom rests the burden of the issues must first produce his evidence; after he has closed his evidence the adverse party may interpose and file a demurrer thereto, upon the ground that no cause of action or defense is proved. If the court shall sustain the demurrer, such

judgment shall be rendered for the party demurring as the state of the pleadings or the proof shall demand. If the demurrer be overruled, the adverse party will then produce his evidence.

Fourth. The parties will then be confined to rebutting evidence unless the court, for good reasons in furtherance of justice, permits them to offer evidence in the original case.

Fifth. After all of the evidence has been presented the cause may be argued to the court.

Section 578. Reserved.

Section 579. Reserved.

Section 580. Reserved.

Section 581. Reserved.

Section 582. Reserved.

Section 583. Reserved.

Section 584. Retrial.

In all cases where the court fails to reach a decision during the trial, or after the cause is submitted for decision, it may be tried again immediately, or at a future time, as the court may direct.

Section 585. Reserved.

Section 586. Reserved.

Section 587. Reserved.

Section 588. Proof of Official Record.

A. Authentication.

1. **Domestic.** An official record kept within the United States or a jurisdiction of another federally recognized Indian tribe or Alaskan Native tribe or organization, state, district, commonwealth, territory, or insular possession thereof, or within the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record or by his deputy and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept and authenticated by the seal of such court, or may be made by any public office having a seal of office and having official duties

in the district or political subdivision in which the record is kept and authenticated by the seal of his office.

2. **Foreign.** A foreign official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof, or a copy thereof, attested by a person authorized to make the attestation and accompanied by a final certification as to the genuineness of the signature and official position a) of the attesting person, or b) of any foreign official whose certificate of genuineness of signature and official position related to the attestation or is in a chain of certificate of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, a) admit an attested copy without final certification, or b) permit the foreign official record to be evidenced by an attested summary with or without a final certification.

B. **Lack of Record.** A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in Paragraph (A)(1) above in the case of a domestic record or complying with the requirements of Paragraph (A)(2) above for summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

C. **Other Proof.** This Section does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

Section 589. Determination of Foreign Law.

A party who intends to raise an issue concerning the law of a foreign jurisdiction 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 Choctaw Nation Rules of Evidence. The court's determination shall be treated as a ruling on a question of law. The court shall take judicial notice of the law of any foreign jurisdiction within the United States published in an official publication of that jurisdiction upon reasonable notice of the law in question. The term "foreign jurisdiction within the United States" includes every federally recognized Indian tribe, every state, territory, or possession of the United States, the United States, and their political subdivisions and agencies.

Section 590. Appointment and Duties of Masters.

A. **Appointment and Compensation.** The District Court with the concurrence of a majority of the Court of Appeals Judges may appoint one (1) or more standing Masters, and the trial judge, in an appropriate case, may appoint a special Master to act in a particular case. The word "Master" includes a referee, an auditor, and an examiner, a commissioner, and an assessor. The compensation to be allowed to a master shall be fixed by the Court of Appeals, 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.

B. **Reference.** A reference to a Master shall be the exception and not the rule. In any action, save in matter of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

C. **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 before him 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 or reference and has the 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 for a court.

D. Proceedings.

1. **Meetings.** When a reference is made, the court 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 attorneys to be held within twenty (20) days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the Master to proceed with all reasonable diligence. Either party, on notice to the parties and Master, may apply to the court for an order requiring the Master to speed the proceedings and to 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.

2. **Witnesses.** The parties may procure the attendance of witnesses before the Master by the issuance and service of subpoenas. If without adequate excuse a witness fails to appear or give evidence, he may be punished as for contempt and be subjected to the consequences, penalties, and remedies provided herein.

3. **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 any 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.

E. Report.

1. **Content 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, unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The clerk shall forthwith mail to all parties notice of the filing.

2. **In Qualifying Actions.** The court shall accept the Master's findings of fact unless clearly erroneous. Within ten (10) 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 by Choctaw law. 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.

3. **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.

4. **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.

Section 591. Reserved.

Section 592. Reserved.

Section 593. Reserved.

Section 594. Reserved.

Section 595. Reserved.

Section 596. Reserved.

Section 597. Reserved.

Section 598. Reserved.

Section 599. Reserved.

Section 600. Reserved.

Section 601. Reserved.

Section 602. Reserved.

Section 603. Reserved.

Section 604. Reserved.

Section 605. Reserved.

Section 606. Reserved.

Section 607. Reserved.

Section 608. Reserved.

Section 609. Reserved.

Section 610. Reserved.

Section 611. Statement of Findings and Conclusions of Law.

A. **Effect.** In all actions tried upon the facts, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Section 687; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Request for findings are not necessary for purposes of review. 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 the witnesses. The findings of a Master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein.

B. **Amendment.** Upon motion of a party made not later than ten (10) 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 made with a motion for a new trial. When findings of fact are made in actions tried by the court, 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 court an objection to such findings or has made a motion to amend them or a motion for judgment.

Section 612. Reserved.

Section 613. Reserved.

Section 614. Reserved.

Section 615. Reserved.

Section 616. Reserved.

Section 617. Reserved.

Section 618. Reserved.

Section 619. Reserved.

Section 620. Reserved.

Section 621. Reserved.

Section 622. Reserved.

Section 623. Reserved.

Section 624. Reserved.

Section 625. Reserved.

Section 626. Reserved.

Section 627. Reserved.

Section 628. Reserved.

Section 629. Reserved.

Section 630. Exceptions—How Taken to Action of the Court.

Formal exceptions to rulings or orders of the court shall not be necessary; but for all purposes for which an exception has heretofore been necessary at the trial of a cause it shall be 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.

Section 631. Reserved.

Section 632. Reserved.

Section 633. Reserved.

Section 634. Reserved.

Section 635. Reserved.

Section 636. Reserved.

Section 637. Reserved.

Section 638. Reserved.

Section 639. Reserved.

Section 640. Reserved.

Section 641. Reserved.

Section 642. Reserved.

Section 643. Reserved.

Section 644. Reserved.

Section 645. Reserved.

Section 646. Reserved.

Section 647. Reserved.

Section 648. Reserved.

Section 649. Reserved.

Section 650. Reserved.

Section 651. New Trial—Definition—Causes for.

A new trial is a reexamination in the same court, of an issue of fact or of law or both, after the approval of the report of a referee or a decision by the court. The former report or decision shall be vacated, and a new trial granted, on the application of the party aggrieved, for any of the following causes, affecting materially the substantial rights of the party:

1. Irregularity in the proceedings of the court, referee, or prevailing party, or any order of the court or referee, or abuse of discretion, by which the party was prevented from having a fair trial;

2. Misconduct of the prevailing party;

3. Accident or surprise, which ordinary prudence could not have guarded against;

4. Excessive or inadequate damages, appearing to have been given under the influence of passion or prejudice;

5. Error in the assessment of the amount of recovery, whether too large or too small, where the action is upon a contract, or for the injury or detention of property;

6. That the report or decision is not sustained by sufficient evidence, or is contrary to law;

7. Newly discovered evidence, material for the party applying, which could not, with reasonable diligence, have been discovered and produced at the trial;

8. Error of law occurring at the trial, and objected to by the party making the application; or

9. When, without fault of the complaining party, it becomes impossible to prepare a record for an appeal.

Section 652. Reserved.

Section 653. Time for Filing Application for New Trial.

A. Unless unavoidably prevented, an application for a new trial by motion, if made, must be filed not later than ten (10) days after the judgment, decree or appealable order prepared in conformance with Section 696.3 of this title has been filed. More than ten (10) days after the judgment, decree, or appealable order which conforms to Section 696.3 of this title has been filed, an application for a new trial by petition may be filed in conformance with the provisions of Section 655 of this title.

B. If the moving party did not prepare the judgment, decree, or appealable order, and Section 696.2 of this title required a copy of the judgment, decree, or appealable order to be mailed to the moving party, and the court records do not reflect the mailing of a copy of the judgment, decree, or appealable order to the moving party within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or appealable order, the motion for new trial may be filed no later than ten (10) days after the earliest date on which the court records show that a copy of the judgment, decree, or appealable order was mailed to the moving party.

C. A motion for new trial filed after the announcement of the decision on all issues in the case but before the filing of the judgment or decree shall be deemed filed immediately after the filing of the judgment or decree.

Section 654. Making of Application—Affidavits.

A. The application for a new trial by motion must be upon written grounds filed at the time of making the motion.

B. The application for a new trial by petition must be filed in conformance with Section 655 of this title. The causes enumerated in paragraphs 2, 3, 7, and 9 of Section 651 of this title must be sustained by affidavits, showing their truth, and may be controverted by affidavits.

Section 655. Petition for New Trial.

Where the grounds for a new trial could not with reasonable diligence have been discovered before but are discovered more than ten (10) days after the judgment, decree, or appealable order was filed, or where the impossibility of preparing a record for an appeal, without fault of the complaining party, arose more than ten (10) days after the judgment, decree, or appealable order was filed, the application may be made by petition filed in the original case, as in other cases, within thirty (30) days after such discovery or occurrence; on which a summons shall issue, be returnable and served, or publication made, as in the beginning of civil actions, or service may be made on the attorney of record in the original case. The facts stated in the petition shall be considered as denied without answer, and the case shall be heard and summarily decided after the expiration of twenty (20) days from the date of service and not more than sixty (60) days after service, and the witnesses shall be examined in open court, or their depositions taken as in other cases; but no petition shall be filed more than one (1) year after the filing of the final judgment.

Section 656. Reserved.

Section 657. Reserved.

Section 658. Reserved.

Section 659. Reserved.

Section 660. Reserved.

Section 661. Rate of Damages Recoverable.

Whenever damages are recoverable, the plaintiff may claim and recover any rate of damages to which he may be entitled for the cause of action established.

Chapter 12. Judgment.

Section 681. Judgment defined.

A judgment is the final determination of the rights of the parties in an action.

Section 682. Judgment Given for or against Several Persons; Petition Dismissal; Costs.

Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; it may determine the ultimate rights of the parties on either side, as between themselves, and it may grant to the defendant any affirmative relief to which he may be entitled. In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others whenever a several judgment may be proper. The court may also dismiss the petition with costs, in favor of one or more defendants, in case of unreasonable neglect on the part of the plaintiff to serve the summons on other defendants, or proceed in the cause against the defendant or defendants served.

Section 683. Default Judgment.

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

B. **Judgment.** Judgment by default may be entered by the court. In all cases the party who claims to be entitled to a judgment by default shall apply to the court therefore, but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, 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 (3) days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial to the parties when and as required by any statute of the Choctaw Nation.

C. **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 Section 690.

D. **Plaintiff, Counter Claimants, Cross-Claimants.** The provisions of this section 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 Section 682.

A. **Judgment against the Choctaw Nation.** No judgment by default may be entered against the Choctaw Nation, its officers, or agencies unless sixty (60) days written notice has been served upon the Chief and the Choctaw Nation Tribal Council. If during such sixty-day period the Choctaw Nation is without counsel, no default may be entered until thirty (30) days after counsel has been procured by the Choctaw Nation. During such period, the Choctaw

Nation its agencies and officers shall be allowed to cure any default. No judgment by default shall be entered against the Choctaw Nation its agencies or officers in any case unless the claimant establishes his claim or right to relief, including his authority to bring the suit, and his damages by evidence satisfactory to the court.

Section 684. 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 thereupon the court shall enter judgment. 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 (1) party to another has been determined by decision or order or judgment, but the amount or extent of the liability, or both, remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than ten (10) days prior to the commencement of hearings to determine the amount or extent of liability.

Section 685. Judgment for Specific Acts; Vesting Title.

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 in accordance with Choctaw and federal law 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 court 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. If real or personal property is within the jurisdiction of the Choctaw Nation and the interest in said property at issue in the action is not held in trust by the United States, the court, in lieu of directing a conveyance of that interest, may enter a judgment divesting the interest from any party and vesting it in others. 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.

Section 686. Summary Judgment.

A. **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 (20) days from the commencement of the action 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 part thereof.

B. **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.

C. **Motion and Proceedings Thereon.** The motion shall be served at least ten (10) days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers 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 entered on the issue of liability alone although there is a genuine issue as to the amount of damages.

D. **Case Not Fully Adjudicated on Motion.** If on motion under this section, 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, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

E. **Forms 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 section, 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 section, must set forth specific facts showing that there is genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

F. **When Affidavits are Unavailable.** Should it appear from the affidavits of a party opposing the motion that he cannot provide, for reasons stated 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.

G. **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 section 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.

Section 687. Entry of Judgment.

A. Subject to the provisions of Section 682, the court shall promptly approve the form of the judgment and shall thereupon enter it:

1. upon a decision by the court that a party shall recover only a sum certain or costs or all relief shall be denied; or

2. upon a decision by the court granting other relief; or

B. Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and when entered in the civil docket book. Entry of the judgment shall not be delayed for the taxing of costs. Attorneys shall not submit forms of judgment except upon direction of the court.

Section 688. New Trials; Amendments of Judgments.

A. **Grounds.** A new trial is a re-examination in the same court, of an issue of fact or of law, or both, and may be granted to all or any of the parties and on all or part of the issues for any of the following reasons:

1. irregularity in the proceedings of the court, referee, or prevailing party, or any order of the court or referee, or abuse of discretion, by which the party was prevented from having a fair trial;

2. misconduct of the prevailing party;

3. accident or surprise which ordinary prudence could not have guarded against;

4. excessive or inadequate damages appearing to have been given under the influence of passion or prejudice;

5. error in the assessment of the amount of recovery, whether too large or too small, where the action is upon a contract or for the injury or detention of property;

6. that the report or decision is not sustained by sufficient evidence or is contrary to law;

7. newly-discovered evidence or material for the party applying which he could not, with reasonable diligence, have discovered and produced at the trial;

8. error of law occurring at the trial and objected to by the party making the application; or

9. when, without fault of the complaining party, it becomes impossible to make a record sufficient for appeal.

On a motion for a new trial, the court may open the judgment, if one has been entered, take additional testimony, amend findings of fact and conclusions and direct the entry of a new judgment.

B. **Time for Motion.** A motion for a new trial shall be served not later than ten (10) days after the entry of the judgment, except that a motion based upon newly discovered evidence shall be made within one (1) year from the date of the judgment.

C. **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 (10) days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding twenty (20) days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

D. **On Initiative of Court.** Not later than ten (10) days after entry of judgment, the court on 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 therefore.

E. **Motion to Alter or Amend a Judgment.** A motion to alter or amend the judgment shall be served not later than ten (10) days after entry of the judgment.

F. **Petition for New Trial on Grounds Discovered more than 10 Days after Judgment, Decree or Appealable Order was filed.** Where the grounds for a new trial could not with reasonable diligence have been discovered before but are discovered more than ten (10) days after the judgment, decree, or appealable order was filed, or where the impossibility of preparing a record for an appeal, without fault of the complaining party, arose more than ten (10) days after the judgment, decree, or appealable order was filed, the application may be made by petition filed in the original case, as in other cases, within thirty (30) days after such discovery or occurrence; on which a summons shall issue, be returnable and served, or publication made, as in the beginning of civil actions, or service may be made on the attorney of record in the original case. The facts stated in the petition shall be considered as denied without answer, and the case shall be heard and summarily decided after the expiration of twenty (20) days from the date of service and not more than sixty (60) days after service, and the witnesses shall be examined in open court, or their depositions taken as in other cases; but no petition shall be filed more than one (1) year after the filing of the final judgment.

Section 689. Relief from Judgment or Order.

A. **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 the motion of any party. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in Court of Appeals, and thereafter while the appeal is pending, may be so corrected with leave of the Court of Appeals.

B. **Mistakes; Inadvertence; 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 Subsection 689(B);

3. fraud (whether 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 upon 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.

C. The motion shall be made within a reasonable time, and for reasons in Paragraphs 1, 2 and 3 above not more than one (1) year after the judgment, order or proceeding was entered or taken. A motion under Subsection b above and this subsection c does not affect the finality of a judgment or suspend its operation. This section 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 not actually personally notified of the proceedings, or to set aside a judgment for fraud upon the court. Writs of *coram nobis*, *coram vobis*, *audita querela*, and bills of review or in the nature of a bill of review are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in this act or by an independent action.

Section 690. 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, setting aside a decision 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.

Section 691. Stay of Proceedings to Enforce a Judgment.

A. **Automatic Stay; Exceptions; Injunctions; Receiverships; Patent Accountings.** Except as otherwise stated in this Act, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of ten (10) days after its entry. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action, or a judgment or order directing an accounting, 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 Subsection C below govern suspending, modifying, restoring, or granting an injunction during the pendency of an appeal.

B. **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 any proceedings to enforce a judgment pending the deposition of a motion for a new trial or to alter or amend a judgment made pursuant to Section 689, or of a motion or relief from a judgment or order made pursuant to Section 690, or of a motion for amendment to the findings or for additional findings made pursuant to Subsection 611(B).

C. **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.

D. **Stay Upon Appeal.** When an appeal is taken, the appellant, by giving a supersedeas bond, may obtain a stay subject to the exceptions contained in Subsection A above. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

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

F. **Power of the Court of Appeals Not Limited.** The provisions in this Section do not limit any power of the Court of Appeals or of a judge thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency

of an appeal or to make any order appropriate to preserve the *status quo* or the effectiveness of the judgment subsequently to be entered.

G. **Stay of Judgment as to Multiple Claims or Multiple Parties.** When the court has ordered a final judgment under the conditions stated in Section 682, 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.

Section 692. Disability of a Judge.

If by reason of death, sickness, or other disability, a District Judge before whom an action has been tried is unable to perform the duties to be performed by the court under this Act after findings of fact and conclusions of law are filed, then another judge, including a judge appointed specially under this Section, may perform those duties; but 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.

Section 693. Judgment against Infant.

It shall not be necessary to reserve in a judgment or order the right of a minor to show cause against it after his attaining majority; but in any case in which such reservation would be proper, the minor, within two (2) years after arriving at the age of eighteen (18) years, may show cause against such order of judgment.

Section 694. Judgment as Liens.

Judgments of the court shall be liens on real estate of the judgment debtor within the jurisdiction of the Choctaw Nation from and after the time a certified copy of such judgment has been filed in the court's land tract records book. A five dollar ($5.00) fee shall be collected for each requested filing in the land tract records book. No judgment shall be a lien on the real estate of a judgment debtor until it has been filed in this manner. Execution shall be issued only by the court.

Section 695. Discharge of Money Judgment Liens.

In the event of an appeal to the Court of Appeals from a money judgment, the lien of such judgment, and any lien by virtue of an attachment issued and levied in the action in which such judgment was rendered, shall cease upon the judgment debtor or debtor's depositing, with the Court of Appeals, cash sufficient to cover the whole amount of the judgment including interest, costs and any attorney fees, together with costs and interest on the appeal, accompanied by a written statement, executed by the judgment debtor or debtors, that such deposit is made to discharge the lien of such judgment and any lien by virtue of an attachment issued and levied in the action, as provided for herein. It shall be the duty of the court clerk, upon receipt of such a cash deposit and written statement, immediately to enter the same and the amount of cash received upon the civil appearance docket in the action, upon the judgment docket opposite the

entry of such judgment, and upon the land tract records book, if the judgment has been filed therein. It shall further be the duty of the court clerk to deposit the cash so received in any action in a separate interest bearing official depository account and to hold the same pending final determination of the action, and, upon final determination of the action, to pay, or apply the same upon any judgment that might be rendered against the depositor or depositors and to refund any balance in excess of any such judgment to the depositor or depositors, or, in the event the action be finally determined in favor of the depositor or depositors, to refund the whole amount thereof to the depositor or depositors.

Section 696. Additional Cash Deposits.

A judgment creditor may, at any time, upon reasonable notice to the judgment debtor or debtors, move the court for the deposit of additional cash. If it appears that the cash which has been deposited is insufficient to cover the whole amount of the judgment, including interest, costs and any attorney fees, together with costs and interest on the appeal, the court shall order the deposit of additional cash. If the additional cash is not deposited within a reasonable time, which time shall be set by the court, the judgment shall be revived and attachment may be issued thereon.

Section 696.1. Reserved.

Section 696.2. Judgment, Decree or Appealable Order to be Written; Preparation of Written Documents; Filing; Mailing; Effect.

A. After the granting of a judgment, decree or appealable order, it shall be reduced to writing in conformance with Section 696.3 of this title, signed by the court, and filed with the court clerk. The court may direct counsel for any party to the action to prepare a draft for the signature of the court, in which event, the court may prescribe procedures for the preparation and timely filing of the judgment, decree or appealable order, including, but not limited to, the time within which it is to be submitted to the court. If a written judgment, decree or appealable order is not submitted to the court by the party directed to do so within the time prescribed by the court, then any other party may reduce it to writing and submit it to the court.

B. A file-stamped copy of every judgment, decree, or appealable order shall be served upon all parties, including those parties who are in default for failure to appear in the action, by the counsel for a party or party who prepared it, or by a person designated by the trial court, promptly and no later than three (3) days after it is filed. The service shall be done in the manner provided in Section 2005 of this title for the service of papers, and a certificate of service must be filed with the court clerk. If the judgment, decree or appealable order was prepared by the court, the court may direct a bailiff, court clerk or party to perform the service and certificate of service required by this subsection. In cases in which a party has failed to appear in the action, it shall be sufficient to mail a file-stamped copy of the judgment, decree or appealable order by first-class mail to the party's last-known address, or if the service of process was on a registered agent, to the address of the registered agent. No mailing is required to a party who has failed to appear in the action if that party was served by publication.

C. In any probate, guardianship, or conservatorship proceeding commenced where a party, heir, devisee, legatee, or other interested party or representative of a party has received notice of

a hearing which resulted in the issuance of a judgment, decree, or appealable order and did not file an entry of appearance, no further service of any judgment, decree, or appealable order shall be required to be sent to such party, heir, devisee, legatee, or other interested party or representative of a party, unless otherwise specifically required by law. No certificate of service shall be required to be filed where no party, heir, devisee, legatee, or other interested party, or representative of a party has filed an entry of appearance.

D. The filing with the court clerk of a written judgment, decree or appealable order, prepared in conformance with Section 696.3 of this title and signed by the court, shall be a jurisdictional prerequisite to the commencement of an appeal. The following shall not constitute a judgment, decree or appealable order: A minute entry;; informal statement of the proceedings and relief awarded, including, but not limited to, a letter to a party or parties indicating the ruling or instructions for preparing the judgment, decree or appealable order.

E. A judgment, decree or appealable order, whether interlocutory or final, shall not be enforceable in whole or in part unless or until it is signed by the court and filed; except that the adjudication of any issue shall be enforceable when pronounced by the court in the following actions: dissolution of marriage; separate maintenance; annulment; post-decree matrimonial proceedings; paternity; custody; adoption; termination of parental rights; mental health; guardianship; juvenile matters; habeas corpus proceedings; or proceedings for temporary restraining orders, temporary injunctions, permanent injunctions, conservatorship, probate proceedings, special executions in foreclosure actions, quiet title actions, partition proceedings or contempt citations. The time for appeal shall not begin to run until a written judgment, decree or appealable order, prepared in conformance with Section 696.3 of this title, is filed with the court clerk, regardless of whether the judgment, decree, or appealable order is effective when pronounced or when it is filed.

F. The preparation of orders, decisions and awards and the taking of appeals in workers' compensation cases shall be governed by the provisions of Title 85 of the Choctaw Nation Statutes.

Section 696.3. Judgments, Decrees and Appealable Orders that are Filed Should contain the following.

A. Judgments, decrees and appealable orders that are filed with the clerk of the court shall contain:

1. A caption setting forth the name of the court, the names and designation of the parties, the file number of the case and the title of the instrument;

2. A statement of the disposition of the action, proceeding or motion, including a statement of the relief awarded to a party or parties and the liabilities and obligations imposed on the other party or parties, including the amount of any prejudgment interest;

3. The signature and title of the court; and

4. Any other matter approved by the court.

B. Judgments, decrees and appealable orders that are filed with the clerk of the court may contain a statement of costs, attorney fees and interest other than prejudgment interest, or any of them, if they have been determined prior to the time the judgment, decree or appealable order is signed by the court in accordance with this section.

C. The clerk shall endorse on the judgment, decree or appealable order the date it was filed and the name and title of the clerk.

D. A file-stamped copy of the judgment, decree, or appealable order shall be served upon all parties, including those parties who are in default for failure to appear in the action, as provided in Section 696.2 of this title.

Section 696.4. Provision for Costs, Attorney Fees, and Interest.

A. A judgment, decree or appealable order may provide for costs, attorney fees, or both of these items, but it need not include them. The preparation and filing of the judgment, decree, or appealable order shall not be delayed pending the determination of these items. Such items may be determined by the court if a timely request is made, regardless of whether a petition in error has been filed.

B. If attorney fees or costs, including the amount of such attorney fees or costs have not been included in the judgment, decree or appealable order, a party seeking any of these items must file an application with the court clerk along with the proof of service of the application on all affected parties in accordance with Section 2005 of this title. The application must set forth the amount requested and include information which supports that amount. The application must be filed within thirty (30) days after the filing of the judgment, decree or appealable order unless a post-trial motion pursuant to subsection A of Section 990.2 of this title has been filed within ten (10) days after the filing of the judgment, decree, or appealable order. If such a motion is filed within that time, the application for attorney fees, costs, or interest shall be filed within thirty (30) days after the date an order disposing of the post-trial motion is filed. If the party filing the application did not prepare the judgment, decree, or appealable order, and Section 696.2 of this title required a copy of the judgment, decree, or appealable order to be mailed to the party filing application, and the court records do not reflect the mailing of a copy of the judgment, decree, or appealable order to the party filing the application within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or appealable order, the application may be filed no later than thirty (30) days after the earliest date on which the court records show that a copy of the judgment, decree, appealable order, or order disposing of the post-trial motion was mailed to the party filing the application. For good cause shown, the court may extend the time for filing the application upon motion filed within the time that the application could be filed. Within fifteen (15) days after the application is filed with the court, any party may file written objections to it, with a copy to the moving party.

C. Except as provided in Subsection D of this section, an application for attorney fees for services performed on appeal shall be made to the appellate court either in the applicant's brief on appeal or by separate motion filed any time before issuance of mandate. If in the brief, the

application shall be made in a separate portion that is specifically identified. The application shall cite authority for awarding attorney fees but shall not include evidentiary material concerning their amount. The appellate court shall decide whether to award attorney fees for services on appeal, and if fees are awarded, it shall remand the case to the trial court for a determination of their amount. The trial court's order determining the amount of fees is an appealable order.

D. If the right of a party to recover attorney fees depends upon a determination that the party has prevailed in an action, and if the prevailing party in the action cannot be determined from the decision of the appellate court, an application for attorney fees for services performed on appeal shall be made to the trial court in the manner and within the time provided in subsection B of this section.

Section 697. Reversal by Court of Appeals.

In the event of a reversal of the judgment by the Court of Appeals, no money deposited to discharge the lien of such judgment shall be refunded by the court until final disposition of the action.

Section 698. Reserved.

Section 699. Interest on Money Judgment.

All money judgments of the court shall bear interest at the rate of ten percent (10%) simple interest *per annum*, except authorized judgments against the Choctaw Nation, its political subdivisions, and agents in their official capacity which judgments shall not bear interest unless such is specifically provided for; provided, that when a rate of interest is specified in a contract, the rate therein shall apply to the judgment debt and be specified in the judgment if the rate does not exceed the lesser of any limitation imposed by Choctaw Nation law or the law of the jurisdiction in which the contract was made upon the amount of interest which may be charged.

Section 700. Exempt Property; Homestead; Area and Value; Indian Allottees; Temporary Renting.

A. The following property shall be exempt, except as to enforcement of contractual liens or mortgages, from garnishment, attachment, execution and sale and other process for the payment of principal and interest, costs, and attorney fees upon any judgment of the court:

1. the homestead of such person; provided, that such home is the principal residence of such person; provided further, that such homestead, if not within any city or town, shall consist of not more than one hundred sixty (160) acres of land, which may be in one or more parcels, to be selected by the owner; provided further, that such homestead within any city or town, owned and occupied as a residence only, or used for both residential and business purposes, shall consist of an area not exceeding one (1) acre of land, to be selected by the owner. For purposes of this Paragraph 1, at least seventy-five percent (75%) of the total square foot area of the improvements for which an exemption is claimed must be used as the principal residence in order to qualify for

the exemption. If more than twenty-five percent (25%) of the total square foot area of the improvements for which an exemption is claimed is used for business purposes, the exemption amount shall not exceed five thousand dollars ($5,000). Any temporary renting of the homestead shall not change the character of the same when no other homestead has been acquired;

2. a manufactured home, provided that such manufactured home is the principal residence of such person;

3. all household and kitchen furniture held primarily for the personal, family or household use of such person or a dependent of such person;

4. any lot or lots in a cemetery held for the purpose of sepulcher;

5. implements of husbandry necessary to farm the homestead;

6. tools, apparatus and books used in any trade or profession of such person or a dependent of such person;

7. all books, portraits and pictures that are held primarily for the personal, family or household use of such person or a dependent of such person;

8. the person's interest, not to exceed four thousand dollars ($4,000.00) in aggregate value, in wearing apparel that is held primarily for the personal, family or household use of such person or a dependent of such person;

9. all professionally prescribed health aids for such person or a dependent of such person;

10. five (5) milk cows and their calves under six (6) months old, that are held primarily for the personal, family or household use of such person or a dependent of such person;

11. one hundred (100) chickens that are held primarily for the personal, family or household use of such person or a dependent of such person;

12. two horses and two bridles and two saddles, that are held primarily for the personal, family or household use of such person or a dependent of such person;

13. such person's interest, not to exceed three thousand dollars ($3,000.00) in value, in one motor vehicle;

14. one gun, that is held primarily for the personal, family or household use of such person or a dependent of such person;

15. ten (10) hogs, that are held primarily for the personal, family or household use of such person or a dependent of such person;

16. twenty (20) head of sheep, that are held primarily for the personal, family or household use of such person or a dependent of such person;

17. all provisions and forage on hand, or growing for home consumption, and for the use of exempt stock for one (1) year;

18. seventy-five percent (75%) of all current wages or earnings for personal or professional services earned during the last ninety (90) days, except as provided in the Choctaw Nation Statutes regarding garnishment proceedings for collection of child support;

19. such person's right to receive alimony, support, separate maintenance or child support payments to the extent reasonably necessary for the support of such person and any dependent of such person;

20. Any interest in a retirement plan or arrangement qualified for tax exemption purposes under present or future Choctaw or federal law; provided, such interest shall be exempt only to the extent that contributions by or on behalf of a participant were not subject to federal income taxation to such participant at the time of such contributions, plus earnings and other additions thereon; provided further, any transfer or rollover contribution between retirement plans or arrangements which avoids current federal income taxation shall not be deemed a transfer which is fraudulent as to a creditor under Choctaw or federal law. "retirement plan or arrangement qualified for tax exemption purposes" shall include without limitation, trusts, custodial accounts, insurance, annuity contracts and other properties and rights constituting a part thereof. By way of example and not by limitation, retirement plans or arrangements qualified for tax exemption purposes permitted under present Choctaw and federal law include defined contribution plans and defined benefit plans as defined under the internal revenue code, individual retirement accounts, individual retirement annuities, simplified employee pension plans, Keogh plans, IRS Section 403(a) annuity plans, IRS Section 403(b) annuities, and eligible state deferred compensation plans governed under IRS Section 457. This provision shall be in addition to, and not a limitation of, any other provision of the Choctaw Nation Statutes which grants an exemption from attachment or execution and every other species of forced sale for the payment of debts. This provision shall be effective for retirement plans and arrangements in existence on, or created after the effective date of this act;

21. such person's interest in a claim for personal bodily injury, death or workers" compensation claim, for a net amount not in excess of fifty thousand dollars ($50,000), but not including any claim for exemplary or punitive damages;

22. any interest in a Roth Individual Retirement Account;

23. any interest in an education individual retirement account;

24. any amount received pursuant to the federal earned income tax credit; and

25. all ceremonial or religious items.

B. In no event shall any property under Paragraph 5 or 6 of Subsection A above, the total value of which exceeds five thousand dollars ($5,000), of any person residing within the jurisdiction of the Choctaw Nation be deemed exempt.

C. Nothing in the laws of the Choctaw Nation or United States, or any treaties between the Choctaw Nation and the United States, shall deprive any Choctaw allottee or other Indian allottee of the benefit of the exemptions provided by this Section or any other section of the Choctaw Nation Statutes.

Chapter 13. Provisional and Final Remedies and Special Proceedings.

Section 731. 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 the law of the Choctaw Nation existing at the time the remedy is sought.

Section 732. Receivers Appointed by the Courts.

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 other similar officers appointed by the court shall be in accordance with Choctaw Nation probate law, or, if none, then the practice heretofore followed in the courts of the United States or as provided in rules promulgated by the court. 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 this Article.

Section 733. Deposit in Court.

In an action in which any part 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 other 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. Money paid into the court under this Section shall be deposited and withdrawn in accordance with Choctaw Nation law detailing accounting procedures for the Court Clerk's Office, and if there be none, then in accordance with the Choctaw Nation procedure for the administration and accounting of federal grant monies, upon order of the court.

Section 734. Process on 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. When obedience to an order may be 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.

Section 735. Security; Proceedings against Sureties.

Whenever this Act or other Choctaw Nation law requires or permits the giving of security by a party and security is given in the form of a bond or stipulation or other undertaking with one (1) 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 may be 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.

Any surety authorized to give a bond, stipulation or other undertaking in either the federal courts or the courts within the State of Oklahoma and any individual approved by the court who resides within the Territorial jurisdiction of the Choctaw Nation (except officers of the court or elected Choctaw Nation officials) shall be eligible to give such bond, stipulation or undertaking in the court under this Act or other Choctaw Nation law unless otherwise prohibited by Choctaw Nation law.

Section 736. Execution.

A. **In General**. Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. 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 this Act.

B. **Against Certain Public Officers.** When a judgment otherwise authorized has been entered against a collector or other officer of revenue of the Choctaw Nation or against any officer, or employee, or agency of the Choctaw Nation in their official capacity; or if judgment is entered against an individual in his personal capacity who purported to act as an officer or employee of the Choctaw Nation, and the court has given certificate of probable cause for his act wherein the court determines that the individual had probable cause to believe that his action was authorized by the Choctaw Nation in his official capacity, execution shall not issue against the officer or his property but the final judgment shall be satisfied as may be provided by appropriation of such judgment (or such part thereof as the legislative body of the Choctaw Nation deems permissible considering the extent of available Choctaw Nation resources) from available Choctaw Nation funds. This Section is not intended, nor shall it be construed, as a waiver of sovereign immunity.

Section 737. Injunction Defined.

The injunction provided for by this Article is a command to refrain from or to do a particular act for the benefit of another. It may be the final judgment in an action, or may be allowed as a provisional remedy, and when so allowed, it shall be by order.

Section 738. Cause for Injunction; Temporary Restraining Order.

When it appears, by the verified complaint or an affidavit that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which, during the litigation, would produce injury to the plaintiff; or when, during the litigation, it appears that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, a temporary restraining order and preliminary injunction may be granted to restrain such act. And when, during the pendency of an action, it shall appear, by affidavit or proof, that the defendant threatens or is about to remove or dispose of his property with intent to defraud his creditors, or to render the judgment ineffectual, a temporary restraining order and preliminary injunction may be granted to restrain such removal or disposition. It may, also, be granted in any case where it is specially authorized by statute.

Section 739. Temporary Restraining Order; Notice; Hearing; Duration.

A. A temporary restraining order may be granted after commencement of the action without written or oral notice to the adverse party or his attorney 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 attorney can be heard in opposition; and

2. the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting a claim that notice should not be required.

B. Temporary restraining orders should not be granted except in cases of extreme urgency. 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 ten (10) days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for 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 injunction shall be set down for hearing at the earliest possible time and take 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 (2) 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.

Section 740. Temporary Restraining Order; Service.

Temporary restraining orders shall be served in the same manner as provided for service of the summons and complaint.

Section 741. Preliminary Injunction.

A. **Notice.** No preliminary injunction shall be issued without notice to the adverse party. Notice may be in the form of an order to appear at a designated time and place and show cause why a proposed preliminary injunction should not be issued, or in such form as the court shall direct. The burden of showing the criteria for issuance of a preliminary injunction remains with the moving party.

B. **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 Subsection B shall be so construed and applied as to save to the parties any rights they may have at trial.

Section 742. Preliminary Injunction; Criteria.

Unless a statute of the Choctaw Nation provides specifically for preliminary injunctive relief upon a showing of particular circumstances, no preliminary injunction shall be granted unless upon hearing the evidence presented by the parties the court determines that:

1. there is a substantial likelihood that the moving party will eventually prevail on the merits of their Claim for a permanent injunction or other relief;

2. the moving party will suffer irreparable injury unless the preliminary injunction issues. Irreparable injury means an injury which cannot be adequately remedied by a judgment for money damages;

3. the threatened injury to the moving party outweighs whatever damage or injury the proposed preliminary injunction may cause the opposing party; and

4. the preliminary injunction, if issued, would not be adverse to the public interest, and would not violate the public policy of the Choctaw Nation or the United States.

Section 743. 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; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

Section 744. Employer and Employee; Interpleader; Constitutional Cases.

This Chapter does not modify any statute of the Choctaw Nation relating to temporary restraining orders and preliminary injunctions in actions affecting employer and employee; or relating to preliminary injunctions in actions of interpleader or in the nature of interpleader; or any other case where temporary restraining orders or preliminary injunctions are expressly authorized or prohibited upon certain express terms or conditions.

Section 745. Security.

A. 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, damages and a reasonable attorney fee 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 Choctaw Nation or of an officer or agency thereof.

B. The provisions of Section 735 apply to a surety upon a bond or undertaking under this Section.

C. A party enjoined by a preliminary injunction may, at any time before final judgment, upon reasonable notice to the party who has obtained the preliminary injunction, move the court for additional security, and if it appears that the surety in the undertaking has removed from the Choctaw Nation jurisdiction or is insufficient, the court may vacate the preliminary injunction unless sufficient surety be given in a reasonable time upon such terms as may be just and equitable.

Section 746. Use of Affidavits.

On the hearing for a restraining order or preliminary injunction, each party may submit affidavits which shall be filed as a part of the record.

Section 747. Injunction by defendant.

A defendant may obtain a temporary restraining order or preliminary injunction upon filing his answer containing an appropriate counterclaim. He shall proceed in the manner hereinbefore prescribed.

Section 748. Injunction is Equitable.

Relief by way of a restraining order, preliminary, or permanent injunction is of equitable cognizance and shall be issued or refused in the sound discretion of the court. Relief by way of injunction shall be denied where the moving party may be adequately compensated for his injuries in money damages. No injunction shall issue to control the discretion or action of a governmental officer or employee when such officer or employee has been delegated the authority to exercise his discretion in determining how to act upon the subject matter, and is

acting or refusing to act in a manner not prohibited by Choctaw Nation law or the Indian Civil Rights Act of 1968, as amended.

Section 749. Modification of Preliminary Injunction.

If the preliminary injunction be granted, the defendant, at any time before the trial, may apply, upon notice, to the court to vacate or modify the same. The application may be made upon the complaint and affidavits upon which the injunction is granted or upon affidavits on the part of the party enjoined, with or without answer. The order of the court allowing, dissolving or modifying an injunction shall be returned to the clerk of the court and recorded.

Section 750. Modification of Permanent Injunction; Separate Action.

A final judgment containing a permanent injunction may be modified or dissolved by separate action upon a showing that the facts and circumstances have changed to the extent that the injunction is no longer just and equitable or that the injunction is no longer needed to protect the rights of the parties.

Section 751. Injunctions Tried to the Court.

All injunctive actions shall be tried to the court.

Section 752. Enforcement of Restraining Orders and Injunctions.

A restraining order of injunction granted by a judge may be enforced as the act of the court. Disobedience of any injunction may be punished as a contempt, by the court or any judge who might have granted it. An attachment may be issued by the court or judge, upon being satisfied, by affidavit or testimony, of the breach of the injunction against the party guilty of the same who may be required to make immediate restitution to the party injured and give further security to obey the injunction; or, in default thereof, he may be committed to close custody, until he shall fully comply with such requirements, be otherwise legally discharged or be punished by fine not exceeding two hundred dollars ($200.00) for each day of, or separate act of, contempt, to be paid into the court fund, or by confinement for not longer than sixty (60) days.

Section 753. Order of Delivery; Procedure.

A. The plaintiff in an action to recover the possession of specific personal property may Claim the delivery of the property at the commencement of suit, as provided herein.

1. The complaint must allege facts which show:

a. a description of the property claimed;

b. that the plaintiff is the owner of the property or has a special ownership or interest therein, stating the facts in relation thereto, and that he is entitled to the immediate possession of the property;

c. that the property is wrongfully detained by the defendant;

d. the actual value of the property, provided that when several articles are claimed, the value of each shall be stated as nearly as practicable;

e. that the property was not taken in execution on any order or judgment against said plaintiff, or for the payment of any tax, fine or amercement assessed against him, or by virtue of an order of delivery issued under this Title, or any other means or final process issued against said plaintiff; or, if taken in execution or on any order or judgment against the plaintiff, that it is exempt by law from being so taken; and

f. the prayer for relief requests that the court issue an order for the immediate delivery of the property.

2. The above allegations are verified by the party or, when the facts are within the personal knowledge of his agent or attorney and this is shown in the verification, by said agent or attorney.

3. A notice shall be issued by the clerk and served on the defendant with the summons which shall notify the defendant that an order of delivery of the property described in the complaint is sought and that the defendant may object to the issuance of such an order by a written objection which is filed with the clerk and delivered or mailed to the plaintiff's attorney within five (5) days of the service of the summons. In the event that no written objection is filed within the five-day period, no hearing is necessary and the court clerk shall issue the order of delivery. Should a written objection be filed within the five-day period specified, the court shall, at the request of either party, set the matter for prompt hearing. At such hearing the court shall proceed to determine whether the order for prejudgment delivery of the property should issue according to the probable merit of the plaintiff's complaint. Provided, however, that no order of delivery may be issued until an undertaking has been executed pursuant to Section 755 of this Title.

4. Nothing in this Act shall prohibit a party from waiving his right to a hearing or from voluntarily delivering the goods to the party seeking them before the commencement of the proceedings or at any time after institution thereof.

B. Where the notice that is required by Subsection A above cannot be served on the defendant but the judge finds that a reasonable effort to serve him was made and at the hearing the plaintiff has shown the probable truth of the allegations in his complaint, the court may issue an order for the prejudgment delivery of the property. If an order for the prejudgment delivery of the property is issued without actual notice being given the defendant, the defendant may move to have said order dissolved and if he does not have possession of the property, for a return of the property. Notice of the right to move for return of said property shall be contained in the order for seizure and delivery of such property which shall be served upon the defendant or left in a conspicuous place where the property was seized, and the law enforcement agency designated by the Chief shall hold said property in such cases for three (3) working days prior to delivery to the

plaintiff in order to give the defendant a reasonable opportunity to move for the return of such property. Notice of said motion with the date of the hearing shall be served upon the attorney for the plaintiff in the action. The motion shall be heard promptly, and in any case within ten (10) days after the date it is filed. The court must grant the motion unless, at the hearing on defendant's motion, the plaintiff proves the probable truth of the allegations contained in his complaint. If said motion and notice is filed before the law enforcement agency designated by the Chief turns the property over to the plaintiff, such law enforcement agency shall retain control of the property pending the hearing on the motion.

C. The court may, on request of the plaintiff, order the defendant not to conceal, damage or destroy the property or a part thereof and not to remove the property or a part thereof from the jurisdiction of the Choctaw Nation pending the hearing on plaintiff's request for an order for the prejudgment delivery of the property, and said order may be served with the summons.

Section 754. Penalty for Damage of Property Subject to Order of Delivery.

Any person who willfully and knowingly damages property in which there exists a valid right to issuance of an order of delivery, or on which such order has been sought under the provisions of this Title, or who conceals it, with the intent to interfere with enforcement of the order, or who removes it from the jurisdiction of the court with the intention of defeating enforcement of an order of delivery, or who willfully refuses to disclose its location to an officer charged with executing an order for its delivery, or, if such property is in his possession, willfully interferes with the officer charged with executing such writ, may be held in civil contempt of court, and shall be guilty of an offense, and if convicted of such offense shall be subject to a fine of not more than five hundred dollars ($500.00) and imprisonment for a term of not more than six (6) months, or both; and, in addition to such civil and criminal penalties, shall be liable to the plaintiff for double the amount of damage done to the property together with a reasonable attorney's fee to be fixed by the court, in which damages and fee shall be deemed based upon tortious conduct and enforced accordingly.

Section 755. Undertaking in Replevin.

The order shall not be issued until there has been executed by one (1) or more sufficient sureties of the plaintiff, to be approved by the court, an undertaking in not less than double the value of the property as stated in the complaint to the effect that the plaintiff shall duly prosecute the action, and pay all costs and damages which may be awarded against him, including attorney's fees and, if the property be delivered to him, that he will return the same to the defendant if a return be adjudged; provided, that where the Choctaw Nation or its agents or subdivisions is a party plaintiff, an undertaking in replevin shall not be required of the plaintiff but a writ shall issue upon complaint duly filed as provided by law. The undertaking shall be filed with the court and shall be subject to the provisions of Section 735 of this Title.

Section 756. Replevin Bond; Value.

On application of either party which is made at the time of executing the replevin bond or the redelivery bond, or at a later date, with notice to the adverse party, the court may hold a hearing

to determine the value of the property which the plaintiff seeks to replevy. If the value as determined by the court is different from that stated in the complaint, the value as determined by the court shall control for the purpose of Sections 755 and 760 of this Title.

Section 757. Order of Delivery.

The order for the delivery of the property to the plaintiff shall be addressed and delivered to the commanding officer of the law enforcement agency designated by the Chief. It shall state the names of the parties, the court in which the action is brought, and command the law enforcement agency to take the property, describing it, and deliver it to the plaintiff as prescribed in this Act, and to make return of the order on a day to be named therein.

Section 758. Order Returnable.

The return day of the order of delivery, when issued at the commencement of the suit, shall be the same as that of the summons; when issued afterwards, it shall be ten (10) days after it is issued.

Section 759. Execution of Order.

The commanding officer of the law enforcement agency designated by the Chief shall execute or cause the execution of the order by taking the property therein mentioned. He shall also deliver a copy of the order to the person charged with the unlawful detainer of the property, or leave such copy at his usual place of residence, or at the place such property was seized.

Section 760. Re-delivery on Bond.

If, within three (3) working days after service of the copy of the order, there is executed one (1) or more sufficient sureties of the defendant, to be approved by the court or the commanding officer of the law enforcement agency designated by the Chief, an undertaking to the plaintiff in not less than double the amount of the value of the property as stated in the affidavit of the plaintiff to the effect that the defendant will deliver the property to the plaintiff, if such delivery be adjudged, and will pay all costs and damages that may be awarded against him, the commanding officer of the law enforcement agency designated by the Chief shall return or shall cause the return the property to the defendant. If such undertaking be not given within three (3) working days after service of the order, the commanding officer of the law enforcement agency designated by the Chief shall return or shall cause the return the property to the plaintiff.

Section 761. Exception to Sureties.

Any party for whose benefit an undertaking is made may except at any time to the sufficiency of the sureties on such undertaking. Such exception shall be made in writing and filed with the court. Upon hearing, the court shall make an order as is just to safeguard the rights of the parties.

Section 762. Proceedings on Failure to Prosecute Action.

If the property has been delivered to the plaintiff and judgment rendered against him or his action be dismissed, or if he otherwise fails to prosecute his action to final judgment, the court shall, on application of the defendant or his attorney, proceed to inquire into the right of property and right of possession of the defendant to the property taken.

Section 763. Judgment; Damages; Attorney Fees.

In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, the recovery of possession or the value thereof in case a delivery cannot be had and of damages for the detention. If the property has been delivered to the plaintiff and the defendant claim a return thereof, judgment for the defendant may be for a return of the property or the value thereof, in case a return cannot be had, and damages for taking and withholding the same. The judgment rendered in favor of the prevailing party in such action may include a reasonable attorney fee to be set by the court, to be taxed and collected as costs.

Section 764. Officer May Break into Buildings.

Upon probable cause to believe that the property is concealed therein, but not until he has been refused entrance into said building or enclosure and the delivery of the property, after having demanded the same, or if no person having charge thereof is present, a law enforcement officer of the agency designated by the Chief, in the execution of the order of delivery issued by the court, may break open any building or enclosure in which the property claimed or any part thereof is concealed.

Section 765. Compelling Delivery by Attachment.

In an action to recover the possession of specific personal property, the court may for good cause shown, before or after judgment, compel the delivery of the property to the officer or party entitled thereto by attachment and may examine either party as to the possession or control of the property. Such authority shall only be exercised in aid of the foregoing provisions of this Chapter 13.

Section 766. Improper Issue of Order of Delivery.

Any order for the delivery of property issued under this Chapter 13 without the affidavit and undertaking required, shall be set aside and the plaintiff shall be liable in damages to the party injured.

Section 767. Joinder of Cause of Action for Debt; Stay of Judgment.

In any action for replevin in the court, it shall be permissible for the plaintiff to join with the claim in replevin a claim founded on debt claimed to be owing to the plaintiff if the debt shall be secured by a lien upon the property sought to be recovered in the claim in replevin. In such cases, the execution of the judgment for debt shall be stayed pending the sale of the property and the determination of the amount of debt remaining unpaid after the application of the proceeds of the sale thereto.

Section 768. Grounds for Attachment.

The plaintiff in a civil action for the recovery of money may, at or after the commencement thereof, have an attachment against the property of the defendant, and upon proof of any of the following grounds:

1. when the defendant, or one (1) of several defendants, is a foreign corporation or a nonresident of the jurisdiction of the Choctaw Nation (but no order of attachment shall be issued on this Paragraph 1 for any claim other than a debt or demand arising upon contract, judgment or decree, unless the claim arose wholly within the jurisdiction of the Choctaw Nation);

2. when the defendant, or one (1) of several defendants, has absconded with intention to defraud his creditors;

3. when the defendant, or one (1) of several defendants, has left the jurisdiction of the Choctaw Nation to avoid the service of summons;

4. when the defendant, or one (1) of several defendants, so conceals himself that a summons cannot be served upon him;

5. when the defendant, or one (1) of several defendants, is about to remove his property, or a part thereof, out of the jurisdiction of the court with the intent to defraud his creditors;

6. when the defendant, or one (1) of several defendants, is about to convert his property, or a part thereof, into money for the purpose of placing it beyond the reach of his creditors;

7. when the defendant, or one (1) of several defendants, has property or rights in action, which he conceals;

8. when the defendant, or one (1) of several defendants, has assigned, removed or disposed of, or is about to dispose of, his property, or a part thereof, with the intent to defraud, hinder or delay his creditors;

9. when the defendant, or one (1) of several defendants, fraudulently contracted the debt, or fraudulently incurred the liability or obligations for which the suit has been brought;

10. where the damages for which the action is brought are for injuries arising from the commission of a criminal offense;

11. when the debtor has failed to pay the price or value of any article or thing delivered, which by contract he was bound to pay upon delivery; or

12. when the action is brought by the Choctaw Nation or its officers, agents, or political agencies or subdivisions for the purpose of collection of any Choctaw Nation tax, levy, charge, fee, assessment, rental, or debt arising in contract or by statute and owed to the Choctaw Nation.

Section 769. Attachment Affidavit.

A. An order of attachment may be issued by the court when:

1. there is a civil complaint filed in the court stating a claim for relief and an application that the court issue an order of attachment which states facts which show:

a. the nature of the plaintiff's claim;

b. that it is just;

c. the amount which the affiant believes the plaintiff ought to recover; and

d. the existence of one (1) of the grounds for an attachment enumerated in Section 768.

2. The application must be verified by the plaintiff, or, where his agent or attorney has personal knowledge of the facts, by said agent or attorney.

3. The defendant has been served with a notice, issued by the clerk which shall notify the defendant that an order of attachment of property is requested and that he may object to the issuance of such an order by a written objection which is filed with the court clerk and mailed or delivered to the plaintiff's attorney within five (5) days of the receipt of the notice. A copy of plaintiff's application shall be attached to and served with the notice, and the notice and application may be served with the summons in the action.

4. If no written objection is filed within the five-day period, no hearing is necessary and the clerk may issue the order of attachment. If a written objection is filed within the five-day period, the court shall, at the request of either party, set the matter for a prompt hearing with notice to the adverse party. If the plaintiff proves the probable merit of his cause and the truth of the matters asserted in his application for an order of attachment, the court may issue the order of attachment. Provided, however, before an order of attachment is issued by either the court or the clerk, the Plaintiff has executed an undertaking pursuant to Section 770. The Choctaw Nation and its agents shall not be required to execute an undertaking.

5. If the court finds that the defendant cannot be given notice as provided herein, although a reasonable effort was made to notify him, but at the hearing the plaintiff proves the probable merit of his claim and the truth of the matters asserted in his application, the court may issue the order of attachment. The defendant may subsequently move to have the attachment vacated.

Section 770. Attachment Bonds.

The attachment bond for the benefit of the party whose property is attached shall be in such form and in such amount, not less than double the amount of the plaintiff's claim, as the court shall direct and shall guarantee payment of all damages, costs, and reasonable attorney fees incurred as a result of a wrongful attachment. No bond shall be required of the Choctaw Nation.

Section 771. Order of Attachment.

The order of attachment shall be directed and delivered to the law enforcement agency designated by the Chief. The order shall require the agency to attach the lands, tenements, goods, chattels, stocks, rights, credits, moneys and effects of the defendant within the territorial jurisdiction of the Choctaw Nation not exempt by law from being applied to the payment of the plaintiff's claim, or so much thereof as will satisfy the plaintiff's claim, to be stated in the order as in the affidavit and the probable cost of the action not exceeding one hundred dollars ($100.00).

Section 772. When Returnable.

The return day of the order of attachment when issued at the commencement of the action shall be the same as that of the summons, and otherwise within twenty (20) days of the date of issuance.

Section 773. Order of Execution.

Where there are several orders of attachment against the defendant, they shall be executed in the order in which they are received by the law enforcement agency.

Section 774. Execution of Attachment Order.

The order of attachment shall be executed by the law enforcement agency designated by the Chief without delay. An officer thereof shall go to the place within the jurisdiction of the Choctaw Nation where the defendant's property may be found, and declare that, by virtue of said order, he attaches said property at the suit of the plaintiff. The officer shall make a true inventory and appraisement of all the property attached, which shall be signed by the officer and returned with the order, leaving a copy of said inventory with the person or in the place from which the property was seized.

Section 775. Service of Order.

A. When the property attached is real property, the officer shall leave a copy of the order with the occupant or, if there be no occupant, then a copy of the order shall be posted in a conspicuous place on the real property. Where it is personal property and he can get possession, he shall take such into his custody and hold it subject to the order of the court.

B. When the property attached is real property, third parties shall not be affected until a copy of the attachment order and the legal description of the real property attached shall be filed and placed of record in the court.

C. When the subject real property lies within the jurisdiction of the State of Oklahoma or any other state, then the laws of such jurisdiction must be satisfied in order for the real property to be attached. In such instances, entering the judgment of the court as a foreign judgment in a court of that jurisdiction may be necessary.

Section 776. Re-delivery on Bond.

The law enforcement agency designated by the Chief shall re-deliver the property to the person in whose possession it was found upon the execution by such person, in the presence an officer of said law enforcement agency, an undertaking to the plaintiff, with one (1) or more sufficient sureties, to the effect that the parties to the same are bound, in double the appraised value thereof, that the property or its appraised value in money shall be forthcoming to answer the judgment of the court in the action.

Section 777. Nature of Garnishment.

Garnishment is an aid to execution of judgments entered by the court or a judgment of a foreign court to which the court may grant comity as provided by Choctaw Law. An order of garnishment before judgment may not be obtained.

Section 778. When Garnishment Available after Judgment; Written Directions Relating to Order of Garnishment.

A. As an aid to the enforcement of the judgment, an order of garnishment may be obtained and shall be issued by the court in connection with an execution thereof as designated by the written direction of the party entitled to enforce the judgment. Garnishment may only be used for the purpose of attaching earnings of the defendant and no other property of the defendant may be affected.

1. An order of garnishment issued as an aid for the enforcement of a judgment and for the purpose of attaching earnings of the defendant, is declared to be sufficient if substantially in the following form:

> "In the District Court of the Choctaw Nation, A.B., Plaintiff vs. C.D., Defendant, and E.F., Garnishee. The Choctaw Nation to the Garnishee: You are hereby ordered as a garnishee to file with the above named court, within thirty (30) days after service of this order upon you, your answer under oath stating whether you are indebted to the defendant by reason of earnings (compensation for personal services, whether denominated as wages, salary, commission, bonus or otherwise) due and owing the defendant and stating the amount of any such indebtedness. Computation of the amount of your indebtedness shall be made as prescribed by the answer form served herewith and shall be based upon defendant's earnings for

the entire normal pay period in which this order is served upon you. You are further ordered to withhold the payment of that portion of defendant's earnings required to be withheld pursuant to the directions accompanying the answer form until the further order of the court. Your answer on the form shall constitute substantial compliance with this order. Failure to file your answer may entitle the plaintiff to judgment against you for the full amount of the claim and costs.

Witness my hand and seal of the court,
this day of_____,_____.

_____
Clerk of the District Court, Choctaw Nation."

a. If the garnishment is to enforce a court order for the support of any person, the garnishment shall not exceed 50% of an individual's disposable earnings.

b. The maximum part of the aggregate disposable earnings of any person for any workweek which is subject to garnishment or income assignment shall not exceed: I) fifty percent (50%) of such person's disposable earnings for that week, if such person is supporting his spouse or a dependent child other than the child with respect to whose support such support is used; and ii) sixty percent (60%) of such person's disposable earnings for that week if such person is not supporting a spouse or dependent child. The fifty percent (50%) specified herein shall be deemed to be fifty-five percent (55%) and the sixty percent (60%) specified in paragraph 2 of this subsection shall be deemed to be sixty-five percent (65%), if and to the extent that such earnings are subject to garnishment or income assignment to enforce a court order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

2. **Service and Return**. The order of garnishment shall be served on the garnishee, together with two (2) copies of the form for the garnishee's answer and amendments thereto and returned by the officer making service.

3. **Effect**. An order of garnishment issued for the purpose of attaching earnings of the defendant shall have the effect of attaching the nonexempt portion of the defendant's earnings for the entire normal pay period in which the order is served. Nonexempt earnings are earnings which are not exempt from wage garnishment pursuant to Subparagraphs (1)(a) and (b) above and computation thereof for a normal pay period shall be made in accordance with the direction accompanying the garnishee's answer form served with the order of garnishment.

Section 779. Answer of Garnishee; Form; Instructions.

A. Within ten (10) days after service upon a garnishee of an order of garnishment issued for the purpose of attaching any earnings due and owing the defendant, the garnishee shall file an answer thereto with the court, stating the facts with respect to the demands of the order. If the defendant is not employed by the garnishee or has terminated employment with the garnishee, the answer is not required to be verified. Otherwise, the answer shall be verified. The answer of

the garnishee is declared to be sufficient if substantially in the following form, but the garnishee's answer shall contain not less than the prescribed in the form:

ANSWER OF GARNISHEE

The defendant_____,

(Check one:)

terminated employment_____, on_____,_____.

or was never employed .

_____
Garnishee

B. If one of the above applies, you are not required to complete the remainder of this form. You must return the form within the time prescribed in the order for garnishment. If neither of the above applies, you must complete the remainder of this form and have it verified.

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_____says that on the _____day of_____,_____, I was served with an order of garnishment in the above entitled action; that since being served with said order I have delivered to the employee_____only that portion of the said employee's earnings authorized to be delivered to the said employee pursuant to the instructions accompanying this form and that the statements in my answer are true and correct.

_____
Garnishee

Instructions to Garnishee:
The order of garnishment served upon you has the effect of attaching that portion of the defendant's earnings (defined as compensation for personal services, whether denominated as wages, salary, commission, bonus or otherwise) which is not exempt from wage garnishment. This form is provided for your convenience in furnishing the answer required of you in the order. It is designed so that you may prepare your answer in conjunction with the preparation of your payroll. Wait until the end of the normal pay period in which this order has been served upon you and apply the tests set forth in these instructions to the entire earnings of the defendant- employee during the pay period, completing your answer in accordance with these instructions. If you do not choose to use this form, your answer, under oath, shall not contain less than that prescribed herein. Your answer must be filed with the above named court within the time prescribed in the order of the garnishment.

First, furnish the information required by Paragraphs A through F of the form below. Read carefully the "Note to Garnishee" following Paragraph G. Then, if the total amount of the

employee's disposable earnings are not exempt from wage garnishment pursuant to Section 5-21448, complete Paragraph G of the form by computing the amount of employee's disposable earnings which are to be paid over to the employee. Any disposable earnings remaining after payment of the above amounts shall be retained until further order of the court.

STATEMENT OF GARNISHMENT

A. The normal pay period for employee is weekly; every two weeks; semi-monthly; monthly. (designate one).

B. This answer covers earnings for the normal pay period beginning on the _____day of _____,_____, which normal pay period includes the day on which the order of garnishment was served upon me.

C. Total gross earnings due for the normal pay period covered by B above are $_____.

D. Average gross earnings for normal pay period as designated in A. above are $_____.

E. Amounts required by law to be withheld for the normal pay period covered by B above are:

1. Federal social security tax.....$_____.
2. Federal income tax .....$_____.
3. State income tax.....$_____.
4. Other withholding tax.....$_____.
   Total .....$_____.
   (Deduct only those items listed above)

F. In accordance with the instructions accompanying this answer form, I have determined that the amount which may be paid to employee is $_____.

G. After paying to employee the amount stated in F above, I am holding the remainder of employee's disposable earnings in the amount of $_____.

I will hold in my possession until further order of the court all of the moneys required to be withheld.

_____
Garnishee

Answer of the garnishee must be filed with court pursuant to this Act. This form is provided for your convenience in furnishing the answer required of you in the order of garnishment. If you do not choose to use this form, your answer shall not contain less than that prescribed herein. Your answer must be filed with the court within the time prescribed in the order of garnishment.

C. The court shall cause a copy of the answer to be mailed promptly to the plaintiff and the defendant. Within ten (10) days after the filing of the answer the plaintiff or defendant, or both of them, may reply thereto controverting any statement in the answer. If the garnishee fails to answer within the time and manner herein specified, the court may grant judgment against garnishee for the amount of the plaintiff's judgment or claim against the defendant. Such judgments may be taken only upon written motion and notice. If the garnishee answers as required herein and no reply thereto is filed, the allegations of the answer are deemed to be confessed. If a reply is filed as herein provided, the court shall try the issues joined, the burden being upon the party filing the reply to disprove the sworn statements of the answer, except that the garnishee shall have the burden of the answer, except that the garnishee shall have the burden of proving offsets or indebtedness claimed to be due from the defendant to the garnishee, or liens asserted by the garnishee against property of the defendant.

Section 780. Effects of Offsets Claimed by Garnishee.

When the garnishee claims that he or she is not indebted to the defendant for the reason that the defendant is indebted to the garnishee, or that the indebtedness due to the defendant is reduced thereby, the garnishee is not discharged unless and until he or she applies the amount of his or her indebtedness to the defendant to the liquidation of his or her claim against the defendant.

Section 781. Trial.

A. **Hearing.** Trial of all garnishment issues shall be in the court.

B. **Right of defendant to Contest Garnishment.** The defendant may, in addition to controverting the statements in the answer of the garnishee upon the ground that the indebtedness of the garnishee, or any property held by him or her, is exempt from execution against such defendant, or for any other reason is not liable to garnishment and the defendant may participate in the trial of any issue between the plaintiff and the garnishee for the protection of his or her interest.

C. **Right of Garnishee to Defend the Action.** The garnishee in the answer may, on behalf of the defendant, state any claim of exemption from execution or attachment which the defendant may have, or any other objection known to the garnishee that the defendant might have or assert. The garnishee may at his option defend the principal action for a defendant who defaults, but is under no obligation to do so.

Section 782. Judgment in Garnishment Proceedings.

A. Upon determination of the issues, either by admissions in the answer or reply, by default, or by findings of the court on controverted issues, judgment shall be entered fixing the rights and

liabilities of all the parties in the garnishment proceedings 1) by determining the liability of garnishee upon default, 2) discharging the garnishee, or 3) making available to the satisfaction of the claim of the plaintiff any indebtedness due from the garnishee to the defendant or any property in the hands of the garnishee belonging to the defendant, including ordering the payment of money by the garnishee into court or the impoundment preservation and sale of property, 4) rendering judgment against the garnishee for the amount of his or her indebtedness to the defendant or for the value of any property of the defendant or for the value if any property of the defendant held by the garnishee, or 5) if the answer of a garnishee is controverted without good cause, the court may award the garnishee judgment against the party controverting such answer damages for his or her expenses, including reasonable attorney's fees, necessarily incurred in substantiating the same.

B. When judgment is entered in garnishment proceedings for the purpose of enforcing an order of any court for the support of any person and such court finds that a continuing order of garnishment is necessary to insure payment of a court order of support, the court may issue a continuing order of garnishment to allow any indebtedness that will become due from the garnishee to the defendant because of an employer-employee relationship to be made available to the plaintiff on a periodic and continuing basis for so long as the court issuing the order may determine or until otherwise ordered by such court in a further proceeding. No other may be made pursuant to this Subsection B, unless the court finds that the defendant is in arrearage of a court order for support in an amount equal to or greater than one (1) year of support as ordered and the defendant receives compensation from his or her employer on a regular basis in substantially equal periodic payments. On motion of a defendant who is subject to a garnishment order pursuant to this subsection B, the court for good cause shown may modify or revoke any such order.

Section 783. Bond of Defendant for Payment of Judgment.

The defendant may at any time after the proceeding is commenced file with the clerk of the court a bond, to be approved by the clerk, in double the amount of the claim or such lesser amount as shall be approved by order of the judge to the effect that the defendant will pay to the plaintiff on demand the amount of the judgment and costs that may be assessed against him or her, and thereupon the garnishee shall be discharged and any money or property paid or delivered to any officer shall be delivered to the person entitled thereto.

Section 784. Forms to be used.

All necessary pleadings and forms to be used in garnishment proceedings shall be promulgated by the Court of Appeals.

Section 785. Child Support Payment; Income Assignment or Garnishment Proceedings.

A. Pursuant to Title 12 Section 786 of the Choctaw Nation Statutes, in all child support cases arising out of an action for divorce, paternity or other proceeding, the court shall order the wage of the obligor subject to immediate income assignment, with certain exceptions. Otherwise, any person awarded custody of and support for a minor child by the court, upon proper application, shall be entitled to proceed to collect any current child support and child support due and owing through income assignment or by garnishment of any Department or Agency or Business Enterprise of the Choctaw Nation, if the minor child is in the custody and care of the person entitled to receive the child support or as is otherwise provided by the court or administrative order at the time of the income assignment or garnishment proceedings.

B. The maximum part of the disposable earnings of any person for any workweek which is subject to garnishment or income assignment for the support of a minor child shall not exceed:

1. fifty percent (50%) of such person's disposable earnings for that week, if such person is supporting his spouse or a dependent child other than the child with respect to whose support such order is used; and

2. sixty percent (60%) of such person's disposable earnings for that week if such person is not supporting a spouse or dependent child. The fifty percent (50%) specified in Paragraph (B)(1) above shall be deemed to be fifty-five percent (55%) and the sixty percent (60%) specified in this Paragraph (B)(2) shall be deemed to be sixty-five percent (65%), if and to the extent that such earnings are subject to garnishment or income assignment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

Section 786. Income Assignment Proceedings.

A. Any person or entity entitled to receive child support payments for the current or for any prior month or months, or such person's legal representative may initiate income assignment proceedings by filing with the court an application signed under oath specifying:

1. that the obligor has failed to make child support payments required by a child support order in an amount equal to the child support payable for at least one (1) month;

2. a certified copy of the support order and all subsequent modifications or orders relating thereto;

3. that some person or entity, known or unknown, is indebted to or has earnings in his/its possession or under his control belonging to the obligor;

4. that the indebtedness or earnings specified in the affidavit, to the best of the knowledge and belief of the person making such affidavit, are not exempt by law; and

5. the amount of the support order and the amount of arrearage.

B. Notice of Delinquency.

1. Upon application by the person or entity entitled to receive child support payments or such person's legal representative, the court shall mail, by certified mail, return receipt requested, to the last known address of the obligor, or shall serve in accordance with law, a notice of delinquency. The notice of delinquency shall be postmarked or issued no later than ten (10) days after the date on which the application was filed and shall specify:

a. that the obligor is alleged to be delinquent under a support order in a specified amount;

b. that an assignment will become effective against the obligor's earnings unless within fifteen (15) days of the date of mailing or service on the obligor of the delinquency notice, said date of mailing to be specified in the notice, the obligor requests a hearing with the court pursuant to this Section;

c. that on or prior to the date of the hearing, in any case in which services are not being provided, the obligor may prevent the income assignment from taking effect by paying the full amount of the arrearage plus costs and attorney's fees provided, that the obligor shall only be entitled to prevent such income assignment from taking effect under this subparagraph a maximum of two (2) times, thereafter, payment of any arrearage will not prevent an income assignment from taking effect;

d. that, at a requested hearing, the obligor may contest the claimed delinquency only with regards to mistake of identity or to the existence or the amount of the delinquency; and

e. that the assignment shall remain in effect for as long as current child support is due or child support arrearage remain unpaid and that payment of any arrearage, except as provided in Subparagraph c above, will not prevent an income assignment from taking effect.

2. Hearing Request.

a. An obligor may request a hearing with the court pursuant to this Section on or before the fifteenth day from date of mailing or service of the delinquency notice. Upon request for hearing, the court shall set the matter for a hearing. A file-stamped copy of the request and a copy of the order for hearing shall be served in accordance with law upon the person or entity filing the affidavit for income assignment or his/its legal representative. The court shall promptly hear and determine the matter and, unless the obligor successfully shows that there is a mistake of identity or a mistake as to the existence or the amount of delinquency, the court shall order that the income assignment take effect against the disposable earnings of the obligor;

b. the court may order an obligor to pay all court costs and attorneys' fees involved in an income assignment proceeding pursuant to this Subsection B;

c. the order shall be a final judgment for purposes of appeal. The effect of the income assignment shall not be stayed on appeal except by order of the court; and

d. in all cases of paternity and for arrearage of child support, the court shall make inquiry to determine if the noncustodial parent has been denied reasonable visitation. If reasonable visitation has been denied by the custodial parent to the noncustodial parent, the court shall include visitation provisions in the support order.

C. The court shall send a notice of the income assignment to the payor to effectuate the assignment pursuant to Subsection E below.

D. If, within fifteen (15) days of the date of mailing or service on the obligor of the delinquency notice, the obligor fails to request a hearing pursuant to Subsection B above, the court shall send a notice of the income assignment to the payor pursuant to Subsection E below to effectuate the assignment.

E. Delivery of Notice.

1. The notice of the income assignment required pursuant to Subsections B, C, and D above shall be sent by the court to the payor listed on the application. The notice shall be sent by certified mail, return receipt requested or otherwise served according to law. The payor shall be required to comply with the provisions of this subsection as stated in the notice. The notice shall specify:

a. the effective date of the assignment. The assignment shall take effect on the next payment of earnings to the obligor after the payor receives notice thereof and the amount withheld shall be sent to the person entitled to the child support within ten (10) days after the date upon which the obligor is paid. The payor shall include with each payment a statement reporting the date on which the obligor's support obligation was withheld;

b. the amount specified in the support order and the amount of the arrearage to be withheld from the obligor's earnings. The amount withheld by the payor shall not exceed the limits on the percentage of an obligor's income which may be assigned for support pursuant to Section 785 of this Act;

c. that the withholding is binding upon the payor until further order of the court or as long as the order for support on which it is based remains in effect;

d. that the payor is liable for any amount up to the accumulated amount that should have been withheld if the payor fails to withhold the earnings in accordance with the provisions of the assignment;

e. that two (2) or more income assignments may be levied concurrently, but if the total levy exceeds the maximum permitted under Section 785 of this title, all current child support due shall be paid before the payment of any arrearage. If total current child support exceeds the maximum permitted under Section 785, the amount available shall be paid *pro rata*

by the percentage of total current support owed to all obligees. After current support, the sums due under the first assignment issued under this Section shall be paid before the payment of any sums due on any subsequent income assignment; provided, that the court which issued the initial income assignment, upon notice to all interested parties, is authorized to prorate the payment of the support between two (2) or more income assignments levied concurrently;

f. If the amount of support due under the assignments exceeds the maximum amount authorized by Section 785, the payor shall pay the amount due up to the statutory limit, and payor shall send written notice to the court and person entitled to support that the amount due exceeds the amount subject to withholding; if payor fails to pay or notify as required herein, the payor may be liable for an amount up to the accumulated amount that is due and owing upon receipt of the notice;

g. that, if the payor is the obligor's employer, the payor shall notify the person entitled to the support payment, and the court when the obligor terminates employment. The payor shall provide by written notice to the person entitled to support and to the court, the obligor's last-known address and the name of the of the obligor's new employer, if known; and

h. that if the payor has no income due or to be due to the obligor in his possession or control, or if the obligor has terminated employment with the payor prior to the receipt of notice required pursuant to Subsection C above, the payor shall send written notice to the court and the person entitled to support within ten (10) days of receipt of said notice.

2. The payor may combine withheld amounts from earnings of two (2) or more obligors subject to the same support order in a single payment and separately identify that portion of the single payment which is attributable to each individual obligor.

3. An income assignment issued pursuant to the provisions of this Section shall have priority over any prior or subsequent garnishments of the same wages; provided, however, income assignments issued pursuant to the provisions of this Section and garnishments for child support issued pursuant to the provisions of Section 785 shall be of equal priority, except as may otherwise be provided for in this Section.

4. The payor may deduct from any earnings of the obligor a sum not exceeding ten dollars ($10) per pay period as reimbursement for costs incurred in the income assignment.

5. The assignment shall remain effective upon notice to the new payor.

6. The income assignment issued pursuant to this Section shall remain in effect for as long as current child support is due or until all arrearage for support are paid, whichever is later. Payment of any arrearage shall not prevent the income assignment from taking effect.

7. The payor may not discipline, suspend, or discharge an obligor because of an assignment executed pursuant to this Section. Any payor who violates this Section shall be liable to such obligor for all wages and employment benefits lost by the obligor from the period of unlawful discipline, suspension, or discharge to the period of reinstatement.

F. Upon written notification of the name and address of a new employer or payor and payment of the required fees for mailing by the person or entity entitled to support, the court shall issue a new notice of income assignment pursuant to Subsection E above.

G. Any existing support order or income assignment which is brought before the court shall be modified by such court to conform to the provisions of this Section.

H. Any person obligated to pay support, who has left or is beyond the jurisdiction of the court, may be prosecuted under any other proceedings available pursuant to the laws of the Choctaw Nation for the enforcement of the duty of support and maintenance.

I. The income assignment proceedings specified in this Section shall be available to other jurisdictions for the enforcement of child support and maintenance or to enforce foreign court orders.

J. Notwithstanding the provisions of the Choctaw Nation Statutes, an income assignment shall be established pursuant to subsections A through I of this Section when there exists a delinquency equal to at least one (1) month's payment.

K. The wages of any parent ordered to pay child support shall be subject to immediate income assignment without regard to whether there is an arrearage, on the earliest of:

1. the date of the obligor requests that such withholding begin;

2. the date as of which the custodian requests that such withholding begin to enforce a child support order entered on or before the date of the custodian's request for income withholding if a court of competent jurisdiction finds that immediate income withholding would be in the best interest of the child. In making such determination, the court shall consider, at a minimum, the timeliness of payment of previously ordered support and the agreement of the parent required to pay support to keep the court and custodian advised of his or her current employer and information on any employment-related health insurance coverage to which that parent has access; or

3. such date as may be ordered by a court of competent jurisdiction.

Section 787. Payments Pursuant to Income Assignment.

A. Payments made by the payor pursuant to an income assignment initiated by the person entitled to receive the child support payments shall be paid to the Choctaw Nation Child Support Enforcement Department, the person entitled to support or to the court, and shall be made in the manner specified in the notice of income assignment.

B. In the event the obligor is in arrears, any payment which exceeds the amount due for the period in which the payment is made shall be applied to past due and unpaid amounts owed in the order in which the payment came due.

Section 788. Appointment of Receiver.

A receiver may be appointed by the court:

1. in an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of a plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured;

2. in an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property where it appears that the mortgaged property is in danger of being lost, removed or materially injured or that the condition of the mortgage has not been performed and that the property is probably insufficient to discharge the mortgage debt;

3. after judgment, to carry the judgment into effect;

4. after judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal or in proceeding in aid of execution when an execution has been returned unsatisfied or when the judgment debtor refuses to apply his property in satisfaction of the judgment;

5. in the cases provided in this Act and by special statutes when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights; and

6. in all other cases where receivers should be appointed to protect the property and rights of the parties thereto in dispute by the usages of the court in equity.

Section 789. Persons Ineligible.

No party, attorney or person so interested in an action, shall be appointed receiver therein except by consent of all parties thereto.

Section 790. Oath and Bond.

Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with one (1) or more sureties, approved by the court, execute an undertaking to such person and in such sum as the court shall direct, to the effect that he will faithfully discharge the duties of receiver in the action and obey the orders of the court therein.

Section 791. Powers of Receiver.

The receiver shall have, under the control of the court, power and authority to bring and defend actions in his own name, as receiver; to take and keep possession of the property; to receive rents

and collect debts; to compound for and compromise the same; to make transfers and generally to do such acts respecting the property as the courts may authorize.

Section 792. Investment of Funds.

Funds in the hands of a receiver may be invested upon interest, by order of the court, but no such order shall be made except upon the consent of all the parties to the action or except by order of the court when the principal and interest earned thereon are guaranteed by the federal government and may be withdrawn within a reasonable time.

Section 793. Disposition of Property Litigated.

A. When it is admitted, by the pleadings or on oral or written examination of a person, that he has in his possession or under his control any non-exempt money or other thing capable of delivery which is held by him as trustee for a party or which belongs or is due to a party, the court may order the same to be deposited in court or delivered to such party, with or without security, subject to the further direction of the court.

B. Any person abiding by an order of the court in such cases and paying or delivering the money or other property subject to said order into court, shall not thereafter be liable to the party for whom he held as trustee, or to whom the money or property belonged or was due, in any civil action for the collection or return of the property or money delivered or paid into court.

C. Such order may be made by ordering the party to procure the deposit or payment into court of the property, which order may be enforced by contempt, or the court, upon proper application, may order the person holding said property to be served with summons and brought into the action as a special defendant for the sole purpose of determining the nature and amount of property in his possession subject to payment into court under this Section and ordering said person to pay or deliver such non-exempt property into court. After such payment has been made, the person shall be dismissed from the action.

D. In cases where judgment has been obtained against the party whose property or money is to be paid into court, it is not necessary to formally appoint a receiver for the money or property paid into court under this Section, but the court clerk shall act as receiver as an aid to the enforcement of a judgment and shall pay such money or deliver such property over to the person entitled thereto in conformity with the order of the court.

Section 794. Punishment for Disobedience of Court.

Whenever, in the exercise of its authority, the court shall have ordered the deposit or delivery of money or other thing, and the order is disobeyed, the court, besides punishing the disobedience as for contempt, may make an order requiring the law enforcement agency designated by the Chief to take the money, or thing, and deposit or deliver it in conformity with the direction of the court.

Section 795. Vacation of Appointment by Court of Appeals.

In all cases in which a receiver has been appointed, or refused, the party aggrieved may, within ten (10) days thereafter have the right to file a motion to vacate the order refusing or appointing such receiver, and hearing on such motion may be had before the court at such time and place as the court may determine, and, pending the final determination of the cause, if the order was one of the appointment of a receiver, the moving party shall have the right to give bond with good and sufficient sureties, and in such amount as may be fixed by the order of the court conditioned for the due prosecution of such case and the payment of all costs and damages that may accrue to the Choctaw Nation, or any officer or person by reason thereof, and the authority of any such receiver shall be suspended pending a final determination of such cause. If such receiver shall have taken possession of any property in controversy in said action, the same shall be surrendered to the rightful owner thereof, upon the filing and approval of said bond.

Section 796. Definitions of Direct Contempt of Court and Indirect Contempt of Court.

A. "Direct Contempt of Court" shall consist of disorderly or insolent behavior committed during the session of the court and in its immediate view, and presence, and of the unlawful and willful refusal of any person to be sworn as a witness, and the refusal to answer any legal or proper question; and any breach of the peace, noise or disturbance, so near to it as to interrupt its proceedings.

B. "Indirect Contempt of Court" shall consist of willful disobedience of any process or order lawfully issued or made by the court; resistance willfully offered by any person to the execution of a lawful order or process of a court.

Section 797. Judge's Power to Cite Contempt; Impose Censure; Notice and Opportunity; Sanction.

A. The judge has the power to cite for contempt anyone who, in his presence in open court, willfully obstructs judicial proceedings. If necessary, the judge may punish a person cited for contempt after an opportunity to be heard has been given.

B. Censure shall be imposed by the judge only if:

1. it is clear from the identity of the offender and the character of his acts that disruptive conduct is willfully contemptuous; or

2. the conduct warranting the sanction is preceded by a clear warning that the conduct is impermissible and that specified sanctions may be imposed for its repetition.

C. The judge, as soon as practicable after he is satisfied that courtroom misconduct requires contempt proceedings, should inform the alleged offender of his intention to institute said proceedings.

D. Before imposing any punishment for contempt, the judge shall give the offender notice of the charges and an opportunity to adduce evidence or argument relevant to guilt or punishment.

E. The judge before whom courtroom misconduct occurs may impose appropriate sanctions including punishment for contempt. If the judge's conduct was so integrated with the contempt that he contributed to it or was otherwise involved or his objectivity can reasonably be questioned, the matter shall be referred to another judge.

Section 798. Punishment for Contempt; Failure to Comply Child Support and other Orders.

A. Punishment for Direct or Indirect Contempt of Court shall be by the imposition of a fine in a sum not exceeding five hundred dollars ($500.00) or by imprisonment not exceeding six (6) months, or by both, at the discretion of the court.

B. Failure to Support Child after Order.

1. In the case of Indirect Contempt of Court for the failure to comply with an order for child support, other support, visitation, or other court orders regarding minor children, the Court of Appeals shall promulgate guidelines for determination of the sentence and purge fee. If the court fails to follow said guidelines, the court shall make a specific finding stating the reasons why the imposition of the guidelines would result in inequity. The factors that shall be used in determining the sentence and purge fee are:

a. the proportion of the child support or other support that was unpaid in relation to the amount of support that was ordered paid;

b. the proportion of the child support or other support that could have been paid by the party found in contempt in relation to the amount of support that was ordered paid;

c. the present capacity of the party found in contempt to pay any arrearages;

d. any willful actions taken by the party found in contempt to reduce factor (c) above;

e. the past history of compliance or noncompliance with the support or visitation order; and

f. willful acts to avoid the jurisdiction of the court.

2. When a court of competent jurisdiction makes an order compelling a parent to furnish monetary support, necessary food, clothing, shelter, medical attention, medical insurance or other remedial care for the minor child of the parent:

a. proof that:

i. the order was made, filed, and served on the parent; or

ii. the parent had actual knowledge of the existence of the order; or

iii. the order was granted by default after prior due process notice to the parent; or

iv. the parent was present in court at the time the order was pronounced; and

b. proof of noncompliance with the order; shall be *prima facie* evidence of an Indirect Contempt of Court.

C. The court has the power to enforce an order for child support, other support, visitation, or other court orders regarding minor children of any court of competent jurisdiction and to punish an individual for failure to comply therewith, as set forth in Subsection (A) above.

Section 799. Indirect Contempts; Notice; Appearance Bond.

A. In all cases of Indirect Contempt of court, the party charged with contempt shall be notified in writing of the accusation and have a reasonable time for defense.

B. The court shall fix the amount of an appearance bond to be posted by said party charged, which bond shall be signed by said party and two sureties, which sureties together shall qualify by showing ownership of real property, the equal of which property shall be in double the amount of the bond, or, in the alternative, the party charged may deposit with the court clerk cash equal to the amount of the appearance bond.

C. In a case of Indirect Contempt of Court, it shall not be necessary for the party alleging indirect contempt, or an attorney for that party, to attend an initial appearance or arraignment hearing for the party charged with contempt, unless the party alleging the Indirect Contempt of Court is seeking a cash bond. If a cash bond is not being requested, the clerk of the court shall, upon request, notify the party alleging the Indirect Contempt of Court of the date of the trial.

Section 800. Violation of Child Custody Court Order; Defense; Emergency Or Protective Custody.

A. Any parent or other person who violates an order of any court of competent jurisdiction granting the custody of a child under the age of eighteen (18) years of age to any person, agency, institution, or other facility, with the intent to deprive the lawful custodian of the custody of the child, shall be guilty of a misdemeanor. The fine for a violation of this Subsection (A) shall not exceed five thousand dollars ($5,000.00).

B. The offender shall have an affirmative defense if the offender reasonably believes that the act was necessary to preserve the child from physical, mental, or emotional danger to the child's welfare.

C. If a child is removed from the custody of the child's lawful custodian pursuant to the provisions of this Section any law enforcement officer may take the child into custody without a court order and, unless there is a specific court order directing a law enforcement officer to take

the child into custody and release or return the child to a lawful custodian, the child shall be held in emergency or protective custody.

Section 801. Substance of Offense Made Part of Record.

Whenever a person shall be imprisoned for contempt, the substance of the offense shall be set forth in the order for his confinement and made a matter of record in the court.

Chapter 14. Reserved.

Chapter 15. Appeal and Error.

Section 951. Judgment by Court Inferior in Jurisdiction to District Court.

A. A judgment rendered, or final order made, by any tribunal, board or officer exercising judicial functions, and inferior in jurisdiction to the district court, may be reversed, vacated or modified by the district court except where an appeal to some other court is provided by law.

B. Unless otherwise provided by law, proceedings for review of a judgment or final order shall be commenced by filing a petition in the district court of the county where the inferior tribunal, board or officer rendered the order within thirty (30) days of the date that a copy of the judgment or final order is mailed to the appellant, as shown by the certificate of mailing attached to the judgment or final order.

Section 952. Jurisdiction of Court of Appeals.

A. The Court of Appeals may reverse, vacate or modify judgments of the district court for errors appearing on the record, and in the reversal of such judgment may reverse, vacate or modify any intermediate order involving the merits of the action, or any portion thereof.

B. The Court of Appeals may reverse, vacate or modify any of the following orders of the district court, or a judge thereof:

1. A final order;

2. An order that discharges, vacates or modifies or refuses to vacate or modify a provisional remedy which affects the substantial rights of a party; or grants, refuses, vacates, modifies or refuses to vacate or modify an injunction; grants or refuses a new trial; or vacates or refuses to vacate a final judgment;

3. Any other order, which affects a substantial part of the merits of the controversy when the trial judge certifies that an immediate appeal may materially advance the ultimate termination of the litigation; provided, however, that the Court of Appeals, in its discretion, may refuse to

hear the appeal. If the Court of Appeals assumes jurisdiction of the appeal, it shall indicate in its order whether the action in the trial court shall be stayed or shall continue.

The failure of a party to appeal from an order that is appealable under either subdivision 2 or 3 of subsection (b) of this section shall not preclude him from asserting error in the order after the judgment or final order is rendered.

Section 953. Final Order Defined.

An order affecting a substantial right in an action, when such order, in effect, determines the action and prevents a judgment, and an order affecting a substantial right, made in a special proceeding or upon a summary application in an action after judgment, is a final order, which may be vacated, modified or reversed, as provided in this article.

Section 954. Reserved.

Section 955. Reserved.

Section 956. Reserved.

Section 957. Reserved.

Section 958. Reserved.

Section 959. Reserved.

Section 960. Reserved.

Section 961. Reserved.

Section 962. Reserved.

Section 963. Reserved.

Section 964. Reserved.

Section 965. Reserved.

Section 966. Reserved.

Section 967. Reserved.

Section 968. Reserved.

Section 969. Reserved.

Section 970. Reserved.

Section 971. Reserved.

Section 972. Reserved.

Section 973. Reserved.

Section 974. Reserved.

Section 975. Reserved.

Section 976. Reserved.

Section 977. Reserved.

Section 978. Recovery of Costs When Judgment or Final Order is Reversed.

When a judgment or final order is reversed, the plaintiff in error shall recover his costs, including the costs of the transcript of the proceedings, or case-made, filed with the petition in error; and when reversed in part and affirmed in part, costs shall be equally divided between the parties.

Section 978.1. Recovery of Costs for review of Certain Interlocutory Orders on Appeal or on Certiorari.

When an interlocutory order of a district court is reviewed on appeal or on certiorari and the interlocutory order is reversed, the prevailing party shall recover his costs, exclusive of attorney fees, including the cost deposit and the costs of preparing the record on appeal or on certiorari, regardless of the ultimate disposition of the action; and when the interlocutory order is reversed in part and affirmed in part, the costs shall be equally divided between the parties.

Section 979. Mistake, Neglect, or Omission of Clerk.

A mistake, neglect or omission of the clerk shall not be ground of error, until the same has been presented and acted upon in the court in which the mistake, neglect or omission occurred.

Section 980. Writs of Error and Certiorari Abolished.

Writs of error and certiorari, to reverse, vacate or modify judgments or final orders in civil cases, are abolished; but courts shall have the same power to compel complete and perfect transcripts of the proceedings containing the judgment or final order sought to be reversed, to be furnished as they heretofore had under writs of error and certiorari.

Section 981. Reserved.

Section 982. Reserved.

Section 983. Reserved.

Section 984. Reserved.

Section 985. Reserved.

Section 986. Reserved.

Section 987. Reserved.

Section 988. Reserved.

Section 989. Reserved.

Section 990. Reserved.

Section 990A. Appeal to the Court of Appeals; Filing of Petition; Rules; Procedure; Dismissal.

A. An appeal to the Court of Appeals, if taken, must be commenced by filing a petition in error with the Clerk of the Court of Appeals within thirty (30) days from the date a judgment, decree, or appealable order prepared in conformance with this title is filed with the clerk of the trial court. If the appellant did not prepare the judgment, decree, or appealable order, and this title required a copy of the judgment, decree, or appealable order to be mailed to the appellant, and the court records do not reflect the mailing of a copy of the judgment, decree, or appealable order to the appellant within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or appealable order, the petition in error may be filed within thirty (30) days after the earliest date on which the court records show that a copy of the judgment, decree, or appealable order was mailed to the appellant.

B. The filing of the petition in error may be accomplished either by delivery or mailing by certified or first-class mail, postage prepaid, to the Clerk of the Court of Appeals. The date of filing or the date of mailing, as shown by the postmark affixed by the post office or other proof from the post office of the date of mailing, shall constitute the date of filing of the petition in error. If there is no proof from the post office of the date of mailing, the date of receipt by the Clerk of the Court of Appeals shall constitute the date of filing of the petition in error.

C. The Court of Appeals shall provide by rule, which shall have the force of statute, and be in furtherance of this method of appeal:

1. For the filing of cross-appeals;

2. The procedure to be followed by the trial courts or tribunals in the preparation and authentication of transcripts and records in cases appealed under this act; and

3. The procedure to be followed for the completion and submission of the appeal taken hereunder.

D. In all cases the record on appeal shall be complete and ready for filing in the Court of Appeals within the time prescribed by rule.

E. Except for the filing of a petition in error as provided herein, all steps in perfecting an appeal are not jurisdictional.

F. Petitions in Error.

1. If a petition in error is filed before the time prescribed in this section, it shall be dismissed as premature; however, if the time to commence the appeal accrues before the appeal is dismissed, the appellant may file a supplemental petition in error, without the payment of any additional costs. Such supplemental petition in error shall state when the time for commencing the appeal began and shall set out all matters which have occurred since the filing of the original petition in error and which should be included in a timely petition in error. When a proper supplemental petition in error is filed, the appeal shall not be dismissed on the ground that it was premature.

2. If an appeal is dismissed on the ground that it was premature, the appellant may file a new petition in error within the time prescribed in this section for filing petitions in error or within thirty (30) days after notice is mailed to the parties which states that the appeal was dismissed on the ground that it was premature, whichever date is later. A notice that an appeal was dismissed on the ground that it was premature shall include the date of mailing and the ground for dismissal.

G. Designation of Record.

1. No designation of record shall be accepted by the district court clerk for filing unless it contains one of the following:

a. where a transcript is designated: A signed acknowledgment from the court reporter who reported evidence in the case indicating receipt of the request for transcript, the date received, and the amount of deposit received, if applicable, in substantially the following form: I, _____, court reporter for the above styled case, do hereby acknowledge this request for transcript on this_____day of____, 20__, and have received a deposit in the sum of $____. , or

b. where a transcript is not designated: A signed statement by the attorney preparing the designation of record stating that a transcript has not been ordered and a brief explanation why, in substantially the following form: I,_____, attorney for the appellant, hereby state that I have not ordered a transcript because:

i. a transcript is not necessary for this appeal, or

ii. no stenographic reporting was made.

2. This section shall not apply to counter-designations of record filed by appellees.

Section 990.1. Jurisdiction of Court of Appeals.

When a petition in error is timely filed, the Court of Appeals shall have jurisdiction of the entire action that is the subject of the appeal. No additional jurisdictional steps shall be necessary to enable the Court of Appeals to rule upon any errors made in the trial of the action which are asserted by any party to the appeal and involve any other party to the appeal.

The Court of Appeals may prescribe by rule the time limits for filing counter-appeals and cross-appeals.

Section 990.2. Post-Trial Motions; Matters Taken Under Advisement; Costs; Attorney Fees; and Interest.

A. Post-Trial Motions Filed Within Ten (10) Days. When a post-trial motion for a new trial, , or to correct, open, modify, vacate or reconsider a judgment, decree or final order, other than a motion only involving costs or attorney fees, is filed within ten (10) days after the judgment, decree or final order is filed with the court clerk, an appeal shall not be commenced until an order disposing of the motion is filed with the court clerk. The unsuccessful party may then appeal from the order disposing of the motion within thirty (30) days after the date such order was filed. If the decision on the motion was against the moving party, the moving party may appeal from the judgment, decree or final order, from the ruling on the motion, or from both, in one appeal, within thirty (30) days after the filing of the order disposing of the motion. Successive appeals from the original judgment, decree or final order and the order disposing of the motion shall not be allowed.

B. Post-Trial Motions Filed After Ten (10) Days. The time to appeal from a judgment, decree or final order is not extended or affected by the filing of a motion to correct, open, modify, vacate or reconsider the judgment, decree or final order that is filed more than ten (10) days after the judgment, decree or final order is filed with the clerk of the trial court, and an appeal that is commenced before such a motion is filed is not premature. If the motion is filed after a petition in error is filed, the moving party shall advise the Court of Appeals the motion was filed. If a petition in error is filed after such a motion is filed, the appellant shall advise the Court of Appeals in the petition in error that the motion is pending. When the trial court disposes of the motion where a petition in error has been filed, the successful party shall advise the Court of Appeals of the action taken on the motion.

C. If the appellant did not prepare the judgment, decree, or final order, and Section 696.2 of this title required a copy of the judgment, decree, or final order to be mailed to the appellant, and the court records do not reflect the mailing of a copy of the judgment, decree, or final order to the appellant within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or final order, all times referred to in this section shall run from the earliest

date on which the court records show that a file-stamped copy of the judgment, decree, or final order was mailed to the appealing party, rather than from the date of filing.

D. Costs and Attorney Fees. The filing of a motion for costs or attorney fees shall not extend or affect the time to appeal.

Section 990.3. Judgment of Money; Relief other than the Payment of Money; Applicability of Provisions; Ten Day Stay.

A. Where only the payment of money is awarded, no execution or other proceeding shall be taken for the enforcement of the judgment, decree or final order until ten (10) days after the judgment, decree or order is filed with the court clerk. Asset hearing proceedings shall not be stayed under this section.

B. Where relief other than the payment of money is awarded or where relief in addition to the payment of money is awarded, the enforcement of the judgment, decree or final order shall be stayed until ten (10) days after the judgment, decree or order is filed with the court clerk, but the court, in its discretion, may impose any conditions on the parties that are necessary for the protection of the property or interests that are the subject of the action, including distribution of part or all of the property involved where the court requires the filing of a superseded bond.

C. This section shall not apply in actions for divorce, separate maintenance, annulment, post-decree matrimonial proceedings, paternity, custody, adoption, termination of parental rights, juvenile matters, probate proceedings, habeas corpus proceedings, special executions in foreclosures, conservatorship or guardianship proceedings, mental health, quiet title actions, and partition proceedings or actions, involving temporary or permanent injunctions, proceedings under the Small Claims Procedure Act, writs of assistance in foreclosure, and other real property actions, post-judgment replevin, and forcible entry and detainer proceedings. The court, in its discretion, may impose any conditions that are necessary to protect the interests of the parties in such actions.

D. It shall be the responsibility of the judgment creditor or counsel for the judgment creditor to ensure that no execution or other proceeding for enforcement of the judgment is sought or taken within the ten-day stay.

Section 990.4. Stay of Enforcement of Judgment, Decree, or Final Order.

A. Except as provided in subsection C of this section, a party may obtain a stay of the enforcement of a judgment, decree or final order:

1. While a post-trial motion is pending;

2. During the time in which an appeal may be commenced in any court in or outside of the Choctaw Nation; or

3. While an appeal is pending in any court in or outside of the Choctaw Nation.

Such stay may be obtained by filing with the court clerk a written undertaking and the posting of a supersedeas bond or other security as provided in this section. In the undertaking the appellant shall agree to satisfy the judgment, decree or final order, and pay the costs and interest on appeal, if it is affirmed. The undertaking and supersedeas bond or security may be given at any time. The stay is effective when the bond and the sufficiency of the sureties are approved by the trial court or the security is deposited with the court clerk. The enforcement of the judgment, decree or order shall no longer be stayed, and the judgment, decree or order may be enforced against any surety on the bond or other security:

1. If neither a post-trial motion nor a petition in error is filed, and the time for appeal has expired;

2. If a post-trial motion is no longer pending, no petition in error has been filed, and the time for appeal has expired; or

3. If an appeal is no longer pending.

B. The amount of the bond or other security shall be as follows:

1. When the judgment, decree or final order is for payment of money:

a. Subject to the limitations hereinafter provided, the bond shall be double the amount of the judgment, decree or final order, unless the bond is executed or guaranteed by a surety as hereinafter provided. The bond shall be for the amount of the judgment, decree or order including costs and interest on appeal where it is executed or guaranteed by an entity with suretyship powers as provided by the laws of the Choctaw Nation.

b. Upon a showing by the judgment debtor that the judgment debtor is likely to suffer substantial economic harm if required to post bond in the amount required by this paragraph, the court shall balance the likely substantial economic harm to the judgment debtor with the ability of the judgment creditor to collect the judgment in the event the judgment is affirmed on appeal and may lower the bond accordingly. "Substantial economic harm" means insolvency or creating a significant risk of insolvency. The court shall not lower a bond as provided in this paragraph to the extent there is in effect an insurance policy, or agreement under which a third party is liable to satisfy part or all of the judgment entered and such party is required to post all or part of the bond.

c. Subject to the limitations contained in this paragraph, the bond shall not exceed Twenty-five Million Dollars ($25,000,000.00).

d. Upon limiting the bond pursuant to subparagraphs b or c of this paragraph, the court shall enter an order enjoining a judgment debtor from dissipating or transferring assets to avoid satisfaction of the judgment, but the court shall not make any order that interferes with the judgment debtor's use of assets in the normal course of business. If it is proven by a preponderance of the evidence that the appellant for whom the bond would be or has been

limited pursuant to subparagraph b or c of this paragraph likely will be or is intentionally dissipating or diverting assets or engaging in other conduct outside of the ordinary course of its business for the purpose of avoiding payment of the judgment, the court shall enter such orders as are necessary to prevent such conduct including, but not limited to, requiring that a bond be posted equal to the full amount of security required pursuant to this section, without the reduction or limitations allowed by subparagraph b or c of this paragraph.

e. Instead of filing a supersedeas bond, the appellant may obtain a stay by depositing cash with the court clerk in the amount of the judgment or order plus an amount that the court determines will cover costs and interest on appeal. The court shall have discretion to accept United States Treasury notes in lieu of cash. If the court accepts such notes, it shall make appropriate orders for their safekeeping and maintenance during the stay;

2. When the judgment, decree or final order directs execution of a conveyance or other instrument, the amount of the bond shall be determined by the court. Instead of posting a supersedeas bond or other security, the appellant may execute the conveyance or other instrument and deliver it to the clerk of the court for deposit with a public or private entity for safekeeping, as directed by the court in writing;

3. When the judgment, decree or final order directs the delivery of possession of real or personal property, the bond shall be in an amount, to be determined by the court, that will protect the interests of the parties. The court may consider the value of the use of the property, any waste that may be committed on or to the property during the pendency of the stay, the value of the property, and all costs. When the judgment, decree or final order is for the sale of mortgaged premises and the payment of a deficiency arising from the sale, the bond must also provide for the payment of the deficiency;

4. When the judgment or final order directs the assignment or delivery of documents, they may be placed in the custody of the clerk of the court in which the judgment or order was rendered, for deposit with a public or private entity for safekeeping during the pendency of the stay, as directed by the court in writing, or the bond shall be in such sum as may be prescribed by the court; or

C. Subsections A and B of this section shall not apply in actions involving temporary or permanent injunctions, actions for divorce, separate maintenance, annulment, paternity, custody, adoption, or termination of parental rights, or in juvenile matters, post-decree matrimonial proceedings or habeas corpus proceedings. The trial or appellate court, in its discretion, may stay the enforcement of any provision in a judgment, decree or final order in any of the types of actions or proceedings listed in this subsection during the pendency of the appeal or while any post-trial motion is pending upon such terms as to bond or otherwise as it considers proper for the security of the rights of the parties. If a temporary or permanent injunction is denied or dissolved, the trial or appellate court, in its discretion, may restore or grant an injunction during the pendency of the appeal and while any post-trial motions are pending upon such terms as to bond or otherwise as it considers proper for the security of the rights of the parties.

D. In any action not provided for in subsection A, B or C of this section, the court may stay the enforcement of any judgment, decree or final order during the pendency of the appeal or while any post-trial motion is pending upon such terms as to bond or otherwise as it considers proper for the security of the rights of the parties.

E. The trial court shall have continuing jurisdiction during the pendency of any post-trial motion and appeal to modify any order it has entered regarding security or other conditions in connection with a stay.

F. The execution of a supersedeas bond shall not be a condition for the granting of a stay of judgment, decree or final order of any judicial tribunal against Choctaw Nation, or any subdivision thereof.

G. Executors, administrators and guardians who have given bond in the Choctaw Nation, with sureties, according to law, are not required to provide a supersedeas bond if they are granted a stay of enforcement of a judgment, decree or final order.

H. After an appeal has been decided, but before the mandate has issued, a party whose trial court judgment has been affirmed, may move the appellate court to order judgment on the bond or other security in the amount of the judgment plus interest, appeals costs and allowable appeal-related attorney fees. After mandate has issued, a party who has posted a bond or other security may move for exoneration of the bond or other security only in the trial court; and all motions concerning the bond or other security must be addressed to the trial court.

I. For judgments entered after November 1, 2009, appeal bonds shall not be required for appeals of punitive damages.

Section 990.5. Automatic Stay.

Notwithstanding any other provision of this title, the execution of a judgment or final order of any judicial tribunal against the Choctaw Nation, or any subdivision thereof, is automatically stayed without the execution of supersedeas bond until any appeal of such judgment or final order has finally been determined.

Section 991. Right to Perfect Appeal to the Court of Appeals without Filing Motion for New Trial; Exemption.

A. The right of a party to perfect an appeal from a judgment, order or decree of the trial court to the Court of Appeals shall not be conditioned upon his having filed in the trial court a motion for a new trial, but in the event a motion for a new trial is filed in the trial court by a party adversely affected by the judgment, order or decree, no appeal to the Court of Appeals may be taken until subsequent to the ruling by the trial court on the motion for a new trial.

B. If a motion for a new trial is filed and a new trial is denied, the movant may not, on the appeal, raise allegations of error that were available to him at the time of the filing of his motion for a new trial but were not therein asserted.

Section 992. Errors in Perfecting Appeal Must Be Raised Promptly; Waiver of Defect or Error.

Where possible, errors in perfecting an appeal must be raised promptly in the trial court, and errors in perfecting an appeal that could have been raised in the trial court may not be raised for the first time in the appellate court. The parties may waive any defect or error in perfecting an appeal except the timely filing of a petition in error as prescribed in this title, and of a petition to review a certified interlocutory order under paragraph 3 of subsection (b) of Section 952 of this title.

Section 993. Appeals from Certain Interlocutory Orders; Undertaking.

A. When an order:

1. Discharges, vacates, or modifies or refuses to discharge, vacate, or modify an attachment;

2. Denies a temporary or permanent injunction, grants a temporary or permanent injunction except where granted at an ex parte hearing, or discharges, vacates, or modifies or refuses to discharge, vacate, or modify a temporary or permanent injunction;

3. Discharges, vacates, or modifies or refuses to discharge, vacate, or modify a provisional remedy which affects the substantial rights of a party;

4. Appoints a receiver except where the receiver was appointed at an ex parte hearing, refuses to appoint a receiver, or vacates or refuses to vacate the appointment of a receiver;

5. Directs the payment of money pendente lite except where granted at an ex parte hearing, refuses to direct the payment of money pendente lite, or vacates or refuses to vacate an order directing the payment of money pendente lite; or

7. Grants a new trial or opens or vacates a judgment or order, the party aggrieved thereby may appeal the order to the Court of Appeals without awaiting the final determination in said cause, by filing the petition in error and the record on appeal with the Court of Appeals within thirty (30) days after the order prepared in conformance with Section 696.3 of this title, is filed with the court clerk. If the appellant did not prepare the order, and Section 696.2 of this title required a copy of the order to be mailed to the appellant, and the court records do not reflect the mailing of a copy of the order to the appellant within three (3) days, exclusive of weekends and holidays, after the filing of the order, the petition in error may be filed within thirty (30) days after the earliest date on which the court records show that a copy of the order was mailed to the appellant. The Court of Appeals may extend the time for filing the record upon good cause shown.

B. If the order discharges or modifies an attachment or temporary injunction and it becomes operative, the undertaking given upon the allowance of an attachment or temporary injunction

shall stay the enforcement of said order and remain in full force until final order of discharge shall take effect.

C. If a receiver shall be or has been appointed, upon the appellant filing an appeal bond, with sufficient sureties, in such sum as may have been required of the receiver by the court or a judge thereof, conditioned for the due prosecution of the appeal and the payment of all costs or damages that may accrue to the state or any officer or person by reason thereof, the authority of the receiver shall be suspended until the final determination of the appeal, and if the receiver has taken possession of any property, real or personal, it shall be returned and surrendered to the appellant upon the filing and approval of the bonds.

Section 994. Procedure when there is more than one claim or party; Final Judgment.

A. 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 preparation and filing of a final judgment, decree, or final order 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 filing of a final judgment, decree, or final order. 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 final judgment, decree, or final order adjudicating all the claims and the rights and liabilities of all the parties is filed with the court clerk.

B. When a court has ordered a final judgment, decree, or final order under the conditions stated in subsection A of this section, the court may stay enforcement of that final judgment, decree or final order until the filing of a subsequent final judgment, decree or final order and may prescribe such conditions as are necessary to protect the interests of all parties to the action. If the court stays the enforcement of a final judgment, decree, or final order until the filing of a subsequent final judgment, decree, or final order, notice of the vacation or modification of the stay or of any condition that was imposed on the enforcement of the final judgment, decree, or final order shall be given to the parties affected by the stay or condition.

Section 995. Dismissal of Frivolous Appeals; Sanctions.

The Court of Appeals shall dismiss an appeal that is frivolous, and may impose sanctions against the appellant, the appellant's attorney, or both. The sanctions that may be imposed may include the reasonable expenses incurred because of the filing of the appeal, including a reasonable attorney's fee. The court shall dismiss a cross-appeal or an original proceeding that is frivolous and may impose sanctions as provided by this section.

Chapter 16. Trial Court Vacation and Modification of Judgments.

Section 1031. Power to Vacate or Modify its Judgments; Timing.

The district court shall have power to vacate or modify its own judgments or orders within the times prescribed hereafter:

1. by granting a new trial for the cause, within the time and in the manner prescribed in Sections 651 through 655 of this Title;

2. where the defendant had no actual notice of the pendency of the action at the time of the filing of the judgment or order;

3. for mistake, neglect, or omission of the court clerk or irregularity in obtaining a judgment or order;

4. for fraud, practiced by the successful party, in obtaining a judgment or order;

5. for erroneous proceedings against an infant, or a person of unsound mind, where the condition of such defendant does not appear in the record, nor the error in the proceedings;

6. for the death of one of the parties before the judgment in the action;

7. for unavoidable casualty or misfortune, preventing the party from prosecuting or defending;

8. for errors in a judgment, shown by an infant in twelve (12) months after arriving at full age; or

9. for taking judgments upon warrants of attorney for more than was due to the plaintiff, when the defendant was not summoned or otherwise legally notified of the time and place of taking such judgment.

Section 1031.1. Motions to Correct, Open, Modify, or Vacate Judgment.

A. The court may correct, open, modify or vacate a judgment, decree, or appealable order on its own initiative not later than thirty (30) days after the judgment, decree, or appealable order has been filed with the court clerk. Notice of the court's action shall be given as directed by the court to all affected parties.

B. On motion of a party made not later than thirty (30) days after a judgment, decree, or appealable order has been filed with the court clerk, the court may correct, open, modify, or vacate the judgment, decree, or appealable order. If the moving party did not prepare the judgment, decree, or appealable order, and this Title required a copy of the judgment, decree, or appealable order to be mailed to the moving party, and the court records do not reflect the

mailing of a copy of the judgment, decree, or appealable order to the moving party within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or appealable order, the motion to correct, open, modify, or vacate the judgment, decree, or appealable order may be filed no later than thirty (30) days after the earliest date on which the court records show that a copy of the judgment, decree, or appealable order was mailed to the moving party. The moving party shall give notice to all affected parties. A motion to correct, open, modify, or vacate a judgment or decree filed after the announcement of the decision on all issues in the case but before the filing of the judgment or decree shall be deemed filed immediately after the filing of the judgment or decree.

C. After thirty (30) days after a judgment, decree, or appealable order has been filed, proceedings to vacate or modify the judgment, decree, or appealable order shall be by petition in conformance with this title.

Section 1032. Mistakes or Omissions of the Court Clerk.

Proceedings to correct mistakes or omissions of the clerk, or irregularity in obtaining a judgment or order, shall be by motion, upon reasonable notice to the adverse party or his attorney in the action.

Section 1033. Motions after Thirty (30) Days.

If more than thirty (30) days after a judgment, decree, or appealable order has been filed, proceedings to vacate or modify the judgment, decree, or appealable order, on the grounds mentioned in Paragraphs 2, 4, 5, 6, 7, 8 and 9 of Section 1031 above, shall be by petition, verified by affidavit, setting forth the judgment, decree, or appealable order, the grounds to vacate or modify it, and the defense to the action, if the party applying was defendant. On this petition, a summons shall issue and be served as in the commencement of a civil action.

Section 1034. Liens and Securities Preserved.

The court may first try and decide upon the grounds to vacate or modify a judgment or order before trying or deciding upon the validity of the defense or cause of action. If a judgment is modified, all liens and securities obtained under it shall be preserved to the modified judgment.

Section 1035. Order Suspending Proceedings.

The party seeking to vacate or modify a judgment or order, may obtain an order suspending proceedings on the whole or part thereof; which order may be granted by the court, or any judge thereof, upon its being rendered probable, by affidavit, or by exhibition of the record, that the party is entitled to have such judgment or order vacated or modified. On the granting of any such order, the court, or judge, may require the party obtaining any such order to enter into an undertaking to the adverse party to pay all damages that may be caused by granting of the same.

Section 1036. Judgment before Trial.

When the judgment was rendered before the action stood for trial, the suspension may be granted, as provided in Section 1035 above, although no valid defense to the action is shown; and the court shall make such orders, concerning the executions to be issued on the judgment as shall give to the defendant the same rights of delay he would have had if the judgment had been rendered at the proper time.

Section 1037. Time Limitations.

Proceedings to vacate or modify a judgment, decree or order, for the causes mentioned in paragraphs 4, 5 and 7 of Section 1031 above must be commenced within two (2) years after the filing of the judgment, decree or order, unless the party entitled thereto be an infant, or a person of unsound mind and then within two (2) years after removal of such disability. Proceedings for the causes mentioned in Paragraphs 3 and 6 of Section 1031 of this title, shall be within three (3) years, and in Paragraph 9 of Section 1031 of this title, within one (1) year after the defendant has notice of the judgment, decree or order. A void judgment, decree or order may be vacated at any time, on motion of a party, or any person affected thereby.

Chapter 17. Survival and Abatement of Actions.

Section 1051. Additional Causes of Action.

In addition to the causes of action which survive at common law, causes of action for mesne profits, or for an injury to the person, or to real or personal estate, or for any deceit or fraud, shall also survive; and the action may be brought, notwithstanding the death of the person entitled or liable to the same.

Section 1052. Actions which Abate on Death of a Party.

No action pending in any court shall abate by the death of either or both the parties thereto, except an action for libel, slander or malicious prosecution, which shall abate by the death of the defendant. An action for libel, slander or malicious prosecution shall not abate after a decision by the court, unless a new trial is ordered.

Section 1053. Wrongful Death—Limitation of Actions—Damages.

A. When the death of one is caused by the wrongful act or omission of another, the personal representative of the former may maintain an action therefore against the latter, or his or her personal representative if he or she is also deceased, if the former might have maintained an action, had he or she lived, against the latter, or his or her representative, for an injury for the same act or omission. The action must be commenced within two (2) years.

B. The damages recoverable in actions for wrongful death as provided in this section shall include the following: Medical and burial expenses, which shall be distributed to the person or governmental agency who paid these expenses, or to the decedent's estate if paid by the estate.

The loss of consortium and the grief of the surviving spouse, which shall be distributed to the surviving spouse.

The mental pain and anguish suffered by the decedent, which shall be distributed to the surviving spouse and children, if any, or next of kin in the same proportion as personal property of the decedent.

The pecuniary loss to the survivors based upon properly admissible evidence with regard thereto including, but not limited to, the age, occupation, earning capacity, health habits, and probable duration of the decedent's life, which must inure to the exclusive benefit of the surviving spouse and children, if any, or next of kin, and shall be distributed to them according to their pecuniary loss.

The grief and loss of companionship of the children and parents of the decedent, which shall be distributed to them according to their grief and loss of companionship.

C. In proper cases, punitive or exemplary damages may also be recovered against the person proximately causing the wrongful death or the person's representative if such person is deceased. Such damages, if recovered, shall be distributed to the surviving spouse and children, if any, or next of kin in the same proportion as personal property of the decedent.

D. Where the recovery is to be distributed according to a person's pecuniary loss or loss of companionship, the judge shall determine the proper division.

E. The above-mentioned distributions shall be made after the payment of legal expenses and costs of the action.

F. Death of an Unborn Child.

1. The provisions of this section shall also be available for the death of an unborn child.

2. The provisions of this subsection shall not apply to:

a. acts which cause the death of an unborn child if those acts were committed during a legal abortion to which the pregnant woman consented, or

b. acts which are committed pursuant to the usual and customary standards of medical practice during diagnostic testing or therapeutic treatment.

3. Under no circumstances shall the mother of the unborn child be found liable for causing the death of the unborn child unless the mother has committed a crime that caused the death of the unborn child.

Section 1054. Cause of Action Brought by Widow or Next of Kin.

In all cases that were caused as set forth in the preceding section of this article, where no personal representative is or has been appointed, the action provided in the said section may be brought by the widow, or where there is no widow, by the next of kin of such deceased.

Section 1055. Death of a Child.

In all actions hereinafter brought to recover damages for the death of an unmarried, un-emancipated minor child, the damages recoverable shall include medical and burial expense, loss of anticipated services and support, loss of companionship and love of the child, destruction of parent-child relationship and loss of monies expended by parents or guardian in support, maintenance and education of such minor child, in such amount as, under all circumstances of the case, may be just.

Chapter 18. Revivor of Action.

Section 1081. Death of Party after Judgment.

A. If a party dies after decision is rendered, judgment may be rendered on the decision although the representative or successor of the decedent has not been substituted as a party to the action.

B. If a plaintiff dies after judgment and the judgment is in his favor, his representative or successor may be substituted for him upon motion of any party to the action with notice to the representative or successor, or substitution may be made upon motion of the representative or successor of the decedent.

C. Such motion may be made at any time before the judgment becomes dormant but it must be made before action is taken to enforce the judgment. A delay in substituting the representative or successor of the decedent shall not affect the validity of a judgment lien.

D. If a defendant dies after judgment and the judgment is in favor of the plaintiff, the judgment shall be filed with the representative of the decedent within the time allowed for filing other claims and the judgment shall be treated as if it has been allowed by the representative and it shall be payable in the due course of administration.

Section 1082. Dissolved Partnerships.

A. A partnership may sue and be sued in its firm name, and after a partnership has been dissolved, actions may be brought by and against the partnership in its firm name to enforce

obligations that arose before the dissolution, the partnership being deemed to continue for the purpose of the suit. Where the dissolution is caused by the death of a partner, an action to enforce an obligation that arose before the dissolution may be brought by or against the partnership in its firm name, or by or against the surviving partners, or by or against the surviving partners and the estate of the deceased partner, if an action is brought against the partnership in its firm name, the estate of the deceased partner may be made a party to the action by being properly served with process.

B. When a partner dies after suit is brought by or against a partnership, the action will not abate, whether it is brought by or against the partnership in its firm name or in the names of the partners and it shall not be necessary to make the representative of the deceased partner a party to the action although he may be substituted for the decedent if the decedent was named as a party plaintiff or was served with process, but judgment may not be enforced against the decedent's estate if the partner dies before the decision was rendered and the decedent's representative was not made a party to the action.

C. When a partner dies after judgment has been rendered in favor of or against the partnership of which the decedent was a member, the judgment may be enforced in favor of or against the partnership and against the estate of the deceased partner although the estate of the deceased partner is not made a party to the judgment.

Section 1083. Dismissal of any Actions in which no Pleadings have been Filed for a Year.

Any action in which no pleading has been filed or other action taken for a year and in which no motion or demurrer has been pending during any part of said year shall be dismissed without prejudice by the court on its own motion after notice to the parties or their attorneys of record; providing, the court may upon written application and for good cause shown, by order in writing allow the action to remain upon its docket.

Section 1084. Enforcement of Contracts or Obligations.

If a person who is either jointly or jointly and severally liable on a contract or obligation dies before an action is brought to enforce the contract or obligation and if the cause of action survives, the decedent's estate may be joined as a party to an action to enforce the contract or obligation.

Section 1085. Death of Nonresident.

When a nonresident who is subject to the jurisdiction of a court of the Choctaw Nation dies, the action shall continue and his personal representative shall be substituted as a party to the action although he was appointed as personal representative in some other jurisdiction if:

1. the personal representative is served in the Choctaw Nation with notice of his substitution as a party to the action; or,

2. the cause of action arose in the Choctaw Nation and the personal representative is given actual notice by mail or by personal service outside of the Choctaw Nation of his substitution as a party to the action;

3. the action may continue as a proceeding *in rem* if a reasonable effort is made to notify the personal representative of the existence of the action.

Chapter 19. Miscellaneous Proceedings.

Section 1101. Offer—Acceptance by Plaintiff—Notice—Filing.

The defendant, in an action for the recovery of money only, may, at any time before the trial, serve upon the plaintiff or his attorney an offer, in writing, to allow judgment to be taken against him for the sum specified therein. If the plaintiff accept the offer and give notice thereof to the defendant or his attorney, within five days after the offer was served, the offer, and an affidavit that the notice of acceptance was delivered within the time limited, may be filed by the plaintiff, or the defendant may file the acceptance, with a copy of the offer, verified by affidavit; and in either case, the offer and acceptance shall be noted in the journal, and judgment shall be rendered accordingly. If the notice of acceptance be not given in the period limited, the offer shall be deemed withdrawn, and shall not be given in evidence or mentioned on the trial. If the plaintiff fails to obtain judgment for more than was offered by the defendant, he shall pay the defendant's costs from the time of the offer.

Section 1101.1 Actions for Person Injury, Wrongful Death and Certain Specified Actions—Other Actions—Evidence—Applicability—Severability.

A. Actions for personal injury, wrongful death, and certain specified actions.

1. Subject to the provisions of paragraph 5 of this subsection, after a civil action is brought for the recovery of money as the result of a claim for personal injury, wrongful death, any defendant may file with the court, at any time more than ten (10) days prior to trial, an offer of judgment for a sum certain to any plaintiff with respect to the action or any claim or claims asserted in the action. An offer of judgment shall be deemed to include any costs or attorney fees otherwise recoverable unless it expressly provides otherwise. If an offer of judgment is filed, each plaintiff to whom an offer of judgment is made shall, within ten (10) days, file:

a. a written acceptance or rejection of such offer, or

b. a counteroffer of judgment, as described in paragraph 2 of this subsection.

If the plaintiff fails to file a timely response, the offer of judgment shall be deemed rejected. The fact an offer of judgment is made but not accepted or is deemed rejected does not preclude subsequent timely offers of judgment.

2. In the event a defendant files an offer of judgment, the plaintiff may, within ten (10) days, file with the court a counteroffer of judgment directed to each defendant who has filed an offer of judgment. If a counteroffer of judgment is filed, each defendant to whom the counteroffer of judgment is made shall, within ten (10) days, file a written acceptance or rejection of the counteroffer of judgment. If a defendant fails to file a timely response, the counteroffer of judgment shall be deemed rejected. The fact a counteroffer of judgment is made but not accepted or deemed rejected does not preclude subsequent counteroffers of judgment if subsequent offers of judgment are made.

3. In the event the plaintiff rejects the offer(s) of judgment and the judgment awarded the plaintiff is less than the final offer of judgment, then the defendant filing the offer of judgment shall be entitled to recover reasonable litigation costs and reasonable attorney fees incurred by that defendant from the date of filing of the final offer of judgment until the date of the decision. Such costs and fees may be offset from the judgment entered against the offering defendant; provided, however, that prior to any such offset, the plaintiff's attorney may:

a. exercise any attorneys lien claimed in an amount not to exceed twenty-five percent (25%) of the judgment, and

b. recover the plaintiff's reasonable litigation costs, not to exceed an additional fifteen percent (15%) of the judgment or Five Thousand Dollars ($5,000.00), whichever is greater.

4. In the event a defendant rejects the counteroffer(s) of judgment and the judgment awarded to the plaintiff is greater than the final counteroffer of judgment, the plaintiff shall be entitled to recover reasonable litigation costs and reasonable attorney fees incurred by the plaintiff from the date of filing of the final counteroffer of judgment until the date of the decision. Such costs and fees may be added to the judgment entered in favor of the plaintiff.

5. The provisions of this subsection shall apply only where the plaintiff demands in a pleading or in trial proceedings more than One Hundred Thousand Dollars ($100,000.00), or where the defendant makes an offer of judgment more than One Hundred Thousand Dollars ($100,000.00). Any offer of judgment may precede the demand.

B. Other actions.

1. After a civil action is brought for the recovery of money or property in an action other than for personal injury or wrongful death, any defendant may file with the court, at any time more than ten (10) days prior to trial, an offer of judgment for a sum certain to any plaintiff with respect to the action or any claim or claims asserted in the action. An offer of judgment shall be deemed to include any costs and attorney fees otherwise recoverable unless it expressly provides

otherwise. If an offer of judgment is filed, the plaintiff or plaintiffs to whom the offer of judgment is made shall, within ten (10) days, file:

a. a written acceptance or rejection of the offer, or

b. a counteroffer of judgment, as described in paragraph 2 of this subsection.

If a plaintiff fails to file a timely response, the offer of judgment shall be deemed rejected. The fact an offer of judgment is made but not accepted or is deemed rejected does not preclude subsequent timely offers of judgment.

2. In the event a defendant files an offer of judgment, the plaintiff may, within ten (10) days, file with the court a counteroffer of judgment to each defendant who has filed an offer of judgment and the claim or claims which are the subject thereof. If a counteroffer of judgment is filed, each defendant to whom a counteroffer of judgment is made shall, within ten (10) days, file a written acceptance or rejection of the counteroffer of judgment. If a defendant fails to file a timely response, the counteroffer of judgment shall be deemed rejected. The fact a counteroffer of judgment is made but not accepted or is deemed rejected does not preclude subsequent counteroffers of judgment if subsequent offers of judgment are made.

3. If no offer of judgment or counteroffer of judgment is accepted and the judgment awarded the plaintiff is less than one or more offers of judgment, the defendant shall be entitled to reasonable litigation costs and reasonable attorney fees incurred by the defendant with respect to the action or the claim or claims included in the offer of judgment from and after the date of the first offer of judgment which is greater than the judgment until the date of the judgment. Such costs and fees may be offset from the judgment entered against the offering defendant.

4. If no offer of judgment or counteroffer of judgment is accepted and the judgment awarded the plaintiff is greater than one or more counteroffers of judgment, the plaintiff shall be entitled to recover the reasonable litigation costs and reasonable attorney fees incurred by the plaintiff with respect to the action or the claim or claims included in the counteroffer of judgment from and after the date of the first counteroffer of judgment which is less than the judgment until the date of the judgment. Such costs and fees may be added to the judgment entered in favor of the plaintiff.

5. An award of reasonable litigation costs and reasonable attorneys fees under paragraph 3 of this subsection shall not preclude an award under paragraph 4 of this subsection, and an award under paragraph 4 of this subsection shall not preclude an award under paragraph 3 of this subsection.

6. This subsection shall not apply to actions based upon discrimination or discharge of an employee for filing a workers' compensation claim, retaining a lawyer for representation regarding a workers' compensation claim, testifying or agreeing to testify in a workers' compensation case.

C. For purposes of comparing the amount of a judgment with the amount of an offer under paragraph 3 or 4 of subsection A of this section or paragraph 3 or 4 of subsection B of this

section, attorney fees and costs otherwise recoverable shall be included in the amount of the compared judgment only if the offer was inclusive of attorney fees and costs. Fees or costs recoverable for work performed after the date of the offer shall not be included in the amount of the judgment for purposes of comparison.

D. Evidence of an offer of judgment or a counteroffer of judgment shall not be admissible in any action or proceeding for any purpose except in proceedings to enforce a settlement arising out of an offer of judgment or counteroffer of judgment or to determine reasonable attorneys fees and reasonable litigation costs under this section.

E. This section shall apply whether or not litigation costs or attorneys fees are otherwise recoverable.

F. The provisions of this section are severable, and if any part or provision thereof shall be held void, the decision of the court shall not affect or impair any of the remaining parts or provisions thereof.

G. This section shall apply to all civil actions filed after the effective date of this act.

Section 1102. Making of Offer Not Cause for Continuance or Postponement.

The making of an offer, pursuant to the provisions contained in the foregoing section, shall not be a cause for a continuance of an action or a postponement of the trial.

Section 1103. Agreement on Facts in Case—Submission of Same—Real Controversy and Good Faith Proceedings.

Parties to a question, which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court, which would have jurisdiction if an action had been brought. But it must appear, by affidavit, that the controversy is real, and the proceedings in good faith to determine the rights of the parties. The court shall thereupon hear and determine the case, and render judgment as if an action were pending.

Section 1104. Case, Submission and Copy of Judgment Constitute Record.

The case, the submission and a copy of the judgment shall constitute the record.

Section 1105. Judgment—Enforcement—Subject to Reversal.

The judgment shall be with costs, may be enforced, and shall be subject to reversal in the same manner as if it had been rendered in an action unless otherwise provided in the submission.

Section 1106. Defendant may offer in Court to Confess Judgment for Part of the Amount Claimed.

After an action for the recovery of money is brought, the defendant may offer in court to confess judgment for part of the amount claimed, or part of the causes involved in the action; whereupon, if the plaintiff, being present, refuse to accept such confession of judgment in full of his demands against the defendant in the action, or, having had such notice that the offer would be made, of its amount, and of the time of making it, as the court shall deem reasonable, fail to attend, and on the trial do not recover more than was so offered to be confessed, such plaintiff shall pay all the costs of the defendant incurred after the offer. The offer shall not be deemed to be an admission of the cause of action, or the amount to which the plaintiff is entitled, nor be given in evidence upon the trial.

Section 1107. Action by Surety against Principal.

A surety may maintain an action against his principal, to compel him to discharge the debt or liability for which the surety is bound, after the same has become due.

Section 1108. Action by Surety for Indemnification before Liability is Due.

A surety may maintain an action against his principal, to obtain indemnity against the debt or liability for which he is bound, before it is due, whenever any of the grounds exist, upon which, by the provisions of this code, an order may be made for arrest and bail, or for an attachment.

Section 1109. Provisional Remedies for Surety.

In such action the surety may obtain any of the provisional remedies mentioned in Articles Eight, Nine and Ten upon the grounds and in the manner therein prescribed.

Section 1110. Reserved.

Section 1111. Reserved.

Section 1112. Reserved.

Section 1113. Reserved.

Section 1114. Reserved.

Section 1115. Reserved.

Section 1116. Definition of Order.

Every direction of a court or judge made or entered in writing, and not included in a judgment, is an order.

Section 1117. Orders Made out of Court—Entered by Clerk.

Orders made out of court shall be forthwith entered by the clerk in the journal of the court, in the same manner as orders made in term.

Section 1118. Authorization of Judges to Hear and Determine Motions and Exercise Control.

Judges of the district court shall be authorized to hear and determine at chambers, motions to dissolve attachments and injunctions, and generally to exercise such supervisory control of the other officers and processes of the court as to prevent abuses or oppression thereby or thereof.

Chapter 20. Actions Regarding Real Property.

ACTIONS TO QUIET TITLE.

Section 1141. Action to Quiet Title—Joinder with Action for Possession—Adverse Interests.

A. An action may be brought by any person in possession, by himself or tenant, of real property against any person who claims an estate or any interest therein adverse to the person bringing the action for the purpose of determining such adverse estate or interest, and such action may be joined with an action to recover possession of such real property by any person not in possession. The person or persons bringing such action shall not be required to allege the particular estate or interest claimed adversely by the person or persons against whom the action is brought, but may allege that the defendants' claim is adverse to that of the plaintiffs.

B. If an action is brought to quiet title alleging that the adverse claim is sham legal process, as defined by the Choctaw Nation Statutes, the court may award costs and reasonable attorneys fees to the prevailing party. If the plaintiff prevails in the action, the court shall order the defendant to pay the plaintiff three times the damages that the plaintiff may have sustained as a result of the sham legal process. A quiet title action pursuant to this subsection shall be independent of any criminal action that may be filed against the defendant, and there shall be no requirement that the defendant in such an action be convicted of any criminal act.

NONJUDICIAL MARKETABLE TITLE PROCEDURES ACT.

Section 1141.1. Short Title.

This act shall be known and may be cited as the "Nonjudicial Marketable Title Procedures Act".

Section 1141.2. Definitions.

As used in this act:

1. "Apparent cloud" means an effect, without a judgment of a court of competent jurisdiction, which in the good faith opinion of a requestor results in a condition of title to real property located in the Choctaw Nation that fails to meet the standard of "marketable title";

2. "Certified mail" means that method of transmitting items through the United States Post Office pursuant to which the addressee of the item mailed is either required to indicate an acceptance of delivery or refusal or which results in a record by the United States Post Office that the addressee was contacted regarding the item, but refused delivery or refused to claim the item;

3. "Conveyance" means an instrument, recorded in the real property records of a county of the State of Oklahoma, pursuant to which a grantor makes a transfer of an estate in real property;

4. "Corrective action" means some procedure, other than the execution and delivery of a curative instrument, identified in a notice and communicated to a respondent with the intended effect of removing a cloud or an apparent cloud on the title to real property;

5. "Curative instrument" means a conveyance or instrument identified by a requestor that the requestor in good faith believes has the effect of curing a title defect;

6. "Entity" means a person, firm, partnership, general partnership, limited partnership, corporation, limited liability company, limited liability partnership or other legally constituted entity;

7. "Estate" means a quantity or duration of ownership in real property located in the Choctaw Nation whether in fee simple absolute or some lesser quantity or duration and includes both the surface estate and mineral estate;

8. "Execute" means to subscribe an instrument or a conveyance as either a natural person acting in an individual or a representative capacity;

9. "Good faith" means having a basis in facts ascertainable to a requestor or which should be ascertainable with the exercise of reasonable diligence and the reasonable application of law to facts known or which, through the exercise of reasonable diligence, should be known to a requestor regarding the effect of an instrument upon the title to real property located in the Choctaw Nation;

10. "Instrument" means a document, executed with formalities authorized or required by law, pursuant to which either a conveyance is made or pursuant to which some aspect of the title to real property located in the Choctaw Nation is affected or may be affected;

11. "Interest" means either legal title or an equitable claim which is made in good faith;

12. "Notice" means the document described in Section 3 of this act;

13. "Parcel" means real property capable of separate description from any other real property located in the Choctaw Nation, pursuant to a description which is adequate for a conveyance pursuant to the requirements of the laws of the Choctaw Nation;

14. "Person" means a natural person acting in an individual capacity or a natural person acting in a representative capacity;

15. "Quiet title action" means a civil action filed pursuant to the authority of Section 1141 of Title 12 of the Choctaw Nation Statutes and in which the plaintiff requests a determination or judgment from the court regarding the title to a parcel of real property;

16. "Real property" means land and fixtures and includes the surface estate and the minerals underlying lands located in the Choctaw Nation of Oklahoma;

17. "Refuse" means that the respondent either will not take the action specified in a notice or that the respondent will not take action which the requestor communicates as an acceptable response to the notice;

18. "Requestor" means any person or entity transmitting a notice to a respondent pursuant to Section 3 of this act or if the requestor engages the services of an agent or fiduciary to prepare the notice, the agent or fiduciary of the requestor;

19. "Respondent" means the person or entity to whom a notice is transmitted pursuant to Section 3 of this act or, if the respondent engages the services of an agent or fiduciary to prepare a response to a requestor, the agent or fiduciary of the requestor;

20. "Response" means the document transmitted by the respondent to the requestor within the time prescribed by Section 4 of this act;

21. "Subject parcel" means the specific real property identified in a notice transmitted to a respondent as provided by Section 3 of this act;

22. "Title" means the judicial or non-judicial conclusion regarding either legal or equitable ownership of real property or an estate in real property located in the Choctaw Nation of Oklahoma; and

23. "Title defect" means a deficiency, as measured or determined by reference to the statutes of the Choctaw Nation, cases decided by the courts of the Choctaw Nation or by reference to the Title Examination Standards published by the Real Property Section of the Oklahoma Bar Association, in the legal or equitable title of real property located in the Choctaw Nation.

Section 1141.3. Alternate Procedures to Quiet Title to Remove Apparent Cloud on Title.

A. Any person or any entity having an interest or claiming an interest with respect to any parcel of real property who in good faith asserts that there is an instrument filed in the real

property records of the county in which the real property, or some portion of the real property, is located in the State of Oklahoma and within the bounds of the Choctaw Nation of Oklahoma, and who would otherwise be required to file a quiet title action with respect to the parcel pursuant to the provisions of Section 1141 of Title 12 of the Choctaw Nation Statutes, may use the procedures authorized by this act to attempt to remove a cloud or an apparent cloud on the title of the real property by requesting a respondent to prepare a curative instrument or to take corrective action.

B. The provisions of this act are permissive and shall not be required as a condition precedent to the filing of a petition to quiet title pursuant to Section 1141 of Title 12 of the Choctaw Nation Statutes.

C. If making a request pursuant to this act, the requestor shall send a notice to the respondent which shall include:

1. The specific identity of the person or entity requesting the respondent to execute or to execute and deliver a curative instrument or take other corrective action the purpose of which is to remove a cloud or an apparent cloud on the title of the subject parcel;

2. A specific identification of the conveyance, instrument or other document, by reference to:

a. the county or counties in which the instrument or document is filed for record,

b. the book and page number in which the instrument or other document is recorded,

c. the identity of the grantor or the person or entity subscribing the instrument, (if different than the identified grantor),

d. the identity of the grantee or grantees,

e. the legal description of the real property contained in the instrument,

f. the date the instrument was executed,

g. the date the instrument was filed for record, and

h. such other information as may be required in order for the respondent to know with reasonable certainty the exact instrument or instruments to which the requestor is referring;

3. The nature of the assertion by the requestor regarding the effect of the instrument or document as a cloud or an apparent cloud upon the title of the subject parcel; and

4. The nature of the corrective action sought by the requestor, including, but not limited to, the exact instrument or conveyance which the requestor would accept from the respondent as a curative instrument or other corrective action.

D. The requestor shall prepare and send with the notice the exact instrument or conveyance which the requestor would accept from the respondent as a curative instrument or other corrective action.

Section 1141.4. Preparation and Transmittal of Notice—Response to Notice—Clarification of Notice.

A. The requestor shall prepare the notice as described in Section 3 of this act and shall transmit the notice by certified mail to the person or entity identified in the notice as the respondent.

B. The respondent shall have a period of thirty (30) days from the receipt of the notice within which to respond to the notice and any request for the execution or delivery of a curative instrument or for corrective action.

C. A respondent may ask for clarification by the requestor or for further information prior to making either a negative response or an affirmative response. The respondent may communicate with the requestor within the period of time required for the respondent to make a response to the requestor, but any request made pursuant to this subsection shall not extend the time within which to respond.

D. The respondent may make a formal request of the requestor for clarification or for further information by certified mail if the formal request for clarification or additional information is received by the original requestor within the original period of time prescribed by subsection B of this section for a response by the respondent. If a respondent makes a formal request for clarification or for additional information, the original requestor shall have a period of twenty (20) days within which to transmit a clarification or additional information. The respondent shall then have a period of twenty (20) days from the date the clarification or additional information is received in order to provide a final response.

E. If a respondent declines to execute and deliver the curative instrument requested or take the corrective action requested, and the respondent communicates the refusal to the requestor, the requestor may pursue the remedies authorized by this section.

F. If the requestor properly transmits the notice by certified mail and the respondent does not claim the item as indicated by the records of the United States Post Office, the refusal to claim the item shall be treated as a refusal to respond to the request.

G. If a respondent executes and delivers or causes to be executed and delivered the curative instrument requested in the notice or takes the corrective action requested, the respondent shall not be liable for the damages specified in subsection A of Section 5 of this act in a quiet title action notwithstanding that the respondent is named as a defendant in such an action.

Section 1141.5. Liability for Damages, Costs, and Attorney Fees.

A. If a requestor prepares a notice pursuant to Section 3 of this act, and:

1. The respondent receives the notice and fails to respond, or

2. The respondent requests clarification or additional information and then subsequently refuses to execute and deliver a curative instrument or to take the corrective action identified in the notice, or

3. The respondent refuses to claim the notice, or

4. The respondent receives the notice and refuses to take the action requested in the notice, then in the event that the requestor files an action to quiet title to the subject parcel pursuant to Section 1141 of Title 12 of the Choctaw Nation Statutes, and the civil action results in a judgment for the plaintiff which could have been accomplished through the execution and delivery of a curative instrument or the taking of corrective action identified in a notice, the plaintiff in the quiet title action, in addition to any other requested relief, shall be entitled to recover damages equal to the actual expenses incurred by the plaintiff in identifying the relevant instrument, preparing the notice to the respondent pursuant to Section 3 of this act, and the expenses of litigation directly related to obtaining judgment quieting title in the plaintiff with respect to the interest or apparent interest forming the basis of the action against the respondent, including costs and reasonable attorney fees.

B. If a defendant in the quiet title action who either failed to respond to a notice pursuant to Section 4 of this act or who refused to execute and deliver a curative instrument or take corrective action identified in the notice prevails in the quiet title action, the defendant in the quiet title action, in addition to any other requested relief, shall be entitled to recover damages equal to the actual expenses incurred by the defendant in responding to the notice from the requestor pursuant to Section 4 of this act, and the expenses of litigation directly related to obtaining judgment quieting title in the defendant or asserting an affirmative defense with respect to the interest or apparent interest forming the basis of the action against the defendant, including costs and reasonable attorney fees.

Actions to Recover Real Property

Section 1142. Actions for Recovery of Real Property.

In actions for the recovery of real property, it shall be necessary for the plaintiff to set forth in detail the facts relied upon to establish his claim, and to attach to his petition copies of all deeds or other evidences of title, as in actions upon written contracts; and he must establish the allegations of his petition, whether answer be filed or not.

Section 1143. Denial by Defendant of Title.

It shall be sufficient in such action, if the defendant in his answer, deny, generally, the title alleged in the petition, or that he withholds the possession, as the case may be, but if he deny the

title of the plaintiff, possession by the defendant shall be taken as admitted. Where he does not defend for the whole premises, the answer shall describe the particular part of which defense is made.

Section 1144. In an Action brought by Tenant against a Cotenant.

In an action, by a tenant in common of real property, against a cotenant, the plaintiff must, in addition to what is required in the second preceding section, state, in his petition, that the defendant either denied the plaintiff's right, or did some act amounting to such denial.

Section 1145. Plaintiff's Right to Recover.

In an action for the recovery of real property, where the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the decision and judgment must be according to the fact, and the plaintiff may recover for withholding the property.

Section 1146. Matter of Right to one Trial—New Trial.

In all actions for the recovery of real property one trial only shall be granted as a matter of right, but the party against whom the judgment is rendered may secure a new trial in the same manner and for the same reasons as new trials are awarded in other civil cases.

Section 1147. Reserved.

INTERESTS AND CLAIMS BY PERSONS NOT IN BEING

Section 1147.1. Persons Not in Being—Possible Future Interest—Proceeds of Sale Held in Trust.

If it shall appear in any suit or proceeding in the district court involving real estate that any person or persons not in being are or may become entitled to, or may upon coming into being claim to be entitled to, any future interest in such real estate, legal or equitable, and if it further appears to be expedient or for the best interests of all concerned, the court may by order determine the rights of all living persons in such real estate and the circumstances under which persons not then in being may claim an interest therein in the future and determine the nature and extent of any such interest or claim and may direct the sale of the full title to the real estate in which such future interest may be claimed, and direct that the proceeds of the sale shall be held as a trust in lieu of the real estate so sold to be administered as hereinafter provided.

Section 1147.2. Undivided Interests.

When, under the circumstances stated in Section 1, the possible claim of persons not in being affect only an undivided interest in the full fee simple title to a tract of real estate, such undivided interest only may be sold under the provisions of this act, and the title to the other undivided interest therein shall not, in such case, be affected by said sale.

Section 1147.3. All Interested Persons to be Made Party to Proceedings in Sale of Real Estate—Mortgages—Guardian or Guardian Ad Litem.

No sale of real estate hereunder shall be made unless all persons interested in the real estate to be sold (which shall be the full fee simple title in the tract sold if the possible claims of the person or persons not in being affect the full fee simple title thereto, or the full undivided interest in the tract sold if such possible claims affect only such undivided interest) are made parties to said proceedings; provided that where the real estate to be sold is subject to a mortgage or other lien, the mortgagee or lien holder need not be made a party to said proceedings if the sale is made subject to such mortgage or lien. Where the person or persons not in being who may claim an interest in the real estate sold belong to a class of which there is a living member or members whose interests do not conflict with those not in being, such living member or members of said class may be made parties plaintiff or defendant and may appear on behalf of themselves and the unborn members of the class, but in every case the court shall appoint a disinterested person as guardian ad litem for such person or persons not in being, and such guardian ad litem shall be required to file a written answer or other pleading fully disclosing the possible interests of such unborn persons and take all appropriate steps to protect their interests.

Section 1147.4. Public or Private sale—Trustee—Terms of Sale—Return—Trustee's Deed—Confirmation.

Where a sale is made under the provisions of this act, the court may appoint a trustee to make such sale on such terms as it may deem advisable, at public or private sale, with or without notice, and on such terms as to the payment of the purchase price as the court may direct and in the event the sale is made partly in cash and partly on credit, the unpaid balance of the purchase money shall be evidenced by a first mortgage secured by the real estate sold. The trustee appointed to sell said real estate shall make a verified return of sale and, upon confirmation by the court, shall execute a trustee's deed conveying the fee simple title to the real estate sold. Said deed shall vest in the purchaser the full fee simple title to said real estate and the rights and claims of all persons who held an interest therein prior to the sale, including all those of a class not then in being, shall be forever barred. The court shall not confirm said sale unless it shall have received satisfactory evidence that the sale was fairly conducted and that a higher price cannot be obtained and furthermore that the sale is for the best interest of all parties who have or may claim an interest therein.

Section 1147.5. Proceeds of Sale a Trust—Trustee—Term—Distribution of Monies.

Upon confirming the sale of real estate under the provisions of Section 1147.4 of this title, the court shall direct that the proceeds of the sale, including any purchase money mortgage which may be accepted as a part of the purchase price, less any costs chargeable against the same, constitute a trust to be managed and invested under the continuing jurisdiction of the court and, except as may be otherwise directed by the court, in accordance with the provisions of the Trust Act and the Uniform Prudent Investor Act. The trustee appointed to make said sale may be continued as trustee for the administration of the trust or the court may appoint a different trustee for the purpose of administering the trust. In the order of confirmation of sale and the

appointment of the trustee to administer the trust, the court shall make appropriate provisions with respect to the term during which the trust shall be administered and how the income and principal thereof shall be distributed.

Section 1147.6. Fees and Costs—Compensation for Guardian or Guardian Ad Litem.

The court shall fix all fees and costs including reasonable compensation for the guardian or guardians ad litem and trustee and assess the same against the trust assets or, in the event the sale is not made, against the parties to the proceedings who are sui juris as equity may require.

FORCIBLE ENTRY AND DETAINER

Section 1148.1. Jurisdiction—Forcible Entry and Detention—Joinder of Actions—Judgments No Bar.

The district court shall have jurisdiction to try all actions for the forcible entry and detention, or detention only, of real property, and claims for the collection of rent or damages to the premises, or claims arising under landlord tenant laws, may be included in the same action, but other claims may not be included in the same action. A judgment in an action brought under this act shall be conclusive as to any issues adjudicated therein, but it shall not be a bar to any other action brought by either party.

Section 1148.2. Powers of Court.

The court shall have power to inquire, in the manner hereinafter directed, as well against those who make unlawful and forcible entry into lands and tenements, and detain the same, as against those who, having a lawful and peaceable entry into land or tenements, unlawfully and by force hold the same, and if it be found, upon such inquiry, that an unlawful and forcible entry has been made, and that the same lands and tenements are held unlawfully, then the court shall cause the party complaining to have restitution thereof.

Section 1148.3. Extent of Jurisdiction.

Proceedings under this act may be had in all cases against tenants holding over their terms and, incident thereto, to determine whether or not tenants are holding over their terms; in sales or real estate on executions, orders or other judicial process, when the judgment debtor was in possession at the time of the rendition of the judgment or decree, by virtue of which such sale was made; in sales by executors, administrators, guardians and on partition, where any of the parties to the partition were in possession at the commencement of the suit, after such sales, so made, on execution or otherwise, shall have been examined by the proper court, and the same by said court, adjudged valid; and in cases where the defendant is a settler or occupier of lands and tenements without color of title, and to which the complainant has the right of possession. This section is not to be construed as limiting the provisions of the preceding section.

Section 1148.4. Issuance and Return of Summons—Contents.

The summons shall be issued and returned as in other cases, except that it shall command the tribal police, or other person serving it, to summon the defendant to appear for trial at the time and place specified therein, which time shall be not less than five (5) days nor more than ten (10) days from the date that the summons is issued. The summons shall apprise the defendant of the nature of the claim that is being asserted against him; and there shall be endorsed upon the summons the relief sought and the amount for which the plaintiff will take judgment if the defendant fails to appear. In all cases, pleadings may be amended to conform to the evidence.

Section 1148.5. Service of Summons.

The summons may be served as in other cases except that such service shall be at least three (3) days before the day of trial, and the return day shall not be later than the day of trial, and it may also be served by leaving a copy thereof with some person over fifteen (15) years of age, residing on the premises, at least three (3) days before the day of trial; or, if service cannot be made by the exercise of reasonable diligence on the tenant or on any person over the age of fifteen (15) years residing on the premises, the same may be served by certified mail with return receipt postmarked at least three (3) days before the date of trial.

Section 1148.5A. Constructive Service of Summons.

If, in the exercise of reasonable diligence, service cannot be made upon the defendant personally nor upon any person residing upon the premises over fifteen (15) years of age, then in lieu of service by certified mail, service may be obtained for the sole purpose of adjudicating the right to restitution of the premises by the tribal police posting or by private process service posting of said summons conspicuously on the building on the premises, and, if there be no building on said premises, then by posting the same at some conspicuous place on the premises sought to be recovered at least five (5) days prior to the date of trial, and by the claimant's mailing a copy of said summons to the defendant at his last-known address by certified mail at least five (5) days prior to said date of trial. Such service shall confer no jurisdiction upon the court to render any judgment against the defendant for the payment of money nor for any relief other than the restoration of possession of the premises to the claimant, unless the defendant appears at trial. Such service shall not be rendered ineffectual by the failure of the defendant to actually see or receive such posted process nor by his failure to actually receive or sign a return receipt for such mailed process.

Section 1148.6. Answer or Affidavit by Defendant.

A. In all cases in which the defendant wishes to assert title to the land or that the boundaries of the land are in dispute, he shall, before the time for the trial of the cause, file a verified answer or an affidavit which contains a full and specific statement of the facts constituting his defense of title or boundary dispute. If the defendant files such a verified answer or affidavit, the action shall proceed as one in ejectment before the proper division of the district court. If the defendant files an affidavit he shall file answer within ten (10) days after the date the affidavit is filed.

B. In all cases in which the cause of action is based on an asserted breach of a lease by the defendant, or the termination or expiration of a lease under which the defendant claims an interest in the property in a verified answer or affidavit, the plaintiff may proceed with the forcible entry and detainer action instead of an ejectment action.

C. No answer by the defendant shall be required before the time for trial of the cause.

Section 1148.7. Trial by Court.

In all cases under this section, the court shall try the cause without a jury.

Section 1148.8. Reserved.

Section 1148.9. Attorney Fee.

A reasonable attorney fee shall be allowed by the court to the prevailing party.

Section 1148.10. Writ of Execution—Form—New Trial.

If judgment be for plaintiff, the court shall, at the request of the plaintiff, his agent or attorney, issue a writ of execution thereon, which shall be in substantially the following form:

The Choctaw Nation of Oklahoma to the Choctaw Tribal Police:

Whereas, in a certain action for the forcible entry and detention (or for the forcible detention as the case may be) of the following described premises, to wit:_____lately tried before me, wherein _____ was plaintiff, and _____ was

defendant, judgment was rendered on the ____ day of_____, 20__, that the plaintiff have restitution of said premises; and also that he recover rent, attorney fees and costs in the sum of_____; you, therefore, are hereby commanded to cause the defendant to be forthwith removed from said premises and the said plaintiff to have restitution of the same; also that you levy on the goods and chattels of the said defendant, and make the costs aforesaid, and all accruing costs, and of this writ, make legal service and due return.
Witness my hand this_____day of_____, 20_.

_____
A.B., Judge

A motion for a new trial may be filed only within three (3) days of judgment but shall not operate to stay execution.

Section 1148.10A. Stay of Execution by Posting Supersedeas Bond—Failure to Post Bond—Payment of Current Rentals.

A. The plaintiff or agent of the plaintiff or officer shall immediately notify the defendant in person or by posting of said notice that the plaintiff or agent of the plaintiff or officer shall return

in forty-eight (48) hours to restore the plaintiff possession of the premises by executing the writ prescribed in Section 1148.10 of this title and shall make levy to collect the amount of the judgment and all accruing costs.

B. The original writ of execution issued as provided by Section 1148.10 of this title shall be filed in the action in the manner provided for judgments in civil cases.

C. The plaintiff or agent of the plaintiff may execute the writ upon the defendant by personally serving a certified copy of the writ upon the defendant or upon a person authorized to receive service of process as provided by Section 2004 of this title. If the plaintiff or agent of the plaintiff is unable to personally serve the defendant or a person authorized to receive service of process as provided by Section 2004 of this title, the plaintiff or agent of the plaintiff may post a notice in a conspicuous place at the premises address that the plaintiff or agent of the plaintiff shall return at a specified date and time, which shall be not less than forty-eight (48) hours from the time of posting, to restore the plaintiff to possession of the premises by executing the writ prescribed in Section 1148.10 of this title.

D. Any person who wrongfully refuses to surrender possession of the premises described in the writ of execution upon service of the writ by the plaintiff or the agent of the plaintiff shall, upon conviction, be deemed guilty of a trespass and may be punished by a fine in an amount not to exceed Five Hundred Dollars ($500.00) or by confinement in jail for a period not to exceed thirty (30) days or by both such fine and imprisonment.

E. The plaintiff or the agent of the plaintiff may summon the tribal police for assistance in executing the writ.

F. The plaintiff's, the agent of the plaintiff's, or the officer's return shall be as upon other executions. Within two (2) days of the date of the judgment, the defendant may post supersedeas bond conditioned as provided by law. This time limit may be enlarged by a trial judge's order to not more than seven (7) days after the date of judgment. The posting of a supersedeas bond shall not be construed to relieve the defendant of his duty to pay current rent as it becomes due while the appeal is pending. The rent shall be paid into the court clerk's office together with poundage. If there be controversy as to the amount of rent, the judge shall determine by order how much shall be paid in what time intervals. Withdrawal by the plaintiff of rent deposited in the court clerk's office pending appeal shall not operate to estop him from urging on appeal his right to the possession of the premises. Failure to pay current rentals while the appeal is pending shall be considered as abandonment of the appeal.

Section 1148.10B. Cure of Default by Tenant in Following Instance.

A. A tenant shall be allowed to cure a default in a forcible entry and detainer action in the following instance:

The default of the tenant was due to unpaid rent which was unpaid due to the good faith claim of a tenant that the landlord failed to provide the minimum services required by the landlord tenant

law; provided that written notice of said claim or actual notice to the landlord's agent for collecting rent is provided within ten (10) days of the date that rent became due.

B. In such instance, the order of the court must recite that the tenant by paying the judgment including court costs and attorney fees, by cash or cashier's check, within seventy-two (72) hours can avoid a writ of execution, cure the breach and remain in the premises.

Section 1148.11 Reserved.

Section 1148.12. Reserved.

Section 1148.13. Reserved.

Section 1148.14. Forcible Entry and Detainer Actions not Exceeding Jurisdictional Amount for Small Claims Court—Small Claims Docket.

An action for forcible entry and detainer brought pursuant to procedures prescribed otherwise in this title standing alone or when joined with a claim for recovery of rent, damages to the premises, or a claim arising under landlord tenant law, where the total recovery sought, exclusive of attorney's fees and other court costs, does not exceed the jurisdictional amount for the small claims court, shall be placed on the small claims docket of the district court. The district court may provide by court rule that any action for forcible entry and detainer may be assigned to the small claims division for determination of the right to possession, regardless of the underlying amount in controversy, at the conclusion of which, the matter shall be returned to the assigned judge for further proceedings. The court clerk shall in connection with such actions prepare the affidavit, by which the action is commenced, and the summons, and generally assist unrepresented plaintiffs to the same extent that he is now required so to do under Section 1751, et seq. of this title.

Section 1148.15. Affidavit—Form.

The actions for unlawful entry and detainer standing alone or when joined with a claim for collection of rent or damages to the premises, or both, shall be commenced by filing an affidavit in substantially the following form with the clerk of the court:

In the District Court of the Choctaw Nation

Plaintiff
vs.
Defendant No. _____
Defendant

CHOCTAW NATION OF OKLAHOMA ss
COUNTY OF_____)

AFFIDAVIT

_____, being duly sworn, deposes and says:

The defendant resides at_____,_____County, Oklahoma, within the Choctaw Nation of Oklahoma, and defendant's mailing address is _____.

The defendant is indebted to the plaintiff in the sum of $_____for rent and for the further sum of $_____for damages to the premises rented by the defendant; the plaintiff has demanded payment of said sum(s) but the defendant refused to pay the same and no part of the amount sued for herein has been paid, and/or the defendant is wrongfully in possession of certain real property described as _____ _____; the plaintiff is entitled to possession thereof and has made demand on the defendant to vacate the premises, but the defendant refused to do so.

_____

Subscribed and sworn to before me this_____day of_____, 20____.

_____
Notary Public (or Clerk or Judge)

Section 1148.16. Summons—Form.

The summons to be issued in an action for forcible entry and detainer shall be in the following form:

SUMMONS

The Choctaw Nation of Oklahoma to the within-named defendant:

You are hereby directed to relinquish immediately to the plaintiff herein total possession of the real property described as_____or to appear and show cause why you should be permitted to retain control and possession thereof.

This matter shall be heard at_____(name or address of building), in_____, County of _____, Oklahoma, in the District Court of the Choctaw Nation of Oklahoma at the hour of _____ o'clock of _____ day of _____ (month), 20_, or at the same time and place three (3) days after service hereof, whichever is the latter. (This date shall be not less than five (5) days from the date summons is issued.) You are further notified that if you do not appear on the date shown, judgment will be given against you as follows:

For the amount of the claim for deficient rent and/or damages to the premises, as it is stated in the affidavit of the plaintiff and for possession of the real property described in said affidavit, whereupon a writ of assistance shall issue directing the sheriff to remove you from said premises and take possession thereof.

In addition, a judgment for costs of the action, including attorney's fees and other costs, may also be given.

Dated this_____day of_____, 20_____.

_____
Clerk of the Court (or Judge)

Plaintiff or Attorney
Address
Telephone Number

Chapter 21. Reserved.

Chapter 22. Reserved.

Chapter 23. Habeas Corpus.

Section 1331. Every Person Restrained of his Liberty May Prosecute a Writ of Habeas Corpus.

Every person restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus to enquire into the cause of the restraint, and shall be delivered therefrom when illegal.

Section 1332. Specifications for Application for the Writ—Made by Petition, Signed and Verified by Plaintiff or Some Person in Plaintiff's Behalf.

Application for the writ shall be made by petition, signed and verified either by the plaintiff or by some person in his behalf, and shall specify:

First. By whom the person in whose behalf the writ is applied for is restrained of his liberty, and the place where, naming all the parties, if they are known, or describing them, if they are not known.

Second. The cause or pretense of the restraint, according to the best of the knowledge and belief of the applicant.

Third. If the restraint be alleged to be illegal, in what the illegality consists.

Section 1333. Granting of Writ.

Writs of habeas corpus may be granted by any court of record in term time, or by a judge of any such court, either in term or vacation; and upon application the writ shall be granted without delay.

Section 1334. Writ Directed to Officer having Person under Restraint.

The writ shall be directed to the officer or party having the person under restraint, commanding him to have such person before the court, or judge, at such time and place as the court or judge shall direct, to do and receive what shall be ordered concerning him and have then and there the writ.

Section 1335. Writ Directed to Tribal Police—Delivered by Clerk.

If the writ be directed to the tribal police, it shall be delivered by the clerk to the officer without delay.

Section 1336. Tribal Police to Serve Writ if Directed to any other person.

If the writ be directed to any other person, it shall be delivered to the tribal police and shall be by him served by delivering to such person without delay.

Section 1337. Service of Writ.

If the person to whom such writ is directed cannot be found, or shall refuse admittance to the tribal police, the same may be served by leaving it at the residence of the person to whom it is

directed, or by affixing the same on some conspicuous place, either of his dwelling house or where the party is confined under restraint.

Section 1338. Immediate Return—Enforcement of Obedience by Attachment.

The tribal police or other person to whom the writ is directed shall make immediate return thereof, and if he neglect or refuse, after due service, to make return, or shall refuse or neglect to obey the writ by producing the party named therein, and no sufficient excuse be shown for such neglect or refusal, the court shall enforce obedience by attachment.

Section 1339. Return to be Signed and Verified—Contents.

The return must be signed and verified by the person making it, who shall state:

First. The authority or cause or restraint of the party in his custody.

Second. If the authority be in writing, he shall return a copy and produce the original on the hearing.

Third. If he has had the party in his custody or under his restraint, and has transferred him to another, he shall state to whom, the time, place and cause of the transfer.

He shall produce the party on the hearing, unless prevented by sickness or infirmity, which must be shown in the return.

Section 1340. Decision of Judge to Decide on Return.

The court or judge, if satisfied with the truth of the allegation of sickness or infirmity, may proceed to decide on the return, or the hearing may be adjourned until the party can be produced, or for other good cause. The plaintiff may except to the sufficiency of, or controvert the return or any part thereof, or allege any new matter in avoidance; the new matter shall be verified, except in cases of commitment on a criminal charge; the return and pleadings may be amended without causing any delay.

Section 1341. Court or Judge to Hear and Determine Cause—Discharge.

The court or judge shall thereupon proceed in a summary way to hear and determine the cause, and if no legal cause be shown for the restraint or for the continuance thereof, shall discharge the party.

Section 1342. Inquiry into Legality of Judgment or Process when Party is in Custody or Term of Commitment has not expired.

No court or judge shall inquire into the legality of any judgment or process, whereby the party is in custody, or discharge him when the term of commitment has not expired in either of the cases following:

First. Upon process issued by any court or judge of the United States, or where such court or judge has exclusive jurisdiction; or,

Second. Upon any process issued on any final judgment of a court of competent jurisdiction; or,

Third. For any contempt of any court, officer or body having authority to commit; but an order of commitment as for a contempt, upon proceedings to enforce the remedy of a party, is not included in any of the foregoing specifications;

Fourth. Upon a warrant or commitment issued from the district court, or any other court of competent jurisdiction, upon an indictment or information.

Section 1343. Discharge from Order of Commitment.

No person shall be discharged from an order of commitment issued by any judicial or peace officer for want of bail, or in cases not bailable, on account of any defect in the charge or process, or for alleged want of probable cause; but in all such cases, the court or judge shall summon the prosecuting witnesses, investigate the criminal charge, and discharge, let to bail or recommit the prisoner, as may be just and legal, and recognize witnesses when proper.

Section 1344. Purpose of Letting Prisoner to Bail.

The writ may be had for the purpose of letting a prisoner to bail in civil and criminal actions.

Section 1345. Notification of Interested Party.

When any person has an interest in the detention, the prisoner shall not be discharged until the person having such interest is notified.

Section 1346. Powers of Court.

The court or judge shall have power to require and compel the attendance of witnesses and to do all other acts necessary to determine the case.

Section 1347. Liability of Tribal Police for Civil Actions.

No tribal police officer or other officer shall be liable to a civil action for obeying any writ of habeas corpus or order of discharge made thereon.

Section 1348. Illegal Restraint—Carrying out of jurisdiction of Court—Warrant.

Whenever it shall appear by affidavit that anyone is illegally held in custody or restraint, and that there is good reason to believe that such person will be carried out of the jurisdiction of the court or judge before whom the application is made, or will suffer some irreparable injury before compliance with the writ can be enforced, such court or judge may cause a warrant to be issued,

reciting the facts, and directed to the tribal police or any other person, commanding him to take the person thus held in custody or restraint, and forthwith bring him before the court or judge, to be dealt with according to law.

Section 1349. Command for Apprehension of Person Charged with Causing the Illegal Restraint.

The court or judge may also, if the same be deemed necessary, insert in the warrant a command for the apprehension of the person charged with causing the illegal restraint.

Section 1350. Manner of Execution of Writ.

The officer shall execute the writ by bringing the person therein named before the court or judge; and the like return and proceedings shall be required and had as in case of writs of habeas corpus.

Section 1351. Temporary Orders.

The court or judge may make any temporary orders in the cause or disposition of the party during the progress of the proceedings, which justice may require. The custody of any party restrained may be changed from one person to another, by order of the court or judge.

Section 1352. Issuance and Service on Sunday in Case of Emergency.

Any writ or process authorized by this article may be issued and served, in case of emergency, on Sunday.

Section 1353. Issuance, Service and Return of Process.

All writs and other process, authorized by the provisions of this article, shall be issued by the clerk of the court, and except summons, sealed with the seal of such court, and shall be served and returned forthwith, unless the court or judge shall specify a particular time for any such return. And no writ or other process shall be disregarded for any defect therein, if enough is shown to notify the officer or person of the purport of the process. Amendments may be allowed, and temporary commitments, when necessary.

Section 1354. Favor of Parents, Guardians, Masters, Husbands and Wives—Enforcement of Rights for Protection of Infants and Insane.

Writ of habeas corpus shall be granted in favor of parents, guardians, masters, husbands and wives; and to enforce the rights and for the protection of infants and insane persons; and the proceedings shall, in all such cases, conform to the provisions of this article.

Section 1355. Habeas Corpus—No Deposit or Security for Costs Upon Initial Application—Payment.

No deposit or security for costs shall be required of an applicant for the initial application for a writ of habeas corpus.

Chapter 24. Reserved.

Chapter 25. Slander and Libel.

Section 1441. Definition of Libel.

Libel is a false or malicious unprivileged publication by writing, printing, picture, or effigy or other fixed representation to the eye, which exposes any person to public hatred, contempt, ridicule or obloquy, or which tends to deprive him of public confidence, or to injure him in his occupation, or any malicious publication as aforesaid, designed to blacken or vilify the memory of one who is dead, and tending to scandalize his surviving relatives or friends.

Section 1442. Definition of Slander.

Slander is a false and unprivileged publication, other than libel, which:

1. Charges any person with crime, or with having been indicted, convicted or punished for crime.

2. Imputes in him the present existence of an infectious, contagious or loathsome disease.

3. Tends directly to injure him in respect to his office, profession, trade or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade or business that has a natural tendency to lessen its profit.

4. Imputes to him impotence or want of chastity; or,

5. Which, by natural consequences, causes actual damage.

Section 1443. Privileged Communication Defined—Exemption from Libel.

A. A privileged publication or communication is one made:

First. In any legislative or judicial proceeding or any other proceeding authorized by law;

Second. In the proper discharge of an official duty;

Third. By a fair and true report of any legislative or judicial or other proceeding authorized by law, or anything said in the course thereof, and any and all expressions of opinion in regard thereto, and criticisms thereon, and any and all criticisms upon the official acts of any and all

public officers, except where the matter stated of and concerning the official act done, or of the officer, falsely imputes crime to the officer so criticized.

B. No publication which under this section would be privileged shall be punishable as libel.

Section 1444. Pleading—Proof—Defenses.

In all civil actions to recover damages for libel or slander, it shall be sufficient to state generally what the defamatory matter was, and that it was published or spoken of the plaintiff, and to allege any general or special damage caused thereby. As a defense thereto the defendant may deny and offer evidence to disprove the charges made, or he may prove that the matter charged as defamatory was true and, in addition thereto, that it was published or spoken under such circumstances as to render it a privileged communication.

Section 1445. Article Published in Good Faith—Retraction.

In an action for damages for the publication of a libel in a newspaper or periodical, if the evidence shows that the article was published in good faith and that its falsity was due to an honest mistake of the facts, and the question of "honest mistake" shall be a question of fact, the plaintiff shall be entitled to recover actual damages only unless a retraction be requested and refused as hereinafter provided. The person claiming to have been libeled shall notify the publisher, either orally or in writing, stating or setting forth the particular matter claimed to be libelous and requesting that the same be retracted. If a retraction, headed "RETRACTION" in eighteen-point type or larger, be published on the same page and in the same type as were the statements complained of, in two regular issues of said newspaper or periodical, published within a reasonable time, but not to exceed two (2) weeks after such notice in a weekly newspaper, or not to exceed one (1) week in a daily newspaper, the publication of said retraction shall be full and complete satisfaction as to all other than actual damages, and the plaintiff shall not be entitled to recover other than actual damages on account of such erroneous published matter. If such a retraction be not so published, plaintiff may recover such damages as are provided by the statutes of the Choctaw Nation, if his cause of action be maintained. This section shall not apply to any libel imputing unchastity to a woman; nor in any case in which the evidence shows the publication was made maliciously or with a premeditated intention and purpose to injure, defame or destroy the reputation of another or to injuriously alter a person's reputation; nor to anonymous communications or publications, and provided further that this section shall not apply to any article pertaining to any candidate for any public office when said article is published within three (3) weeks of the date of the primary, runoff primary, special or general election, as the case may be.

Newspapers or periodicals shall, for the purposes of this act, be considered publications having admission to the mails as second class mail matter and having all the other qualifications of a legal newspaper.

Section 1446. Reserved.

Section 1447.1. Limitation of Liability of Owners, Etc. of Television or Radio Stations or Networks.

The owner, licensee or operator of a television and/or radio broadcasting station or network of stations, and the agents or employees of any such owner, licensee or operator, shall not be liable for any damages for any defamatory statement published or uttered in or as a part of a television and/or radio broadcast, by one other than such owner, licensee or operator, or agent or employee thereof, unless it shall be alleged and proved by the complaining party, that such owner, licensee, operator or such agent or employee, has failed to exercise due care to prevent the publication or utterance of such statement in such broadcast.

Section 1447.2. No Liability for Statements of Candidates for Political Office.

In no event, however, shall any owner, licensee or operator, or the agents or employees of any such owner, licensee or operator of such television and/or radio station or network of stations be held liable for any damages for any defamatory statement uttered over the facilities of such station or network by any candidate for public office, where such statement is not subject to censorship or control by reason of any federal statute or any ruling or order of the Federal Communications Commission made pursuant thereto; PROVIDED, HOWEVER, that this section shall not apply to any owner, licensee, or operator, or any agent or employee of such owner, licensee or operator, of such visual or sound radio broadcasting station, or network of stations, when such owner, licensee, or operator, or agent or employee of such owner, licensee or operator, is a candidate for public office or speaking on behalf of a candidate for public office.

Section 1447.3. Actual or Punitive Damages.

In any action for damages for any defamatory statement published in or uttered as a part of a television and/or radio broadcast, the complaining party shall be allowed such actual and/or punitive damages as he has alleged and proved.

Section 1447.4. Recording and Preservation of Political Utterances.

It shall be the duty of such television and/or radio broadcasting station or network to record and preserve all political utterances. Said recording to be preserved for a period of two (2) years and made available to any person or persons instituting legal actions for libel or defamation. Any person, firm or corporation violating this section shall be guilty of a misdemeanor and upon conviction thereof fined not to exceed One Thousand Dollars ($1,000.00) and costs.

Section 1447.5. False Statements must be counteracted by True Statements upon Request.

If any broadcasting station, at any time, broadcasts, publishes, or circulates any false statement, allegation or rumor pertaining or relating to any individual or association of individuals, or to any trade, labor business, social, economic or religious organization or to any firm, corporation or business or to any public official or candidate for a public office, the said broadcasting station upon demand of any person or persons affected or their representatives, shall broadcast, without charge, any statement setting forth in proper language the truth pertaining to such statement,

allegation, or rumor, which said person or persons or their representatives shall offer to said broadcasting station for broadcast. Provided, that the truth statement shall be broadcast as many times as the untrue statement was broadcast. Provided further, that the truth statement shall be broadcast at a like or comparable time in the daily routine as was the untrue statement.

Section 1448. The Deceased's Right of Publicity.

A. Any person who uses a deceased personality's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods, or services, without prior consent from the person or persons specified in subsection C of this section, shall be liable for any damages sustained by the person or persons injured as a result thereof, and any profits from the unauthorized use that are attributable to the use shall be taken into account in computing the actual damages. In establishing these profits, the injured party or parties shall be required to present proof only of the gross revenue attributable to the use and the person who violated this section is required to prove his or her deductible expenses. Punitive damages may also be awarded to the injured party or parties. The prevailing party or parties in any action under this section shall also be entitled to attorney's fees and costs.

B. The rights recognized under this section are property rights, freely transferable, in whole or in part, by contract or by means of trust or testamentary documents, whether the transfer occurs before the death of the deceased personality, by the deceased personality or his or her transferees, or, after the death of the deceased personality, by the person or persons in whom such rights vest under this section or the transferees of that person or persons.

C. The consent required by this section shall be exercisable by the person or persons to whom such right of consent (or portion thereof) has been transferred in accordance with subsection B of this section, or if no such transfer has occurred, then by the person or persons to whom such right of consent (or portion thereof) has passed in accordance with subsection D of this section.

D. Subject to subsections B and C of this section, after the death of any person, the rights under this section shall belong to the decedents' spouse, issue, or parents in accordance with Choctaw Nation Statutes. Said rights shall be exercised on behalf of and for the benefit of all those persons, by those persons who, in the aggregate, are entitled to more than a one-half (1/2) interest in such rights.

E. If any deceased personality does not transfer his or her rights under this section by contract, or by means of a trust or testamentary document, and there are no surviving persons as described in subsection D of this section, then the rights set forth in subsection A of this section shall terminate.

F. Reserved.

G. No action shall be brought under this section by reason of any use of a deceased personality's name, voice, signature, photograph, or likeness occurring after the expiration of one hundred (100) years from the death of the deceased personality.

H. As used in this section, "deceased personality" means any natural person whose name, voice, signature, photograph, or likeness has commercial value at the time of his or her death, whether or not during the lifetime of that natural person the person used his or her name, voice, signature, photograph, or likeness on or in products, merchandise or goods, or for purposes of advertising or selling, or solicitation of purchase of, products, merchandise, goods, or services. A "deceased personality" shall include, without limitation, any such natural person who has died within fifty (50) years prior to January 1, 1986.

I. As used in this section, "photograph" means any photograph or photographic reproduction, still or moving, or any videotape or live television transmission, of any person, such that the deceased personality is readily identifiable. A deceased personality shall be deemed to be readily identifiable from a photograph when one who views the photograph with the naked eye can reasonably determine who the person depicted in the photograph is.

J. For purposes of this section, a use of a name, voice, signature, photograph, or likeness in connection with any news, public affairs, or sports broadcast or account, or any political campaign, shall not constitute a use for which consent is required under subsection A of this section.

K. The use of a name, voice, signature, photograph, or likeness in a commercial medium shall not constitute a use for which consent is required under subsection A of this section solely because the material containing such use is commercially sponsored or contains paid advertising. Rather it shall be a question of fact whether or not the use of the deceased personality's name, voice, signature, photograph, or likeness was so directly connected with the commercial sponsorship or with the paid advertising as to constitute a use for which consent is required under subsection A of this section.

L. Nothing in this section shall apply to the owners or employees of any medium used for advertising, including, but not limited to, newspapers, magazines, radio and television networks and stations, cable television systems, billboards, and transit ads, by whom any advertisement or solicitation in violation of this section is published or disseminated, unless it is established that such owners or employees had knowledge of the unauthorized use of the deceased personality's name, voice, signature, photograph, or likeness as prohibited by this section.

M. The remedies provided for in this section are cumulative and shall be in addition to any others provided for by law.

N. This section shall not apply to the use of a deceased personality's name, voice, signature, photograph, or likeness, in any of the following instances:

1. A play, book, magazine, newspaper, musical composition, exhibit, display, film, radio or television program, other than an advertisement or commercial announcement not exempt under paragraph 4 of this subsection;

2. Material that is of political or newsworthy value;

3. Single and original works of fine art; and

4. An advertisement or commercial announcement for a use permitted by paragraph 1, 2 or 3 of this subsection.

Section 1449. Unauthorized Use of Another Person's Right of Publicity.

A. Any person who knowingly uses another's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods, or services, without such person's prior consent, or, in the case of a minor, the prior consent of his parent or legal guardian, shall be liable for any damages sustained by the person or persons injured as a result thereof, and any profits from the unauthorized use that are attributable to the use shall be taken into account in computing the actual damages. In establishing such profits, the injured party or parties are required to present proof only of the gross revenue attributable to such use, and the person who violated this section is required to prove his or her deductible expenses. Punitive damages may also be awarded to the injured party or parties. The prevailing party in any action under this section shall also be entitled to attorney's fees and costs.

B. As used in this section, "photograph" means any photograph or photographic reproduction, still or moving, or any videotape or live television transmission, of any person, such that the person is readily identifiable.

1. A person shall be deemed to be readily identifiable from a photograph when one who views the photograph with the naked eye can reasonably determine that the person depicted in the photograph is the same person who is complaining of its unauthorized use.

2. If the photograph includes more than one person so identifiable, then the person or persons complaining of the use shall be represented as individuals rather than solely as members of a definable group represented in the photograph. A definable group includes, but is not limited to, the following examples: A crowd at any sporting event, a crowd in any street or public building, the audience at any theatrical or stage production, a glee club, or a baseball team.

3. A person or persons shall be considered to be represented as members of a definable group if they are represented in the photograph solely as a result of being present at the time the photograph was taken and have not been singled out as individuals in any manner.

C. Where a photograph or likeness of an employee of the person using the photograph or likeness appearing in the advertisement or other publication prepared by or in behalf of the user is only incidental, and not essential, to the purpose of the publication in which it appears, there

shall arise a rebuttable presumption affecting the burden of producing evidence that the failure to obtain the consent of the employee was not a knowing use of the employee's photograph or likeness.

D. For purposes of this section, a use of a name, voice, signature, photograph, or likeness in connection with any news, public affairs, or sports broadcast or account, or any political campaign, shall not constitute a use for which consent is required under subsection A of this section.

E. The use of a name, voice, signature, photograph, or likeness in a commercial medium shall not constitute a use for which consent is required under subsection A of this section solely because the material containing such use is commercially sponsored or contains paid advertising. Rather it shall be a question of fact whether or not the use of the person's name, voice, signature, photograph, or likeness was so directly connected with the commercial sponsorship or with the paid advertising as to constitute a use for which consent is required under subsection A of this section.

F. Nothing in this section shall apply to the owners or employees of any medium used for advertising, including, but not limited to, newspapers, magazines, radio and television networks and stations, cable television systems, billboards, and transit ads, by whom any advertisement or solicitation in violation of this section is published or disseminated, unless it is established that such owners or employees had knowledge of the unauthorized use of the person's name, voice, signature, photograph, or likeness as prohibited by this section.

G. The remedies provided for in this section are cumulative and shall be in addition to any others provided for by law.

Chapter 25. Reserved.

Chapter 26. Mandamus.

Section 1501. Petition for Partition—Contents.

A. When the object of the action is to effect a partition of real property, the petition must describe the property and the respective interests of the owners thereof, if known.

B. 1. Except as provided for in this subsection, in any action involving the partition of a mineral estate, in addition to the requirements of subsection A of this section, the petition shall specify and the plaintiff shall establish at trial by a preponderance of the evidence that:

a. one or more of the co-owners of the mineral estate are frustrating the development objective of the plaintiff for the estate; and

2. The provisions of this subsection shall not apply to any action involving the partition of a mineral estate, if the person requesting the partition owns the surface estate or any part thereof and also owns an interest in the mineral estate.

Section 1502. Contents of Reasonable Certainty in Petition.

If the number of shares or interests is known, but the owners thereof are unknown, or if there are, or are supposed to be, any interests which are unknown, contingent or doubtful, these facts must be set forth in the petition with reasonable certainty.

Section 1503. Creditors with Specific or General Liens may be Made Parties.

Creditors having a specific or general lien upon all or any portion of the property, may be made parties.

Section 1504. Answer—Contents.

The answers of the defendants must state, among other things, the amount and nature of their respective interests. They may also deny the interests of any of the plaintiffs, or any of the defendants.

Section 1505. Court shall Make Order Specifying Interests of Respective Parties.

After the interests of all the parties shall have been ascertained, the court shall make an order specifying the interests of the respective parties, and directing partition to be made accordingly.

Section 1506. Appointment of Commissioners to Make Partition.

Upon making such order, the court shall appoint three commissioners to make partition into the requisite number of shares.

Section 1507. Commissioners to Allot Portions.

For good and sufficient reasons appearing to the court, the commissioners may be directed to allot particular portions to any one of the parties.

Section 1508. Commissioners to Take and Subscribe an Oath.

Before entering upon their duties, such commissioners shall take and subscribe an oath that they will perform their duties faithfully and impartially, to the best of their ability.

Section 1509. Duty of Commissioners—Report—Notice of Time Limit for Filing Exception or Election.

A. The commissioners shall make partition of the property among the parties according to their respective interests, if such partition can be made without manifest injury. But if such

partition cannot be made, the commissioners shall make a valuation and appraisement of the property. They shall make a report of their proceedings to the court, forthwith. For the purpose of this section the term "party" shall mean one who has been adjudged to own an undivided interest in the property involved in the action.

B. Within ten (10) days after the report of commissioners is filed with the court clerk, the attorney for the plaintiff shall forward by certified mail to the attorney of record for every other party in the case and to each party not represented by an attorney, a copy of the commissioners' report and a notice stating that the time limit for filing an exception or an election to take the property at the appraisement, if partition cannot be made, is not later than twenty (20) days from the date the report was filed. Before the expiration of the said twenty (20) days, the court may fix a different and longer period for the filing of an election. The mailing of notice as required herein shall be certified by affidavit to be filed, attached to the original notice. If a party has been served by publication, the notice of said time limit shall be published in one issue of a newspaper qualified to publish legal notices, at least ten (10) days prior to the expiration of the date to file exception or election.

C. The time limit for filing an exception or an election to take property at appraisement, as prescribed in subsection B of this section, shall be calculated from the date the report of the commissioners is filed in the case. On failure of the attorney for plaintiff to give notice within the time prescribed in subsection B of this section, the court, on application of any party, may extend the time for filing an exception or an election for the period not to exceed twenty (20) days from the date the application is heard.

Section 1510. Filing of Exceptions to Report—Setting Aside of Report.

Any party may file exceptions to the report of the commissioners, and the court may, for good cause, set aside such report, and appoint other commissioners, or refer the matter back to the same commissioners.

Section 1511. Judgment.

If partition be made by the commissioners, and no exceptions are filed to their report, the court shall render judgment that such partition be and remain firm and effectual forever.

Section 1512. Purchase at Appraised Value.

If partition cannot be made, and the property shall have been valued and appraised, any one or more of the parties may elect to take the same at the appraisement, and the court may direct the sheriff to make a deed to the party or parties so electing, on payment to the other parties of their proportion of the appraised value. Such election shall be filed within twenty (20) days of the filing of the commissioners' report provided that the court may, before expiration of the said twenty (20) days, fix a different and longer period for the filing of elections.

Section 1513. Order for Tribal Police to Sell Property.

If none of the parties elect to take the property at the valuation, or if several of the parties elect to take the same at the valuation, in opposition to each other, the court shall make an order directing the tribal police to sell the same, in the same manner as in sales of real estate on execution; but no sale shall be made at less than two-thirds (2/3) of the valuation placed upon the property by the commissioners.

Section 1514. Return of Proceedings—Tribal Police to Execute Deed.

The tribal police officer shall make return of his proceedings to the court, and if the sale made by him shall be approved by the court, the tribal police shall execute a deed to the purchaser, upon the payment of the purchase money, or securing the same to be paid, in such manner as the court shall direct.

Section 1515. Costs, Attorney's Fees and Expenses.

The court making partition shall tax the costs, attorney's fees and expenses which may accrue in the action, and apportion the same among the parties, according to their respective interests, and may award execution therefor, as in other cases.

Section 1516. Power of Court to Make Order.

The court shall have full power to make any order, not inconsistent with the provisions of this article, that may be necessary to make a just and equitable partition between the parties, and to secure their respective interests.

Section 1517. Sale of Property that cannot be Partitioned—Procedure.

A. In addition to other provisions of law, if, upon the filing of the commissioners' report, it appears that the property cannot be partitioned in kind and the value of the property does not exceed Five Thousand Dollars ($5,000.00), the court may forthwith dispense with further regular partition proceedings and make an order directing the tribal police to sell the property, in the same manner, as in sales of real estate on execution at not less than two-thirds (2/3) of the appraised value.

B. In addition to the notice required for sales of real estate on execution, notice of the sale shall be mailed with return receipt requested at least twenty (20) days prior to the sale, to all persons owning an interest in the property or to their attorneys at their respective last-known address.

C. If it can be established to the satisfaction of the court, prior to the sale, that such property is of a value in excess of Five Thousand Dollars ($5,000.00), such sale shall not be held and the court shall appoint other commissioners to reappraise the property or refer the matter to the same commissioners.

D. Confirmation of such sale shall be set for hearing not less than ten (10) days after the day of sale. A written notice of hearing on the confirmation of the sale shall be mailed, by first-class

mail, postage prepaid, to all persons having an interest in the property as previously determined by the court whose names and addresses are known, at least ten (10) days before the hearing on the confirmation of the sale, and if the name or address of any such person is unknown, such notice shall also be published in a newspaper authorized by law to publish legal notices in each county in which the property is situated. If no newspaper authorized by law to publish legal notices is published in such county, the notice shall be published in some such newspaper of general circulation which is published in an adjoining county. The notice shall state the name of the person or persons being notified by publication and shall be published once at least ten (10) days prior to the date of the hearing on the notice of confirmation of the sale. An affidavit of proof of mailing and of publication, if publication is required, shall be filed in the case.

E. Upon such hearing, if satisfied with the validity and fairness of the sale, the court shall order the tribal police to issue a deed to the purchaser of the property and, after apportionment of costs, attorney fees and expenses, direct disbursement of the sale proceeds to those persons legally entitled to receive the same.

Chapter 29. Quo Warranto.

Section 1531. Quo Warranto Abolished—Relief Obtainable by Civil Action—Maintenance by Contestants for Office.

The writ of quo warranto, and proceedings by information in the nature of quo warranto, are abolished and the remedies heretofore obtainable in those forms may be had by civil action; provided, that such cause of action may be instituted and maintained by the contestant for such office at any time after the issuance of the certificate of election by the tribal election board, and before the expiration of thirty (30) days after such official is inducted into office; provided further, that all suits now pending, contesting such elections, shall not be dismissed because of the prematurity as to time of their commencement, which shall be deemed valid and timely, if commenced after the issuance of the election certificate or after twenty (20) days after the result of said election having been declared by such election board; and provided further, that this act shall not apply to primary election.

Section 1532. Action to be Brought in the Court of Appeals or District Court, in the following cases:

Such action may be brought in the Court of Appeals or in the district court, in the following cases:

1st, When any person shall usurp, intrude into, or unlawfully hold or exercise any public office, or shall claim any franchise within the Choctaw Nation or any office in any corporation created by authority of the Choctaw Nation;

2nd, Whenever any public officer shall have done or suffered any act which, by the provisions of law, shall work a forfeiture of his office;

3rd, Where any corporation claims, by virtue of a congressional grant, any of the public lands or Indian lands to which the Indian title or right of occupancy has been extinguished;

4th, For any other cause for which a remedy might have been heretofore obtained by writ of quo warranto, or information in the nature of quo warranto.

Section 1533. Prosecution in the Name of the Choctaw Nation or Person Bringing the Action.

When the action is brought by a prosecutor of the Choctaw Nation of his own motion, or when directed to do so by competent authority, it shall be prosecuted in the name of the tribe, but where the action is brought by a person claiming an interest in the office, franchise or corporation, or claiming any interest adverse to the franchise, gift or grant, which is the subject of the action, it shall be prosecuted in the name and under the direction, and at the expense of such persons; whenever the action is brought against a person for usurping an office by a prosecutor of the Choctaw Nation, he shall set forth in the petition the name of the person rightfully (entitled) to the office and his right or title thereto; when the action in such case is brought by the person claiming title, he may claim and recover any damage he may have sustained.

Section 1534. Judgment in Case Contesting Right to Office.

In every case contesting the right to an office, judgment shall be rendered according to the rights of the parties, and for the damages the plaintiff or person entitled may have sustained, if any, to the time of the judgment.

Section 1535. Judgment in Favor of Plaintiff.

If judgment be rendered in favor of the plaintiff or person entitled, he shall proceed to exercise the functions of the office, after he has been qualified as required by law; and the court shall order the defendant to deliver over all the books and papers in his custody or within his power, belonging to the office from which he shall have been ousted.

Section 1536. Refusal or Neglect of Defendant to Deliver Books and Papers.

If the defendant shall refuse or neglect to deliver over the books and papers, pursuant to the order, the court, or judge thereof, shall enforce the order by attachment and imprisonment.

Section 1537. Separate Action for Damages.

When judgment is rendered in favor of the plaintiff, he may, if he has not claimed his damages in the action, have a separate action for the damages at any time within one (1) year after the judgment. The court may give judgment of ouster against the defendant, and exclude him from the office.

Chapter 30. Reserved.

Chapter 31. Reserved.

Chapter 32. Reserved.

Chapter 33. Reserved.

Chapter 34. Reserved.

Chapter 35. Reserved.

Chapter 36. Small Claims Procedure Act.

Section 1751. Suits Authorized Under Small Claims Procedure.

A. The following suits may be brought under the small claims procedure:

1. Actions for the recovery of money based on contract or tort, including subrogation claims, but excluding libel or slander, in which the amount sought to be recovered, exclusive of attorneys fees and other court costs, does not exceed Six Thousand Dollars ($6,000.00);

2. Actions to replevy personal property the value of which does not exceed Six Thousand Dollars ($6,000.00). If the claims for possession of personal property and to recover money are pled in the alternative, the joinder of claims is permissible if neither the value of the property nor the total amount of money sought to be recovered, exclusive of attorneys fees and other costs, exceeds Six Thousand Dollars ($6,000.00); and

3. Actions in the nature of interpleader in which the value of the money which is the subject of such action does not exceed Six Thousand Dollars ($6,000.00).

B. No action may be brought under the small claims procedure by any collection agency, collection agent, or assignee of a claim, except that an action may be brought against an insurer or third-party administrator by a health care provider, who is an assignee of benefits available under an accident and health insurance policy, trust, plan, or contract.

C. In those cases which are uncontested, the amount of attorneys fees allowed shall not exceed ten percent (10%) of the judgment.

D. No action may be brought under the small claims procedure for any alleged claim against the Choctaw Nation, or an employee of the Choctaw Nation, if the claim alleges matters arising from incarceration, probation, parole or community supervision.

E. No action by a plaintiff who is currently incarcerated in any jail or prison may be brought against any person or entity under the small claims procedure.

Section 1752. Reserved.

Section 1753. Small Claims Affidavit—Form—Filling.

A. Actions under the small claims procedure as described in paragraphs 1 and 2 of subsection A of Section 1751 of this title shall be initiated by plaintiff or plaintiff's attorney filing an affidavit in substantially the following form with the clerk of the court:

IN THE DISTRICT COURT OF THE CHOCTAW NATION

_____
Plaintiff

vs. Small Claims No. _____

_____
Defendant

CHOCTAW NATION OF)
OKLAHOMA) ss.
)
COUNTY OF _____

_____, being duly sworn, deposes and says:

That the defendant resides at_____, in the above-named county, and that the mailing address of the defendant is _____ _____. That the defendant is indebted to the plaintiff in the sum of $_____for_____, that plaintiff has demanded payment of the sum, but the defendant refused to pay the same and no part of the amount sued for has been paid,

or

That the defendant is wrongfully in possession of certain personal property described as _____ _____ that the value of the personal property is $_____, that plaintiff is entitled to possession thereof and has demanded that defendant relinquish possession of the personal property, but that defendant wholly refuses to do so.

_____

Subscribed and sworn to before me this_____day of_____, 20_.

_____
Notary Public (or Clerk or Judge)

My Commission Expires: My Commission Number:

_____ _____

On the affidavit shall be printed:

ORDER

The Choctaw Nation of Oklahoma, to the within-named defendant:

You are hereby directed to appear and answer the foregoing claim and to have with you all books, papers, and witnesses needed by you to establish your defense to the claim.

This matter shall be heard at_____(name or address of building), in _____, County of_____, State of Oklahoma, at the hour of _____ o'clock of the _____day of_____, 20__. And you are further notified that in case you do not so appear judgment will be given against you as follows:

For the amount of the claim as it is stated in the affidavit, or for possession of the personal property described in the affidavit.

And, in addition, for costs of the action (including attorney fees where provided by law), including costs of service of the order.

Dated this_____day of_____, 20_.

_____
Clerk of the Court (or Judge)

B. Actions under the small claims procedure as described in paragraph 3 of subsection A of Section 1751 of this title shall be initiated by plaintiff or plaintiff's attorney filing an affidavit in substantially the following form with the clerk of the court:

IN THE DISTRICT COURT OF THE CHOCTAW NATION

_____
Plaintiff

vs. Small Claims No. _____

_____
Defendant

_____
Defendant

CHOCTAW NATION OF)
OKLAHOMA) ss.
)
COUNTY OF_____

_____, being duly sworn, deposes and says:

That,_____, the defendant resides at _____

_____, in the above-named county, and that the mailing address of the defendant is_____.

That,_____, the defendant resides at _____

_____, in the above-named county, and that the mailing address of the defendant is_____.

That the plaintiff has custody or possession of money in the amount or value of $_____, held pursuant to the following:

_____

_____.

That the defendants claim or may claim to be entitled to the money.

That the plaintiff deposits herewith into the court $_____, which equals the amount of the money to be invested in accordance with the order of the court and that the plaintiff will abide with the judgment of the court as to the final disposition thereof.

Subscribed and sworn to before me this_____day of_____, 20_.

_____
Notary Public (or Clerk or Judge)

My Commission Expires: My Commission Number:

_____ _____

On the affidavit shall be printed:

ORDER

The Choctaw Nation of Oklahoma, to the within-named defendant:

You are hereby directed to appear and answer the foregoing claim and to have with you all books, papers, and witnesses needed by you to establish your defense to the claim.

This matter shall be heard at_____(name or address of building), in _____, County of_____, State of Oklahoma, at the hour of _____ o'clock of the _____day of_____, 20__. And you are further notified that in case you do not so appear judgment will be given against you as follows:

For the amount of the claim as it is stated in the affidavit, or for possession of the personal property described in the affidavit.

And, in addition, for costs of the action (including attorney fees where provided by law), including costs of service of the order.

Dated this_____day of_____, 20_.

_____
Clerk of the Court (or Judge)

Section 1754. Preparation of Affidavit—Copies.

The claimant shall prepare such an affidavit as is set forth in this act, or, at his request, the clerk of said court shall draft the same for him. Such affidavit may be presented by the claimant in

person or sent to the clerk by mail. Upon receipt of said affidavit, properly sworn to, the clerk shall file the same and make a true and correct copy thereof, and the clerk shall fill in the blanks in the order printed on said copy and sign the order.

Section 1755. Service of Affidavit and Order upon Defendant.

Unless service by the tribal police or other authorized person is requested by the plaintiff, the defendant shall be served by mail. The clerk shall enclose a copy of the affidavit and the order in an envelope addressed to the defendant at the address stated in said affidavit, prepay the postage, and mail said envelope to said defendant by certified mail and request a return receipt from addressee only. The clerk shall attach to the original affidavit the receipt for the certified letter and the return card thereon or other evidence of service of said affidavit and order. If the envelope is returned undelivered and sufficient time remains for making service, the clerk shall deliver a copy of the affidavit and order to the tribal police who shall serve the defendant in the time set in Section 1756 of this title, or at the election of the plaintiff service shall be governed by the provisions of subsection C of Section 2004 of this title.

Section 1756. Date for Appearance of Defendant.

The date for the appearance of the defendant as provided in the order endorsed on the affidavit shall not be more than sixty (60) days nor less than ten (10) days from the date of the order. The order shall be served upon the defendant at least seven (7) days prior to the date specified in the order for the appearance of the defendant. If it is not served upon the defendant, the plaintiff shall apply to the clerk for a new order setting a new day for the appearance of the defendant, which shall not be more than sixty (60) days nor less than ten (10) days from the date of the issuance of the new order. When the clerk has fixed the date for appearance of the defendant, the clerk shall inform the plaintiff, either in person or by certified mail, of the date and order the plaintiff to appear on that date.

Section 1757. Transfer of Actions from Small Claims Docket to another Docket.

A. On motion of the defendant, a small claims action may, in the discretion of the court, be transferred from the small claims docket to another docket of the court; provided, that the motion is filed and notice is given by the defendant to the opposing party or parties by mailing a copy of the motion at least forty-eight (48) hours prior to the time fixed in the order for defendant to appear or answer; and provided further, that the defendant deposit the sum of Fifty Dollars ($50.00) as the court cost.

B. The motion shall be heard at the time fixed in the order and consideration shall be given to any hardship on the plaintiff, complexity of the case, reason for transfer, and other relevant matters. If the motion is denied, the action shall remain on the small claims docket. If the motion is granted, the defendant as movant shall present within ten (10) days and the court shall cause to be filed an order transferring the action from the small claims docket to another docket. If the transfer order is not filed by the movant within ten (10) days, it shall be reinstated upon the small claims docket upon motion of the small claims plaintiff, and no further transfer shall be authorized. Before the transfer is effected, the movant shall deposit with the clerk the court costs

that are charged in other civil cases, less any sums that have already been paid to the clerk. After this filing, the costs and other procedural matters shall be governed as in other civil actions, and not under small claims procedure.

C. Within twenty (20) days of the date the transfer order is signed, the plaintiff shall file a petition that conforms to the standards of pleadings prescribed by the Pleading Code. The answer of the defendant shall be due within twenty (20) days after the filing of the petition and the reply of the plaintiff in ten (10) days after the answer is filed. If the plaintiff ultimately prevails in the action so transferred by the defendant, a reasonable attorney's fee shall be allowed to plaintiff's attorney to be taxed as costs in the case, in addition to any sanctions which the court may deem appropriate.

Section 1758. Counterclaim or Setoff by Verified Answer.

No formal pleading, other than the claim and notice, shall be necessary, but if the defendant wishes to state new matter which constitutes a counterclaim or a setoff, he shall file a verified answer, a copy of which shall be delivered to the plaintiff in person, and filed with the clerk of the court not later than seventy-two (72) hours prior to the hour set for the first appearance of said defendant in such action. Such answer shall be made in substantially the following form:

IN THE DISTRICT COURT OF THE CHOCTAW NATION

_____
Plaintiff

vs. Small Claims No. _____

_____
Defendant

COUNTERCLAIM OR SETOFF
CLAIM OF DEFENDANT

CHOCTAW NATION OF OKLAHOMA) ss.
COUNTY OF_____)

_____, being first duly sworn, deposes and says: That said plaintiff is indebted to said defendant in the sum of $_____for _____ _____which amount defendant prays may be allowed as a claim against the plaintiff herein.

Subscribed and sworn to before me this_____day of_____, 20_____.

_____
Notary Public (or Clerk or Judge)

Section 1759. Claims, Counterclaims, or Setoffs in Excess of Six Thousand Dollars.

A. Except as provided by subsection C of this section, if a claim, a counterclaim, or a setoff is filed, prior to the expiration of the time prescribed by Section 1758 of this title, for an amount in excess of Six Thousand Dollars ($6,000.00), the action shall be transferred to another docket of the district court unless both parties agree in writing and file said agreement with the papers in the action that said claim, counterclaim, or setoff shall be tried under the small claims procedure. If such an agreement has not been filed, a judgment in excess of Six Thousand Dollars ($6,000.00) may not be enforced for the part that exceeds Six Thousand Dollars ($6,000.00). If the action is transferred to another docket of the district court, the person whose claim exceeded Six Thousand Dollars ($6,000.00) shall deposit with the clerk the court costs that are charged in other cases, less any sums that have been already paid to the clerk, or the claim shall be dismissed and the remaining claims, if any, shall proceed under the small claims procedure.

B. If the action is transferred to another docket of the district court, the plaintiff shall file a petition that conforms to the standards for pleadings prescribed by the Pleading Code, within twenty (20) days from the timely filing of the claim, counterclaim, or setoff. The answer of the defendant shall be due within twenty (20) days after the filing of the petition and the reply of the plaintiff shall be due within ten (10) days after the answer is filed.

C. Except as provided by Section 1757 of this title, if a defendant does not file a counterclaim within the period prescribed by Section 1758 of this title, the action shall not be transferred to another docket of the district court.

Section 1760. Attachment or Garnishment—Depositions—Interrogatories—New Parties—Intervention.

No attachment or prejudgment garnishment shall issue in any suit under the small claims procedure. Proceedings to enforce or collect a judgment rendered by the trial court in a suit under the small claims procedure shall be in all respects as in other cases; provided, however, judgments, other than default judgments, for the payment of money may be enforced or collected as prescribed by this act. No depositions shall be taken or interrogatories or other discovery proceeding shall be used under the small claims procedure except in aid of execution. No new parties shall be brought into the action, and no party shall be allowed to intervene in the action.

Section 1761. Trial by Court—Request for Court Reporter—Evidence—Informality.

Actions under the small claims procedure shall be tried to the court. If either party wishes a court reporter, he must notify the clerk of the court in writing at least two (2) working days before the date set for the defendant's appearance and must deposit Fifty Dollars ($50.00) with said notice with the clerk. The plaintiff and the defendant shall have the right to offer evidence in their behalf by witnesses appearing at such hearing, and the judge may call such witnesses and order the production of such documents as he may deem appropriate. The hearing and disposition of such actions shall be informal with the sole object of dispensing speedy justice between the parties.

The prevailing party shall mail a file-stamped copy of the judgment by first-class mail to all other parties who have entered an appearance in the action at their last-known addresses and file a certificate of mailing with the court clerk.

Section 1762. Payment of Judgment.

If judgment be rendered against either party for the payment of money, said party shall pay the same immediately or pay the judgment in accordance with a judgment satisfaction plan arranged by the court.

Section 1763. Appeals.

Appeals may be taken from the judgment rendered under small claims procedure to the Court of Appeals in the same manner as appeals are taken in other civil actions.

Section 1764. Fees.

A fee of Forty-five Dollars ($45.00) shall be charged and collected for the filing of the affidavit for the commencement of any action for an amount of One Thousand Five Hundred Dollars ($1,500.00) or less. Any action in excess of One Thousand Five Hundred Dollars ($1,500.00) shall be subject to the filing fees provided by law for the same kind of action as filed in district court. For the filing of any counterclaim or setoff, fees shall be charged and collected pursuant to the Choctaw Nation Statutes. Except as otherwise provided in this title, no other fee or charge shall be collected by any officer for any service rendered pursuant to the provisions of the Small Claims Procedure Act, or for the taking of affidavits for use in connection with any action tried pursuant to the provisions of the Small Claims Procedure Act. If the affidavit and order are served by the tribal police or a licensed private process server, the court clerk shall collect the usual fee for the tribal police, which shall be taxed as costs in the case. The fee paid to a licensed private process server, as approved by the court, shall be taxed as additional costs in the case. After judgment, the court clerk shall issue such process and shall be entitled to collect only such fees and charges as are allowed by law for like services in other actions. All fees collected as authorized by this section and Section 1772 of this title shall be deposited with other fees that are collected by the district court. Any statute providing for an award of attorneys fees shall be applicable to the small claims division if the attorney makes an appearance in the case, whether before or after judgment or on hearing for disclosure of assets.

Section 1765. Costs.

The prevailing party in an action is entitled to costs of the action, including the costs of service of the order for the appearance of the defendant and the costs of enforcing any judgment rendered therein.

Section 1766. Citation.

This act shall be known as "The Small Claims Procedure Act," and shall be incorporated in Title 12, Choctaw Nation Statutes.

Section 1767. Reserved.

Section 1768. Reserved.

Section 1769. Reserved.

Section 1770. Small Claims Judgment as Lien—Filing—Release—Notice—Costs.

A. A judgment granted under the Small Claims Procedure Act shall become a lien on the real property of the judgment debtor within the county in the State of Oklahoma only from and after the time a Statement of Judgment has been filed in the office of the county clerk of that county and after the judgment of the District Court of the Choctaw Nation has been filed with the District Court in the appropriate county of the State of Oklahoma. When requested, the court clerk shall prepare a Statement of Judgment for the judgment creditor which shall include instructions advising the judgment creditor to file the Statement of Judgment in the office of the county clerk.

B. The lien of any small claims judgment when satisfied by payment or otherwise discharged shall be released by the court clerk upon written application by the judgment debtor. The court clerk shall mail notice of the judgment debtor's application to the attorney for the judgment creditor or the judgment creditor, if there is no attorney, at the last-known address of the attorney or judgment creditor. If there is no response or objection from the judgment creditor within ten (10) days after the notice is mailed, the judgment shall be released. No hearing shall be required unless requested by a party to the action. When requested, the court clerk shall prepare a Certificate of Release. The Certificate of Release shall include instructions advising the judgment debtor to file the Certificate of Release in the office of the county clerk. The lien of the judgment shall be released once the Certificate of Release is filed in the office of the county clerk.

C. The party filing the application for release shall pay all recording fees and other costs.

Section 1771. Reserved.

Section 1772. Processing and Collecting Judgment—Failure to Satisfy Judgment.

Judgments for the payment of money shall be processed and collected as follows:

1. Incident to the entering of the judgment and while the parties are still under oath:

a. the court may arrange a judgment satisfaction plan and enter a writ of execution, and

b. the court may secure a listing and description of the judgment debtor's assets from the judgment debtor in case subsequent attachment of property becomes necessary to collect an

unsatisfied judgment. Forms for an application and order to appear and answer as to assets and interrogatories to be answered by the debtor shall be supplied by the court clerk.

2. If the judgment debtor fails to satisfy the judgment in accordance with the judgment satisfaction plan, the judgment creditor shall attempt to contact the judgment debtor and collect the same.

3. If the judgment debtor still fails to satisfy the judgment, the judgment creditor may:

a. require the debtor to appear and answer interrogatories regarding assets, or

b. request the issuance of a writ of execution or a garnishment summons on forms provided by the court clerk.

4. Except as provided in this section, proceedings hereunder to collect the judgment shall be conducted pursuant to the provisions of this title.

Section 1773. Failure to File Pleadings—Dismissal of Action without Prejudice.

A. Any action under the Small Claims Procedure Act which is not at issue and in which no pleading has been filed or other action taken for one (1) year and in which no motion has been pending during any part of the year shall be dismissed without prejudice by the court on its own motion after notice to the parties or their attorneys of record; providing, the court may, upon written application and for good cause shown by order in writing, allow the action to remain on its docket.

B. If service of process under the Small Claims Procedure Act is not made upon a defendant within one hundred eighty (180) days after the filing of the affidavit, the action shall be deemed to have been dismissed without prejudice as to that defendant. The action shall not be deemed to have been dismissed where a summons was served on the defendant within one hundred eighty (180) days after the filing of the affidavit and a court later holds that the summons or its service was invalid. After a court quashes a summons or its service, a new summons may be served on the defendant within a time specified by the judge. If the new summons is not served within the specified time, the action shall be deemed to have been dismissed without prejudice as to that defendant. This subsection shall not apply with respect to a defendant who has been in a foreign country for one hundred eighty (180) days following the filing of the affidavit.

Chapter 37. Reserved.

Chapter 38. Reserved.

Chapter 39. Pleading Code.

COMMENCEMENT OF ACTION.

Section 2001. Scope of the Pleading Code.

The Choctaw Nation Pleading Code governs the procedure in the district court of all suits of a civil nature whether cognizable as cases at law or in equity except where a statute specifies a different procedure. It shall be construed to secure the just, speedy, and inexpensive determination of every action.

Section 2002. Reserved.

Section 2003. Commencement of Action.

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

Section 2004. Process.

A. SUMMONS: ISSUANCE. Upon filing of the petition, the clerk shall forthwith issue a summons. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

B. SUMMONS: FORM.

1. 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 attorney, if any, otherwise, the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify the defendant that in case of failure to appear, judgment by default will be rendered against the defendant for the relief demanded in the petition.

2. A judgment by default shall not be different in kind from or exceed in amount that prayed for in either the demand for judgment or in cases not sounding in contract in a notice which has been given the party against whom default judgment is sought. 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 or her pleadings.

C. BY WHOM SERVED: PERSON TO BE SERVED.

1. SERVICE BY PERSONAL DELIVERY.

a. At the election of the plaintiff, process, other than a subpoena, shall be served by a tribal law enforcement officer, a person licensed to make service of process in civil cases, a person licensed to make service of Process in civil cases by a state of the United States or the federal government, or a person specially appointed for that purpose. The court shall freely make special appointments to serve all process, other than a subpoena, under this paragraph.

b. Service shall be made as follows:

i. upon an individual other than an infant who is less than fifteen (15) years of age or an incompetent person, by delivering a copy of the summons and of the petition personally or by leaving copies thereof at the person's dwelling house or usual place of abode with some person then residing therein who is fifteen (15) years of age or older or by delivering a copy of the summons and of the petition to an agent authorized by appointment or by law to receive service of process,

ii. upon an infant who is less than fifteen (15) years of age, by serving the summons and petition personally and upon either of the infant's parents or guardian, or if they cannot be found, then upon the person having the care or control of the infant or with whom the infant lives; and upon an incompetent person by serving the summons and petition personally and upon the incompetent person's guardian,

iii. upon a domestic or foreign 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 petition to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant,

iv. upon the United States or an officer or agency thereof in the manner specified by Federal Rule of Civil Procedure 4,

v. upon the Choctaw Nation or other governmental organization thereof subject to suit, by delivering a copy of the summons and of the petition the official whose duty it is to maintain the official records of the tribe.

2. SERVICE BY MAIL.

a. At the election of the plaintiff, a summons and petition may be served by mail by the plaintiff's attorney, any person authorized to serve process pursuant to subparagraph a of paragraph 1 of this subsection, or by the court clerk upon a defendant of any class referred to in division (1), (3), or (5) of subparagraph c of paragraph 1 of this subsection. Service by mail shall be effective on the date of receipt or if refused, on the date of refusal of the summons and petition by the defendant.

b. Service by mail shall be accomplished by mailing a copy of the summons and petition by certified mail, return receipt requested and delivery restricted to the addressee. When there is more than one defendant, the summons and a copy of the petition or order shall be mailed in a separate envelope to each defendant. If the summons is to be served by mail by the court clerk, the court clerk shall enclose the summons and a copy of the petition or order of the court to be served in an envelope, prepared by the plaintiff, addressed to the defendant, or to the resident service agent if one has been appointed. The court clerk shall prepay the postage and mail the envelope to the defendant, or service agent, by certified mail, return receipt requested and delivery restricted to the addressee. The return receipt shall be prepared by the plaintiff. Service by mail to a garnishee shall be accomplished by mailing a copy of the summons and notice by certified mail, return receipt requested, and at the election of the judgment creditor by restricted delivery, to the addressee.

c. Service by mail shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing acceptance by the defendant or a returned envelope showing refusal of the process by the defendant. Acceptance or refusal of service by mail by a person who is fifteen (15) years of age or older who resides at the defendant's dwelling house or usual place of abode shall constitute acceptance or refusal by the party addressed. In the case of an entity described in division (3) of subparagraph c of paragraph 1 of this subsection, acceptance or refusal by any officer or by any employee of the registered office or principal place of business who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. A return receipt signed at such registered office or principal place of business shall be presumed to have been signed by an employee authorized to receive certified mail. If delivery of the process is refused, upon the receipt of notice of such refusal and at least ten (10) days before applying for entry of default, the person elected by plaintiff pursuant to subparagraph a of this paragraph to serve the process shall mail to the defendant by first-class mail a copy of the summons and petition and a notice prepared by the plaintiff that despite such refusal the case will proceed and that judgment by default will be rendered against him unless he appears to defend the suit. Any default or judgment by default shall be set aside upon motion of the defendant in the manner prescribed by this title, or upon petition of the defendant in the manner prescribed by this title if the defendant demonstrates to the court that the return receipt was signed or delivery was refused by an unauthorized person. A petition shall be filed within one (1) year after the defendant has notice of the default or judgment by default but in no event more than two (2) years after the filing of the judgment.

3. SERVICE BY PUBLICATION.

a. Service of summons upon a named defendant may be made by publication when it is stated in the petition, verified by the plaintiff or the plaintiff's attorney, or in a separate affidavit by the plaintiff or the plaintiff's attorney filed with the court, that with due diligence service cannot be made upon the defendant by any other method.

b. Service of summons upon the unknown successors of a named defendant, a named decedent, or a dissolved partnership, corporation, or other association may be made by

publication when it is stated in a petition, verified by the plaintiff or the plaintiff's attorney, or in a separate affidavit by the plaintiff or the plaintiff's attorney filed with the court, that the person who verified the petition or the affidavit does not know and with due diligence cannot ascertain the following:

i. whether a person named as defendant is living or dead, and, if dead, the names or whereabouts of the person's successors, if any,

ii. the names or whereabouts of the unknown successors, if any, of a named decedent,

iii. whether a partnership, corporation, or other association named as a defendant continues to have legal existence or not; or the names or whereabouts of its officers or successors,

iv. whether any person designated in a record as a trustee continues to be the trustee; or the names or whereabouts of the successors of the trustee, or

v. the names or whereabouts of the owners or holders of special assessment or improvement bonds, or any other bonds, sewer warrants or tax bills.

c. Service pursuant to this paragraph shall be made by publication of a notice, signed by the court clerk, one (1) day a week for three (3) consecutive weeks in a newspaper that publishes legal notices in the county where the petition is filed. If no newspaper is published in such county, the notice shall be published in some such newspaper of general circulation which is published in an adjoining county. All named parties and their unknown successors who may be served by publication may be included in one notice. The notice shall state the court in which the petition is filed and the names of the plaintiff and the parties served by publication, and shall designate the parties whose unknown successors are being served. The notice shall also state that the named defendants and their unknown successors have been sued and must answer the petition on or before a time to be stated (which shall not be less than forty-one (41) days from the date of the first publication), or judgment, the nature of which shall be stated, will be rendered accordingly. If jurisdiction of the court is based on property, any real property subject to the jurisdiction of the court and any property or debts to be attached or garnished must be described in the notice.

i. When the recovery of money is sought, it is not necessary for the publication notice to state the separate items involved, but the total amount that is claimed must be stated. When interest is claimed, it is not necessary to state the rate of interest, the date from which interest is claimed, or that interest is claimed until the obligation is paid.

ii. It is not necessary for the publication notice to state that the judgment will include recovery of costs in order for a judgment following the publication notice to include costs of suit.

iii. In an action to quiet title to real property, it is not necessary for the publication notice to state the nature of the claim or interest of either party, and in describing the nature of the judgment that will be rendered should the defendant fail to answer, it is sufficient to state that a decree quieting plaintiff's title to the described property will be entered. It is not necessary to state that a decree forever barring the defendant from asserting any interest in or to the property is sought or will be entered if the defendant does not answer.

iv. In an action to foreclose a mortgage, it is sufficient that the publication notice state that if the defendant does not answer, the defendant's interest in the property will be foreclosed. It is not necessary to state that a judgment forever barring the defendant from all right, title, interest, estate, property and equity of redemption in or to said property or any part thereof is requested or will be entered if the defendant does not answer.

d. Service by publication is complete when made in the manner and for the time prescribed in subparagraph c of this paragraph. Service by publication shall be proved by the affidavit of any person having knowledge of the publication. No default judgment may be entered on such service until proof of service by publication is filed with and approved by the court.

e. Before entry of a default judgment or order against a party who has been served solely by publication under this paragraph, the court shall conduct an inquiry to determine whether the plaintiff, or someone acting in behalf of the plaintiff, made a distinct and meaningful search of all reasonably available sources to ascertain the whereabouts of any named parties who have been served solely by publication under this paragraph. Before entry of a default judgment or order against the unknown successors of a named defendant, a named decedent, or a dissolved partnership, corporation or association, the court shall conduct an inquiry to ascertain whether the requirements described in subparagraph b of this paragraph have been satisfied.

f. A party against whom a default judgment or order has been rendered, without other service than by publication in a newspaper, may, at any time within three (3) years after the filing of the judgment or order, have the judgment or order set aside in the manner prescribed in this title. Before the judgment or order is set aside, the applicant shall notify the adverse party of the intention to make an application and shall file a full answer to the petition, pay all costs if the court requires them to be paid, and satisfy the court by affidavit or other evidence that during the pendency of the action the applicant had no actual notice thereof in time to appear in court and make a defense. The title to any property which is the subject of and which passes to a purchaser in good faith by or in consequence of the judgment or order to be opened shall not be affected by any proceedings under this subparagraph. Nor shall proceedings under this subparagraph affect the title of any property sold before judgment under an attachment. The adverse party, on the hearing of an application to open a judgment or order as provided by this subparagraph, shall be allowed to present evidence to show that during the pendency of the action the applicant had notice thereof in time to appear in court and make a defense.

g. The term “successors” includes all heirs, executors, administrators, devisees, trustees, and assigns, immediate and remote, of a named individual, partnership, corporation, or association.

h. Service outside of the Choctaw Nation does not give the court personal jurisdiction over a defendant who is not subject to the jurisdiction of the courts of the Choctaw Nation or who has not, either in person or through an agent, submitted to the jurisdiction of the courts of the Choctaw Nation.

4. SERVICE BY ACKNOWLEDGMENT. An acknowledgment on the back of the summons or the voluntary appearance of a defendant is equivalent to service.

5. SERVICE BY OTHER METHODS. If service cannot be made by personal delivery or by mail, a defendant of any class referred to in division (1) or (3) of subparagraph c of paragraph 1 of this subsection may be served as provided by court order in any manner which is reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard.

6. NO SERVICE BY PRISONER. No prisoner in any jail, prison facility, private prison, or parolee or probationer shall be appointed by any court to serve process on any defendant, party or witness.

D. SUMMONS AND PETITION. The summons and petition shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. The failure to serve a copy of the petition with the summons is not a ground for dismissal for insufficiency of service of process, but on motion of the party served, the court may extend the time to answer or otherwise plead. If a summons and petition are served by personal delivery, the person serving the summons shall state on the copy that is left with the person served the date that service is made. This provision is not jurisdictional, but if the failure to comply with it prejudices the party served, the court, on motion of the party served, may extend the time to answer or otherwise plead.

E. SUMMONS: TERRITORIAL LIMITS OF EFFECTIVE SERVICE.

1. Service of the summons and petition may be made anywhere within the Choctaw Nation in the manner provided by subsection C of this section.

2. When the exercise of jurisdiction is authorized by subsection F of this section, service of the summons and petition may be made outside the Choctaw Nation:

a. by personal delivery in the manner prescribed for service within the Choctaw Nation,

b. in the manner prescribed by the law of the place in which the service is made for service in that place in an action in any of its courts of general jurisdiction,

c. in the manner prescribed by paragraph 2 of subsection C of this section,

d. as directed by the foreign authority in response to a letter rogatory,

e. in the manner prescribed by paragraph 3 of subsection C of this section only when permitted by subparagraphs a and b of paragraph 3 of subsection C of this section, or

f. as directed by the court.

3. Proof of service outside the Choctaw Nation may be made in the manner prescribed by this section, the order pursuant to which the service is made, or the law of the place in which the service is made for proof of service in an action in any of its courts of general jurisdiction.

4. Service outside the Choctaw Nation may be made by an individual permitted to make service of process under the law of the state or under the law of the place in which the service is made or who is designated to make service by a court of the Choctaw Nation.

5. When subsection C of this section requires that in order to effect service one or more designated individuals be served, service outside the Choctaw Nation under this section must be made upon the designated individual or individuals.

6. Service inside the Choctaw Nation.

a. The court may order service upon any person who is domiciled or can be found within the Choctaw Nation of any document issued in connection with a proceeding in a tribunal outside the Choctaw Nation. The order may be made upon application of any interested person or in response to a letter rogatory issued by a tribunal outside the Choctaw Nation and shall direct the manner of service.

b. Service in connection with a proceeding in a tribunal outside the Choctaw Nation may be made within the State of Oklahoma without an order of court.

c. Service under this paragraph does not, of itself, require the recognition or enforcement of an order, judgment, or decree rendered outside the Choctaw Nation.

F. ASSERTION OF JURISDICTION. A court of the Choctaw Nation may exercise jurisdiction on any basis consistent with the laws of the Choctaw Nation and the Constitution of the United States.

G. RETURN.

1. The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the process, but the failure to make proof of service does not affect the validity of the service.

2. When process has been served by a tribal law enforcement officer, process server or person appointed to serve process and return thereof is filed in the office of the court clerk, a copy of the return shall be sent by the court clerk to the plaintiff's attorney within three (3) days after the return is filed. The return shall set forth the name of the person served and the date, place, and method of service.

3. If service was by mail, the person mailing the summons and petition shall endorse on the copy of the summons or order of the court that is filed in the action the date and place of mailing and the date when service was receipted or service was rejected, and shall attach to the copy of the summons or order a copy of the return receipt or returned envelope, if and when received, showing whether the mailing was accepted, refused, or otherwise returned. If the mailing was refused, the return shall also show the date and place of any subsequent mailing pursuant to paragraph 2 of subsection C of this section. When the summons and petition are mailed by the court clerk, the court clerk shall notify the plaintiff's attorney within three (3) days after receipt of the returned card or envelope showing that the card or envelope has been received.

H. 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.

I. SUMMONS: TIME LIMIT FOR SERVICE. If service of process is not made upon a defendant within one hundred eighty (180) days after the filing of the petition and the plaintiff cannot show good cause why such service was not made within that period, the action shall be deemed dismissed as to that defendant without prejudice. The action shall not be dismissed if a summons was served on the defendant within one hundred eighty (180) days after the filing of the petition and a court later holds that the summons or its service was invalid. After a court quashes a summons or its service, a new summons may be served on the defendant within a time specified by the judge. If the new summons is not served within the specified time, the action shall be deemed to have been dismissed without prejudice as to that defendant. This subsection shall not apply with respect to a defendant who has been outside of the Choctaw Nation for one hundred eighty (180) days following the filing of the petition.

Section 2004.1. Subpoena.

A. SUBPOENA; FORM; ISSUANCE.

1. Every subpoena shall:

a. state the name of the court from which it is issued and the title of the action, and

b. command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified.

2. A subpoena shall issue from the court where the action is pending, and it may be served at any place within the Choctaw Nation.

a. Deposition in Action Pending Outside of the Choctaw Nation.

If the action is pending outside of the Choctaw Nation, the district court shall issue the subpoena and, upon application, any other order or process that may be appropriate in aid of discovery in that action. Proof of service of a notice to take deposition constitutes a sufficient authorization for the issuance of subpoenas for the persons named or described therein,

b. Subpoena for Production or Inspection in Action Pending Outside of the Choctaw Nation.

If the action is pending outside of the Choctaw Nation, the district court shall issue a subpoena for production or inspection as provided in subparagraph b of paragraph 1 of subsection A of this section, if separate from a subpoena commanding the attendance of a person, and upon application, any other order or process that may be appropriate in aid of discovery in that action. Proof of service of a notice of request for production of documents without a deposition constitutes a sufficient authorization for the issuance of a subpoena for production or inspection, and

c. Judicial Assistance or Review Available.

Any person seeking an order or process in aid of discovery or any person aggrieved by the issuance or enforcement of a subpoena issued in aid of discovery for an action pending outside of the Choctaw Nation may obtain judicial assistance or review upon the filing of a civil action and payment of required fees.

3. A witness shall be obligated upon service of a subpoena to attend a trial or hearing at any place within the Choctaw Nation and to attend a deposition or produce or allow inspection of documents at a location that is authorized by subsection B of Section 3230 of this title.

4. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service. As an officer of the court, an attorney authorized to practice law in the Choctaw Nation may also issue and sign a subpoena on behalf of a court of the Choctaw Nation.

5. Leave of court for issuance of a subpoena for the production of documentary evidence shall be required if the plaintiff seeks to serve a subpoena for the production of documentary evidence on any person who is not a party prior to the expiration of thirty (30) days after service of the summons and petition upon any defendant.

6. Notwithstanding any other provision of law, a court clerk of the Choctaw Nation shall not be subject to a subpoena in matters relating to court records unless the court makes a specific finding that the appearance and testimony of the court clerk are both material and necessary because of a written objection to the introduction of the court records made by a party prior to trial.

B. Service of Subpoena.

1. SERVICE. Service of a subpoena upon a person named therein shall be made by delivering or mailing a copy thereof to such person and, if the person's attendance is demanded, by tendering to that person the fees for one (1) day's attendance and the mileage allowed by law. Service of a subpoena may be accomplished by any person who is eighteen (18) years of age or older. A copy of any subpoena that commands production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by subsection B of Section 2005 of this title. If the subpoena commands production of documents and things or inspection of premises from a nonparty before trial but does not require attendance of a witness, the subpoena shall specify a date for the production or inspection that is at least seven (7) days after the date that the subpoena and copies of the subpoena are served on the witness and all parties, and the subpoena shall include the following language: "In order to allow objections to the production of documents and things to be filed, you should not produce them until the date specified in this subpoena, and if an objection is filed, until the court rules on the objection."

2. Service of a subpoena by mail may be accomplished by mailing a copy thereof by certified mail with return receipt requested and delivery restricted to the person named in the subpoena. The person serving the subpoena shall make proof of service thereof to the court promptly and, in any event, before the witness is required to testify at the hearing or trial. If service is made by a person other than a tribal law enforcement officer, such person shall make affidavit thereof. If service is by mail, the person serving the subpoena shall show in the proof of service the date and place of mailing and attach a copy of the return receipt showing that the mailing was accepted. Failure to make proof of service does not affect the validity of the service, but service of a subpoena by mail shall not be effective if the mailing was not accepted by the person named in the subpoena. Costs of service shall be allowed whether service is made by the tribal law enforcement officer, or any other person. When the subpoena is issued on behalf of the Choctaw Nation or a board, commission, or committee thereof, fees and mileage shall be paid to the witness at the conclusion of the testimony out of funds appropriated for such purpose.

C. PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

1. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney, or both, in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney fee.

2. COMPLIANCE WITH SUBPOENA.

a. A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

b. Subject to paragraph 2 of subsection D of this section, a person commanded to produce and permit inspection and copying or any party may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than

fourteen (14) days after service, serve written objection to inspection or copying of any or all of the designated materials or of the premises. An objection that all or a portion of the requested material will or should be withheld on a claim that it is privileged or subject to protection as trial preparation materials shall be made within this time period and in accordance with subsection D of this section. If the objection is made by the witness, the witness shall serve the objection on all parties; if objection is made by a party, the party shall serve the objection on the witness and all other parties. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. For failure to object in a timely fashion, the court may assess reasonable costs and attorney fees or take any other action it deems proper; however, a privilege or the protection for trial preparation materials shall not be waived solely for a failure to timely object under this section. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

3. MOTIONS TO QUASH.

a. On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

i. fails to allow reasonable time for compliance,

ii. requires a person to travel to a place beyond the limits allowed under paragraph 3 of subsection A of this section,

iii. requires disclosure of privileged or other protected matter and no exception or waiver applies,

iv. subjects a person to undue burden, or

v. requires production of books, papers, documents or tangible things that fall outside the scope of discovery permitted by Section 3226 of this title.

b. If a subpoena:

i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or

ii. requires disclosure of an un-retained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena. However, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be

reasonably compensated, the court may order appearance or production only upon specified conditions.

D. DUTIES IN RESPONDING TO SUBPOENA.

1. A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

2. When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

E. CONTEMPT.

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

Section 2004.2. Notice of Pendency of Action.

A. Upon the filing of a petition, the action is pending so as to charge third persons with notice of its pendency. While an action is pending, no third person shall acquire an interest in the subject matter of the suit as against the prevailing party's title; except that:

1. As to actions in state, federal, or tribal court involving real property, such notice shall be effective from and after the time that a notice of pendency of action, identifying the case and the court in which it is pending and giving the legal description of the land affected by the action, is filed of record in the office of the county clerk of the county in the State of Oklahoma wherein the land is situated; and

2. Notice of the pendency of an action shall have no effect unless service of process is made upon the defendant or service by publication is commenced within one hundred twenty (120) days after the filing of the petition.

3. No action pending in either state or federal court, or the court of any other Indian Nation, shall constitute notice with respect to any real property or personal property located within the jurisdiction of the Choctaw Nation until a notice of pendency of the action, identifying the case and the court in which it is pending and giving the legal description of the land affected or the description of the personal property and its location (if known) affected by the action, is filed of record in the office of the court clerk.

B. Except as to mechanics and materialman lien claimants, any interest in real property which is the subject matter of an action pending in any state, federal, or tribal court, acquired or purported to be acquired subsequent to the filing of a notice of pendency of action as provided in

subsection A of this section, or acquired or purported to be acquired prior to but filed or perfected after the filing of such notice of pendency of action, shall be void as against the prevailing party or parties to such action.

C. No person purporting to acquire or perfect an interest in real property in contravention of this section need be given notice of a sale upon execution or of hearing upon confirmation thereof.

Section 2005. Service and Filing of Pleadings and Other Papers.

A. SERVICE: WHEN REQUIRED. Except as otherwise provided in this title, every order required by its terms to be served, every pleading subsequent to the original petition unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party or any other person 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, 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 Section 2004 of this title.

B. SERVICE: HOW MADE. Whenever pursuant to this act service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service directly upon the party is ordered by the court or final judgment has been rendered and the time for appeal has expired. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or the party or by mailing it or sending it by third-party commercial carrier for delivery within three (3) calendar days to the attorney or the party at the last-known address of the attorney or the party or by electronic means if the attorney or party consents in writing to receiving service in a particular case by electronic means and the attorney or party provides instructions for making the electronic service consented to by the attorney or party. The required written consent and electronic service instructions may be made in the entry of appearance filed by the attorney or the party pursuant to subsection A of Section 2005.2 of this title or may be made in another pleading filed by the attorney or party in the case. For purposes of this subsection, "electronic means" includes communications by facsimile or electronic mail through the internet, commonly known as e-mail. If no mailing address, physical address or electronic means address for the attorney or party is known, service is effected by leaving it with the clerk of the court. Delivery of a copy within this section means:

1. Handing it to the attorney or to the party; or

2. Leaving it at the office of the attorney or the party with the attorney's or party's clerk or other person in charge thereof; or

3. If there is no one in charge, leaving it in a conspicuous place therein; or

4. If the office is closed or the person to be served has no office, leaving it at his or her dwelling house or usual place of abode with some person residing therein who is fifteen (15) years of age or older.

Except for service of the summons and the original petition, service by mail is complete upon mailing, service by commercial carrier is complete upon delivery to the commercial carrier, and service by electronic means is complete upon transmission, unless the party making service is notified that the copy or paper served was not received by the party served. If the court clerk or a party is required to serve a judgment or other paper by first-class mail, service in accordance with any method permitted by this section is sufficient to comply with such requirement.

C. SERVICE: NUMEROUS DEFENDANTS. In any action in which there are unusually 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 to be 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.

D. FILING. All papers after the petition required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter, but the court may on motion of a party or on its own initiative order that depositions upon oral examination and interrogatories, requests for documents, requests for admission, and answers and responses thereto not be filed unless on order of the court or for use in the proceeding. All papers filed with the court shall include a statement setting forth the names of the persons served and the date, place, and method of service.

E. FILING WITH THE COURT DEFINED.

1. The filing of papers with the court as required by this act 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, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

2. A duplicate of any paper shall be acceptable for filing with the court and shall have the same force and effect as an original. For purposes of this section a duplicate is a copy produced on unglazed white or eggshell paper by mechanical, chemical or electronic means, or by other equivalent technique, which accurately reproduces the original. A duplicate that is acceptable for filing shall not be refused because any signatures thereon are duplicates. A carbon copy shall not be considered a duplicate for purposes of this section.

3. Papers may be filed by facsimile or other electronic transmission directly to the court or the court clerk as permitted by a rule of court. The Court of Appeals shall promulgate rules for the district court for the filing of papers transmitted by facsimile or other electronic transmission

device. Rules for facsimile or other electronic transmission filing must have the approval of the Court of Appeals.

4. The clerk shall not refuse to accept for filing any paper solely because it is not presented in proper form as required by these rules or any local rules or practices.

Section 2005.1. Service of Post-Judgment Motions Pertaining to Dissolution of Marriage Proceedings.

All post-judgment motions pertaining to divorce proceedings shall be served in accordance with subsection C of Section 2004 of Title 12 of the Choctaw Nation Statutes.

Section 2005.2. Entry of Appearance; Counsel not licensed in the Choctaw Nation; Address of record and Withdrawal.

A. ENTRY OF APPEARANCE. Every party to any civil proceeding in the district court shall file an entry of appearance by counsel or personally as an unrepresented party when no other pleading or other paper in the case by that counsel or party has been filed, but no later than the first filing of any pleading or other paper in the case by that counsel or party. In the event a party changes, adds, or substitutes counsel, new counsel must immediately file an entry of appearance as set forth in this section. The entry of appearance shall 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, Choctaw Bar Association number, and name of the law firm, if any. In the event that counsel or a party consents to receive service by electronic means in a particular case or civil proceeding pursuant to subsection B of Section 2005 of this title, counsel or a party may give notice of the required written consent within counsel's or the party's entry of appearance. Counsel or the party giving the required written consent shall provide the electronic mail address or addresses to which service by electronic means will be accepted by the consenting counsel or party. Copies shall be served on all other parties of record. Filing an entry of appearance as required by this section does not waive any defenses enumerated in subsection B of Section 2012 of Title 12 of the Choctaw Nation Statutes.

B. COUNSEL NOT LICENSED IN THE CHOCTAW NATION. All counsel shall be required to be licensed in the Choctaw Nation before appearing before any court of the Choctaw Nation.

C. WITHDRAWAL OF COUNSEL. A motion to withdraw may be filed at any time. All motions to withdraw shall be accompanied by a proposed order. No counsel may withdraw from a pending case without leave of the court. The counsel filing the motion shall serve a copy of the motion on the client and all attorneys of record. All motions to withdraw shall be signed by the party on whose behalf counsel has previously appeared or contain a certificate by counsel that:

1. The client has knowledge of counsel's intent to withdraw; or

2. Counsel has made a good faith effort to notify the client and the client cannot be located.

In civil actions, the court may grant a motion to withdraw where there is no successor counsel only if the withdrawing attorney clearly states in the body of the motion the name and address of the party. The order allowing withdrawal shall notify the unrepresented party that an entry of appearance must be filed either by the party pro se or by substitute counsel within thirty (30) days from the date of the order permitting the withdrawal and that a failure of the party to prosecute or defend the case may result in dismissal of the case without prejudice or a default judgment against the party. If no entry of appearance is filed within thirty (30) days from the date of the order permitting withdrawal, then the unrepresented party, other than a corporation, is deemed to be representing himself or herself and acting pro se. In all cases, counsel seeking to withdraw shall advise the court if the case is currently set for motion docket, pretrial conference, or trial.

D. ADDRESS OF RECORD. The address of record for any attorney or party appearing in a case pending in the district court shall be the last address provided to the court. The attorney or unrepresented party must, in all cases pending before the court involving the attorney or party, file with the court and serve upon all counsel and unrepresented parties a notice of a change of address. Any attorney or unrepresented party has the duty of maintaining a current address with the court. Service of notice to the address of record of counsel or an unrepresented party shall be considered valid service for all purposes, including dismissal of cases for failure to appear.

E. NOTICE OF CHANGE OF ADDRESS. All attorneys and unrepresented parties shall give immediate notice to the court of a change of address by filing notice with the court clerk. If the attorney or unrepresented party has provided written consent to receive service by electronic means pursuant to subsection A of this section, or in another pleading, the attorney or party shall include a change of electronic mailing address as part of the notice required in this subsection. The notice of the change of address shall contain the same information required in the entry of appearance, shall be served on all parties, and a copy shall be provided to the assigned judge. If an attorney or an unrepresented party files an entry of appearance, the court will assume the correctness of the last address of record until a notice of change of address is received. Attorneys of record who change law firms shall notify the court clerk and the assigned judge of the status of representation of their clients, and shall immediately withdraw, when appropriate.

Section 2006. Time.

A. COMPUTATION.

In computing any period of time prescribed or allowed by this title, by the rules of any court of the Choctaw Nation, or by order of a court of the Choctaw Nation, 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 legal holiday or any other day when the office of the court clerk does not remain open for public business until the regularly scheduled closing time, in which event the period runs until the end of the next day which is not a legal

holiday or a day when the office of the court clerk does not remain open for public business until the regularly scheduled closing time. Except for the times provided by the specific provisions of other provisions of this title, when the period of time prescribed or allowed is less than eleven (11) days, intermediate legal holidays and any other day when the office of the court clerk does not remain open for public business until the regularly scheduled closing time, shall be excluded from the computation.

B. ENLARGEMENT. When by this title or by a notice given thereunder 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 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 set forth in this title for taking an appeal from a judgment, decree or appealable order, or for seeking a new trial, or to correct, open, modify, vacate or reconsider a judgment, decree, or appealable order, except as provided in the sections governing such proceedings.

C. FOR MOTIONS - 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 (5) days before the time specified for the hearing, unless a different period is fixed by the Choctaw Nation Statutes, court rules, or by an 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.

D. ADDITIONAL TIME AFTER SERVICE BY MAIL, THIRD-PARTY COMMERCIAL CARRIER OR ELECTRONIC MEANS. 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 the party and the notice or paper is served upon the party by mail, third-party commercial carrier or electronic means, three (3) days shall be added to the prescribed period; provided, however, when a summons and petition are served by mail, a defendant shall serve an answer within twenty (20) days or thirty-five (35) days if pursuant to subsection A of Section 2012 of this title, after the date of receipt or if refused, the date of refusal of the summons and petition by the defendant.

Section 2007. Pleadings Allowed; Form of Motions.

A. **Pleadings.** There shall be a complaint; an answer; a reply to a counterclaim; an answer to a cross-claim; a third-party complaint; and a third-party answer. No other pleading shall be allowed, except that the court may allow or order a reply to an answer or a third-party answer.

B. Motions and Other Papers.

1. An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall:

a. be made in writing;

b. state with particularity the grounds therefor; and

c. set forth the relief or order sought.

The requirement of a 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 pleading apply to all motions and other papers provided for by these rules.

3. All motions shall be signed in accordance with this Act.

Section 2008. General Rules of Pleading.

A. **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 claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief to which he deems himself entitled. Relief may be demanded in the alternative or in several different types.

B. **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. Denials shall fairly meet the substance of the averments denied. He may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits. 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. When he intends to controvert all averments in a pleading, including averments of the grounds upon which the court's jurisdiction depends, if any, he may do so by general denial subject to the obligation set forth in this Act. 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.

C. **Affirmative Defenses.** In responding to a pleading, a party shall set forth affirmatively each of the following defenses relied upon:

1. accord and satisfaction;

2. arbitration and award;

3. assumption of risk;

4. contributory negligence;

5. discharge in bankruptcy

6. duress;

7. estoppel;

8. failure of consideration;

9. fraud;

10. illegality;

11. injury by fellow servant;

12. *laches*;

13. license;

14. payment;

15. release;

16. *res judicata*;

17. statute of frauds;

18. statute of limitations;

19. waiver; and

20. 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, in its discretion that justice so requires, may treat the pleading as if there had been a proper designation.

D. **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.

E. Pleading to be Concise and Direct; Consistency.

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

2. A party may set forth and at a trial rely upon two (2) or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate counts or defenses. When two (2) or more statements are made in the alternative and one (1) of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one (1) 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, equitable, or other grounds. All statements shall be made subject to the obligations set forth in this Act.

F. **Construction of Pleadings.** All pleadings shall be liberally construed so as to do substantial justice.

Section 2009. Pleading Special Matters.

A. **Capacity.** It is not necessary to aver or assert 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, if necessary. 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, and that party shall have the burden of proof on that issue.

B. **Fraud, Mistake, Condition of the Mind.** All averments of fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

C. **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 of conditions precedent shall be made specifically and with particularity.

D. **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.

E. **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 matters showing jurisdiction to render it.

F. **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.

G. **Special Damage.** When items of special damage are claimed, they shall be specifically stated, but specific amounts need not be alleged in order to obtain judgment in the amount to which the party is entitled.

Section 2010. Form of Pleadings; Motions; and Briefs.

A. **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 in the terms expressed in this Act. 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. In the initial third party complaint, counterclaim, cross-claim, motion and petition in intervention or a pleading by a party suing or being sued in a representative capacity, appropriate designations of all affected parties shall be made and their names shall be stated. Thereafter, papers relating to such matters may contain only the name of the first party in each category with an appropriate indication of other parties.

B. **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 practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings, or motions, or briefs. 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.

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

Section 2011. Signing Of Pleadings.

Every pleading of a party represented by a licensed attorney or advocate shall be signed by at least one (1) attorney or advocate of record in his individual name, whose address and telephone number shall be stated. A party who is not represented by attorney or advocate shall sign his pleading and his address and telephone number. Except when otherwise specifically provided by rule or statute pleadings need not be verified or accompanied by affidavit. The English and American common law rule in equity that the averments of an answer under oath must be overcome by the testimony of two (2) witnesses or of one (1) witness sustained by corroborating circumstances is not applicable in any court of the Choctaw Nation. The signature of an attorney or advocate 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 Section it may be stricken as sham and false and the action may proceed as though the pleading had not been served. For a willful violation of this Section an attorney or advocate may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

Section 2012. Defense and Objections; When and how Presented; By Pleadings or Motions; Motion for Judgment on the Pleadings.

A. When Presented.

1. A defendant shall serve his answer within twenty (20) days after the service of summons and complaint upon him except when service is specially made by order of the court and a different time is prescribed in such order or under a statute of the Choctaw Nation.

A party served with a pleading stating a cross-claim against him shall serve an answer thereto within twenty (20) days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within twenty (20) days after service of the answer, or if a reply is ordered by the court, within twenty (20) days after service of the order unless the order otherwise directs. The Choctaw Nation or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim, within sixty (60) days after the service upon the Choctaw Nation of the pleading in which the claim is asserted, provided that no default judgment shall be entered against the Choctaw Nation, and upon affidavit of the Chief of the Choctaw Nation that the Choctaw Nation has no attorney but that an attorney contract is pending approval, the court shall allow the Choctaw Nation to answer within twenty (20) days after the approval of the attorney contract or within sixty (60) days after service, whichever is later. The service of a motion permitted under this Section 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 (10) 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 (10) days after the service of the more definite statement.

2. Within the time in which an answer may be served, a defendant may file any entry of appearance and reserve twenty (20) additional days to answer or otherwise defend. Any entry of appearance shall extend the time to respond twenty (20) days from the last date for answering and is a waiver of all defenses numbered 2, 3, 4, 5, and 9 of Subsection B below, provided, that a waiver of sovereign immunity shall not be implied under defense of Paragraph B.9 below since a defense based upon sovereign immunity is a defense to the subject matter jurisdiction of the court and not a defense to the parties capacity to be sued.

B. **How Presented.** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

1. lack of jurisdiction over the subject matter;

2. lack of jurisdiction over the person;

3. improper venue or *forum non conveniens*;

4. insufficiency of process;

5. insufficiency of service of process;

6. failure to state a claim upon which relief can be granted;

7. failure to join a party;

8. another action pending between the same parties for the same claim;

9. lack of capacity of a party to be sued; and

10. lack of capacity of a party to sue.

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 (1) 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 in fact to that claim for relief. If, on a motion asserting the defense numbered 6 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 Section 686, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Section 686. Every motion to dismiss shall be accompanied by a concise brief in support of that motion unless waived by order of the court.

C. **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 Section 686, and all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Section 686. Every motion for judgment on the pleadings shall be accompanied by a concise brief in support of that motion unless waived by order of the court.

D. **Preliminary Hearings.** The defenses specified in Paragraphs (B)(1) through (10) above, whether made in a pleading or by motion, and the motion for judgment mentioned in Subsection C above 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.

E. **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 interposing his responsive pleading. The motion shall point out the defect complained of and the details desired. If the motion is granted and the order of the court is not obeyed within ten (10) 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. Such motions are not favored.

F. **Motion to Strike.** Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by this Act, upon motion made by a party within twenty (20) days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. If, on a motion to strike an insufficient defense, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for partial summary judgment and all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by the rules relating to summary judgment.

G. **Consolidation of Defenses in Motion.** A party who makes a motion under this Section may join with it any other motions herein provided for and then available to him. If a party makes a motion under this Section but omits therefrom any defense or objection then available to him which this Section 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 Paragraph H.2 below on any of the grounds there stated. The court may, in its discretion, permit a party to amend his motion by stating additional defenses or objections at any time prior to a decision on the motion.

H. Waiver or Preservation of Certain Defenses.

1. A defense of lack of jurisdiction over the person, improper venue or *forum non conveniens*, insufficiency of process, insufficiency of service of process or lack of capacity of a party to sue is waived a) if omitted from a motion in the circumstances described in Subsection G above; b) if it is neither made by motion under this Section nor included in a responsive pleading or an amendment thereof permitted by Section 2018, to be made as a matter of course; or c) if a permissive counterclaim is filed pursuant to Section 2014.

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

3. Whenever it is determined, upon suggestion of the parties or otherwise, that the court lacks jurisdiction over the subject matter, the court shall dismiss the action.

Section 2013. Final Dismissal on Failure to Amend.

Before granting a motion to dismiss, the court may grant leave to amend a defective pleading if the defect can be remedied. If the court grants leave to amend, it shall, by order, specify the time within which an amended pleading may be filed. If an amended pleading is not filed within the time allowed, final judgment of dismissal with prejudice shall be entered on motion except in

cases of excusable neglect. In cases of excusable neglect, amendment may be made by the party in default within a time specified by the court for filing such amended pleading. A plaintiff may voluntarily dismiss the action without prejudice within the time allowed by the court for filing an amended pleading.

Section 2014. Counter-Claim and Cross-Claim.

A. **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 over 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 that claim and the pleader is not stating any other counterclaim under this Section. A party pleading a compulsory counterclaim does not thereby waive any defenses the pleader may have which are otherwise properly raised.

B. **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.

C. **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.

D. **Counterclaim against the Choctaw Nation.** This Act shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the Choctaw Nation or an officer or agency thereof. A compulsory counterclaim does not waive the defense of sovereign immunity when made by the Choctaw Nation or an officer or an agency thereof. A permissive counterclaim waives the defense of sovereign immunity for the purpose of determining the permissive counterclaim stated by the Choctaw Nation, its officer, or agency, but does not waive such defense for any other purpose.

E. **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.

F. **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, except that when such amendment is served within the time otherwise allowed for amendment without leave of the court, he may set up such counterclaim by amendment without leave of the court.

G. **Cross-claim against Co-party.** A pleading may state as a cross-claim any claim by one (1) 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. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

H. **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 this Act and Choctaw Statutes regarding service of notice.

I. **Separate Trials; Separate Judgments.** If the court orders separate trials, judgment on a counterclaim, cross-claim, or third-party claim may be rendered when the court has jurisdiction to do so, even if the claims of the opposing party have been dismissed or otherwise disposed of.

Section 2015. Counter-Claim; Effect of the Statutes of Limitation.

A. Where a counterclaim and the claim of the opposing party arise out of the same transaction or occurrence, the counterclaim shall not be barred by a statute of limitation notwithstanding that it was barred at the time the petition was filed, and the counterclaimant shall not be precluded from recovering an affirmative judgment.

B. Where a counterclaim and the claim of the opposing party:

1. do not arise out of the same transaction or occurrence;

2. both claims are for money judgments;

3. both claims had accrued before either was barred by a statute of limitation; and

4. the counterclaim is barred by a statute of limitation at the time that it is asserted, whether in an answer or an amended answer; then the counterclaim may be asserted only to reduce the opposing party's claim.

C. Where a counterclaim was barred by a statute of limitation before the claim of the opposing party arose, the barred counterclaim cannot be used for any purpose.

Section 2016. Counterclaim against Assigned Claims.

A party, other than a holder in due course, who acquired a claim by assignment or otherwise, takes the claim subject to any defenses or counterclaims that could have been asserted against the person from whom he acquired the claim, but the recovery on a counterclaim may be asserted against the assignee only to reduce the recovery of the opposing party.

Section 2017. Third-Party Practice.

A. **When defendant may bring in Third-party.** At any time after commencement of the action a defending party, 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, or who is or may be liable to him on a claim arising out of the transaction or occurrence that is the subject matter of any one (1) or more of the claim(s) being asserted against him. The third-party plaintiff need not obtain leave to make the service if he files the third-party complaint not later than ten (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 and his counterclaims against the third-party plaintiff and cross-claims against other third-party defendants. 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 and his counterclaims and cross-claims. A third-party defendant may proceed under this Section 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. Any party may move to strike the third- party claim, or for its severance or separate trial.

B. **When Plaintiff may bring in Third-Party.** When a counterclaim is asserted against a plaintiff, he may cause a third-party to be brought in under circumstances which under this Section would entitle a defendant to do so.

C. **Party defendants in Real Property Actions.** In an action involving real property, any person appearing in any manner in the title thereto, or claiming or appearing to claim some interest in the real property involved, may be included as a party defendant by naming such person as a party defendant in the caption of the complaint; and when such person is made a defendant in the body of the complaint under the appellation of substantially the following words, "said defendant named herein claims some right, title, lien, estate, encumbrance, claim, assessment, or interest in and to the real property involved herein, adverse to plaintiff which constitutes a cloud upon the title of plaintiff", it not being necessary to set out the reason for such claim or claims in the complaint or other pleading for such person being made a party defendant.

Section 2018. Amended and Supplemental Pleadings.

A. **Amendments.** A party may amend his pleading once as a matter of course at a 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 (20) days after it is served, including amendments to add omitted counterclaims or cross-claims or to add or drop parties. Otherwise a party may amend his pleading only by leave of the court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

B. **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 of 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 served 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. Where the pretrial conference order has superseded the pleadings, the pre-trial order is controlling and it is sufficient to amend the order and the pleadings need not be amended.

C. **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 and will not be prejudiced in maintaining his defense 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. The delivery or mailing of process to the Chief, his designee, the prosecutor of the Choctaw Nation or an agency or officer thereof who would have been a proper defendant if named, satisfies the requirement of clauses (1) and (2) above with respect to the Choctaw Nation or any agency or officer thereof to be brought into the action as a defendant.

D. **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. A supplemental pleading will relate back to the original pleading if it arises out of the conduct, transaction, or occurrence set forth in the original pleading.

Section 2019. Pre-Trial Procedure; Formulating Issues.

A. In any action, the court may in its discretion direct the attorneys for the parties 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. such other matters as may aid in the disposition of the action.

B. 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 counsel; and such 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 court rule a pre-trial calendar on which actions may be placed for consideration as above provided.

Section 2020. Lost Pleadings.

If a pleading is lost or withheld by any person, the court may allow a copy thereof to be substituted.

Section 2021. Tenders of Money or Property.

When a tender of money or property is alleged in any pleading, it shall not be necessary to deposit the money or property in court when the pleading is filed, but it shall be sufficient if the money or property is deposited in court at trial, or when ordered by the court.

Section 2022. Dismissal of Actions.

A. Voluntary Dismissal: Effect Thereof.

1. By Plaintiff: By Stipulation. An action may be dismissed by the plaintiff without order of the court:

a. by filing a notice of dismissal at any time before service by adverse party of an answer or of a motion of summary judgment, whichever first occurs, or

b. 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 without the consent of the defendants operates as an adjudication upon the merits when filed by a plaintiff who has once voluntarily dismissed, without the consent of the defendants, in any court of any Indian tribe, the United States, or any state an action based on or including the same claim, unless such previous dismissal was entered due to inability to obtain personal jurisdiction over an indispensable party or lack of subject matter jurisdiction in the court in which the case was previously filed. If the plaintiff claims either or both of these exceptions, it shall so state in its notice of dismissal and shall apply to the

court, upon notice to all adverse parties for an order determining that the previous dismissal was within one (1) or both of the two (2) stated exceptions and that the plaintiff is entitled to dismiss the current action without prejudice. The court may grant such application in its discretion and allow the plaintiff to dismiss without prejudice on such terms as are just, due regard being had for costs, attorney fees, and inconvenience of the defendants, and any apparent motive to harass, embarrass, or delay the defendants.

2. By order of the court. Except as provided in Paragraph 1 above, 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 2 is without prejudice.

B. **Involuntary Dismissal: Effect Thereof.** For failure of the plaintiff to prosecute or to comply with this act, a court rule, or any order of the 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, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move 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. Unless the court in its order for dismissal otherwise specifies, a dismissal under this Subsection B for lack of jurisdiction, or for failure to join a party, operates as an adjudication upon the merits.

C. **Dismissal of Counterclaim, Cross-claim, or Third-party Claim.** The provisions of this section apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to Paragraph A.1 above shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

Chapter 40. Rules of Evidence.

ARTICLE I. GENERAL PROVISIONS.

Section 2101. Short Title.

This act shall be known and may be cited as the Choctaw Nation Evidence Code.

Section 2102. Legislative Purpose.

This Code shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

Section 2103. Scope of Rules.

A. Except as otherwise provided in subsection B of this section, this Code shall apply in both criminal and civil proceedings, conducted by or under the supervision of a court, in which evidence is produced.

B. The rules set forth in this Code, other than those applicable to a valid claim of privilege, do not apply in the following situations:

1. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the judge under subsection A of Section 2105 of this title; and

2. Proceedings for extradition or rendition; sentencing or granting or revoking probation; advancement of deferred judgment; issuance of warrants for arrest, criminal summonses and search warrants; proceedings with respect to release on bail or otherwise; and juvenile emergency show-cause hearings.

Section 2104. Rulings on Evidence.

A. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of a party is affected, and:

1. If the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

2. If the ruling is one excluding evidence, the substance of the evidence was made known to the judge by offer or was apparent from the context within which questions were asked.

B. The court may add any statement which shows the character of the evidence, the form in which it was offered, the objection made and the ruling thereon. It may direct the making of an offer in question and answer form.

C. Nothing in this section precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

Section 2105. Preliminary questions.

A. Preliminary questions concerning the qualifications of a person to be a witness, the existence of a privilege or the admissibility of evidence shall be determined by the court, subject to the provisions of subsections B and C of this section.

B. A person claiming a privilege must prove that the conditions prerequisite to the existence of the privilege are more probably true than not. A person claiming an exception to a privilege must prove that the conditions prerequisite to the applicability of the exception are more

probably true than not. If there is a factual basis to support a good faith belief that a review of the allegedly privileged material is necessary, the court, in making its determination, may review the material outside the presence of any other person.

C. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the judge shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

D. The accused does not subject himself to cross-examination on other issues in the case by testifying upon a preliminary matter.

Section 2106. Limited admissibility.

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court shall upon request restrict the evidence to its proper scope.

Section 2107. Remainder of record.

When a record or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other record that should in fairness be considered contemporaneously with it.

ARTICLE II. JUDICIAL NOTICE.

Section 2201. Judicial Notice of Law.

A. Judicial notice shall be taken by the court of the common law, constitutions and public statutes in force in every state, territory and jurisdiction of the United States and of the Choctaw Nation of Oklahoma.

B. Judicial notice may be taken by the court of:

1. Private acts and resolutions of the Congress of the United States and of the Tribal Council of the Choctaw Nation, and duly enacted ordinances and duly published regulations of governmental subdivisions or agencies of the United States and of the Tribal Council of the Choctaw Nation of Oklahoma; and

2. The laws of foreign countries.

C. The determination by judicial notice of the applicability and the tenor of any matter of common law, constitutional law or of any statute, private act, resolution, ordinance or regulation shall be a matter for the judge.

Section 2202. Judicial Notice of Adjudicative Facts.

A. This section governs only judicial notice of adjudicative facts.

B. A judicially noticed adjudicative fact shall not be subject to reasonable dispute in that it is either:

1. Generally known within the territorial jurisdiction of the trial court; or

2. Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

C. A court may take judicial notice, whether requested or not.

D. A court shall take judicial notice if requested by a party and supplied with the necessary information.

Section 2203. Determining Propriety of Taking Judicial Notice.

A. In determining the propriety of taking judicial notice of a matter:

1. The court may consult and use any source of pertinent information, whether or not furnished by a party; and

2. No exclusionary rule except a valid claim of privilege shall apply.

B. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the scope of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

C. Judicial notice may be taken at any stage of the proceeding.

ARTICLE III. PRESUMPTIONS.

Section 2301. Definitions.

As used in this Code:

1. A "presumption" means a rule of procedure that when a basic fact exists the existence of another fact must be assumed, whether or not the basic fact has any probative value of the existence of the assumed fact;

2. "Basic fact" means the fact or group of facts giving rise to a presumption;

3. "Presumed fact" means the fact which must be assumed; and

4. "Inconsistent presumptions" means the presumed fact of one presumption is inconsistent with the presumed fact of another presumption.

Section 2302. Establishment of Basic Fact.

The basic fact of a presumption may be established in an action by the pleadings, or by stipulation of the parties, or by judicial notice, or by evidence.

Section 2303. Effect of Presumptions in Civil Cases.

Except when otherwise provided by law, when the basic fact of a presumption has been established as provided in Section 2302 of this Code:

1. If the basic fact has any probative value of the existence of the presumed fact, the presumed fact shall be assumed to exist and the burden of persuading the trier of fact of the nonexistence of the presumed fact rests on the party against whom the presumption operates; or

2. If the basic fact does not have any probative value of the existence of the presumed fact, the presumed fact is disregarded when the party against whom the presumption operates introduces evidence which would support a finding of the nonexistence of the presumed fact and the existence of the fact otherwise presumed is then determined from the evidence in the same manner as if no presumption had been operable in the case.

Section 2304. Presumptions in Criminal Cases.

Except as otherwise provided by act of the Tribal Council, this statute governs presumptions against an accused, in a criminal case, recognized at common law or created by statute, including statutory provisions that certain facts are prima facie evidence of other facts or of guilt.

Section 2305. Inconsistent Presumptions.

If two conflicting presumptions arise the court shall apply the presumption which is founded on the weightier considerations of policy and logic. If there is no such preponderance both presumptions shall be disregarded.

ARTICLE IV. RELEVANCY

Section 2401. Definition of "Relevant Evidence".

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Section 2402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible.

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by statute or by this Code. Evidence which is not relevant is not admissible.

Section 2403. Exclusion of relevant evidence on grounds of prejudice, confusion or cumulative nature of evidence.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the decision maker, undue delay, needless presentation of cumulative evidence, or unfair and harmful surprise.

Section 2404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes.

A. Evidence of a person's character or a trait of his character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

1. Evidence of a pertinent trait of character offered by an accused or by the prosecution to rebut the same;

2. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor; or

3. Evidence of the character of a witness, as provided in Sections 2607, 2608 and 2609 of this Code.

B. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

Section 2405. Methods of Proving Character.

A. Where evidence of a person's character or trait of character is admissible, proof may be by testimony as to reputation or by testimony in the form of opinion. Inquiry is allowable on cross-examination into relevant specific instances of conduct.

B. In cases in which a person's character or a trait of character is an essential element of a charge, claim or defense, proof may be made of specific instances of his conduct.

Section 2406. Habit; Routine Practice.

Evidence of a person's habit or of an organization's routine practice, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

Section 2407. Subsequent Remedial Measures.

When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or

culpable conduct in connection with the event. This section does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

Section 2408. Compromise and Offers to Compromise.

Evidence of:

1. Furnishing, offering or promising to furnish; or

2. Accepting, offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount is not admissible to prove liability for the claim, invalidity of the claim or the amount of the claim.

Evidence of conduct or statements made in compromise negotiations is not admissible. This section does not require the exclusion of discoverable evidence merely because it is revealed in the course of compromise negotiations. This section does not require exclusion of evidence when it is offered for another purpose, including proof of bias or prejudice of a witness, negativing a contention of undue delay, or proof of an effort to obstruct a criminal investigation or prosecution.

Section 2409. Payment of Medical and Similar Expenses.

Evidence of furnishing, offering or promising to pay medical, hospital or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

Section 2410. Pleas and Plea Discussions; Admissibility of Evidence.

A. Except as otherwise provided in this section evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

1. a plea of guilty which was later withdrawn;

2. a plea of nolo contendere;

3. any statement made in the course of any proceedings under state procedure regarding either of the foregoing pleas; or

4. any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty which is later withdrawn.

B. However, such a statement is admissible in:

1. any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement, as a matter of justice, should be considered contemporaneously with it; or

2. a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

Section 2411. Liability Insurance.

Evidence of the existence of liability insurance is not admissible upon the issue of negligence or wrongful action.

This section does not require the exclusion of evidence of liability insurance where the question of possession of liability insurance is itself an element of the action, or when offered for another purpose, including proof of agency, ownership, control, bias or prejudice of a witness.

Section 2412. Sexual offense against another person--Evidence of other sexual behavior inadmissible –Exceptions.

A. In a criminal case in which a person is accused of a sexual offense against another person, the following is not admissible:

1. Evidence of reputation or opinion regarding other sexual behavior of a victim or the sexual offense alleged.

2. Evidence of specific instances of sexual behavior of an alleged victim with persons other than the accused offered on the issue of whether the alleged victim consented to the sexual behavior with respect to the sexual offense alleged.

B. The provisions of subsection A of this section do not require the exclusion of evidence of:

1. Specific instances of sexual behavior if offered for a purpose other than the issue of consent, including proof of the source of semen, pregnancy, disease or injury;

2. False allegations of sexual offenses; or

3. Similar sexual acts in the presence of the accused with persons other than the accused which occurs at the time of the event giving rise to the sexual offense alleged.

C.

1. If the defendant intends to offer evidence described in subsection B of this section, the defendant shall file a written motion to offer such evidence accompanied by an offer of proof not later than fifteen (15) days before the date on which the trial in which such evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties by counsel for the defendant and on the alleged victim by the prosecutor.

2. If the court determines that the motion and offer of proof described in paragraph 1 of this subsection contains evidence described in subsection B of this section, the court may order an in-camera hearing to determine whether the proffered evidence is admissible under subsection B of this section.

Section 2413. Sexual assault offense--Commission of other offenses admissible—Definition.

A. In a criminal case in which the defendant is accused of an offense of sexual assault, evidence of the defendant's commission of another offense or offenses of sexual assault is admissible, and may be considered for its bearing on any matter to which it is relevant.

B. In a case in which the prosecution intends to offer evidence under this rule, the prosecutor shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen (15) days before the scheduled date of trial or at such later time as the court may allow for good cause.

C. This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

D. For purposes of this rule, "offense of sexual assault" means a crime under federal law, the laws of any state, of the Choctaw Nation, or of any Indian tribe that involve:

1. Contact, without consent, between any part of the defendant's body or an object and the genitals or anus of another person;

2. Contact, without consent, between the genitals or anus of the defendant and any part of another person's body;

3. Deriving sexual pleasure or gratification from the infliction of death, bodily injury, emotional distress, or physical pain on another person; or

4. An attempt or conspiracy to engage in conduct described in paragraphs 1 through 3 of this subsection.

Section 2414. Child molestation offense--Commission of other offenses admissible—Definitions.

A. In a criminal case in which the defendant is accused of an offense of child molestation, evidence of the defendant's commission of another offense or offenses of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant.

B. In a case in which the prosecution intends to offer evidence under this rule, the prosecutor shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen (15) days before the scheduled date of trial or at such later time as the court may allow for good cause.

C. This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

D. For purposes of this rule, "child" means a person below the age of sixteen (16), and "offense of child molestation" means a crime under federal law, the laws of any state, of the Choctaw Nation, or of any Indian tribe that involve:

1. Contact between any part of the defendant's body or an object and the genitals or anus of a child;

2. Contact between the genitals or anus of the defendant and any part of the body of a child;

3. Deriving sexual pleasure or gratification from the infliction of death, bodily injury, emotional distress, or physical pain on a child; or

4. An attempt or conspiracy to engage in conduct described in paragraphs 1 through 3 of this subsection.

ARTICLE V. PRIVILEGES

Section 2501. Privileges Recognized Only as Provided.

Except as otherwise provided by United States Constitution, Choctaw Nation Statutes or rules promulgated by the Court of Appeals no person has a privilege to:

1. Refuse to be a witness;

2. Refuse to disclose any matter;

3. Refuse to produce any object or record; or

4. Prevent another from being a witness or disclosing any matter or producing any object or record.

Section 2502. Attorney-Client Privilege.

A. As used in this section:

1. An "attorney" is a person authorized, or reasonably believed by the client to be authorized, to engage in the practice of law in any state, nation or the Choctaw Nation;

2. A "client" is a person, public officer, or corporation, association, or other organization or entity, either public or private, who consults an attorney with a view towards obtaining legal services or is rendered professional legal services by an attorney;

3. A "representative of an attorney" is one employed by the attorney to assist the attorney in the rendition of professional legal services;

4. A "representative of the client" is one having authority to obtain professional legal services, or to act on advice rendered pursuant thereto, on behalf of the client; and

5. A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

B. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

1. Between the client or a representative of the client and the client's attorney or a representative of the attorney;

2. Between the attorney and a representative of the attorney;

3. By the client or a representative of the client or the client's attorney or a representative of the attorney to an attorney or a representative of an attorney representing another party in a pending action and concerning a matter of common interest therein;

4. Between representatives of the client or between the client and a representative of the client; or

5. Among attorneys and their representatives representing the same client.

C. The privilege may be claimed by the client, the client's guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the attorney or the attorney's representative at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.

D. There is no privilege under this section:

1. If the services of the attorney were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;

2. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction;

3. As to a communication relevant to an issue of breach of duty by the attorney to the client or by the client to the attorney;

4. As to a communication necessary for an attorney to defend in a legal proceeding an accusation that the attorney assisted the client in criminal or fraudulent conduct;

5. As to a communication relevant to an issue concerning an attested document to which the attorney is an attesting witness;

6. As to a communication relevant to a matter of common interest between or among two or more clients if the communication was made by any of them to an attorney retained or consulted in common, when offered in an action between or among any of the clients; or

7. As to a communication between a public officer or agency and its attorney unless the communication concerns a pending investigation, claim or action and the court determines that disclosure will seriously impair the ability of the public officer or agency to process the claim or conduct a pending investigation, litigation or proceeding in the public interest.

E. A disclosure of a communication or information covered by the attorney-client privilege or the work-product doctrine does not operate as a waiver if:

1. The disclosure was inadvertent;

2. The holder of the privilege took reasonable steps to prevent disclosure; and

3. The holder of the privilege took reasonable steps to rectify the error including, but not limited to, information falling within the scope of paragraph 4 of subsection B of Section 3226 of this title, if applicable.

F. Disclosure of a communication or information meeting the requirements of an attorney-client privilege as set forth in this section or the work-product doctrine to a governmental office, agency or political subdivision in the exercise of its regulatory, investigative, or enforcement authority does not operate as a waiver of the privilege or protection in favor of nongovernmental persons or entities. Disclosure of such information does not waive the privilege or protection of undisclosed communications on the same subject unless:

1. The waiver is intentional;

2. The disclosed and undisclosed communications or information concern the same subject matter; and

3. Due to principles of fairness, the disclosed and undisclosed communications or information should be considered together.

Section 2502.1. Communications between accountant and client.

A. As used in this section:

1. "Accountant" means a certified public accountant (CPA) or a public accountant;

2. "Client" means any person, public officer, corporation, association, or other organization or entity, either public or private, who consults an accountant for the purpose of obtaining accounting services; and

3. A communication between an accountant and a client of the accountant is "confidential" if not intended to be disclosed to third persons other than:

a. those to whom disclosure is in furtherance of the rendition of accounting services to the client, and

b. those reasonably necessary for the transmission of the communication.

B. A client has a privilege to refuse to disclose, and to prevent any other person or entity from disclosing, the contents of confidential communications with an accountant when the other person or entity learned of the communication because the communications were made in the rendition of accounting services to the client. This privilege includes other confidential information obtained by the accountant from the client for the purpose of rendering accounting advice.

C. The privilege provided for in this section may be claimed by the client, the guardian or conservator of the client, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the accountant at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.

D. There is no accountant-client privilege under this section:

1. When the services of the accountant were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or should have known was a crime including, but not limited to, fraud;

2. When a communication is relevant to an issue of breach of duty by the accountant to the client of the accountant or by the client to the accountant; or

3. When a communication is relevant to a matter of common interest between two or more clients, if the communication was made by any of the clients to an accountant retained or consulted in common when offered in a civil action between clients.

E. A disclosure of a communication or information covered by the accountant-client privilege or the work product doctrine does not operate as a waiver if:

1. The disclosure was inadvertent;

2. The holder of the privilege took reasonable steps to prevent disclosure; and

3. The holder of the privilege took reasonable steps to rectify the error including, but not limited to, information falling within the scope of paragraph 4 of subsection B of Section 3226 of Title 12 of the Choctaw Nation Statutes, if applicable.

F. Disclosure of a communication or information covered by the accountant-client privilege or the work-product doctrine to a governmental office, agency or political subdivision in the exercise of its regulatory, investigative, or enforcement authority does not operate as a waiver of

the privilege or protection in favor of nongovernmental persons or entities. Disclosure of such information does not waive the privilege or protection of undisclosed communications on the same subject unless:

1. The waiver is intentional;

2. The disclosed and undisclosed communications or information concern the same subject matter; and

3. Due to principles of fairness, the disclosed and undisclosed communications or information should be considered together.

Section 2503. Physician and Psychotherapist-Patient Privilege.

A. As used in this section:

1. A "patient" is a person who consults or is examined or interviewed by a physician or psychotherapist;

2. A "physician" is a person authorized to practice medicine in any state or nation, or reasonably believed by the patient to be so authorized;

3. A "psychotherapist" is:

a. a person authorized to practice medicine in any state or nation, or reasonably believed by the patient to be so authorized, while engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction, or

b. a person licensed or certified as a psychologist under the laws of any state or nation, or reasonably believed by the patient to be so licensed or certified, while similarly engaged; and

4. A communication is "confidential" if not intended to be disclosed to third persons, except persons present to further the interest of the patient in the consultation, examination or interview, persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist, including members of the patient's family.

B. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of the patient's physical, mental or emotional condition, including alcohol or drug addiction, among the patient, the patient's physician or psychotherapist, and persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist, including members of the patient's family.

C. The privilege may be claimed by the patient, the patient's guardian or conservator or the personal representative of a deceased patient. The person who was the physician or

psychotherapist at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the patient.

D. The following shall be exceptions to a claim of privilege:

1. There is no privilege under this section for communications relevant to an issue in proceedings to hospitalize the patient for mental illness, if the psychotherapist in the course of diagnosis or treatment has determined that the patient is in need of hospitalization;

2. Communications made in the course of a court-ordered examination of the physical, mental or emotional condition of a patient, whether a party or a witness, are not privileged under this section when they relate to the particular purpose for which the examination is ordered unless the court orders otherwise;

3. The privilege under this Code as to a communication relevant to the physical, mental or emotional condition of the patient in any proceeding in which the patient relies upon that condition as an element of the patient's claim or defense or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense is qualified to the extent that an adverse party in the proceeding may obtain relevant information regarding the condition by statutory discovery;

4. When the patient is an inmate in the custody of a jail or prison facility, and the release of the information is necessary:

a. to prevent or lessen a serious and imminent threat to the health or safety of any person, or

b. for law enforcement authorities to identify or apprehend an individual where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody; or

5. The testimonial privilege created pursuant to this section does not make communications confidential where federal privacy law would otherwise permit disclosure.

Section 2503.1. Interpreter for the Deaf or Hard-of-Hearing Privilege.

A. As used in this section:

1. "Interpreter" means:

a. an individual who possesses the knowledge and skills necessary to accurately and impartially interpret spoken English into the equivalent visual languages and modes, and currently certified by the National Registry of Interpreters for the Deaf as one of the following:

i. Specialist Certificate: Legal (SC:L). In the event none are available, then

ii. Certificate of Interpretation and Certificate of Transliteration (CI & CT), Comprehensive Skills Certificate (CSC), or National Association of the Deaf Certificate Level 5 (NAD5),

b. an individual who possesses the knowledge and skills necessary to accurately and impartially transliterate for a person who is oral or nonsigning using the equivalent oral or captioned mode, and is currently certified by the National Registry of Interpreters for the Deaf as one of the following:

i. Specialist Certificate: Oral Transliteration Certificate (OTC). In the event none are available, then

ii. Specialist Certificate: Legal (SC:L). In the event none are available, then

iii. Certificate of Interpretation and Certificate of Transliteration (CI & CT), Comprehensive Skills Certificate (CSC), or National Association of the Deaf Certificate Level 5 (NAD5). In the event none are available, then a recognized national or state certifying body of captionists, or

c. an individual who:

i. is deaf or hard-of-hearing who possesses the knowledge, skills, specialized training and experience to enhance communication with persons who are deaf or hard-of-hearing and whose communication modes are so unique that they cannot be adequately assessed by interpreters who are hearing, and

ii. holds the following qualifications as a deaf interpreter: National Registry of Interpreters for the Deaf, Certified Deaf Interpreter (CDI); in the event none are available, then an Oklahoma QAST Deaf Evaluator may be utilized.

2. A "deaf or hard-of-hearing person" is a person whose sense of hearing is nonfunctional for the ordinary purposes of life; and

3. A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

B. A person has a privilege to refuse to disclose and to prevent an interpreter from disclosing such person's confidential communication made while such interpreter is acting in the capacity as an interpreter for persons who are deaf or hard-of-hearing.

C. The privilege may be claimed by the interpreter, by the deaf or hard-of-hearing person, by the guardian or conservator of the deaf or hard-of-hearing person, or by the personal representative of the deaf or hard-of-hearing person if the deaf or hard-of-hearing person is deceased.

D. An interpreter who is employed to interpret, transliterate or relay a conversation between a person who can hear and a deaf or hard-of-hearing person is a conduit for the conversation and

may not disclose or be compelled to disclose, through reporting or testimony or by subpoena, the contents of a confidential communication.

E. There is no privilege pursuant to this section for communications:

1. If the services of the interpreter were sought or obtained to enable or aid anyone to commit or plan to commit what the deaf or hard-of-hearing person knew, or reasonably should have known, to be a crime or fraud or physical injury to the deaf or hard-of-hearing person or another individual;

2. In which the deaf or hard-of-hearing person has expressed an intent to engage in conduct likely to result in imminent death or serious bodily injury to the deaf or hard-of-hearing person or another individual;

3. Relevant to an issue in a proceeding challenging the competency of the interpreter;

4. Relevant to a breach of duty by the interpreter; or

5. That are subject to a duty to disclose under statutory law.

Section 2504. Spousal Privilege.

A. A communication is confidential for purposes of this section if it is made privately by any person to the person's spouse and is not intended for disclosure to any other person.

B. An accused in a criminal proceeding has a privilege to prevent the spouse of the accused from testifying as to any confidential communication between the accused and the spouse.

C. The privilege may be claimed by the accused or by the spouse on behalf of the accused. The authority of the spouse to do so is presumed.

D. There is no privilege under this section in a proceeding in which one spouse is charged with a crime against the person or property of:

1. The other;

2. A child of either;

3. A person residing in the household of either; or

4. A third person when the crime is committed in the course of committing a crime against any other person named in this section.

Section 2505. Religious Privilege.

A. As used in this section:

1. A "cleric" is a minister, priest, rabbi, accredited Christian Science practitioner or other similar functionary of a religious organization, or any individual reasonably believed to be a cleric by the person consulting the cleric; and

2. A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

B. A person has a privilege to refuse to disclose and to prevent another from disclosing his confidential communication made to a clergyman acting in his professional capacity.

C. The privilege may be claimed by the person, by the person's guardian or conservator, or by the person's personal representative if the person is deceased. The cleric is presumed to have authority to claim the privilege but only on behalf of the communicant.

Section 2506. Journalist's Privilege.

A. As used in this section:

1. "Tribal proceeding" includes any proceeding or investigation before or by any judicial, legislative, executive or administrative body in the Choctaw Nation of Oklahoma;

2. "Medium of communication" includes any newspaper, magazine, other periodical, book, pamphlet, news service, wire service, news or feature syndicate, broadcast station or network, cable television system, or record;

3. "Information" includes any written, oral or pictorial news or other record;

4. "Published information" means any information disseminated to the public by the person from whom disclosure is sought;

5. "Unpublished information" includes information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated, and includes, but is not limited to, all notes, outtakes, photographs, tapes or other data of whatever sort not itself disseminated to the public through a medium of communication, whether or not published information based upon or related to such material has been disseminated;

6. "Processing" includes compiling, storing and editing of information; and

7. "Journalist" means any person who is a reporter, photographer, editor, commentator, journalist, correspondent, announcer, or other individual regularly engaged in obtaining, writing, reviewing, editing, or otherwise preparing news for any newspaper, periodical, press association, newspaper syndicate, wire service, radio or television station, or other news service. Any individual employed by any such news service in the performance of any of the above-mentioned activities shall be deemed to be regularly engaged in such activities. However, journalist shall not include any governmental entity or individual employed thereby engaged in official governmental information activities.

B. No journalist shall be required to disclose in a state proceeding either:

1. The source of any published or unpublished information obtained in the gathering, receiving or processing of information for any medium of communication to the public; or

2. Any unpublished information obtained or prepared in gathering, receiving or processing of information for any medium of communication to the public; unless the court finds that the party seeking the information or identity has established by clear and convincing evidence that such information or identity is relevant to a significant issue in the action and could not with due diligence be obtained by alternate means.

This subsection does not apply with respect to the content or source of allegedly defamatory information, in a civil action for defamation wherein the defendant asserts a defense based on the content or source of such information.

Section 2506.1. Reserved.

Section 2506.2. Peer support counseling confidentiality.

A. For purposes of this section:

1. "Emergency services provider" means any public employer that employs persons to provide firefighting services;

2. "Emergency services personnel" means any employee of an emergency services provider who is engaged in providing firefighting services;

3. "Employee assistance program" means a program established by a law enforcement agency or emergency services provider to provide counseling or support services to employees of the law enforcement agency or emergency services provider;

4. "Law enforcement agency" means the Choctaw Tribal Police, and any other tribal entity that employs public safety personnel;

5. "Public safety personnel" means a police officer, parole and probation officer, corrections employee, certified reserve officer, telecommunicator, or emergency medical dispatcher; and

6. "Peer support counseling sessions" means critical incident stress management sessions for public safety or emergency services personnel who have been involved in emotionally traumatic incidents by reason of their employment.

B. Any communication made by a participant or counselor in a peer support counseling session conducted by a law enforcement agency or by an emergency services provider for public safety personnel or emergency services personnel, and any oral or written information conveyed in the peer support counseling session, is confidential and may not be disclosed by any person participating in the peer support counseling session.

C. Any communication relating to a peer support counseling session made confidential under subsection B of this section that is made between counselors, between counselors and the supervisors or staff of an employee assistance program, or between the supervisors or staff of an employee assistance program, is confidential and may not be disclosed.

D. The provisions of this section apply only to peer support counseling sessions conducted by an employee or other person who:

1. Has been designated by a law enforcement agency or emergency services provider, or by an employee assistance program, to act as a counselor; and

2. Has received training in counseling and in providing emotional and moral support to public safety personnel or emergency services personnel who have been involved in emotionally traumatic incidents by reason of their employment.

E. The provisions of this section apply to all oral communications, notes, records and reports arising out of a peer support counseling session.

F. Any communication made by a participant or counselor in a peer support counseling session subject to this section, and any oral or written information conveyed in a peer support counseling session subject to this section, is not admissible in any judicial proceeding, administrative proceeding, arbitration proceeding, or other adjudicatory proceeding. Communications and information made confidential under this section shall not be disclosed by the participants in any judicial proceeding, administrative proceeding, arbitration proceeding, or other adjudicatory proceeding. The limitations on disclosure imposed by this subsection include disclosure during any discovery conducted as part of an adjudicatory proceeding.

G. Nothing in this section limits the discovery or introduction in evidence of knowledge acquired by any public safety personnel or emergency services personnel from observation made during the course of employment, or material or information acquired during the course of employment, that is otherwise subject to discovery or introduction in evidence.

H. This section does not apply to:

1. Any threat of suicide or homicide made by a participant in a peer support counseling session, or any information conveyed in a peer support counseling session relating to a threat of suicide or homicide;

2. Any information relating to abuse of children or of the elderly, or other information that is required to be reported by law;

3. Any admission of criminal conduct; or

4. Any admission of a plan to commit a crime.

I. This section shall not prohibit any communications between counselors who conduct peer support counseling sessions, or any communications between counselors and the supervisors or staff of an employee assistance program.

Section 2507. Political Vote.

A. Every person has a privilege to refuse to disclose the tenor of the person's vote at a political election conducted by secret ballot.

B. This privilege does not apply if the court finds that the vote was cast illegally.

Section 2508. Trade Secrets.

A person has a privilege, which may be claimed by the person, the person's agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by the person, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. If disclosure is directed, the court shall take such protective measures as the interest of the holder of the privilege, of the parties and of justice require.

Section 2509. Secrets of State and Other Official Information; Governmental Privileges.

A. If the law of the United States creates a governmental privilege that the courts of the Choctaw Nation must recognize under the Constitution of the United States, the privilege may be claimed as provided by the law of the United States.

B. No other governmental privilege is recognized except as created by the Constitution or statutes of the Choctaw Nation.

C. If a claim of governmental privilege is sustained and it appears that a party is thereby deprived of material evidence, the court shall make any further orders the interests of justice require, including striking the testimony of a witness, declaring a mistrial, finding upon an issue as to which the evidence is relevant or dismissing the action.

Section 2510. Identity of Informer.

A. The United States, state or subdivision thereof or any Indian Tribe has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting the investigation.

B. The privilege under this section may be claimed by an appropriate representative of the public entity to which the information was furnished.

C. The following shall be exceptions to the privilege granted in this section:

1. No privilege exists if the identity of the informer or the informer's interest in the subject matter of the informer's communication has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informer's own action, or if the informer appears as a witness for the government.

2. If the informant is also a material witness to the criminal conduct with which the defendant is charged, or was a participant in said criminal conduct conjointly with the defendant, or is shown to be able to give testimony relevant to a material issue in the case.

3. If information from an informer is relied upon to establish the legality of the means by which evidence was obtained and the court or the defendant is not satisfied that the information was received from an informer reasonably believed to be reliable or credible, the court or defendant may require the identity of the informer to be disclosed. The court shall, on request of the government, direct that the disclosure be made in chambers. All counsel and parties concerned with the issue of legality shall be permitted to be present at every stage of a proceeding under this subsection except a disclosure in chambers if the court determines that no counsel or party shall be permitted to be present. If disclosure of the identity of the informer is made in chambers, the record thereof shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the government.

Section 2510.1. Crime stoppers organizations--Privileged communications--Orders for production of records.

A. As used in this section:

1. "Crime stoppers organization" means a private, nonprofit organization that accepts and expends donations for rewards to persons who report to the organization information concerning criminal activity and that forwards the information to the appropriate law enforcement agency; and

2. "Privileged communication" means a statement by any person who wishes to remain anonymous to a crime stoppers organization for the purpose of reporting alleged criminal activity.

B. Evidence of a privileged communication between a person submitting a report of a criminal act to a crime stoppers organization and the person who accepts the report on behalf of the organization is not admissible in a court or an administrative proceeding.

C. Records of a crime stoppers organization concerning a privileged communication of criminal activity may not be compelled to be produced before a court or other tribunal except upon the motion of a criminal defendant to the court in which the offense is being tried that the records or report contains evidence that is exculpatory to the defendant in the trial of that offense.

D. Upon the motion of a defendant under subsection C of this section, the court may issue an order for production of the records or report. The court shall conduct an in camera inspection of materials produced under the order to determine whether the records or report contain evidence that is exculpatory to the defendant.

E. If the court determines that the records or report produced contain evidence that is exculpatory to the defendant, the court shall present the evidence to the defendant in a form that

does not disclose the identity of the person who was the source of the evidence, unless the Choctaw Nation of Oklahoma constitution requires the disclosure of the identity of that person.

F. The court shall return to the crime stoppers organization the records or report that are produced under this section but not disclosed to the defendant. The crime stoppers organization shall store the records or report until the conclusion of the criminal trial and the expiration of the time for all direct appeals in the case.

Section 2511. Waiver of Privilege by Voluntary Disclosure.

A person upon whom this Code confers a privilege against disclosure waives the privilege if the person or the person's predecessor voluntarily discloses or consents to disclosure of any significant part of the privileged matter. This section does not apply if the disclosure itself is privileged.

Section 2512. Privileged Matter Disclosed Under Compulsion or Without Opportunity to Claim Privilege.

A claim of privilege is not defeated by a disclosure which was:

1. Compelled erroneously; or

2. Made without opportunity to claim the privilege.

Section 2513. Comment Upon or Inference from Claim of Privilege; Instruction.

A claim of privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel. No inference may be drawn therefrom.

ARTICLE VI. WITNESSES

Section 2601. General Rule of Competency.

Every person is competent to be a witness except as otherwise provided in this Code.

Section 2602. Personal Knowledge

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule is subject to the provisions of Section 2703 of this title.

Section 2603. Oath or Affirmation

Every witness shall be required to declare before testifying that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness's conscience and impress the witness's mind with the duty to do so.

Section 2604. Interpreters.

An interpreter is subject to the provisions of this Code relating to qualification as an expert and the administration of an oath or affirmation to make a true and complete rendition of all communications made during the interpretive process to the best of the interpreter's knowledge and belief.

Section 2605. Competency of Judge as Witness.

The judge presiding at the trial shall not testify in that trial as a witness. No objection need be made in order to preserve the error.

Section 2606. Reserved.

Section 2607. Who May Impeach.

The credibility of a witness may be attacked by any party, including the party calling the witness.

Section 2608. Evidence of Character and Conduct of Witness.

A. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, subject to these limitations:

1. The evidence may refer only to character for truthfulness or untruthfulness; and

2. Evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked.

B. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness's credibility, other than conviction of crime as provided in Section 2609 of this title, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness if they:

1. Concern the witness's character for truthfulness or untruthfulness;

2. Concern the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

C. The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness's privilege against self-incrimination when examined with respect to matters which relate only to credibility.

Section 2609. Impeachment by Evidence of Conviction of Crime.

A. For the purpose of attacking the credibility of a witness:

1. Evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Section 2403 of this title, if the crime was punishable by death or

imprisonment in excess of one (1) year pursuant to the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

2. Evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

B. Evidence of a conviction under this section is not admissible if a period of more than ten (10) years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is later, to the date of the witness's testimony, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, if the witness is a defendant currently charged with a sexual offense involving a child, testifying at a criminal proceeding regarding the current charge of the defendant and has a prior conviction for a sexual offense involving a child, the conviction of the prior sexual offense involving a child is admissible for the purpose of impeachment of the defendant regardless of the age of the prior conviction. Evidence of a conviction more than ten (10) years old, as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence or unless, during the ten-year period, the witness has been convicted of a subsequent crime which is a misdemeanor involving moral turpitude or a felony.

C. Evidence of a conviction is not admissible under this Code if:

1. The conviction has been the subject of a pardon, annulment, certificate of rehabilitation or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which was punishable by death or imprisonment in excess of one (1) year; or

2. The conviction has been the subject of a pardon, annulment or other equivalent procedure based on a finding of innocence.

D. Evidence of juvenile adjudications is not admissible under this Code. The court in a criminal case may, however, allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

E. The pendency of an appeal from the conviction does not render evidence of that conviction inadmissible.

Evidence of the pendency of an appeal is admissible.

Section 2610. Religious Beliefs or Opinions.

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness's credibility is impaired or enhanced.

Section 2611. Mode and Order of Interrogation and Presentation.

A. Subject to subsection B of this section, the court shall exercise control over the manner and order of interrogating witnesses and presenting evidence so as to:

1. Make the interrogation and presentation effective for the ascertainment of the truth;

2. Avoid needless consumption of time; and

3. Protect witnesses from harassment or undue embarrassment.

B. Any party to a civil action or proceeding may compel any adverse party or person, or any agent, servant or employee of such party or person, for whose benefit such action or proceeding is instituted, prosecuted or defended, to testify as a witness, at the trial, or by deposition, in the same manner and subject to the same rules as other witnesses, provided that any such adverse party, or the adverse party's agent, servant or employee called as a witness by the opposing party shall be deemed a hostile witness and may be cross-examined by the party calling the witness to the same extent as any opposition witness.

C. Cross-examination shall be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may permit inquiry into additional matters as if on direct examination.

D. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness's testimony. Leading questions should ordinarily be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, leading questions may be used on direct examination.

Section 2611.1. Reserved.

Section 2611.2. Minor or incapacitated witnesses--Closing of testimony to public--Taking testimony outside courtroom--Meeting in chambers with judge and attorneys--Presence of support person.

A. It is the intent of the Tribal Council in enacting this section to provide the court with discretion to employ unusual court procedures to protect the rights of incapacitated persons, while ensuring the rights of a criminal defendant and the integrity of the judicial process.

B. As used in this section:

1. "Support person" means a parent, other relative or a next friend chosen by the witness to accompany the witness to court proceedings;

2. “Incapacitated witness” means any witness in a criminal proceeding that is an individual who is an incapacitated person or who, because of physical or mental disability, incapacity, or other disability, is substantially impaired in the ability to provide adequately for the care or custody of himself or herself, or is unable to manage his or her property and financial affairs effectively, or to meet essential requirements for mental or physical health or safety, or to protect himself or herself from abuse, verbal abuse, neglect, or exploitation without assistance from others; and

3. “Witness” means incapacitated witness.

C. The court, upon motion of counsel, shall conduct a hearing to determine whether the testimony of a witness shall be closed to the public. In making the decision, the court shall consider:

1. The nature and seriousness of the issues in the proceeding;

2. The age of the witness;

3. The relationship, if any, of the witness to the defendant;

4. The extent to which the size of the community would preclude the anonymity of the witness;

5. The likelihood of public disgrace of the witness;

6. Whether there is an overriding public interest in having the testimony of the witness presented in open court;

7. The substantial risk that the identity of the witness would be disclosed to the public during the proceeding;

8. The substantial probability that the disclosure of the identity of the witness would cause serious harm to the witness;

9. Whether the witness has disclosed information concerning the case to the public in a manner which would preclude anonymity of the witness; and

10. Other factors the court may deem necessary to protect the interests of justice.

D. If the court determines that the testimony of the witness is to be closed to the public, the court shall in its order accordingly and set forth the persons who can be present during the taking of testimony of the witness, which shall include:

1. The parties to the proceeding and their counsel;

2. Any officer having custody of the witness;

3. Court personnel as may be necessary to conduct the hearing and maintain order, including but not limited to the judge, the court clerk, the bailiff, and the court reporter; and

4. The witness and a support person for the witness.

E. The testimony of the witness may be taken in the courtroom, in chambers, or in some other comfortable place. If the testimony of a witness is to be taken in a courtroom, the witness and support person shall be assembled in the court chambers prior to the taking of the testimony to meet for a reasonable period of time with the judge, and counsel for the parties. At this meeting court procedures shall be explained to the witness and counsel shall be given an opportunity to establish a rapport with the witness to facilitate taking the testimony of the witness at a later time. The facts involved in the proceeding shall not be discussed with the witness during this meeting.

F. A witness shall have the right to be accompanied by a support person while giving testimony in the proceeding, but the support person shall not discuss the testimony of the witness with any other witnesses or attempt to prompt or influence the testimony of the witness in any way.

Section 2611.3. Short title.

Sections 1 through 9 of this act shall be known and may be cited as the "Uniform Child Witness Testimony by Alternative Methods Act".

Section 2611.4. Definitions.

As used in the Uniform Child Witness Testimony by Alternative Methods Act:

1. "Alternative method" means a method by which a child witness testifies which does not include all of the following:

a. having the child testify in person in an open forum,

b. having the child testify in the presence and full view of the finder of fact and presiding officer, and

c. allowing all of the parties to be present, to participate, and to view and be viewed by the child;

2. "Child witness" means an individual under thirteen (13) years of age who has been or will be called to testify in a proceeding;

3. "Criminal proceeding" means a deposition, conditional examination, trial or hearing before a court in a prosecution of a person charged with violating a criminal law of this state, a juvenile certified to stand trial as an adult, or a juvenile prosecuted as an adult; and

4. "Noncriminal proceeding" means a deposition, trial or hearing before a court or an administrative agency having judicial or quasi-judicial powers, other than a criminal proceeding.

Section 2611.5. Testimony to which act applies--Other procedures not precluded.

The Act applies to the testimony of a child witness in a criminal or noncriminal proceeding. However, the Uniform Child Witness Testimony by Alternative Methods Act does not preclude, in a noncriminal proceeding, any other procedure permitted by law for a child witness to testify in a proceeding conducted pursuant to the Choctaw Nation Children's Code or the Choctaw Nation Juvenile Code.

Section 2611.6. Hearing--Determination of whether to use alternative method testimony.

A. The judge or presiding officer in a criminal or noncriminal proceeding may order a hearing to determine whether to allow a child witness to testify by an alternative method. The judge or presiding officer, for good cause shown, shall order the hearing upon motion of a party, a child witness, or an individual determined by the judge or presiding officer to have sufficient standing to act on behalf of the child.

B. A hearing to determine whether to allow a child witness to testify by an alternative method shall be conducted on the record after reasonable notice to all parties, any nonparty movant, and any other person the presiding officer specifies. The presence of the child is not required at the hearing unless ordered by the judge or presiding officer. In conducting the hearing, the judge or presiding officer shall not be bound by rules of evidence except the rules of privilege.

Section 2611.7. Situations where alternative method testimony permitted.

A. In a criminal proceeding, the judge or presiding officer may allow a child witness to testify by an alternative method only in the following situations:

1. The child may testify otherwise than in an open forum in the presence and full view of the finder of fact if the judge or presiding officer finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child's ability to communicate with the finder of fact if required to testify in the open forum; and

2. The child may testify other than face-to-face with the defendant if the judge or presiding officer finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child's ability to communicate with the finder of fact if required to be confronted face-to-face by the defendant.

B. In a criminal proceeding, the child may have an advocate appointed by the court to monitor the potential for emotional trauma. The advocate shall be a registered professional social worker, psychologist, or psychiatrist.

C. In a noncriminal proceeding, the judge or presiding officer may allow a child witness to testify by an alternative method if the judge or presiding officer finds by a preponderance of the evidence that allowing the child to testify by an alternative method is necessary to serve the best interests of the child or enable the child to communicate with the finder of fact. In making the finding, the judge or presiding officer shall consider:

1. The nature of the proceeding;

2. The age and maturity of the child;

3. The relationship of the child to the parties in the proceeding;

4. The nature and degree of emotional trauma that the child may suffer in testifying; and

5. Any other relevant factor.

Section 2611.8. Determination of whether to allow child witness to testify by an alternative method.

If the judge or presiding officer determines that a standard under Section 5 of this act has been met, the judge or presiding officer shall determine whether to allow a child witness to testify by an alternative method and in doing so shall consider:

1. Alternative methods reasonably available;

2. Available means for protecting the interests of or reducing emotional trauma to the child without resort to an alternative method;

3. The nature of the case;

4. The relative rights of the parties;

5. The importance of the proposed testimony of the child;

6. The nature and degree of emotional trauma that the child may suffer if an alternative method is not used; and

7. Any other relevant factor.

Section 2611.9. Order--Required contents.

A. An order allowing or disallowing a child witness to testify by an alternative method shall state the findings of fact and conclusions of law that support the determination of the judge or presiding officer.

B. An order allowing a child witness to testify by an alternative method shall:

1. State the method by which the child is to testify;

2. List any individual or category of individuals allowed to be in, or required to be excluded from, the presence of the child during the testimony;

3. State any special conditions necessary to facilitate a party's right to examine or cross-examine the child;

4. State any condition or limitation upon the participation of individuals present during the testimony of the child; and

5. State any other condition necessary for taking or presenting the testimony.

C. The alternative method ordered by the judge or presiding officer shall not be more restrictive of the rights of the parties than is necessary under the circumstance to serve the purposes of the order.

Section 2611.10. Opportunity for examination and cross-examination.

An alternative method ordered by the judge or presiding officer shall permit a full and fair opportunity for examination or cross-examination of the child witness by each party.

Section 2611.11. Construction and application of act.

In applying and construing the Uniform Child Witness Testimony by Alternative Methods Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states and tribes that enact it.

Section 2612. Writing Used to Refresh Memory.

If a witness uses a record or object to refresh the witness's memory either while testifying or before testifying, the court shall allow an adverse party to have the record or object produced at the hearing, to inspect it, to cross-examine the witness thereon and to introduce in evidence those portions which relate to the testimony of the witness.

If it is claimed by an opposing party that the record or object contains matters not related to the subject matter of the testimony, the court shall examine the record or object in chambers, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a record or object is not produced, made available for inspection, or delivered pursuant to order, the court shall make any order justice requires, but in criminal cases if the prosecution elects not to comply, the order shall be an order striking the testimony or declaring a mistrial.

Section 2613. Prior Statements of Witnesses.

A. In examining a witness concerning a prior statement made by the witness whether in a record or not, the statement need not be shown nor its contents disclosed to the witness at that time but on request the same shall be shown or disclosed to opposing counsel just prior to the cross-examination of the witness.

B. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon. This provision does not apply to admissions of a party opponent as defined in paragraph 2 of subsection B of Section 2801 of this title.

Section 2614. Calling and Interrogation of Witnesses by Court.

A. The court may, on its own motion or at the suggestion of a party, call witnesses, provided that all parties shall have the right of cross-examination of those witnesses.

B. The court may interrogate any witness whether called by itself or by a party.

C. Objections to the calling or interrogating of witnesses by the court may be made at the time.

Section 2615. Exclusion of Witnesses.

At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses. The court may make the order of its own motion. This rule does not authorize exclusion of:

1. A party who is a natural person;

2. An officer or employee of a party which is not a natural person designated as its representative by its attorney;

3. A person whose presence is shown by a party to be essential to the presentation of the party's cause;

4. A parent, other relative, or next friend of a child twelve (12) years of age or under who is called to testify when the court deems it to be in the best interests of the child and the interests of justice; or

5. The victim of an alleged criminal offense or a representative, parent or other relative of said victim, in any criminal prosecution, upon the motion of the state to bar such exclusion, unless the court finds such exclusion to be in the interest of justice.

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY.

Section 2701. Opinion Testimony by Lay Witnesses.

If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are:

1. Rationally based on the perception of the witness;

2. Helpful to a clear understanding of his testimony or the determination of a fact in issue; and

3. Not based on scientific, technical or other specialized knowledge within the scope of Section 2702 of this title.

Section 2702. Testimony by Experts.

If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify in the form of an opinion or otherwise, if:

1. The testimony is based upon sufficient facts or data;

2. The testimony is the product of reliable principles and methods; and

3. The witness has applied the principles and methods reliably to the facts of the case.

Section 2703. Bases of Opinion Testimony by Experts.

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted.

Section 2704. Opinion on Ultimate Issue.

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

Section 2705. Disclosure of Facts or Data Underlying Expert Opinion.

An expert may testify in terms of opinion or inference and give reasons therefor without previous disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

Article VIII. Hearsay

Section 2801. Definitions.

A. For purposes of this Code:

1. A "statement" means:

   a. an oral assertion,

   b. an assertion in a record, or

   c. nonverbal conduct of a person, if it is intended by a person as an assertion;

2. A "declarant" means a person who makes a statement; and

3. "Hearsay" means a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

B. A statement is not hearsay if:

1. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:

a. inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing or other proceeding, or in a deposition, or

b. consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive and was made before the supposed fabrication, influence, or motive arose, or

c. one of identification of a person made after perceiving the person; or

2. The statement is offered against a party and is:

a. the party's own statement, in either an individual or a representative capacity, or

b. a statement of which the party has manifested an adoption or belief in its truth, or

c. a statement by a person authorized by the party to make a statement concerning the subject, or

d. a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or

e. a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

Section 2802. Hearsay Rule.

Hearsay is not admissible except as otherwise provided by an act of the Tribal Council.

Section 2803. Hearsay Exceptions; Availability of Declarant Immaterial.

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

1. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter;

2. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition;

3. A statement of the declarant's then existing state of mind, emotion, sensation or physical condition, such as intent, plan, motive, design, mental feeling, pain and bodily health,

but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification or terms of declarant's will;

4. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain or sensations, if reasonably pertinent to diagnosis or treatment;

5. A record concerning a matter about which a witness once had knowledge but now has insufficient recollection to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness's memory and to reflect that knowledge correctly. The record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party;

6. A record of acts, events, conditions, opinions or diagnosis, made at or near the time by or from information transmitted by a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the record, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with paragraph 11 or 12 of Section 2902 of this title, or with a statute providing for certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation and calling of every kind, whether or not conducted for profit. A public record inadmissible under paragraph 8 of this section is inadmissible under this exception;

7. Evidence that a matter is not included in records kept in accordance with the provisions of paragraph 6 of this section, to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a record was regularly made and preserved, or by certification that complies with paragraph 11 or 12 of Section 2902 of this title, or with a statute providing for certification, unless the sources of information or other circumstances indicate lack of trustworthiness;

8. To the extent not otherwise provided in this paragraph, a record of a public office or agency setting forth its regularly conducted and regularly recorded activities or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual finding resulting from an investigation made pursuant to authority granted by law. The following are not within this exception to the hearsay rule:

a. investigative reports by police and other law enforcement personnel,

b. investigative reports prepared by or for a government, a public office or agency when offered by it in a case in which it is a party,

c. factual findings offered by the government in criminal cases,

d. factual findings resulting from special investigation of a particular complaint, case or incident, or

e. any matter as to which the sources of information or other circumstances indicate lack of trustworthiness;

9. Records of births, fetal deaths, deaths or marriages, if the report thereof was made to a public office pursuant to statutory requirements;

10. To prove the absence of a record or the nonoccurrence or nonexistence of a matter of which a record was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Section 2903 of this title, or testimony, that diligent search failed to disclose the record or entry;

11. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage or other similar facts of personal or family history contained in a regularly kept record of a religious organization;

12. Statements of fact contained in a certified record that the maker performed a marriage or other ceremony or administered a sacrament, made by a cleric, public official or other person authorized by the rules or practices of a religious organization or by law to perform the act certified and purporting to have been issued at the time of the act or within a reasonable time thereafter;

13. Statements of fact concerning personal or family history including those contained in family Bibles, genealogy, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts or tombstones, or the like;

14. A public record purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed and delivered;

15. A statement contained in a record purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the record unless dealings with the property since the record was made have been inconsistent with the truth of the statement or the purport of the record;

16. Statements in a record in existence twenty (20) years or more, the authenticity of which is established;

17. Market quotations, tabulations, lists, directories or other published or publicly recorded compilations generally used and relied upon by the public or by persons in particular occupations;

18. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the witness in direct examination, statements contained in published treatises, periodicals or pamphlets on a subject of history, medicine or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits;

19. Reputation among members of an individual's family by blood, adoption or marriage, or among the individual's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption or marriage, ancestry or other similar fact of the individual's personal or family history;

20. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community and reputation as to events of general history important to the community or state or nation in which located;

21. Reputation of a person's character among the person's associates or in the community;

22. Evidence of a final judgment, but not upon a plea of nolo contendere, adjudging a person guilty of a crime punishable by death or imprisonment in excess of one (1) year, to prove any fact essential to sustain the judgment, but not including, when offered by the state in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility;

23. Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the matter would be provable by evidence of reputation; or

24. A verified or declared written medical report signed by a physician, provided:

a. the report is used in an action not arising out of contract in which the claim of the plaintiff is not in excess of Twenty-five Thousand Dollars ($25,000.00),

b. the report contains a history of the plaintiff, the complaints of the plaintiff, the physician's findings on examination, and any diagnostic tests, description and cause of the injury, and the nature and extent of any permanent impairment. All opinions expressed in the report must be based upon a reasonable degree of medical probability, and

c. the medical report must be verified or contain a written declaration, made under the penalty of perjury, that the report is true.

Section 2803.1. Statements of children not having attained 13 years or incapacitated persons describing acts of physical abuse or sexual contact--Admissibility in criminal and juvenile proceedings.

A. A statement made by a child who has not attained thirteen (13) years of age or a person who is an incapacitated person as such term is defined by the provisions of Section 2611.2(B)(2) of this title, which describes any act of physical abuse against the child or incapacitated person or any act of sexual contact performed with or on the child or incapacitated person by another, is admissible in criminal and juvenile proceedings if:

1. The court finds that the time, content and totality of circumstances surrounding the taking of the statement provide sufficient indicia of reliability so as to render it inherently

trustworthy. In determining such trustworthiness, the court may consider, among other things, the following factors: the spontaneity and consistent repetition of the statement, the mental state of the declarant, whether the terminology used is unexpected of a child of similar age or of an incapacitated person, and whether a lack of motive to fabricate exists; and

2. The child or incapacitated person either:

a. testifies or is available to testify at the proceedings in open court or through an alternative method pursuant to the provisions of the or Section 2611.2 of this title, or

b. is unavailable as defined in Section 2804 of this title as a witness. When the child or incapacitated person is unavailable, such statement may be admitted only if there is corroborative evidence of the act.

B. A statement may not be admitted under this section unless the proponent of the statement makes known to the adverse party an intention to offer the statement and the particulars of the statement at least ten (10) days in advance of the proceedings to provide the adverse party with an opportunity to prepare to answer the statement.

Section 2803.2. Reserved.

Section 2804. Hearsay Exception; Declarant Unavailable.

A. "Unavailability as a witness," as used in this section, includes the situation in which the declarant:

1. Is exempt by ruling of the court on the ground of privilege from testifying concerning the subject matter or of the declarant's statement;

2. Persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so;

3. Testifies to a lack of memory of the subject matter of the declarant's statement;

4. Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

5. Is absent from the hearing and the proponent of the declarant's statement has been unable to procure the declarant's attendance or, in the case of a hearsay exception under paragraphs 2, 3 or 4 of subsection B of this section, the declarant's attendance or testimony, by process or other reasonable means.

A declarant is not unavailable as a witness if the declarant' s exemption, refusal, claim of lack of memory, inability or absence is due to an act by the proponent of the declarant's statement for the purpose of preventing the witness from attending or testifying.

B. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

1. Testimony given as a witness at another hearing of the same or another proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered or, in a civil action or proceeding, a predecessor in interest had an opportunity and similar motive to develop the testimony by direct, cross or redirect examination;

2. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be the declarant's impending death;

3. A statement which was at the time of its making contrary to the declarant's pecuniary or proprietary interest, or which tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, and which a reasonable person in the declarant's position would not have made unless the declarant believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement. A statement or confession offered against the accused in a criminal case, made by a codefendant or other individual implicating both the codefendant or other individual and the accused, is not within this exception; and

4. A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, ancestry, relationship to another person or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or statement concerning the foregoing matters or death of another person, if the declarant was related to that person by blood, adoption or marriage or was so intimately associated with the person's family as to be likely to have accurate information concerning the matter declared.

Section 2804.1. Hearsay Exception--Exceptional circumstances.

A. In exceptional circumstances a statement not covered by Section 2803, 2804, 2805, or 2806 of this title but possessing equivalent, though not identical, circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule if the court determines that:

1. The statement is offered as evidence of a fact of consequence;

2. The statement is more probative on the point for which it is offered than any other evidence that the proponent can procure through reasonable efforts; and

3. The general purposes of this Code and the interests of justice will best be served by admission of the statement into evidence.

B. The court shall state on the record the circumstances that support its determination of the admissibility of the statement offered pursuant to subsection A of this section.

C. A statement is not admissible under this exception unless its proponent gives to all parties reasonable notice in advance of trial, or during trial if the court excuses pretrial notice for good cause shown, of the substance of the statement and the identity of the declarant.

Section 2805. Hearsay Within Hearsay.

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in this Code.

Section 2806. Attacking and Supporting Credibility of Declarant.

When a hearsay statement, or a statement defined in subparagraph b, c, d or e of paragraph 2 of subsection B of Section 2801 of this title, has been admitted in evidence, the credibility of the declarant may be attacked and, if attacked, may be supported by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

ARTICLE IX. AUTHENTICATION AND IDENTIFICATION.

Section 2901. Requirement of Authentication or Identification.

A. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims it to be.

B. The following are illustrative examples of authentication or identification conforming with the requirements of this Code:

1. Testimony that a matter is what it is claimed to be;

2. Non-expert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation;

3. Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated;

4. Appearance, content, substance, internal patterns or other distinctive characteristics taken in conjunction with circumstances;

5. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker;

6. Telephone conversations by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business if:

a. in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or

b. in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone;

7. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement or data compilation, in any form, is from the public office where items of this nature are kept;

8. Evidence that a document or data compilation, in any form:

a. is in such condition as to create no suspicion concerning its authenticity,

b. was in a place where it, if authentic, would likely be, and

c. has been in existence twenty (20) years or more at the time it is offered;

9. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result; or

10. Any method of authentication or identification provided by statute or by rules prescribed by the Court of Appeals pursuant to statutory authority.

Section 2902. Self-Authentication.

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

1. A document bearing a seal purporting to be that of the United States or of any state, district, commonwealth, territory or insular possession thereof, including the Panama Canal Zone, or the trust territory of the Pacific Islands, or of a political subdivision, department, office or agency thereof, or of an Indian Tribe and a signature purporting to be an attestation or execution;

2. A document purporting to bear the signature in his official capacity of an officer or employee of any entity included in paragraph 1 of this section, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine;

3. A document purporting to be executed or attested in his official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position:

a. of the executing or attesting person, or

b. of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness or signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification;

4. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph 1, 2 or 3 of this section or complying with any statute or by rules prescribed by the Court of Appeals pursuant to statutory authority;

5. Books, pamphlets or other publications purporting to be issued by public authority;

6. Printed materials purporting to be newspapers or periodicals;

7. Inscriptions, signs, tags or labels purporting to have been affixed in the course of business and indicating ownership, control or origin;

8. Records accompanied by a certificate of acknowledgment under the hand and the seal of a notary public or other officer authorized by law to take acknowledgments;

9. Commercial paper, signatures thereon, and related records to the extent provided by general commercial law;

10. Any signature, record or other matter declared by act of the Tribal Council to be presumptively or prima facie genuine or authentic;

11. The original or a duplicate of a domestic record of acts, events, conditions, opinions, or diagnoses if:

a. the document is accompanied by a written declaration under oath of the custodian of the record, or other qualified individual that the record was made, at or near the time of the occurrence of the matters set forth by or from information transmitted by a person having knowledge of those matters; was kept in the course of the regularly conducted business activity; and was made pursuant to the regularly conducted activity,

b. the party intending to offer the record in evidence gives notice of that intention to all adverse parties and makes the record available for inspection sufficiently in advance of its offer to provide the adverse parties with a fair opportunity to challenge the record, and

c. notice is given to the proponent, sufficiently in advance of the offer to provide the proponent with a fair opportunity to meet the objection or obtain the testimony of a foundation witness, raising a genuine question as to the trustworthiness or authenticity of the record; and

12. The original or a duplicate of a record from a foreign country of acts, events, conditions, opinions, or diagnoses if:

a. the document is accompanied by a written declaration under oath of the custodian of the record, or other qualified individual that the record was made, at or near the time of the occurrence of the matters set forth by or from information transmitted by a person having knowledge of those matters; was kept in the course of a regularly conducted business activity; and was made pursuant to the regularly conducted activity,

b. the party intending to offer the record in evidence gives notice of that intention to all adverse parties and makes the record available for inspection sufficiently in advance of its offer to provide the adverse parties with a fair opportunity to challenge the record, and

c. notice is given to the proponent, sufficiently in advance of the offer to provide the proponent with a fair opportunity to meet the objection or obtain the testimony of a foundation witness, raising a genuine question as to the trustworthiness or authenticity of the record.

Section 2903. Subscribing Witness' Testimony Unnecessary.

The testimony of a subscribing witness is not necessary to authenticate a record unless required by the laws of the jurisdiction governing the validity of the record.

ARTICLE X. CONTENTS OF WRITINGS, RECORDINGS AND PHOTOGRAPHS.

Section 3001. Definitions.

For purposes of this Code:

1. "Writings" and "recordings" means letters, words, or numbers, or their equivalent, inscribed on a tangible medium or stored in an electronic or other machine and retrievable in perceivable form by handwriting, typewriting, printing, photostating, photographing, mechanical or electronic recording, or other technique;

2. "Photographs" mean a form of a record which consists of still photographs, stored images, x-ray films, video tapes, or motion pictures;

3. An "original" of a writing, recording, or other record means the writing, recording, or other record itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original", when applied to a photograph, includes the negative or any print therefrom. The term "original" includes a print out or other perceivable output of a record of data or images stored in a computer or similar device if shown to reflect the data or images accurately;

4. A "duplicate" means a counterpart in the form of a record produced by the same impression as the original, from the same matrix, by means of photography, including enlargements and miniatures, or by mechanical or electronic rerecording, by chemical reproduction, or by another equivalent technique that accurately reproduce the original;

5. "Image" means a form of a record which consists of a digitized copy or image of information; and

6. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Section 3002. Requirement of Original.

To prove the content of a record, recording or photograph, the original record, recording or photograph is required except as otherwise provided in this Code or by other statutes.

Section 3003. Admissibility of Duplicates

A duplicate is admissible to the same extent as an original under this rule or as may otherwise be provided by statute unless:

1. A genuine question is raised as to the authenticity of the original; or

2. In the circumstances it would be unfair to admit the duplicate in lieu of the original.

Section 3004. Admissibility of Other Evidence of Contents.

The original is not required, and a duplicate or other evidence of the contents of a record is admissible if:

1. All originals are lost or have been destroyed unless the proponent lost or destroyed them in bad faith;

2. No original can be obtained by any available judicial process or procedure;

3. At a time when an original was under the control of the party against whom offered, the party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearings and the party does not produce the original at the hearing; or

4. The record is not closely related to a controlling issue.

Section 3005. Public Records.

The contents of an official record or of a private record authorized to be recorded or filed in the public records and actually recorded or filed, if otherwise admissible, may be proved by a copy in perceivable form, certified as correct in accordance with Section 2902 of this title or testified to be correct by a witness who has compared it with the original. If a copy which complies with this section cannot be obtained by the exercise of reasonable diligence, other evidence of the contents may be admitted.

Section 3006. Summaries.

The contents of voluminous writings, recordings or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The judge may order that they be produced in court.

Section 3007. Testimony or Written Admission of Party.

Contents of a record may be proved by the testimony or deposition of the party against whom offered or by that party's written admission without accounting for the nonproduction of the original.

Section 3008. Reserved.

Section 3009. Medical bills--Identification

Upon the trial of any civil case involving injury, disease or disability, the patient, a member of the patient's family or any other person responsible for the care of the patient, shall be a competent witness to identify doctor bills, hospital bills, ambulance service bills, drug bills and similar bills for expenses incurred in the treatment of the patient upon a showing by the witness that such bills were received from a licensed practicing physician, hospital, ambulance service, pharmacy, drug store, or supplier of therapeutic or orthopedic devices, and that such expenses were incurred in connection with the treatment of the injury, disease or disability involved in the subject of litigation at trial. Such items of evidence need not be identified by the person who submits the bill, and it shall not be necessary for an expert witness to testify that the charges were reasonable and necessary.

Section 3009.1 Personal injury suits—Medical bills—Evidence

A. Upon the trial of any civil action arising from personal injury, the actual amounts paid for any services in the treatment of the injured party, including doctor bills, hospital bills, ambulance service bills, drug and other prescription bills, and similar bills shall be the amounts admissible at trial, not the amounts billed for such expenses incurred in the treatment of the party. If, in addition to the evidence of payment, a party submits a signed statement acknowledged by the medical provider or an authorized representative or sworn testimony that the provider will accept the amount paid as full payment of the obligations, the statement or testimony shall be admitted into evidence. The statement or testimony shall be part of the record as an exhibit but need not be shown to the jury. If a medical provider has filed a lien in the case for an amount in excess of the amount paid, then the bills in excess of the amount paid, but not more than the amount of the lien, shall be admissible.

B. If no payment has been made, the Medicare reimbursement rates in effect when the personal injury occurred, not the amounts billed, shall be admissible if, in addition to evidence of nonpayment, a party submits a signed statement acknowledged by the medical provider or an authorized representative or sworn testimony that the provider will accept payment at the Medicare reimbursement rate less cost of recovery as provided in Medicare regulations as full payment of the obligation. The statement or testimony shall be admitted into evidence and shall be part of the record as an exhibit but need not be shown to the jury. If a medical provider has

filed a lien in the case for an amount in excess of the Medicare rate, then the bills in excess of the amount of the Medicare rate, but not more than the amount of the lien, shall be admissible.

C. If no bills have been paid, or no statement acknowledged by the medical provider or sworn testimony as provided in subsections A and B of this section is provided to the opposing party and listed as an exhibit by the final pretrial hearing, then the amount billed shall be admissible at trial subject to the limitations regarding any lien filed in the case.

D. This section shall apply to civil actions arising from personal injury filed on or after March 9, 2019.

Chapter 41. Depositions and Discovery.

Section 3224. Short Title and Scope of Code.

Sections 3224 through 3237 of this title shall be known and may be cited as the Choctaw Nation Discovery Code. The Choctaw Discovery Code shall govern the procedure for discovery in all suits of a civil nature in all courts in the Choctaw Nation.

Section 3225. Construction.

The Discovery Code shall be liberally constructed to provide the just, speedy and inexpensive determination of every action.

Section 3226. General Provisions Governing Discovery.

A. **DISCOVERY METHODS**. Parties may obtain discovery by one or more of the following methods: Depositions 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 this section, the frequency of use of these methods is not limited.

B. **DISCOVERY SCOPE AND LIMITS**. Unless otherwise limited by order of the court in accordance with the Discovery Code, 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 a ground 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. A party shall produce upon request pursuant to Section 3234 of this title, any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or 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 section, an application for insurance shall not be treated as a part of an insurance agreement.

2. **INITIAL DISCLOSURES**.

a. Except in categories of proceedings specified in subparagraph b of this paragraph, or to the extent otherwise stipulated or directed by order, a party, without awaiting a discovery request, must provide to other parties a computation of any category of damages claimed by the disclosing party, making available for inspection and copying the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered.

b. The following categories of proceedings are exempt from initial disclosure under subparagraph a of this paragraph:

i. an action for review on an administrative record,

ii. a petition for habeas corpus or other proceeding to challenge a criminal conviction or sentence,

iii. an action brought without counsel by a person in custody of the United States, a state, or a state subdivision,

iv. an action to enforce or quash an administrative summons or subpoena,

v. an action by the United States to recover benefit payments,

vi. an action by the United States to collect on a student loan guaranteed by the United States,

vii. a proceeding ancillary to proceedings in other courts, and

viii. an action to enforce an arbitration award.

3. **TIME FOR DISCLOSURES**. These disclosures shall be made at or within sixty (60) days after service unless a different time is set by stipulation or court order, or unless a party objects that initial disclosures are not appropriate in the circumstances of the action and states the objection in a motion filed with the court. In ruling on the objection, the court shall determine what disclosures, if any, are to be made and set the time for disclosure. A party shall make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

4. **TRIAL PREPARATION: MATERIALS**. Subject to the provisions of paragraph 5 of this subsection, discovery may be obtained of documents and tangible things otherwise discoverable under paragraph 1 of this subsection and prepared in anticipation of litigation or for trial by or for another party or by or for the representative of that other party, including his attorney, consultant, surety, indemnitor, 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 an attorney or other representative of a party concerning the litigation.

A party may obtain, without the required showing provided for in this paragraph, a statement concerning the actionor 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 paragraph 3 of subsection A of Section 3237 of this title 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 substantially recites an oral statement by the person making it and contemporaneously recorded.

5. **TRIAL PREPARATION: EXPERTS**.

a. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of paragraph 1 of this subsection and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

i. A party may, through interrogatories, require any other party to identify each person whom that other party expects to call as an expert witness at trial and give the address at which that expert witness may be located.

ii. After disclosure of the names and addresses of the expert witnesses, the other party expects to call as witnesses, the party, who has requested disclosure, may depose any such expert witnesses subject to scope of this section. Prior to taking the deposition the party must give notice as required in subsections A and C of Section 3230 of this title. If any documents are provided to such disclosed expert witnesses, the documents shall not be protected from disclosure by privilege or work product protection and they may be obtained through discovery.

iii. In addition to taking the depositions of expert witnesses the party may, through interrogatories, require the party who expects to call the expert witnesses to state the subject matter on which each expert witness is expected to testify; the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion; the qualifications of each expert witness, including a list of all publications authored by the expert witness within the preceding ten (10) years; the compensation to be paid to the expert witness for the testimony and preparation for the testimony; and a listing of any other cases in which the expert witness has testified as an expert at trial or by deposition within the preceding four (4) years. An interrogatory seeking the information specified above shall be treated as a single interrogatory for purposes of the limitation on the number of interrogatories in Section 3233 of this title.

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 upon motion, when the court may order discovery as provided in Section 3235 of this title 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 any 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 division (2) of subparagraph a of this paragraph and subparagraph b of this paragraph.

ii. The court shall require that the party seeking discovery with respect to discovery obtained under subparagraph b of this paragraph, 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.

6. **CLAIMS OF PRIVILEGE OR PROTECTION OF TRIAL PREPARATION MATERIALS**. When a party withholds information otherwise discoverable under the Discovery Code by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing

information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

C. **PROTECTIVE ORDERS**.

1. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer, either in person or by telephone, with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or on matters relating to a deposition, the district court where the deposition is to be taken may enter any order which justice requires to protect a party or person from annoyance, harassment, embarrassment, oppression or undue delay, burden or expense, including one or more of the following:

a. that the discovery not be had,

b. that the discovery may be had only on specified terms and conditions, including a designation of the time or place,

c. that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery,

d. that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters,

e. that discovery be conducted with no one present except persons designated by the court,

f. that a deposition after being sealed be opened only by order of the court,

g. that a trade secret or other confidential research, development or commercial information not be disclosed or be disclosed only in a designated way, and

h. that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court;

2. 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 paragraph 3 of subsection A of Section 3237 of this title apply to the award of expenses incurred in relation to the motion. Any protective order of the court which has the effect of removing any material obtained by discovery from the public record shall contain the following:

a. a statement that the court has determined it is necessary in the interests of justice to remove the material from the public record,

b. specific identification of the material which is to be removed or withdrawn from the public record, or which is to be filed but not placed in the public record, and

c. a requirement that any party obtaining a protective order place the protected material in a sealed manila envelope clearly marked with the caption and case number and is clearly marked with the word "CONFIDENTIAL", and stating the date the order was entered and the name of the judge entering the order;

3. No protective order entered after the filing and microfilming of documents of any kind shall be construed to require the microfilm record of such filing to be amended in any fashion;

4. The party or counsel which has received the protective order shall be responsible for promptly presenting the order to appropriate court clerk personnel for appropriate action;

5. All documents produced or testimony given under a protective order shall be retained in the office of counsel until required by the court to be filed in the case;

6. Counsel for the respective parties shall be responsible for informing witnesses, as necessary, of the contents of the protective order; and

7. When a case is filed in which a party intends to seek a protective order removing material from the public record, the plaintiff(s) and defendant(s) shall be initially designated on the petition under pseudonym such as "John or Jane Doe", or "Roe", and the petition shall clearly indicate that the party designations are fictitious. The party seeking confidentiality or other order removing the case, in whole or in part, from the public record, shall immediately present application to the court, seeking instructions for the conduct of the case, including confidentiality of the records.

D. **SEQUENCE AND 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. The fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay discovery by any other party.

E. **SUPPLEMENTATION OF RESPONSES**. A party who has responded to a request for discovery with a response that was complete when it was made is under no duty to supplement the response to include information thereafter acquired, except as follows:

1. A party is under a duty seasonably to supplement the response with respect to any question directly addressed to:

a. the identity and location of persons having knowledge of discoverable matters, and

b. the identity of each person expected to be called as an expert witness at trial, the subject matter on which the person is expected to testify, and the substance of the testimony of the person;

2. A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party obtains information upon the basis of which:

a.

i. the party knows that the response was incorrect in some material respect when made, or

ii. the party knows that the response, which was correct when made, is no longer true in some material respect, and

b. the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; and

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.

F. **DISCOVERY CONFERENCE**. At any time after commencement of an action, the court may direct the attorneys for the parties to appear for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

1. A statement of the issues as they then appear;

2. A proposed plan and schedule of discovery;

3. Any limitations proposed to be placed on discovery;

4. Any other proposed orders with respect to discovery; and

5. A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion.

Each party and his attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than ten (10) days after service of the motion. Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. In preparing the plan for discovery the court shall protect the parties from excessive or abusive use of discovery. An order shall be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference.

G. **SIGNING OF DISCOVERY REQUESTS, RESPONSES AND OBJECTIONS**. Every request for discovery, response or objection thereto made by a party represented by an

attorney shall be signed by at least one of his attorneys of record in his individual name whose address shall be stated. A party who is not represented by an attorney shall sign the request, response or objection and state his address. The signature of the attorney or party constitutes a certification that he has read the request, response or objection, and that it is:

1. To the best of his knowledge, information and belief formed after a reasonable inquiry consistent with the Discovery Code and warranted by existing law or a good faith argument for the extension, modification or reversal of existing law;

2. Interposed in good faith and not primarily to cause delay or for any other improper purpose; and

3. Not unreasonable or unduly burdensome or expensive, given the nature and complexity of the case, the discovery already had in the case, the amount in controversy, and other values at stake in the litigation. If a request, response or objection is not signed, it shall be deemed ineffective.

If a certification is made in violation of the provisions of this subsection, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response or objection is made, or both, an appropriate sanction, which may include an order to pay to the amount of the reasonable expenses occasioned thereby, including a reasonable attorney fee.

Section 3226.1. Abusive discovery

A. ABUSIVE DISCOVERY. In addition to the protective orders that a court may issue pursuant to paragraph 1 of subsection C of Section 3226 of Title 12 of the Choctaw Nation Statutes, a protective order may be issued by the court authorizing or denying discovery in the court in which the action is pending. A protective order may also be authorized on matters relating to a deposition. The order may be issued upon a motion by a party or the person from whom discovery is sought. The motion shall be accompanied by a certification that the movant has in good faith conferred or attempted to confer, either in person or by telephone, with other affected parties in an effort to resolve the dispute without court action. Upon receipt by the court of the motion and certification, the court may enter the protective order authorizing or denying the discovery upon a finding that justice requires a party or person be protected from annoyance, harassment, embarrassment, oppression or undue delay, burden, or expense.

B. AWARD OF EXPENSES OF MOTION. If the motion is granted, the court may, after opportunity for hearing, require the party or person whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney 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 may, after opportunity for hearing, require the moving party or the attorney 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 attorney 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.

Section 3226A. Withdrawal of certain discovery items

Not less than thirty (30) days nor more than sixty (60) days after the filing of a judgment, decree, or final appealable order if no appeal is taken, or within thirty (30) days after issuance of the mandate by the appellate court if appealed, the party or counsel shall withdraw, upon proper receipt to the court clerk, any previously filed discovery items which were not introduced into evidence which were not included in the record on appeal or which are not needed for decision of the case on remand, if any.

Section 3227. Depositions Before Action or Pending Appeal

A. **BEFORE ACTION**.

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

a. That the petitioner or his personal representative, heirs, beneficiaries, successors or assigns may be a party to an action cognizable in a court but is presently unable to bring it or cause it to be brought.

b. The subject matter of the expected action and his interest therein, and a copy, attached to the petition, of any written instrument the validity or construction of which may be called in question or which is connected with the subject matter of the requested deposition.

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

d. The names or, if the names are unknown, a description of the persons he expects will be adverse parties and their addresses so far as known.

e. 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 request an order authorizing the petitioner to take the depositions of the persons named in the petition to be examined for the purpose of perpetuating their testimony.

2. **NOTICE AND SERVICE**. The petitioner shall thereafter serve a notice upon each person named or described 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 (20) days before the date of hearing, the notice shall be served in the manner provided for personal service of summons. If such service

cannot, with due diligence, be made upon any expected adverse party named or described in the petition, the court may enter such order as is just for service by publication or otherwise, and shall appoint, for persons not served by personal service, an attorney who shall represent them and, if they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the court shall appoint a guardian ad litem for any such minor or incompetent not legally represented.

3. **ORDER AND EXAMINATION**. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall enter an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and how the depositions shall be taken. The depositions may then be taken in accordance with the Discovery Code, Section 3224 et seq. of this title. The court may enter orders of the character provided for by Sections 3234 and 3235 of this title. For the purpose of applying the Discovery Code to depositions for perpetuating testimony, each reference to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

4. **USE OF DEPOSITION**. If a deposition to perpetuate testimony is taken under the Discovery Code, it may be used in any action involving the same subject matter subsequently brought in a court of the Choctaw Nation of Oklahoma, in accordance with the provisions of subsection A of Section 3232 of this title.

B. **PENDING APPEAL**. If an appeal has been taken from a judgment of a district court or before the taking of an appeal if the time therefor has not expired, the district court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the district court. In such case, the party who desires to perpetuate the testimony may make a motion in the district court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the district court. The motion shall show:

1. The names and addresses of persons to be examined and the substance of the testimony which he expects to elicit from each;

2. The reasons for perpetuating the testimony.

If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may enter an order allowing the depositions to be taken and may make orders of the character provided for by Sections 3234 and 3235 of this title, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in the Discovery Code for depositions taken in actions pending in the district court.

C. **PERPETUATION BY ACTION**. The procedures prescribed in this section do not limit the power of a court to entertain an action to perpetuate testimony.

D. **FILING OF DEPOSITION**. Depositions taken under this section shall not be filed with the court in which the petition is filed or the motion is made except on order of the court or unless they are attached to a motion, response thereto, or are needed for use in a trial or hearing.

E. **COSTS**. The attorney taking any deposition under this section shall pay the costs thereof unless otherwise ordered by the court.

F. **DEPOSITIONS TAKEN IN OTHER JURISDICTIONS ADMISSIBLE**. A deposition taken under procedures of another jurisdiction, which are similar to those in this section, is admissible to the same extent as a deposition taken under this section.

Section 3228. Persons Before Whom Depositions May Be Taken.

A. **DEPOSITIONS TAKEN WITHIN THE CHOCTAW NATION**. Within the jurisdiction of the Choctaw Nation, depositions shall be taken before a person appointed by the court. A person so appointed has power to administer oaths and take testimony.

B. **DEPOSITIONS TAKEN OUTSIDE THE CHOCTAW NATION**. Depositions may be taken outside of the Choctaw Nation:

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 Choctaw Nation of Oklahoma; 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; or

3. Pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the Choctaw Nation of Oklahoma.

C. **DISQUALIFICATIONS FOR INTEREST**. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

Section 3229. Stipulations Regarding Discovery Procedure.

Unless the court orders otherwise, the parties may by written 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 other procedures governing or limitations placed upon discovery, except that stipulations extending the time provided in Sections 3226, 3233, 3234 and 3236 of this title for responses to discovery may, if they would interfere with any time set for completion of

discovery, be made only with the approval of the court. A person designated by the stipulation has the power by virtue of his designation to administer any necessary oath.

Section 3230. Depositions upon Oral Examination.

A. WHEN DEPOSITIONS MAY BE TAKEN; WHEN LEAVE REQUIRED.

1. A party may take the testimony of any person, including a party, by deposition upon oral examination without leave of court except as provided in paragraph 2 of this subsection. The attendance of witnesses may be compelled by subpoena.

2.

a. A party shall obtain leave of court, if the person to be examined is confined in prison, or if, without the written stipulation of the parties:

i. the person to be examined already has been deposed in the case, or

ii. a party seeks to take a deposition prior to the expiration of thirty (30) days after service of the summons and petition upon any defendant unless the notice contains a certification, with supporting facts, that the person to be examined is expected to leave the jurisdiction of the Choctaw Nation, or is about to go out of the United States, or is bound on a voyage to sea, and will be unavailable for examination unless deposed before that time.

b. A request for leave of court shall include a statement that the requesting party has in good faith conferred or attempted to confer either in person or by telephone with the opposing parties to obtain a written stipulation.

3. Unless otherwise agreed by the parties or ordered by the court, a deposition upon oral examination shall not last more than six (6) hours and shall be taken only between the hours of 8:00 a.m. and 5:00 p.m. on a day other than a Saturday or Sunday and on a date other than a holiday designated by the Tribal Council or the court. The court may grant an extension of these time limits if the court finds that the witness or counsel has been obstructive or uncooperative or if the court finds it to be in the interest of justice.

B. PLACE WHERE WITNESS OR PARTY IS REQUIRED TO ATTEND TAKING OF DEPOSITIONS.

1. A witness shall be obligated to attend to give a deposition only in the county of his or her residence, a county adjoining the county of his or her residence or the county where he or she is located when the subpoena is served.

2. A party, in addition to the places where a witness may be deposed, may be deposed in the county where he or she is located when the notice is served.

C. NOTICE OF EXAMINATION; GENERAL REQUIREMENTS; SPECIAL NOTICE; NONSTENOGRAPHIC RECORDING; PRODUCTION OF DOCUMENTS AND THINGS; DEPOSITION OF ORGANIZATION; DEPOSITION BY TELEPHONE.

1. A party desiring to take the deposition of any person upon oral examination shall give notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and shall state 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 the person or the particular class or group to which the person belongs. The notice shall be served in order to allow the adverse party sufficient time, by the usual route of travel, to attend, and three (3) days for preparation, exclusive of the day of service of the notice.

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. The court may for cause shown enlarge or shorten the time for taking the deposition and for notice of taking the deposition.

3. The parties may stipulate in writing or the court may upon motion order that the testimony at a deposition be recorded by other than stenographic means. Unless good cause is shown to the contrary, such motions shall be freely granted. The stipulation or order shall designate the person before whom the deposition shall be taken, 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 deposition is recorded by other than stenographic means, the party taking the deposition shall upon request by any party or the witness furnish a copy of the deposition to the witness. The party taking the deposition may furnish either a stenographic copy of the deposition or a copy of the deposition as recorded by other than stenographic means. Any objections under subsection D of this section, any changes made by the witness, the signature of the witness identifying the deposition as his or her own or the statement of the officer that is required if the witness does not sign, as provided in subsection F of this section, and the certification of the officer required by subsection G of this section shall be set forth in a writing to accompany a deposition recorded by non-stenographic means.

4. The notice to a party deponent may be accompanied by a request made in compliance with Section 3234 of this title for the production of documents and tangible things at the taking of the deposition. The procedure of Section 3234 of this title shall apply to the request.

5. A party may in the notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, 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 that person will testify. Such designation of persons to testify and the subject of the testimony shall be delivered to the other party or parties prior to or at the commencement of the taking of the deposition of the organization. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This paragraph does not preclude taking a deposition by any other procedure authorized in the Discovery Code.

6. The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone or other remote electronic means. For the purposes of this section, subsection A of Section 3228, and paragraphs 1 of subsections A and B of Section 3237 of this title, a deposition taken by such means is taken in the county and state and at the place where the deponent is to answer questions.

D. 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 Section 2101 et seq. of this title except Section 2104. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation 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 method authorized by paragraph 3 of subsection C of this section.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any party, or to any other aspect of the proceedings shall be noted by the officer upon the record of the deposition; however, the examination shall proceed, with the testimony being taken subject to the objections.

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

E. MOTION TO TERMINATE OR LIMIT EXAMINATION.

1. Any objection to evidence during a deposition shall be stated concisely and in a non-argumentative and non-suggestive manner. A party may instruct a deponent not to answer only when necessary to preserve a privilege or work product protection, to enforce a limitation on evidence directed by the court, to present a motion under paragraph 2 of this subsection, or to move for a protective order under subsection C of Section 3226 of this title. If the court finds a person has engaged in conduct which has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney fees incurred by any parties as a result thereof.

2. 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 in which the action is pending or the court where the deposition is being taken may order the officer conducting the examination to cease taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in subsection C of Section 3226 of this title. If the order entered terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. 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 the order provided for in this section. The provisions of paragraph 3 of subsection A of Section 3237 of this title apply to the award of expenses incurred in relation to the motion.

F. REVIEW BY WITNESS; CHANGES; SIGNING. The deponent shall have the opportunity to review the transcript of the deposition unless such examination and reading are waived by the deponent and by the parties. After being notified by the officer that the transcript is available, the deponent shall have thirty (30) days in which to review it and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by paragraph 1 of subsection G of this section whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

G. CERTIFICATION AND FILING BY OFFICER; EXHIBITS; COPIES; NOTICE OF FILING.

1. The officer shall certify on any stenographic deposition:

a. the qualification of the officer to administer oaths, including the officer's certificate number,

b. that the witness was duly sworn by the officer,

c. that the deposition is a true record of the testimony given by the witness, and

d. that the officer is not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of the attorney or counsel, and is not financially interested in the action.

Except on order of the court or unless a deposition is attached to a motion response thereto, is needed for use in a trial or hearing, or the parties stipulate otherwise, depositions shall not be filed with the court clerk. The officer shall securely seal any stenographic deposition in an envelope endorsed with the title of the action and marked “Deposition of (here insert name of witness)” and send it to the attorney who arranged for the deposition, who shall store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

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 the deposition and may be inspected and copied by any party. If the person producing the materials desires to retain them he may:

a. Offer copies to be marked for identification and annexed to the deposition and to serve as originals if he affords to all parties fair opportunity to verify the copies by comparison with the originals, or

b. Offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to 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.

3. Each attorney who takes the deposition of a witness or of a party shall bear all expenses thereof, including the cost of transcription, and shall furnish upon request to the

adverse party or parties, free of charge, one copy of the transcribed deposition. If the party taking the deposition recorded it on videotape or by other non-stenographic means, that party shall also furnish upon request to the adverse party or parties, free of charge, one copy of the videotape or other recording of the deposition.

H. FAILURE TO ATTEND OR TO SERVE SUBPOENA; EXPENSES.

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

2. If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because he or she 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 that party and his or her attorney in attending, including reasonable attorney fees.

I. WITNESS FEES.

1. The attendance and travel fees for a witness shall be paid as provided by law.

2. A party deponent must attend the taking of a deposition without the payment or tender of attendance or travel fees.

J. TAXING OF COSTS OF DEPOSITIONS. The cost of transcription of a deposition, as verified by the statement of the certified court reporter, the fees of the process server for serving the notice to take depositions and fees of witnesses shall each constitute an item of costs to be taxed in the case in the manner provided by law. The court may upon motion of a party re-tax the costs if the court finds the deposition was unauthorized by statute or unnecessary for protection of the interest of the party taking the deposition.

Section 3231. Depositions upon Written Questions.

A. SERVING QUESTIONS; NOTICE. After commencement of the action, any party to the action may take the testimony of any person, including an opposing party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of a subpoena. The deposition of a person confined in prison 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 other 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 paragraph 6 of subsection C of Section 3230 of this title.

Within thirty (30) days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within ten (10) days after being served with cross questions, a party may serve redirect questions upon all other parties. Within ten (10) days after being served with redirect questions, a party may serve re-cross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

B. 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. The officer shall proceed promptly, in the manner provided by subsections D, F and G of Section 3230 of this title, to take the testimony of the witness in response to the questions and to prepare, certify and file or mail the deposition as provided in subsection G of Section 3230 of this title, attaching thereto the copy of the notice and the questions received by him.

C. NOTICE OF FILING. When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

D. COSTS OF TRANSCRIPTION OF DEPOSITION. Cost of the transcription, fees of the sheriff and witness fees shall be taxed as provided in subsection J of Section 3230 of this title.

Section 3232. Use of Depositions in Court Proceedings.

A. 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 Evidence Code applied as though the witness were then present and testifying, may be used against any party who was present or who was 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, or for any other purpose permitted by the Evidence Code;

2. The deposition of a party or of anyone who at the time of taking the deposition was an officer, director or managing agent, or a person designated under paragraph 6 of subsection C of Section 3230 or subsection A of Section 3231 of this title to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used for any purpose;

3. The deposition of a witness, whether or not a party may be used for any purpose if the court finds:

a. That the witness is dead, or

b. That the witness does not reside in the county where the action or proceeding is pending or is sent for trial by a change of venue or the witness is absent therefrom, 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. That the witness is an expert witness, who for purposes of this section is a person educated in a special art or profession or a person possessing special or peculiar knowledge acquired from practical experience, or

f. 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. Nothing in this paragraph shall be construed to limit the authority of the appropriate office to issue a subpoena to compel an expert witness to appear in the same manner as any other witness;

4. If only part of a deposition is offered in evidence by a party, an adverse party may require the introduction of 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 Sections 1081, 1082, 1083 or 229 of this title does not affect the right to use depositions previously taken. When an action has been brought in the Choctaw Nation of Oklahoma or in any court of the United States or of any other state 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 therefor.

A deposition previously taken may also be used as permitted by the Evidence Code.

B. OBJECTIONS TO ADMISSIBILITY. Subject to the provisions of subsection B of Section 3228 of this title and paragraph 3 of subsection D of this section, 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.

C. FORM OF PRESENTATION. Except as otherwise directed by the court, a party offering deposition testimony pursuant to this section may offer it in stenographic or non-stenographic form, but, if in non-stenographic form, the party shall also provide the court with a transcript of the portions so offered.

D. 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 in the manner of the oral examination in the taking of 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 seasonable objection thereto is made at the taking of the deposition.

c. Objections to the form of written questions submitted under Section 3231 of this title are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions or within five (5) days after service of the last questions authorized.

4. AS TO COMPLETION AND RETURN OF DEPOSITION. Errors and irregularities:

a. in the manner in which the testimony is transcribed or recorded, or

b. in the manner in which the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Sections 3230 and 3231 of this title 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.

Section 3233. Interrogatories to Parties.

A. AVAILABILITY; PROCEDURES 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 that party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action or upon any other party with the summons and petition or after service of the summons and petition on that party.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable. The number of interrogatories to a party shall not exceed thirty in number. Interrogatories inquiring as to the names and locations of witnesses, or the existence, location and custodian of documents or physical evidence shall be construed as one interrogatory. All other interrogatories, including subdivisions of one numbered interrogatory, shall be construed as separate interrogatories. No further interrogatories will be served unless authorized by the court. If counsel for a party believes that more than thirty interrogatories are necessary, he shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional interrogatories. Counsel are expected to comply with this requirement in good faith. In the event a written stipulation cannot be agreed upon, the party seeking to submit such additional interrogatories shall file a motion with the court (1) showing that counsel have conferred in good faith but sincere attempts to resolve the issue have been unavailing, (2) showing reasons establishing good cause for their use, and (3) setting forth the proposed additional interrogatories. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within thirty (30) days after the service of the interrogatories, except that a defendant may serve answers or objections to interrogatories within forty-five (45) days after service of the summons and complaint upon that defendant. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties subject to Section 3229 of this title. All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown. The party submitting the interrogatories may move for an order under subsection A of Section 3237 of this title with respect to any objection to or other failure to answer an interrogatory.

B. SCOPE; USE AT TRIAL. Interrogatories may relate to any matters which can be inquired into under subsection B of Section 3226 of this title, and the answers may be used to the extent permitted by the Evidence Code as set forth in Sections 2101 et seq. of this title.

An interrogatory otherwise proper is not necessarily objectionable because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact. 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.

C. 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, including a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as 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 thereof. A specification shall be in sufficient detail to permit the party submitting the interrogatory to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

Section 3234. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes

A. 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, but not limited to, writings, drawings, graphs, charts, photographs, motion picture films, phonograph records, tape and video recordings, records and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form, or to inspect and copy, test or sample any tangible things which constitute or contain matters within the scope of subsection B of Section 3226 of this title 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 subsection B of Section 3226 of this title.

B. PROCEDURE. The request to produce or permit inspection or copying may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with the summons and petition or after service of the summons and petition upon that party. The number of requests to produce or permit inspection or copying shall not exceed thirty in number. The request shall set forth and describe with reasonable particularity the items to be inspected either by individual item or by category. The request shall specify a reasonable time, place and manner of making the inspection and performing the related acts. If counsel for a party believes that more than thirty requests to produce or permit inspection or copying are necessary, he or she shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional requests. Counsel are expected to comply with this requirement in good faith. In the event a written stipulation cannot be agreed upon, the party seeking to submit such additional requests for production or inspection shall file a motion with the court (1) showing that counsel have conferred in good faith but sincere attempts to resolve the issue have been unavailing, (2) showing reasons establishing good cause for their use, and (3) setting forth the proposed additional requests for production or inspection. The party, upon whom the request is served, shall serve a written response within thirty (30) days after the service of the request, except that a defendant may serve a response within forty-five (45) days after service of the summons and petition 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 shall 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 subsection A of Section 3237 of this title with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested. A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

C. PERSONS NOT PARTIES. A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Section 2004.1 of this title.

Section 3235. Physical and Mental Examination of Persons.

A. SCOPE WHEN ELEMENT OF CLAIM OR DEFENSE. When the physical, including the blood group, or mental condition of a party or of a person in custody or under the legal control of a party, is in controversy in any proceeding in which the person relies upon that condition as an element of his claim or defense, an adverse party may take a physical or mental examination of such person.

B. PROCEDURE WHEN ELEMENT OF CLAIM OR DEFENSE. The party desiring to take the physical or mental examination of another party or of a person in custody or control of another party within the scope of subsection A of this section shall serve his request upon the person to be examined and all other parties. The request shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made.

No request shall be served until thirty (30) days after service of summons and petition upon the defendant. The request shall set a time for the examination not less than five (5) days after service of the notice.

If the party or person in custody or control of the party who is to be examined objects to the physical or mental examination then he shall file a motion objecting to the examination and setting out the reasons why his mental or physical condition is not in controversy or such person may apply for a protective order under the provisions of subsection C of Section 3226 of this title. The burden of proof is upon the person objecting to the examination or requesting a protective order. The court may set the conditions for examination or refuse to permit such examination if the mental or physical condition is not in controversy. If the party or the person in custody or control of the party refuses to obey the court order to submit to a physical or mental examination the court may impose those sanctions provided for in paragraph 3 of subsection A and paragraph 2 of subsection B of Section 3237 of this title.

If the motion is granted to prohibit the examination, the court may impose those sanctions provided for in paragraph 3 of subsection A of Section 3237 of this title upon the party requesting the examination.

C. ORDER FOR EXAMINATION. When the physical, including the blood group, or mental condition of a party, or a person in the custody or under the legal control of a party, is in controversy but does not meet the conditions set forth in subsection A of this section, the court in which the action is pending may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for such examination the agent, employee or 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. The order shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made.

D. REPRESENTATIVE MAY BE PRESENT. A representative of the person to be examined may be present at the examination.

E. REPORT OF EXAMINER.

1. If requested by the party or the person examined under this section, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examiner setting out his findings, including results of all tests made, diagnoses and conclusions, together with the 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 or person 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 enter an order against a party requiring delivery of a report on such terms as are just. If an examiner fails or refuses to make a report the court may exclude his testimony if offered at the trial.

2. If the physician or psychotherapist-patient privilege has not already been waived as provided in the Evidence Code requesting and obtaining a report of the examination made 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 physical or mental condition.

3. This subsection applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subsection does not preclude discovery of a report of an examiner or the taking of a deposition of the examiner in accordance with the provisions of any other section of the Discovery Code.

Section 3236. Requests for Admission.

A. 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 Section 3226 of this title 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 for admission 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 party with the summons and petition or after service of the summons and petition upon that party. The number of requests for admissions for each party is limited to thirty. No further requests for admission will be served unless authorized by the court. If counsel for a party believes that more than thirty requests for admissions are necessary, he shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional requests for admissions. Counsel are expected to comply with this requirement in good faith. In the event a written stipulation cannot be agreed upon, the party seeking to submit such additional requests for admissions shall file a motion with the court (1) showing that counsel have conferred in good faith but sincere attempts to resolve the issue have been

unavailing, (2) showing reasons establishing good cause for their use, and (3) setting forth the proposed additional requests.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty (30) days after service of the request, 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 attorney, but unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of forty-five (45) days after service of the summons and petition upon him.

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 subsection D of Section 3237 of this title, deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admission 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 section, 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 pretrial conference or at a designated time prior to trial. The provisions of paragraph 3 of subsection A of Section 3237 of this title apply to the award of expenses incurred in relation to the motion.

B. EFFECT OF ADMISSION. Any matter admitted under this section is conclusively established unless the court on motion permits withdrawal or amendment of the admission. The court may permit withdrawal or amendment of an admission when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits.

C. SCOPE OF ADMISSIONS. Any admission made by a party under this section 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.

Section 3237. Failure to Make or Cooperate in Discovery; Sanctions.

A. 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 Section 3230 or 3231 of this title, or a corporation or other entity fails to make a designation under paragraph 6 of subsection C of Section 3230 or subsection A of Section 3231 of this title, or a party fails to answer an interrogatory submitted under Section 3233 of this title, or if a party, in response to a request for inspection and copying submitted under Section 3234 of this title, fails to respond that the inspection or copying will be permitted as requested or fails to permit the inspection or copying as requested, or if a party or witness objects to the inspection or copying of any materials designated in a subpoena issued pursuant to subsection A of Section 2004.1 of this title, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection and copying in accordance with the request or subpoena. The motion must include a statement that the movant has in good faith conferred or attempted to confer either in person or by telephone with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order. When a claim of privilege or other protection from discovery is made in response to any request or subpoena for documents, and the court, in its discretion, determines that a privilege log is necessary in order to determine the validity of the claim, the court shall order the party claiming the privilege to prepare and serve a privilege log upon the terms and conditions deemed appropriate by the court. The privilege log shall be served upon all other parties. Unless otherwise ordered by the court, the privilege log shall include, as to each document for which a claim of privilege or other protection from discovery has been made, the following:

a. the author or authors,

b. the recipient or recipients,

c. its origination date,

d. its length,

e. the nature of the document or its intended purpose, and

f. the basis for the objection.

The court may conduct an in camera review of the documents for which the privilege or other protection from discovery is claimed. 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 subsection C of Section 3226 of this title.

2. EVASIVE OR INCOMPLETE ANSWER. For purposes of this subsection, 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 attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney 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 attorney 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 attorney 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.

B. FAILURE TO COMPLY WITH ORDER.

1. SANCTIONS BY COURT WHERE DEPOSITION IS TAKEN. If a deponent fails to be sworn or to answer a question after being directed to do so by the court in which the deposition is being taken, the failure may be considered a contempt of that court.

2. SANCTION BY COURT IN WHICH ACTION IS PENDING. If a party or an officer, director or managing agent of a party or a person designated under paragraph 6 of subsection C of Section 3230 or subsection A of Section 3231 of this title to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subsection A of this section or Section 3235 of this title, or if a party fails to obey an order entered under subsection F of Section 3226 of this title, the court in which the action is pending may make such orders in regard to the failure as are just. Such orders may include 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 designated 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 proceedings or any part thereof, or rendering a judgment by default against the disobedient party,

d. In lieu of or in addition to the orders provided for in subparagraphs a through c of this paragraph, 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 subsection A of Section 3235 of this title requiring him to produce another for examination, such orders as are listed in

subparagraphs a, b and c of this paragraph, unless the party failing to comply shows that he is unable to produce such person for examination,

f. If a person, not a party, fails to obey an order entered under subsection C of Section 3234 of this title, the court may treat the failure to obey the order as contempt of court.

In lieu of or in addition to the orders provided for in this paragraph, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney 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.

C. EXPENSES ON EXAMINATION OF PROPERTY. The reasonable expense of making the property available under Section 3234 of this title shall be paid by the requesting party, and at the time of the taxing of costs in the case, the court may tax such expenses as costs, or it may apportion such expenses between the parties, or it may provide that they are an expense of the requesting party.

D. 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 Section 3236 of this title, and if the party requesting the admission thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney fees. The court shall make the order unless it finds that:

1. The request was held objectionable pursuant to subsection C of Section 3236 of this title; 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.

E. FAILURE OF PARTY TO ATTEND AT OWN DEPOSITION OR SERVE ANSWER 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 paragraph 6 of subsection C of Section 3230 or subsection A of Section 3231 of this title 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 Section 3233 of this title, after proper service of the interrogatories; or

3. To serve a written response to a request for inspection submitted under Section 3234 of this title, after proper service of the request; the court in which the action is pending on motion

may make such orders in regard to the failure as are just, and among others it may take any action authorized under subparagraphs a, b and c of paragraph 2 of subsection B of this section. In lieu of or in addition to any order, the court shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney 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 as described in this subsection 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 subsection C of Section 3226 of this title.

F. FAILURE TO PARTICIPATE IN THE FRAMING OF A DISCOVERY PLAN. If a party or his attorney fails to participate in good faith in the framing of a discovery plan by agreement as is required by subsection F of Section 3226 of this title, the court may, after opportunity for hearing, require such party or his attorney to pay to any other party the reasonable expenses, including attorney fees, caused by the failure.

APPENDIX 1. COURT OF APPEALS RULES—APPELLATE RULES OF CIVIL PROCEDURE.

Rule 1.1 Title, Citation, Scope, Effective Date of Rules and Unsettled Procedure.

(a) Title and Citation. These rules shall be known as the Choctaw Court of Appeals Rules, and may be cited "Choc.Ct.App.R. [Rule Number]."

(b) Scope and Effective Date. These rules govern proceedings in the Choctaw Nation Court of Appeals. These rules also have application to certain proceedings in lower tribunals which are incident to appeal or review from decisions of such tribunals.

These rules shall govern all proceedings commenced in the Choctaw Nation Court of Appeals on and after May 1, 2010. In proceedings pending on the effective date, the parties shall comply with these rules to the extent possible.

(c) Unsettled Procedure. Any point of practice or procedure which stands unsettled by statutory or decisional law and is not specifically addressed by these rules will be resolved by the Court of Appeals as the orderly administration of legal process may require.

Rule 1.2 Effect of Failure to Comply with Rules and Orders.

Compliance with these rules is required. In case of failure to comply with any rule or order of the Court of Appeals, the Court of Appeals may continue or dismiss a cause, reverse or affirm the judgment appealed, render judgment, strike a filing, assess costs or take any other action is deems proper.

Rule 1.3 Computation of Time.

In computing any time period as prescribed by these rules the first day shall be excluded and the last day included to complete the period. When the last day of the period so computed falls on a day when the court clerk's office at which the act is to be performed or the instrument filed is not open during the full business day (until 4:00 P.M.) the period shall stand extended to include the next ensuing full business day.

Rule 1.4 Clerk for the Court of Appeals, Filings, Mailing, Copies, and Notice to Parties.

(a) **Clerk of the Court of Appeals**. All briefs, motions, and other papers are to be filed with the Clerk of the Court of Appeals.

The clerk shall not allow an original opinion to be removed from the Office of the Court Clerk. The clerk shall not allow an original motion, pleading, or record to be taken from the Office of the Clerk without an Order of the Court of Appeals or one of the Judges thereof.

(b) **Filings**.

(1) *Form*. The pages of all filing shall be numbered unless excused by a specific rule herein. The forms provided by Rule 1.301 shall be used when applicable.

(2) *Time for Filing*. Except for petitions in error, petitions for review, and petitions for certiorari mailed in conformance with Rule 1.4(c), all briefs, motions, petitions, and other papers shall be deemed filed on the date of receipt by the Clerk of the Court of Appeals during regular office hours, Monday through Friday between 8:00 A.M. and 4:30 P.M., tribal holidays excluded, at the Office of the Court Clerk.

(c) **Petition in Error, Petition for Review of an Order in a Worker's Compensation case, Petition for Certiorari, Costs and Mailing.** A petition in error, petition for review, or petition for certiorari may be filed either by delivery to the Clerk of the Court of Appeals, or by deposit with the United States Postal Service, or by delivery with a third party commercial carrier, and addressed to the Clerk of the Court of Appeals. See Rule 1.4(e). When a petition is delivered to the Clerk for filing it must be delivered at the Office of the Clerk of the Court of Appeals during regular office hours, Monday through Friday between 8:00 A.M. and 4:30 P.M., tribal holidays excluded.

When a petition is delivered to the clerk by the United States Postal Service, the date of mailing as shown by the postmark or other proof from the post office, such as the date stamped by the post office upon a certified mail receipt, will be deemed to be the date of filing the petition. When a petition is mailed through the United States Postal Service, a postmark date from a privately owned postage meter or commercial postage meter label will not suffice as proof of the date of mailing and, in the absence of other proof of date of mailing from the United States Postal Service, a document bearing only such a postmark will be deemed filed upon date of delivery to the clerk. The court may require the party or person who mailed a petition to the court to provide proof from the United States Postal Service showing the date of mailing.

When a petition is delivered to the Court of Appeals Clerk by a third-party commercial carrier, the petition must be received by the carrier from the party on or before the last day the petition may be timely filed with the clerk, and the petition must be received by the carrier for delivery to the Clerk of the Court of Appeals within three calendar days. The date the third-party commercial carrier receives the petition for delivery to the Clerk of the Court of Appeals shall be deemed the date of filing with the clerk when the third-party commercial carrier provides documentation with delivery to the clerk showing the date the petition was received by the carrier. If the third-party commercial carrier does not provide the date the document was received by the carrier, the court will require the person who sent the petition to submit a notarized statement or declaration in compliance with 12 C.N.S. § 426 setting out the details of the filing and stating that the filing took place on a particular date within the permitted time. Documentation of the date a petition is received by a third-party commercial carrier shall be by a document showing the actual date of receipt, and the date of receipt must be affixed or printed on the document by the third-party commercial carrier. A date of receipt on a document that may be affixed or printed thereon by anyone other than a third-party commercial carrier shall not be used as documentation of date of delivery to the carrier for the purposes of Rule 1.4.

The date a petition is mailed or date of receipt by a third-party commercial carrier shall be deemed the date of its filing only when it is mailed or received by the third-party commercial carrier in accordance with this rule, and when it is properly addressed to the Clerk of the Court of Appeals and contains sufficient postage. Where a petition is mailed or delivered by third-party commercial carrier following the requirements of this rule, the petition shall not be deemed filed on the date of mailing or receipt by the commercial carrier unless the full amount of the required cost deposit for filing the petition, or properly executed pauper's affidavit, has also been mailed or received by the commercial carrier, conforming to the same requirements for mailing or receipt by the commercial carrier, or such cost deposit or affidavit is actually delivered to the Court Clerk within the time period for perfecting the appellate procedure. Choc.Ct.App.R. 1.23.

(d) Mailing by Prisoner.

A prisoner’s appeal is commenced on the date that he or she places the petition in error in the prison mailbox for mailing or otherwise delivers it to a prison official for mailing. Proof of the date of the placement of the petition in error in the prison mailbox shall be supplied by affidavit attached to the petition in error.

(e) Scope of Rule 1.4(c).

Rule 1.4(c) applies to petitions in error in appeals from the District Court; to petitions for certiorari, to petitions for certiorari to review certified interlocutory orders of the District Courts, and to rehearing petitions of the Court of Appeals.

(f) Copies.

The original shall be filed with the following number of copies.

1. Petition in Error - Four copies (Rule 1.23).

2. Response to Petition in Error, - Four copies (Rule 1.25).

3. Amended and Supplemental Petitions in Error - Four copies, (Rule 1.26).

4. Entry of Appearance - Two copies (Rule 1.5).

5. Motions in an appeal - Four copies (Rule 1.6).

6. Briefs in an appeal - Four copies (Rule 1.10).

7. Waiver of brief - Four copies (Rule 1.10).

8. Record on appeal from summary judgment, etc. - Four copies (Rule 1.36).

9. Rehearing before Court of Appeals - Four copies (Rule 1.13).

10. Petition to Review Certified Interlocutory Order - Four copies, (Rule 1.52).

15. Response to Petition to Review Certified Interlocutory Order -Four copies, (Rule 1.53).

16. Application to assume original jurisdiction - Four copies (Rule 1.191).

17. Responses and Briefs in an original action - Four copies (Rule 1.191).

18. Appendix in original action - One copy (Rule 1.191).

19. Corrections to filed instruments - Same number of copies as document corrected, (Rule 1.7).

(g) Notice to Parties.

(1) By Parties. Service of all documents filed with the Court of Appeals shall be made in the manner provided in 12 C.N.S. § 2005(B). Proof of service may be by a certificate of service endorsed on the filing. The court, a judge thereof, or a referee of the Court of Appeals may require other methods of service and proof of service.

No brief, motion, petition, application or suggestion will be considered by the Court of Appeals without proof of service as required herein, except where the court determines that notice is not required.

(2) By Clerk.

Orders and notices required to be mailed to parties will be mailed on the date shown by the clerk's file stamp unless otherwise indicated, and such date will serve as notice of the date of mailing. Notice by the clerk shall be made to attorney or party pro se at the address shown by the entry of appearance or notice of change of address. See Rule 1.5.

Whenever in any case filed in this court it shall be made to appear to the clerk of this court by the affidavit of an appellant or a petitioner, appellant's agent or attorney, that the appellee or the respondent has no attorney of record, or that appellee is beyond the limits of the tribe, or that appellee's residence is unknown, so that it is impossible or impracticable to serve citation upon appellee (or respondent) in the ordinary method provided by law, it shall be the duty of the clerk of this court, upon the appellant or the petitioner making provision for the payment of the expense thereof, to cause notice of the pendency of such cause to be published once each week for four weeks successively in some newspaper published either in the county in which the case was tried or by the Choctaw Nation of Oklahoma.

Rule 1.5 Appearance, Withdrawal, and Change of Address.

(a) **Entry of Appearance.** All parties to any proceeding in the Court of Appeals shall immediately, but no later than filing the first document in the Court of Appeals, file and Entry of Appearance on the forms set forth in Rule 1.301, by counsel or an unrepresented party representing him or herself. Copies shall be served on all other parties. Attorneys shall use the form prescribed by Rule 1.301 Form No. 1 and parties representing themselves shall use the form prescribed by Rule 1.301 Form No. 2. An original and two (2) copies of the Entry of Appearance shall be filed with the Clerk of the Court of Appeals.

All motions of counsel not licensed to practice in the Choctaw Nation to appear as counsel of record in a case before the Court of Appeals must comply with the requirements of 5 C.N.S., App. 1. The required entry of appearance of the associate attorney shall be filed with the motion.

(b) **Withdrawal of Counsel.** A motion to withdraw may be filed at any time. However, unless successor counsel enters an appearance, leave of the court must be obtained for withdrawal. The court will consider and may grant a motion to withdraw where there is no successor counsel only if the withdrawing attorney clearly states in the body of the motion the name and address of the party and that notice of the motion was given to the party.

(c) **Notice of Change of Address.** All attorneys and parties representing themselves shall give immediate notice to the Clerk of the Court of Appeals of a change of address, using the form prescribed by Rule 1.301 Form No. 3. The notice of change of address shall be served upon all parties. If an attorney or a party representing himself or herself files an entry of appearance, the Court will assume the correctness of the last address of record, as defined in section (d), or in the absence of such address change, the address stated in the entry of appearance until a notice of change of address is received.

(d) **Address of Record.** The address of record for any attorney or party appearing in a case pending before the Court of Appeals shall be the last address provided to the court. The attorney or the party representing him or herself must, in all cases pending before the court involving the attorney or party, file with the court and serve upon all counsel and parties representing themselves a notice of a change of address. An address change made pursuant to this rule shall apply to all cases pending before the Court of Appeals. The attorney or party representing him or herself has the duty of maintaining a current address with the court.

Rule 1.6 Motions.

(a) Motion and Response.

All motions shall contain a brief statement of relevant facts, the relief requested, and the applicable law. No separate brief in support of a motion will be accepted for filing. The motion and response shall be duplicated on letter-size 8-1/2" x 11" white paper, and an original and three copies shall be filed.

A response shall be filed within fifteen (15) days of filing of the following motions: (1) Motion to stay or suspend a judgment; (2) Motion to dismiss an appeal on jurisdictional grounds; (3) Motion for attorney's fees; and (4) Motion for judgment on supersedeas bond. No response to any other motion is necessary unless otherwise provided by Rule or Order of this Court.

Where the facts relied upon are not of record in the Court of Appeals, the motion or response shall be supported by affidavit.

When the Court deems appropriate it may deny a motion or application without a response from opposing counsel.

(b) **Motion to Extend Time**.

Motions for extension of time are not favored and are not routinely granted. If the requirements of filing are met and specific good cause is shown, one extension of no more than twenty (20) days may be granted to file a brief or response to a petition. One extension of no more than thirty (30) days may be granted to complete a record for an appeal. Granting additional time rests in the sound discretion of the Court. Rule 1.13 governs an extension of time to file a petition for rehearing.

Briefing time is automatically suspended during pendency of a motion to dismiss an appeal. A motion to dismiss does not extend time for completing the record for appeal. Settlement Conferences or negotiations do not extend any time limits.

A motion to extend time must:

1. Be filed prior to the terminal date.
2. Be mailed to opposing counsel and no oral or letter requests will be considered.
3. Include the following information:

    (a) The due date which the applicant wishes to extend.

    (b) The specific reason why with due diligence it is impossible to file timely. Press of business or the equivalent is not good cause. A general statement that the motion is not for delay or that the cause is complex will not suffice. Motions for time to complete a record on appeal must clearly state the dates on which the designation was filed, the designation was delivered to the court reporter, and costs for the transcripts were paid to the court reporter. See Rule 1.34(g).

(c) The amount of time requested. The request should be limited to the minimum time necessary to overcome the cause for delay.

(d) Whether there have been prior delays or extensions granted during the course of appeal.

(c) **Motion to Dismiss an Appeal**.

(1) Grounds for Dismissal.

The court may dismiss an appeal, counter-appeal or cross appeal either on its own motion or on the motion of the parties at any stage of the appellate process. An appeal may be dismissed because of untimeliness of the appeal, absence of an appealable order, mootness, waiver, abandonment or acquiescence in the judgment, failure to comply with these rules or order of the court, or other grounds deemed appropriate by the court. An alleged absence of substantive merit will not be regarded by the court as grounds for dismissal on motion but may be raised in the brief of a party for consideration at the decisional stage.

A party bringing an appeal, counter-appeal or cross-appeal may move for dismissal of that appeal at any time prior to the filing of a decision. No grounds need be stated in a motion for a voluntary dismissal.

Any party may seek dismissal of an appeal by motion filed during the preliminary stages of the appellate process or by request for dismissal included in the answer brief. Where a request for dismissal has been included in the answer brief, it will be addressed by the court at the decisional stage; if the court omits a discussion of such a request for a dismissal, it will be deemed denied. A motion alleging that the appeal is frivolous, that the trial court's decision was free from error, or any other argument requiring an analysis of the substantive merit of the case will not be considered in advance of the decisional stage of the appeal.

(2) Response to Motion.

Within fifteen (15) days of the filing of a motion to dismiss, a response shall be filed. The argument and authorities in support of the response shall be included therein, and no separate brief may be tendered for filing. If a request for dismissal is included in the answer brief, appellant's responsive arguments shall be included in the reply brief. If no response to the motion to dismiss is filed, the court will consider the matter on the movant's paperwork alone.

Rule 1.7. Corrections of Filed Documents.

If after filing any paper in the Court of Appeals, a party discovers that errors were made, the party may file and serve the required number of copies of "Corrections to (name of filing)", listing the corrections. No document may be altered after filing; pages may not be otherwise

inserted and no interlineations, additions or deletions may be made. No document may be substituted for another once filed. The number of copies filed is the same as the number of copies of the original document being corrected.

Rule 1.8. Communications with Court.

Communications concerning any matter connected with the issues presented on appeal of any proceeding pending in or cause appealed to this court shall be only by written motion, petition, application or suggestion filed in the office of the clerk, a copy of which shall be served upon all opposing counsel.

Rule 1.9. Oral Argument.

Oral argument before the Court of Appeals is not a matter of right. A party desiring to present oral argument shall file a motion for oral argument, setting forth the exceptional reason that oral argument is necessary and the issues sought to be presented. The motion shall not exceed two (2) pages, and shall be filed by separate motion under the style and number of the cause in this court. If no motion is filed, the cause will stand for submission on the briefs unless the Court of Appeals directs otherwise. No motion shall be argued orally unless by direction of the court.

In the event oral argument is allowed, the court will allot such time as it may deem sufficient for oral argument. Not more than two (2) attorneys will be permitted to speak on each side. An attorney appearing amicus curiae will be heard only by leave of court.

Rule 1.10. Briefs.

(a.) Time to File Briefs, Copies, Waiver of Brief, Filing in the Trial Court, and Dismissal for Failure to File.

(1) In All Appeals. In all appeals, except for those pursuant to Rule 1.36 and as otherwise provided by these Rules, the appellant, including any appellant on a co-appeal, shall file a Brief-in-chief in this court within sixty (60) days from the date the Notice of Completion of Record is filed in the Court of Appeals. The appellee shall file an Answer Brief within forty (40) days after the filing of the Brief-in-chief by the appellant. The appellant may file a Reply Brief within twenty (20) days after the filing of the Answer Brief by the appellee.

(2) Original Jurisdiction Proceedings. The requirements for the time to file briefs in original jurisdiction proceedings are governed by Rule 1.191.

(3) Filing Appellate Brief in Lower Tribunal. One copy of each brief on appeal, or waiver of right to file brief, shall be filed with the clerk of the trial court or other lower tribunal within five (5) days of its filing in this court.

(4) Briefs in Appeals From Summary Judgments and Certain Dismissals. The requirements for briefs in an appeal from summary judgments and certain dismissals are governed by Rule 1.36.

(5) Filing Waiver. In any proceeding before the Court of Appeals, whether original jurisdiction or appellate, any party who chooses not to file an Answer or Reply Brief shall file a "Waiver of Right To File Brief" within the time allowed for filing the brief. An original and 3 copies of the waiver shall be filed.

(6) Copies. One original and fourteen copies of the brief shall be filed for every brief filed in any appeal.

(7) Dismissal for Failure to File. An appeal from the district court or other tribunal may be dismissed by this court when appellant has failed to timely file the Brief-in-chief and has failed to timely respond to this court's order to file the required brief. The court may dismiss an appeal without notice when six months have transpired since the filing of the Notice of Completion of Record and no Brief-in-chief has been filed and where no extension of time for the Brief-in-chief has been granted.

(b.) **Briefs in Multiple Appeals.** An appellee's Answer Brief shall be combined with the Brief-in-chief on any counter or cross-appeal filed by the appellee, and such combined brief shall be filed within forty (40) days after the filing of the Brief-in-chief of the appellant. The Brief-in- chief on any other counter or cross-appeal shall be filed within forty (40) days after the filing of the Brief-in-chief of the appellant.

An appellant shall combine a Reply Brief, if any is filed, with an Answer Brief to a Brief-in- chief on a counter or cross-appeal against the appellant, and such combined brief shall be filed within thirty (30) days after the filing of the Brief-in-chief on the counter or cross-appeal. Any other party against whom a counter or cross-appeal has been filed shall file an Answer Brief within thirty (30) days after the filing of the Brief-in-chief on such counter or cross-appeal.

A counter or cross-appellant may file a Reply Brief to the Answer Brief on the counter or cross-appeal within twenty (20) days after the filing of the Answer Brief on the counter or cross- appeal.

(c.) **Briefs in Specific Appeals.**

(1) *Juvenile Appeals.* In an appeal from the District Court to the Court of Appeals and involving a judgment or order issued pursuant to Title 10 or Title 10A of the Choctaw Nation Statutes in paternity proceedings, or proceedings pursuant to the Children's Code, or proceedings pursuant to the Juvenile Code, or Adoption Code proceedings, (sometimes referred to as a "juvenile appeal"), appellant's Brief-in-chief shall be filed within twenty (20) days after the clerk of the District Court notifies all parties that the record is complete and such notice has been filed with the Clerk of the Court of Appeals. Appellee's Answer Brief shall be filed within fifteen (15) days after the brief in chief is filed. Appellant's Reply Brief may be filed within ten (10) days after the answer brief is filed.

Although, strictly speaking, not all of the proceedings listed here under the collective label of "juvenile appeals" are properly includable under that rubric, we group them together, as a matter of convenience, solely for the purpose of applying to them the same rules. See also Ct.App.R. 1.23(d), 1.28(b)(3) & (k), and 1.34(e).

(d.) **Extension or Reduction of Briefing Time.** Briefing time may be extended or reduced by direction of this court. A motion to extend briefing time is governed by Rule 1.6.

(e.) **Suspension of Time to File Brief While Motion to Dismiss Pending.** When a motion to dismiss appeal is filed, the time prescribed for briefing shall remain suspended and shall not recommence to run until disposition of the motion is effected by this court.

Rule 1.11. Form and Content of Briefs.

(a.) **Type and Margins.** All briefs shall be presented on paper measuring eight and one-half inches in width by eleven inches (8 ½" x 11") in length. All briefs shall be printed or typed in clear type not less than 12-point, with single spaced lines of quoted matter and double spaced lines of unquoted matter. The margins of the printed page shall be 1¼ inches on the left side and one (1) inch on the other three sides. The pagination shall appear at the bottom of the page.

(b.) **Size.** A brief-in-chief, answer brief, or reply brief which is not combined with another brief shall not exceed thirty (30) pages. Where these rules require the filing of a combined brief by a party to a counter or cross-appeal, the combined brief shall not exceed forty (40) pages. Page limitations herein exclude only the cover, index, appendix, signature line and accompanying information identifying attorneys and parties, and the certificate of service.

No brief which exceeds the page limitations of this rule shall be accepted for filing by the clerk. An application to file a brief exceeding the page limitations prescribed herein may be made at least ten (10) days before a brief is due to be filed. Such an application should not be filed as a matter of course and will not be granted absent a showing of good cause justifying departure from the limitations of this rule.

The size of briefs in original jurisdiction proceedings is governed by Rule 1.191.

(c.) **Cover.**

(1) *All Briefs.* All covers of briefs shall be typed on cover stock of at least 96# weight. Briefs shall be securely bound and fastened along the left side with spiral or plastic finger-spine binding and shall be bound so as to be flat upon opening.

(2) *Appeals.* Covers of briefs in appeals shall contain the docket number in this court, the style of the case, the court or forum from which the appeal is taken, and the name of the trial judge, the name and address of the attorneys appearing for the party filing the brief, and the nature of the action,--ejectment, foreclosure, mandamus, as the case may be.

(3) *Original Jurisdiction Proceedings.* Covers of briefs in original jurisdiction proceedings shall comply with Rule 1.11(c)(1) and shall contain the docket number in this court, the title of the case, the court, forum, official or party, to which a writ is sought, the name and address of the attorney, or attorneys, appearing for the party filing the brief, and the nature of the action,--mandamus, quo warranto, habeas corpus, prohibition, as the case may be.

(d.) **Index.** A subject index shall be attached to the front of every brief. The index shall contain a concise statement or classification of the questions discussed; and each question or principle of law for which contention is made shall be numbered separately and clearly stated, and the cases, alphabetically arranged, text books and statutes with reference to the pages in the brief where they are cited must be set forth under each proposition respectively. The page or pages of the brief on which each separate classification is discussed must be indicated.

(e.) **Summary of the Record.**

(1) *Appellate Briefs.* The brief of the moving party shall contain a Summary of the Record, setting forth the material parts of the pleadings, proceedings, facts and documents upon which the party relies, together with such other statements from the record as are necessary to a full understanding of the questions presented to this court for decision. Facts stated in the Summary of the Record must be supported by citation to the record where such facts occur. If the answering party shall contend that such Summary of the Record is incorrect or incomplete, that party's brief shall contain a Summary of the Record correcting any such inaccuracies with citation to the record.

Where a party complains of the admission or rejection of testimony, that party shall set out the testimony to the admission or rejection of which the party complains, stating specifically the objections thereto. Where a party complains of an instruction given or refused, the party shall cite to the place in the record on appeal where said instruction may be found, together with the objection thereto.

When a party desires to set out instructions or requested instructions, or if it is necessary to set out admitted or rejected testimony, the party may set forth such material in either the Summary of the Record in the brief or in an appendix to the brief as described in Rule 1.11(i). A party need not include in the Summary of the Record all of the evidence in support of a claim that the record does not show or tend to show a certain fact, but when such a question is presented, the adverse party shall include in that party's brief or appendix so much of the evidence claimed to have had that effect.

The Summary of the Record need include only a general statement of the substance of those parts of the record over which there is no controversy and which are not required to be shown in detail in order to present the issues to this court, and such parts of the record as are purely formal and immaterial to the consideration of any issue presented to this court may be omitted therefrom.

(2) *Original Jurisdiction Proceedings.* The brief in support of the petition shall contain a Summary of the Record, setting forth the material facts. If a response is ordered and the

answering party shall contend that such Summary of the Record is incorrect or incomplete, that party's response shall contain a Summary of the Record correcting any such inaccuracies.

(f.) **Separate Propositions.** The main contentions of the parties must be set forth in separate propositions. The argument and authorities in support of each proposition must follow the statement of the proposition. Briefs in every proceeding, whether appellate or original jurisdiction, shall comply with Rule 1.11(f).

(g.) **Signature of Counsel.** The brief must be signed by the counsel of record. The name, Choctaw Bar Association number, address, and telephone number of the counsel of record shall also be shown. Briefs in every proceeding, whether appellate or original jurisdiction, shall comply with Rule 1.11(g).

(h.) **Certificate of Service.** The brief must contain a Certificate of Service showing service of a copy of the brief upon other parties or their counsel. Briefs in every proceeding, whether appellate or original jurisdiction, shall comply with Rule 1.11(h).

(i.) **Appendix to Brief.**

(1) *Appeals.* An Appendix to a brief shall not be filed except as permitted by this Rule. An Appendix to a brief may be filed as an attachment to the brief or as a separate document. An Appendix to a brief on appeal may include only: (1) a copy of the decision from which the appeal is taken; (2) copies of authorities not contained in the National Reporter System; (3) copies of statutes or rules not promulgated in the Choctaw Nation; (4) attachments provided by Rule 1.11(e)(1) relating to complaints about admission or exclusion or insufficiency of evidence.

(2) *Original Jurisdiction Proceedings.* No exhibits or appendix are attached to briefs in an original jurisdiction action. An appendix in an original jurisdiction proceeding is governed by Rule 1.191.

(j.) **Citations to Record.**

(1) *Appeals.* Citations to a document in the record other than a transcript shall include the name of the document and the pages within the document to which reference is made (e.g., Petition at 17); and may include a description of the document. Citations to a trial transcript shall include the page number; (e.g., Tr.Vol.II at 3-4). Citations to a transcript other than a trial transcript shall refer also to the date and type of transcript. Quotations from the record must be accurate and in context, and reference the pages in the record where they appear.

(2) *Original Jurisdiction Proceedings.* Citations to a document shall be to the nature of the document and the page at which it appears in the Appendix; (e.g., Order of (date), App. at page (no.), or Affidavit of (person), App. at page (no.)).

(k.) **Authority.**

(1) *Appeals.* Issues raised in the Petition in Error but omitted from the brief may be deemed waived. Argument without supporting authority will not be considered.

(2) *Original Jurisdiction Proceedings.* Issues raised in the Application to Assume Original Jurisdiction and Petition for Writ, but omitted from the brief, may be deemed waived. Argument without supporting authority will not be considered.

(3) *Supplemental Briefs.* The Court of Appeals may request additional authorities or briefs from either or both parties within a time fixed by the court's order. The additional authorities and briefs shall be filed with the Clerk of the Court of Appeals and served upon counsel for all parties to the proceedings.

(l.) **Citation to Authority.** The citation of authorities shall be to the volume and page of the National Reporter System, if applicable, or to some selected case system, if practical. Where a decision cited in the brief is not included in the National Reporter System a copy may be included in an appendix to the brief. See Rules 1.11(i)(1) and 1.191(d). Citations to decisions of the United States Supreme Court shall be to the official reporter, the United States Reports, and may also include parallel citations to other reporters, or to some selected case system, if practical.

Rule 1.12. Brief of Amicus Curiae.

(a) Amicus Curiae Brief May Be Filed Either by the Consent of the Parties or by leave of the Chief Judge of the Court of Appeals.

(1) Appeal. A brief of an amicus curiae which is confined to the issues raised by the parties and which does not exceed twenty-five (25) pages may be filed during the briefing cycle of an appeal if it is accompanied by written consent of all the parties. If consent is denied by any of the parties, the procedure in subparagraph 1.12(b) shall be followed.

(2) Original Jurisdiction Proceedings. Amicus curiae may not appear in an original jurisdiction proceeding unless authorized by order of the Chief Judge. See Rule 1.191. The brief of the amicus curiae must comply with Rules 1.10, 1.11, and 1.191. Amicus curiae is not allowed to raise or put in issue any new fact in the original jurisdiction proceeding. A brief of an amicus curiae shall be confined to the issues raised by the parties. The brief of the amicus curiae may not have exhibits or appendix.

(b) Application to File Amicus Curiae Brief Without Consent by Parties.

(1) During Briefing Cycle of Appeal. The amicus curiae shall file a statement not to exceed five (5) pages which concisely discloses the nature and extent of the applicant's interest, states any facts or questions of law which may not be presented adequately by the litigants, and the relevancy of these facts or questions of law to the disposition of the cause. The amicus curiae shall mail a copy of the statement to the parties. If an objection is not filed within ten (10) days, consent shall be deemed to have been granted. If an objection is filed, the Court of Appeals shall review the statement and the objections to determine whether to allow the filing of the amicus brief.

(2) Original Jurisdiction Proceedings. The amicus curiae shall file a statement not to exceed five (5) pages which concisely discloses the nature and extent of the applicant's interest, and states questions of law which may not be presented adequately by the litigants, and the relevancy of these questions of law to the disposition of the cause. The amicus curiae shall mail a copy of the statement to the parties. Parties shall have ten days to object, unless the court orders otherwise. The Court of Appeals shall review the statement and any objections to determine whether to allow the filing of the amicus brief.

(c) Avoidance of Unnecessary Repetition.

Before completion of an amicus brief, counsel for an amicus curiae shall attempt to ascertain the arguments which will be made in the brief of any party whose positions the amicus is supporting in order to avoid any unnecessary repetition of argument.

(d) Assignment and Disposition of Cause Not to be Delayed by Filing Amicus Curiae Brief.

(1) Appeals. The assignment and disposition of a cause will not be delayed pending action on a motion for leave to file an amicus curiae brief or to await the filing of a brief amicus curiae. If the filing of an amicus curiae brief is allowed either by the consent of the parties or by the Court of Appeals, it must be filed within the briefing cycle set for the party supported, and in conformance with the applicable provisions of Rules 1.10 and 1.11. Extraordinary cause must be shown before an amicus curiae will be permitted to file a brief at any time other than during the normal briefing cycleNo reply brief of an amicus curiae may be filed.

(2) Original Jurisdiction Proceedings. The disposition of a cause will not be delayed pending action on a motion for leave to file an amicus curiae brief or to await the filing of a brief amicus curiae. The time to file an amicus brief shall be governed by order of the court in the proceeding. No reply brief of an amicus curiae will be received.

(e) Leave to File Response to Amicus Brief.

Leave may be sought by any party in the case to file a response to the amicus curiae brief.

(f) Oral Argument By Amicus Curiae.

Amicus curiae may be permitted to participate in the argument granted in the case by the Court of Appeals upon motion showing extraordinary cause.

Rule 1.13. Rehearing.

(a) Petition.

Applications for a rehearing and a brief in support thereof, unless otherwise ordered by the court, shall be made by petition to the court, signed by counsel, and filed with the

clerk within twenty (20) days from the date on which the opinion in the cause is filed. The mailbox rule, extended to various papers by the terms of Rule 1.4 (c) and 1.4(e), applies to rehearing petitions to the Court of Appeals. No oral argument on a petition for rehearing shall be allowed except upon order of the court. No petition for rehearing shall be filed or considered without proof of service.

(b) Application for Extension of Time to File Petition.

Applications for extension of time to file petitions for rehearing are not favored and are not routinely granted. If an application for an extension of time is filed, it must be filed within twenty days of the date the opinion is filed. No extension of time will be granted for more than twenty days from the original due date for the petition for rehearing. The application will be granted only if the court determines that *extraordinary cause* is shown in the application. No second extension of time will be granted. Press of business, that the application is not for delay, or that the issues are complex, are insufficient to show extraordinary cause. An oral application for an extension of time to file the petition for rehearing will not be considered.

(c) Copies and Size.

An original and ten (10) clearly legible copies of petitions for rehearing shall be filed. A petition and brief for rehearing shall not exceed fifteen pages.

(d) Response.

A response to a petition for rehearing need not be filed unless requested by an order of the court.

(e) Second Petition for Rehearing.

No motion or application for rehearing or review will be accepted for filing after the denial of a petition for rehearing.

(f) Rehearing When Original Jurisdiction Assumed.

A petition for rehearing may be filed in any cause where the court has assumed original jurisdiction by order or opinion and denied or granted relief.

(g) When No Rehearing May Be Filed.

No petition for rehearing may be addressed to:

1. An order denying an application to assume original jurisdiction;

2. An order denying a petition for certiorari to review a certified interlocutory order;

3. An order denying a motion to dismiss with prejudice to its re-argument; or

4. Any other pre-decisional order made in an original proceeding, on certiorari, in an appeal or in a disciplinary proceeding against a member of the bar.

Rule 1.14. Taxation of Costs and Motions for Appeal Related Attorney Fees.

(A.) **Costs.**

(1.) Costs must be sought by a separately filed and labeled motion in the appellate court prior to mandate. The clerk shall not tax as costs any expense unless the person claiming the same, prior to the issuance of a mandate in the cause, shall file with the clerk a verified statement of taxable cost items showing that person has paid the same.

(2.) Costs taxable by the Clerk of the Court of Appeals are limited to the following:

(a) In each case filed in the Court of Appeals and in each application seeking reinstatement to the Choctaw Nation Bar Association, and at the time of filing same, there shall be deposited with the Clerk as costs in said cause Two Hundred Dollars ($200.00) of which no rebate of any part thereof shall be made; provided, the Court of Appeals may prescribe by rules the procedure for affording access to that Court, without the deposit of costs, to those indigent persons who are deemed by it entitled thereto;

(b) The Court of Appeals shall, by rule, prescribe the procedure in bringing writs of certiorari to tribunals or administrative agencies of the Choctaw Nation, and the scope of review to be afforded on certiorari to that tribunal or administrative agency.

There shall be deposited with the Clerk of the Court of Appeals as costs for the filing of a petition for certiorari to the Court of Appeals One Hundred Dollars ($100.00) of which no rebate or refund of any part thereof may be made; provided, the Court of Appeals, by rule, may prescribe the procedure for affording access to the Court of Appeals, on certiorari and without deposit of costs, to those indigent persons who are deemed by it entitled thereto;

(c) The reasonable cost of copying and binding the record pursuant to Rule 1.36.

(d) Reasonable costs for transcripts which are a part of the record on appeal. These costs may include the fee for recording and transcribing the proceedings, and mileage if the trial judge requires the parties to bring their own court reporter. Any charges for mailing and delivery of copies, or for an additional electronic transcript, are not taxable.

(3.) No fee paid to the district court clerk is taxable in the appellate courts.

(B) Attorney's Fee.

A motion for an appeal related attorney's fee must be made by a separately filed and labeled motion in the appellate court prior to issuance of mandate, or in the applicant's brief on appeal in a separate portion that is specifically identified. The motion must state the statutory and decisional authority allowing the fee. See 12 C.N.S.§ 696.4(C). If the motion for an attorney's fee is included in the brief and the court does not address the motion in its opinion the party shall re-urge the request by separate motion prior to mandate. In an appeal governed by Rule 1.36 a motion for an appeal related attorney's fee must be made by a separately filed and labeled motion in the appellate court prior to issuance of mandate.

Rule 1.15. Stay and Supersedeas.

(a) Stay and Supersedeas in Appeals from Decisions of the District Court.

Stay of enforcement in the trial court of a decision on appeal, whether by stay or supersedeas, is governed by the applicable statutory law. See 12 C.N.S. § 990.3; 12 C.N.S. §§ 990.4; 12 C.N.S. § 993(B) and (C), 12 C.N.S. § 994(B). The trial court shall have continuing jurisdiction during the pendency of any post-trial motion and appeal to modify any order it has entered regarding security or other conditions in connection with a stay or supersedeas. 12 C.N.S. § 990.4(E).

The effectiveness of a judgment, decree, or final order, that is not governed by 12 C.N.S. § 990.3, 12 C.N.S. §§ 990.4, 12 C.N.S. § 994(B), or other applicable statute relevant to staying or superseding the judgment, shall stand suspended if a timely motion for new trial is filed, and the enforcement of such judgment shall be stayed until ten days after the trial court's disposition of the motion. Within the ten day interval a further stay of the judgment may be sought by motion in the trial court, and the time limit for filing such motion may be extended by the trial court for good cause shown.

The effectiveness of an interlocutory order appealable by right and which is not governed by 12 C.N.S. § 993(B) and (C), or other applicable statute relevant to staying the order, shall stand suspended for ten days after the order is filed. Within that ten day interval a further stay may be sought by motion filed in the trial court, and the time limit for filing such motion may be extended by the trial court for good cause shown.

(b) Stay of Enforcement of Decisions in All Other Proceedings.

Stay of enforcement of the decision of a lower tribunal in any proceeding other than an appeal from a final decision of a district court shall be governed by any applicable statutory law or rules governing that tribunal. Except where an applicable statute or rule provides otherwise, the lower tribunal may in its sound discretion stay enforcement of the decision which is the subject of proceedings in this court on terms which will protect the rights of the parties. No motion shall be filed in this court to stay the decision of the lower tribunal where such relief may be sought from the lower tribunal until application has first been presented to and ruled upon by the lower tribunal.

(c) Applications for Stay in Court of Appeals.

1. Emergency Applications or Motions.

Any application that requires the court to act in less than a week in order to effect the relief requested shall be accompanied by a certification by counsel stating why the application was not made earlier. Emergency applications for stay shall be plainly marked with the word "emergency" on the face of the motion and shall state the effective date of the order, judgment, or other action sought to be stayed. The Court of Appeals may require an expedited hearing. Emergency applications must comply with Rule 1.15(c)(2).

2. All Applications for Stay, Supersedeas, or Suspension.

No application for a stay, supersedeas, or suspension pending appeal will be considered unless the applicant addresses:

(a) The likelihood of success on appeal;

(b) The threat of irreparable harm to moving party if relief is not granted;

(c) The potential harm to the opposing party; and

(d) Any risk of harm to the public interest.

All applications for stay shall state that relief was first sought in the district court or other lower tribunal.

(d) Motions Relating to Supersedeas Bonds.

All motions relating to a supersedeas bond must have attached a certified copy of the supersedeas bond and include a citation to the place in the record where the original of the supersedeas bond may be located. Motions to modify the supersedeas bond must be first presented in the district court, subject to the Court of Appeal's review, and must explain the reason for the modification. All motions for judgment on the supersedeas bond must clearly state the specific dollar amount of the judgment. In any event, the judgment on the supersedeas bond may not exceed the penal sum represented by the bond. An appellee may request judgment on the supersedeas bond in its Brief-in-chief on appeal or after the opinion of the Court of Appeals is filed and prior to the time of the issuing of the mandate. No motion for judgment on the supersedeas bond will be entertained by the Court of Appeals unless filed with the clerk of the court prior to issuance of the mandate.

Rule 1.16. Mandate.

In every appeal or petition to review any order of the district court or other tribunal, a mandate will be issued to the lower court or tribunal on order of the Chief Judge upon conclusion of the

matter on appeal. The mandate may be issued seven (7) days after the filing of an order denying certiorari or rehearing in the Court of Appeals, or immediately upon expiration of time to file a petition for writ of certiorari or petition for rehearing, and disposition of any timely filed post-decisional motion. No mandate is issued upon conclusion of original actions, questions certified by federal courts, bar disciplinary matters, or original proceedings on initiative or referendum petitions.

If a party contemplates the filing of a petition for writ of certiorari in the United States Supreme Court, the party may file a motion to suspend the effectiveness of the mandate. The effectiveness of the mandate may be suspended upon order of this court until expiration of time to file the petition or notice of final disposition by the United States Supreme Court.

Rule 1.17. Reserved.

Rule 1.18. Reserved.

Rule 1.19. Reserved.

PART II. APPEALS FROM JUDGMENT OF FINAL ORDER OF THE DISTRICT COURT.

Rule 1.20. Definitions.

(a) Judgment. A judgment is the final determination of the rights of the parties in an action. 12 C.N.S. § 681. The term "judgment" is synonymous with a final order for the purpose of these rules. A judgment includes any decision appealable under the provisions of:

(1.) 12 C.N.S. §§ 952, 953 (general civil appeal);

(2.) matrimonial actions defined by Choctaw Nation Statutes;

(3.) pre-adoption minor relinquishment and termination of parental rights appeals;

(4.) adoption appeals;

(5.) paternity appeals;

(6.) deprived or allegedly deprived child and termination of parental rights appeals;

(7.) Juvenile Code appeals;

(8.) small claims appeals;

(9.) appeals in probate from final decree of distribution;

(10.) where a claim in a probate action raises issues that are separate from the probate issues, a decision on the claim is appealable as a final order under 12 C.N.S. § 681;

(11.) condemnation appeals;

(12.) Administrative Procedures Act or decisions by Choctaw Nation administrative agencies, department or boards that is appealable to the Court of Appeals;

(13.) 12 C.N.S. § 994 (judgment entered in multi-party/multi-claim cases); or

(14.) Any other statute now in force or hereafter enacted which finally determines the rights of the parties in the action. The term judgment excludes interlocutory orders appealable pursuant to 12 C.N.S. § 952 Subdiv. (b) (2) & (3); excludes an order allowing final account and granting a decree of distribution; and excludes an order adjudicating a right to condemn.

(b) **Final Order.** A final order is an order affecting a substantial right in an action, when the order effectively determines the action and prevents a judgment. A final order is also an order which affects a substantial right, made in a special proceeding or upon a summary application in an action after judgment. 12 C.N.S. § 953. The following constitute final orders:

(1.)an order denying a timely and proper motion for new trial (12 C.N.S. § 651);

(2.)an order modifying or refusing to modify a judgment;

(3.)an order refusing to vacate a judgment;

(4.)an order denying leave to intervene;

(5.)a post-judgment order which grants or denies attorney fees, costs or interest;

(6.)an order appealed terminating parental rights.

(c) **Trial Court.** "Trial court" and "district court" are synonymous terms.

Rule 1.21. Computation of Time for Commencement of Appeal.

(a) District Court Appeals.

An appeal from the district court may be commenced by filing a petition in error with the Clerk of the Court of Appeals within thirty days from the date the judgment, decree, or appealable order prepared in conformance with 12 C.N.S. § 696.3 was filed with the clerk of the district court. 12 C.N.S. § 990A. The date of filing of a judgment, decree or appealable

order with the clerk of the district court shall be presumed to be the date of the district court clerk's file stamp thereon.

If the appellant did not prepare the judgment, decree, or appealable order, and Section 696.2 of this title required a copy of the judgment, decree, or appealable order to be mailed to the appellant, and the court records do not reflect the mailing of a copy of the judgment, decree, or appealable order to the appellant within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or appealable order, the petition in error may be filed within thirty (30) days after the earliest date on which the court records show that a copy of the judgment, decree, or appealable order was mailed to the appellant. 12 O.S. 2001 § 990A.

For cross or multiple appeals Rule 1.27 is applicable. The interval allowed for filing a petition in error may not be extended by either the district court or the Court of Appeals.

The times to appeal final orders of tribunals other than the district court (for example, the Choctaw Nation Election Board) are governed by the specific statutory authority for such appeals, except when these Rules specifically authorize a different period.

(b) Proceedings to Review a Decision of the District Court in a Workers' Compensation Case.

An original proceeding in the Court of Appeals to review an order in a Workers' Compensation case shall be brought in the time and manner as set forth in Rule 1.100 through Rule 1.106 of the Rules of the Court of Appeals. The preparation of orders, decisions and awards and the taking of appeals in workers' compensation cases shall be governed by the provisions of Title 85 of the Choctaw Nation Statutes. Those provisions in 12 C.N.S. §§ 696.2, 696.3 do not apply to orders in Workers' Compensation cases. 12 C.N.S. § 696.2(E).

(c) Contempt Appeals and Juvenile Delinquency Appeals.

(1.) An appeal or habeas corpus proceeding to review a sentence imposed for contempt of court occurring in a civil action or proceeding or occurring in a criminal prosecution or in a habeas corpus case shall be brought in the Court of Appeals. A contempt appeal shall be considered timely brought for review if it was commenced in the Court of Appeals within the time limit and in the manner prescribed by these Rules or within one hundred and twenty (120) days from the time judgment and sentence was imposed.

(2.) An appeal or habeas corpus proceeding to review a trial court's decision in a proceeding for adjudication of juvenile delinquency or for certification of a juvenile to be prosecuted as an adult shall be brought in the Court of Appeals. A juvenile delinquency appeal shall be considered timely brought for review if it was commenced within one hundred and twenty (120) days from the time the decision was made.

Rule 1.22. Post-Trial Motions.

(a) Post-Trial Motion Defined.

A post-trial motion is a motion filed, or deemed filed, after a judgment or a final order.

(b) Interlocutory Orders.

The filing of a motion for new trial, reconsideration, re-examination, or to modify or vacate an interlocutory order appealable by right, shall not extend the time to appeal from the interlocutory order, except as allowed by Rule 1.22(f).

(c) Appeal Time and Post-Trial Motions Filed Not Later Than Ten Days after the Date of Judgment.

(1.)If a motion for new trial, or to correct, open, modify, vacate or reconsider the judgment (other than solely for a determination of an award of costs, interest, or attorney's fees) is filed by any party not later than ten (10) days after the judgment, decree or final order is filed with the court clerk (or, where taken under advisement, mailed (12 C.N.S. § 990.2(C)), the appeal time for any party to the action shall not begin to run until the motion shall have been disposed of. A motion for new trial filed after the announcement of the decision on all issues in the case but before the filing of the judgment or decree shall be deemed filed immediately after the filing of the judgment or decree. 12 C.N.S. § 653(C).

The right of a party to perfect an appeal from a judgment or final order is not conditioned upon the filing of a motion for new trial. 12 C.N.S. § 991(a). If a motion for new trial is filed and denied, the movant may not, on the appeal, raise allegations of error that were available at the time of the filing of the motion for new trial but were not therein asserted. 12 C.N.S. § 991(b).

Where the judgment, decree or final order was mailed because taken under advisement (12 C.N.S. § 990.2(C)), three days are added to the time to file in the district court the post-trial motion pursuant to 12 C.N.S. § 2006(D). The time to appeal from the disposition of the post-trial motion shall not be extended by any subsequent motion or plea for reconsideration.

(2.)An appeal may be commenced from both the underlying judgment, decree or final order and the order disposing of the post-trial motion, either by filing a single petition in error, or by filing separate petitions in error if both are filed within thirty (30) days of filing of the order disposing of the post-trial motion. Successive appeals from denials of successive post-trial motions shall not be allowed.

(3.)If the order disposing of the post-trial motion is a final order, such as denial of a timely motion for new trial then the time to appeal from that final order and underlying judgment shall be from the date of the filing of the final order in statutory form with the district court clerk, except when the matter is taken under advisement (see 12 C.N.S. §

990.2(C) as to matters taken under advisement), all as provided in 12 C.N.S. § 990.2(A). See 12 C.N.S. § 696.3.

(d) Attorneys Fees, Costs, or Interest.

A judgment or final order may provide for costs, attorney's fees, or interest, but it need not include them. 12 C.N.S. § 696.4. A motion for attorney's fees, costs, or statutory interest based upon a judgment or final order shall not delay the preparation and filing of the judgment, decree or final order. 12 C.N.S. § 696.4. The filing of a motion for costs, attorney's fees, or interest shall not delay or extend the running of time to appeal. 12 C.N.S. § 990.2. A party aggrieved by a judgment or appealable order granting or denying a post-trial motion for attorney's fees, costs or interest, may seek review of the judgment or appealable order by timely filing a petition in error, within the thirty (30) day time period allowed by 12 C.N.S. § 990A(A).

(e) Post-Trial Motions Filed More Than Ten Days After Date of Judgment.

A post-trial motion no matter how denominated filed later than ten (10) days after the judgment, decree or final order is filed with the court clerk (or, where taken under advisement, mailed, see 12 C.N.S. § 990.2(C)) shall not delay the running of the time to appeal the judgment. 12 C.N.S. § 990.2(B).

(f) Appeal from Order Disposing of Post-Trial Motion Filed More Than Ten Days After Date of Judgment.

The time to appeal from any decision which disposes of a post-trial motion seeking relief pursuant to 12 C.N.S. § 1031, or 12 C.N.S. § 1031.1 when the motion was filed later than ten (10) days after the judgment, decree or final order is filed with the court clerk may be extended by a timely motion for new trial, reconsideration, re-examination, rehearing, or to vacate or modify that decision.

Rule 1.23. Commencement of Appeal.

(a) **Commencement.** An appeal from a district court is commenced by:

(1.)filing a petition in error with four (4) copies with the Clerk of this Court within the time prescribed in Rule 1.21; and

(2.)Remitting to the Clerk of the Court of Appeals the cost deposit provided by statute, or if the appellant is an indigent, an affidavit in forma pauperis shall be filed concurrently with the petition in error. The affidavit shall be furnished by the Clerk of the Court of Appeals, upon request, and shall be in substantial compliance with the form prescribed by Rule 1.301 Form No. 4.

Commencement of an appeal from certain trial court orders must comply with Rule 1.36.

(b) **Timely Costs Mandatory.** A petition in error will not be filed until the entire cost deposit, or a properly executed pauper's affidavit, is received by the Clerk of the Court of Appeals. The cost deposit or pauper's affidavit must be received by the Clerk of the Court of Appeals within the same thirty-day period for filing the petition in error (12 C.N.S. § 990A(A)) for the tendered petition in error to be timely filed to commence an appeal. In an appeal brought by the Choctaw Nation, or by any officer or department thereof, a cost deposit shall not be paid with the filing of the petition in error.

(c) **Notice and Entry of Appearance.** A copy of the petition in error shall be filed in the trial court and mailed to each party to the appeal, or to the party's counsel of record within the time prescribed for filing the petition in error. The mailing of the copy of the petition in error shall constitute notice of appeal, and no further notice of the appeal is required. Parties served with process or entering a general appearance in the trial court constitute parties to the appeal. Appellant must file an entry of appearance. See Rule 1.5. See Rules 1.23 and 1.25 for filing the petition in error and response thereto.

(d) **Juvenile Appeals.** An appeal from the District Court to the Court of Appeals and involving a judgment or order issued in paternity proceedings, or Children's Code proceedings, or Juvenile Code proceedings, or Adoption Code proceedings, (sometimes referred to as a "juvenile appeal"), shall be commenced by filing with the Court of Appeals a petition in error with four (4) copies with the Clerk of this Court within the time prescribed in Rule 1.21 and remitting to the Clerk of the Court of Appeals the cost deposit as provided by law, or if the appellant is indigent, an affidavit in forma pauperis shall be filed concurrently with the petition in error.

In a juvenile appeal when the appellant is a minor represented by court-appointed counsel, that counsel may file, in lieu of remitting the cost deposit, an in forma pauperis affidavit stating that the minor is indigent to the best information and belief of counsel, and a certified copy of the order appointing counsel as the lawyer for the minor. The affidavit and copy of the order of appointment shall be filed with the minor's petition in error.

Rule 1.24. Reserved.

Rule 1.25. Petition in Error and Response to Petition in Error.

(a) Form of Petition in Error.

The form of the petition in error shall comply with Rule 1.301 Form No.5.

(b) Style of Petition in Error.

The style and the sequence of the parties in an appeal shall be exactly the same as the style and sequence in the judgment or order from which the appeal is taken. Designations such as "et al." shall not be used in the style. Each party shall be designated in the caption as they were in the trial court followed by a slash " / " behind the trial court designation. For example, Plaintiff/Appellant, Plaintiff/Appellee, Defendant/Appellant, Defendant/Appellee.

A party who is neither seeking relief on appeal, nor opposing another party's attempt to seek relief on appeal, has no appellate designation and remains listed in the style with the same designation as in the trial court. A party who seeks appellate relief but was not included in the caption of the trial court action shall be designated according to the appropriate appellate designation on appeal (e.g., appellant), without a trial court designation, and shall be last in sequence of the parties in the caption on appeal.

In appeals from juvenile proceedings including, but not limited to, adoption and paternity proceedings and proceedings under the juvenile code, the initials of the child's name shall be used rather than the child's name. For example, in an appeal involving a child, John Smith, the style is IN THE MATTER OF CHILD J.S.

(c) Response to Petition in Error, Entry of Appearance, and Notice.

Within twenty days after the petition in error is filed, appellee shall file a response to the petition in error with fourteen copies in the office of the Clerk of the Court of Appeals. The response shall comply with Rule 1.301, Form No. 6. Appellee shall file an entry of appearance with the response. See Rule 1.5. A copy of the response shall be filed in the trial court and mailed to each party of record or to that party's counsel of record. Failure to respond within the time provided without good cause may result in sanctions by the Court.

For Response to Petition to Review Certified Interlocutory Order see Rule 1.301, Form No. 8. For Response to Petition to Review Decision in ae Workers' Compensation case see Rule 1.301, Form No. 11.

(d) Cross and Counter Appeals, Response.

If a cross or counter appeal is taken, Rule 1.301 Form No.5. for a petition in error must be used. The style shall comply with Rule 1.25(b). See Rule 1.27 for multiple appeals.

If a counter or cross-petition in error is filed, the appellant shall file a response within twenty (20) days after the filing of the counter or cross-petition using Form No. 6.

Rule 1.26. Amended Petition in Error, Premature Petition in Error, and Supplemental Petition in Error.

(a) Time, Extent, and Form of Amended Petition in Error.

The petition in error may be amended at any time before brief-in-chief is filed, or thereafter by leave of court, to include any error or any issue presented to and resolved by the trial court which is supported by the record. If a party has filed a motion for new trial, errors either not alleged in that motion or not fairly comprised within the grounds alleged therein may not be asserted on appeal by such party. 12 C.N.S. § 991(b). An amendment to a petition in error may not add non-nominal parties appellee or appellant after expiration of the time for

commencing an appeal. The form of the petition in error set forth at Rule 1.301, Form No. 5, shall be used to amend a petition in error.

A party properly filing an amended petition in error may file the amended petition without payment of costs.

(b) Amendment Upon Filing of Brief-in-chief.

The petition in error will be deemed amended to include errors set forth in the propositions in the brief-in-chief, provided that in no event may the appeal be broader in scope than allowed by Rule 1.26(a). Error may not be raised for the first time in any reply brief.

(c) Premature Petition in Error and Supplemental Petition in Error.

(1.)If a petition in error is filed before the time prescribed in 12 C.N.S. § 990A(A), it is premature and shall be dismissed as premature. If the appeal is dismissed as premature the appellant may file a new petition in error within thirty (30) days after a notice of dismissal is mailed to the parties which states that the appeal was dismissed on the ground it was premature. A new petition in error filed within thirty (30) days filed after notice of a dismissal for prematurity must be accompanied by payment of costs. See Rule 1.23. The new petition in error must comply with Rule 1.301, Form No. 5.

(2.)When an appeal is dismissed as premature the new petition in error filed in accordance with Rule 1.26(c)(1) is timely to challenge appealable events that occurred in the trial court between the date the premature petition in error was filed in the Court of Appeals and the date the premature appeal was dismissed. The date of dismissal is the date of the Clerk's file-stamp affixed on the dismissal order.

(3.)In the event a premature petition in error is filed, and the premature appeal has not been dismissed by the Court, the appellant may file a supplemental petition in error at any time prior to the Court's dismissal of the appeal. The date of dismissal of an appeal is the date of the Clerk's file-stamp affixed on a dismissal order. The supplemental petition in error may be filed without payment of costs. The supplemental petition in error must comply with Rule 1.301, Form No. 5. The supplemental petition in error shall state when the time to appeal commenced and all other matters which should be included in a timely petition in error, including those occurring after the filing of the original petition in error. 12 O.S.Supp.1995 § 990A(F).

(4.)A supplemental petition in error filed in accordance with Rule 1.26(c)(3) is timely to challenge appealable events that occurred in the trial court on or after the date the premature petition in error was filed in the Court of Appeals. A supplemental petition in error cannot be filed after the Court has dismissed the appeal as premature.

(5.)The filing of an amended or supplemental petition in error shall not extend the time to file record, transcripts, or briefs, without leave of the Court on motion of a party.

(d) Post-trial Order for Attorney's Fees, Interest, or Costs.

An amended petition in error to challenge a post-trial order granting or denying costs, interest, or attorney's fees must be filed with this court within thirty (30) days of the date of the post-trial order challenged. The amended petition in error may be filed without payment of costs, subject to leave of court which will be granted or withdrawn subsequent to filing. An appellate court may order such an appeal to be re-docketed and given a different number upon payment of an accompanying cost deposit.

When a petition in error challenging a post-trial order granting or denying costs, interest, or attorney's fees is premature, a supplemental petition in error challenging that order may be filed within (30) days from the date of the post-trial order or at any time prior to the date of the Court of Appeals' order dismissing the premature petition, whichever is later. See Rule 1.26(c).

An amended petition in error challenging a post-judgment order granting or denying costs, interest, or attorney's fees may be filed in an appeal governed by Rule 1.36 as specified by that Rule.

(e) Copies.

An original and four copies shall be filed of amended or supplemental petitions in error.

Rule 1.27. Multiple Appeals.

(a) Cross-Appeal or Counter-Appeal.

If a petition in error has been timely filed to commence an appeal from an appealable decision, then a party aggrieved by the same decision may file a petition in error within forty (40) days of the date the judgment was filed with the district court clerk. Petitions in error which commence an appeal from the same appealable decision or from different appealable decisions in the same case shall so far as possible be filed under the same docket number, except when one of the appeals is brought pursuant to Rule 1.36. If more than one petition in error addressed to the same decision is filed the same day, the court shall determine which of these petitions in error is to be regarded as bringing the principal appeal and which constitutes a counter-appeal, a cross-appeal or some other form of appeal.

Only one cost deposit prescribed by statute shall be required in this court for multiple appeals from the same case filed under the same number. This cost deposit shall be paid by the party who first shall file a petition in error in this court. See Rule 1.36(k) and (l) for multiple appeals involving one or more appeals governed by Rule 1.36. Appeals from different appealable decisions in the same district court case, filed in a pending appeal, are subject to leave of court which will be granted or withdrawn subsequent to filing. An appellate court may order a later appeal to be re-docketed as a new cause upon payment of an accompanying cost deposit.

(b) Form of Petition in Error.

Where there is a cross-appeal or a counter-appeal the petition in error shall be headed the same as the original petition in error; it shall use the docket number assigned to the original appeal; it shall name the parties to the cross-appeal or the counter-appeal; and it shall state the date that the original petition in error was filed with the clerk of this court. The petition in error form required by Rule 1.25 shall be used for a cross-petition or a counter-petition.

(c) Single Record on Multiple Appeals from the Same Decision or Same Trial Court Case.

When multiple appeals are taken from the same decision or from different appealable decisions in the same case by petitions in error filed in this Court either under the same or different numbers the appeals may be consolidated and a single record on appeal shall be prepared by the clerk. The record shall contain in chronological order and without duplication all the matter either designated by all the parties or stipulated by them for inclusion or transcription. The record for an appeal governed by Rule 1.36 is provided by that Rule.

(d) Consolidated and Companion Appeals.

It shall be the duty of the parties to notify the court of prior or related appeals. Related appeals may be consolidated in cases where separate appeals have been taken from either the same judgment or order or different judgments or orders in the same case in the district court. If appeals are consolidated, one set of briefs will be filed under the surviving case number. A single record is prepared for consolidated appeals, unless one of the appeals is governed by Rule 1.36. If one or more of the related appeals are governed by Rule 1.36 the appellate court may consolidate the appeals. See Rule 1.36(k).

When related appeals are inappropriate for consolidation they may be treated as companion appeals by the appellate court if no delay in decision would result. Companion appeals each contain separate records, are briefed separately, and are assigned to the same court for decision.

The appellate court has the discretion sua sponte, or upon motion of a party, to consider any appeals including one or more appeals governed by Rule 1.36 as companion or consolidated appeals.

(e) Appeal from a Judgment Adjudicating Less Than All Claims and Parties.

When an appeal is taken from a judgment on fewer than all claims and all parties pursuant to 12 O.S.Supp.1995 § 994, cross-appeals and counter-appeals from the § 994 judgment may be filed with the same appellate case number and without the cost deposit. Appeals from appealable orders subsequent to the § 994 judgment shall be filed under a new case number and must be accompanied by the cost deposit. Subsequent appeals from the same trial court proceeding may be consolidated on motion of any party, or on the court's own motion. It shall be the duty of the parties to notify the Court of such related appeals.

(f) Joinder of Parties in Single Petition in Error.

Two or more parties may join in any appeal by filing a single petition in error. Each party joining in the appeal must be specifically named as an appellant in the style of the petition in error, i.e., designations such as "et al." shall not be used to designate parties to the appeal. The petition in error shall comply with Rule 1.25. A statement of the precise points of law to be urged by a joint petition in error shall be regarded as joint and several.

Rule 1.28. Record.

(a) **All Parties to an Appeal Must Designate a Record.** All parties to an appeal shall file either a designation of record or counter designation of record using Rule 1.301, Form 11.

(b) **Designation of Record.** Concurrently with or prior to filing a copy of the petition in error in the trial court, the party desiring to appeal shall mail to the other parties or their counsel and file in the trial court from which the appeal is to be taken, a designation of any pertinent instruments filed in the case and of proceedings and evidence adduced which are sought to be included in the record on appeal. An original and one copy of the designation of record shall be filed in the trial court. If there is designated for inclusion in the record any evidence or proceeding at a trial or hearing which was stenographically reported, an additional copy of the designation shall be given to the court reporter, and the cost of preparing the transcript shall be advanced forthwith by the designating party.

The designation of record shall be made using the form prescribed by Rule 1.301, Form No. 11. Pleadings and other papers filed with the district court clerk in the case shall be designated by either: 1. Circling the document on a copy of the court clerk's appearance docket. If this method is used the appearance docket shall be attached to the designation of record. or 2. Listing the specific pleadings or other papers on the face of the designation of record form. No designation of record which generally includes the entire trial court record shall be filed without order of the Chief Justice.

The record on appeal shall not include the following unless upon order of the trial court or appellate court, or unless the document is specifically drawn in issue by the appeal: subpoenas, summonses, certificates of service, returns and acceptances of service, and procedural motions or orders (e.g., continuances, extensions of time, etc.). Depositions filed but not offered or admitted into evidence must be excluded from the record on appeal. Materials which were not before the trial court at the time of the decision appealed are not properly part of the record on appeal without order of the trial court or the appellate court.

Appellant's designation of record form must contain the certification by the court reporter when a transcript is ordered. See 12 C.N.S. § 990A(G).

A copy of appellant's designation of record shall be filed in the Supreme Court at the time the petition in error is filed or at the time the designation of record is filed in the District Court, whichever occurs later. Nothing herein precludes the appellate court from ordering any

additional parts of the entire trial court record to be transmitted to the appellate court at any stage of the appeal.

(1.)*Designation of Record When the Record on Appeal Must Be Completed Earlier Than Six Months From the Date of Judgment*. When statute or court rule requires completion of the record earlier than six months from the date of judgment the appellant shall file the designation of record within such time as required by statute or rule specific for the appeal. When statute or rule does not specify the time to file the designation of record for such an appeal the designation shall be filed within such time so as to allow the filing of a counter designation and timely preparation of the record. Any party may seek appropriate relief in the trial court to require timely filing of designations of record and timely completion of the record.

(2.)*Juvenile Appeals*. In an appeal from a District Court to the Court of Appeals and involving a judgment or order issued pursuant to Title 10 of the Choctaw Nation Statutes in paternity proceedings, or Children's Code proceedings, or Juvenile Code proceedings, or Adoption Code proceedings, (sometimes referred to as a "juvenile appeal"), appellant's designation of record shall be filed in the trial court within ten days of the date of the order appealed. Appellee's counter designation shall be filed within ten days after the designation of record is filed.

(c) **Counter Designation of Record.** All appellees (including counter-appellees and cross-appellees) shall file a counter designation of record in the trial court. The counter designation of record shall be made using the form prescribed by Rule 1.301, Form No. 11. If an appellee does not order transcripts or record in addition to that designated by the appellant the appellee's designation of record shall so state on the counter designation of record form. An original and one copy of the counter designation of record shall be filed in the trial court. If additional portions of the proceedings and evidence are designated, an additional copy of the designation shall be given to the court reporter.

The appellee's (counter-appellee's, cross-appellee's) counter designation of record shall be filed in the trial court within 20 days after appellant's (counter-appellant's or cross- appellant's) designation of record is filed in the trial court. The times to file a counter designation of record in specific appeals are provided by Rule 1.28(b)(1), (2), and (3). A copy of the appellee's (counter-appellee's, cross-appellee's) counter designation of record shall be filed in the Court of Appeals at the time the response to the petition in error is filed or at the time the counter designation of record is filed in the District Court, whichever occurs later.

(d) **Cost of Transcribing Trial or Proceedings.** Each appellant (counter or cross-appellant) must timely advance the costs, including cost deposit for transcripts ordered by any party relating to the appeal of that appellant. The trial court may, after notice and prompt hearing for good cause shown, direct parties to pay costs for transcript preparation in another equitable manner, pending final allocation of costs at the termination of the appeal. Proceedings in the trial court regarding allocation of costs shall not delay the appellate proceedings.

(e) **Failure to Advance Costs Promptly.** If the party required to advance costs shall fail to do so within a reasonable time, the trial court shall so certify to this court. Failure to pay costs required by this Rule shall not be good cause for an extension of time to complete the record and shall be ground for dismissal of the appeal (counter-appeal or cross-appeal) or any other sanction the appellate court deems appropriate.

(f) **Error in Assessing Costs Reviewable.** Trial court's errors in assessing costs for transcribing designated portions of the record may be reviewed by the appellate court if challenged by any party. Trial court decisions in assessing costs for transcribing designated portions of the record may be challenged by an amended petition in error and subsequent brief in the appeal.

(g) **Designation of Record by Stipulation of Parties.** Instead of serving designations, the parties may designate the record on appeal by written stipulation filed in the trial court within 10 days after the petition in error is filed. This time limit may be extended by the trial court. Where portions of the evidence must be transcribed and exhibits incorporated, a copy of the stipulation must be given to the court reporter and the cost of transcribing advanced.

The parties may not stipulate to designate the entire trial court record. The parties may not stipulate to designate items prohibited by Rule 1.28(b), unless the trial court or appellate court has authorized by order their inclusion in the record on appeal.

(h) **Power of Court to Order Additional Record.** Nothing provided in this rule shall prevent the trial court or an appellate court from ordering that any undesignated portions of the record be transcribed and from assessing the cost thereof.

(i) **Transcript Designated and Furnishing Copy of Designation to Court Reporter.** Transcripts shall be ordered using the Designation of Record Form and a completed copy thereof shall be delivered to the court reporter and to every party when the designation of record is filed in the trial court. The transcripts and the particular trial or hearing exhibits necessary to a review of the issues briefed shall be clearly and separately designated on the form. "Transcripts" includes transcripts of videotape, audiotape or other magnetic media.

(j) **Penalties for Designating Excessive Portions of Transcript.** When this court determines on motion to tax costs made after the determination of the appeal but before mandate is issued that any party has designated for inclusion in the record on appeal unnecessary portions of the proceedings or evidence either at that party's expense or at the expense of another party, the costs of transcription attributable to the unnecessary portion shall be taxed against the designating party (or be ordered to be borne by such party).

(k) **Fees for Assembling Record and Cost of Transcribing Trial or Proceedings in a Juvenile Appeal.** In an appeal from a District Court to the Court of Appeals and involving a judgment or order issued in paternity proceedings, or Children’s Code proceedings, or Juvenile Code proceedings, or Adoption Code proceedings, (sometimes referred to as a "juvenile appeal"), the fee for preparing, assembling, indexing, and transmitting the record for appellate review shall be paid in the manner provided by law. After a petition in error is

filed the District Court retains jurisdiction to facilitate the completion of the record and allocate the costs of its preparation. Ct.App.R. 1.37(a). When parental rights are terminated the District Court retains jurisdiction to determine if a parent is indigent for the purpose of payment of the fee required by § 162(D) and payment for transcripts designated to be included in the record on appeal. Ct.App.R. 1.37(a); Ct.App.R. 1.28(d). Alleged error in a District Court's order adjudicating indigent status or in allocating the costs of transcripts may be challenged in the original appeal by filing in the Supreme Court an amended petition in error within thirty (30) days of the date of the District Court's order, or by filing in the original appeal in the Court of Appeals a motion within thirty (30) days of the date the District Court's order is filed in that court. Ct.App.R. 1.28(f) & 1.37(b).

Rule 1.29. Designation of Record where Reversal is sought Solely on Ground of Insufficiency of Evidence to Support Judgment.

If the party taking an appeal asserts as a ground for reversal that the evidence is insufficient to support the judgment, that party need not designate for transcription any of the evidence in the case, but instead may serve on the adverse party a statement specifying the material facts which allegedly were not proved. Within ten days after the receipt of such statement the opposing party shall file in the trial court, mail to the other parties in the case (or their counsel) and give to the court reporter a statement designating for transcription so much of the evidence as the opposing party relies upon to establish proof of the specified facts, at the cost of the appellant. If more evidence than necessary is designated for transcription, the trial court shall order the designated portions abbreviated or direct that the excess be transcribed at the cost of the designating party. The provisions of Rule 1.28(d), (e) and (f) shall apply to transcripts sought to be procured under this Rule. On failure of a party who did not appeal to designate for transcription, within the time limit provided herein, the evidence relied upon to establish the specified facts, appellant may move in this court for summary reversal of the decision sought to be reviewed.

Rule 1.30 Preparation of Narrative Statement of Trial or Proceedings in Lieu of Transcript.

If no stenographic report of the evidence or proceedings at a hearing or trial was made or if a transcript of the reporter's notes cannot be prepared or where the judgment involves an involuntary loss of liberty, personal freedom or incarceration and where the appealing party is an indigent, the party desiring to take the appeal under these rules (or any other party) may prepare a statement of the evidence or proceedings in the narrative form from the best available means including the party's recollection for use in lieu of a stenographic transcript.

Where no stenographic report was made, this statement shall be filed with the court clerk and submitted to the opposite parties within ten (10) days after the filing of the petition in error; where a transcript of the court reporter's notes cannot be prepared, this statement shall be filed with the court clerk and submitted to the opposite parties within twenty (20) days after the party desiring to appeal discovers that the reporter's notes are unavailable or cannot be transcribed. These time limits may be extended by the trial court for good cause shown. The statement that is filed shall contain a certificate that copies have been submitted to the opposite parties. The

narrative shall (1) be sworn to before an officer authorized by law to administer oaths (2) set forth that Rule 1.30 is relied on (3) inform the opposing party of the time and method for objections or amendments, and (4) advise the opposing party of the consequences of failure to object or move for proposed amendments. The opposite parties may object or propose amendments to the statement within ten (10) days after receipt. Thereupon, the statement, and any objections thereto, or proposed amendments shall be submitted, upon due and advance notice to all parties, to the trial judge for settlement and approval and as settled and approved shall be included by the clerk in the record on appeal. All narrative statements must be signed by the trial judge prior to submission to the Supreme Court, regardless of whether an objection or amendment was filed in the trial court.

Use of the narrative statement must be noted on the designation of record.

Rule 1.31. Preparation of Statement in Lieu of Record on Appeal.

When points of law which are to be presented on the appeal can be determined without an examination of trial court's record, the parties may within thirty (30) days after the filing of the petition in error, prepare and sign a statement of the case showing how the questions arose and were decided and setting forth as many of the facts as are essential to a decision on appeal. The statement with a copy of the trial court's decision attached shall be filed with the clerk and submitted to the trial court. The statement together with such additions as the trial court may consider necessary fully to present the questions to be urged, shall be approved by the trial judge or the judge's successor and shall be certified by the judge as the record on appeal. The designations of record by both parties must state that a statement in lieu of record on appeal is used for the appeal.

Rule 1.32. Correctness of Transcript and Amendment of Record.

(a) Controversy over Correctness of Transcript or Record.

Issues involving the correctness of the transcript or of other materials to be included in the record shall be resolved by the trial court, if the dispute should arise before the record is transmitted to this court. If the dispute should arise after transmission of the record, this court shall designate the mode of proceedings to resolve the issue.

(b) Correction of a Record Transmitted to Court of Appeals.

A record which has been transmitted to this court may be amended nunc pro tunc with leave of this court on application to the trial court. Notice of hearing the application shall be given to the opposite parties as the trial court may direct. After hearing the application, the trial court may order the record amended nunc pro tunc by adding any omitted instrument or by correcting any instrument contained in the transmitted record. The original application, notice, transcript of proceedings, if any were had, and the order amending the record, together with the original instruments ordered to be included, shall be listed and authenticated in a certificate of the clerk of the trial court and transmitted to the clerk of this

court for incorporation into the record in this court. If the trial court should refuse to amend the record, the application, notice, transcript of proceedings, if any were had, and the trial court's order shall be transmitted to this court in the same manner.

Rule 1.33. Form and Contents of Record.

(a) Duties of Clerk to Assemble Record.

After the designations of the record are made, the clerk shall promptly assemble in chronological sequence all of the instruments on file which have been designated for inclusion in the record on appeal and all orders made in the trial court with respect to the content of the transcript and assessment of cost. The instruments, numbered consecutively, indexed and bound, shall be certified under the seal of the clerk. All designations of record shall be included. A copy of the appearance docket shall be included in the record on appeal.

(b) Abbreviation of Record; Certified Copies of Instruments.

If the items of an account or the pages attached to the pleadings be voluminous, the trial court may order the record to be abbreviated by a narrative description of the omitted instrument, or by omitting such instrument entirely. The trial court may direct, for good cause shown, that certified copies be substituted either for original instruments (or their portions) or for trial exhibits.

(c) Duties of Court Reporter to File Transcripts and Assemble Exhibits, Copy of Transcript upon Payment, and Duty of Appellant to Monitor Preparation.

The original transcript indexed and certified as correct together with two (2) certified copies and the exhibits in the case if any shall be filed in the trial court by the court reporter. Transcripts shall be completed and filed in the trial court as soon as practicable after they have been ordered, and in any event within sufficient time to permit the court clerk to file the Notice of Completion of Record within six (6) months after the filing of the judgment, decree or order from which the appeal was taken.

The trial exhibits shall be indexed and incorporated into the transcript either by reference or physical attachment, as the court reporter may deem advisable. However, only two dimensional exhibits no larger than 8 1/2" x 14" may be transmitted to the Supreme Court with the record, except upon order of the Court.

If any party desires a copy of a transcript for his or her sole use such party shall procure it from the court reporter upon payment of cost.

If a transcript is sought to be included in the record on appeal, it shall be the responsibility of the trial court to expedite the preparation thereof by such orders, prospective or retrospective, to assure the earliest possible completion of the record. The appellant has the burden of monitoring the preparation of the appellate record and seeking relief from the trial court for its timely completion.

(d) Definition of Record on Appeal.

The record on appeal shall consist only of those portions of the "entire trial court record" properly designated by a party to the appeal or ordered by the appellate court. The "entire trial court record" shall consist of all papers and exhibits filed in the trial court, the reporter's notes and transcripts of proceedings, and the entries on the appearance docket in the office of the trial court clerk. A copy of the appearance docket shall be included in the record on appeal.

Only papers filed and exhibits presented to the trial court together with transcripts necessary to the appeal may be included in the record on appeal.

(e) Access to the Record by Parties or Counsel.

Until a uniform rule of procedure has been promulgated by this court, the parties shall have access to the transcript and to the bound instruments on file in the trial court on such terms as that court may impose.

Rule 1.34. time for Completion of Record.

(a) **Time to Make Record Ready for Transmission.** The record on appeal shall be ready for transmission to this court not later than six months from the date of the judgment or order appealed. When statute or specific rule requires completion of the record earlier than three months from the date of judgment that statute or rule shall be followed. See, e.g., 1.34(b), (c), (d), and (e). Appellant must monitor the preparation of the record and seek the appropriate relief when necessary for its timely preparation. See Rule 1.33(c), Rule 1.34(g). All transcripts shall be ordered and designations of record made in sufficient time that the entire record on appeal (including transcripts) may be completed and transmitted within the time limits required by statute or these rules.

(b) **Juvenile Appeals**. In an appeal from the District Court to the Court of Appeals and involving a judgment or order issued in paternity proceedings, or Children's Code proceedings, or Juvenile Code proceedings, or Adoption Code proceedings, (sometimes referred to as a "juvenile appeal"), the Notice of Completion of Record shall be filed in the Court of Appeals immediately upon completion of the record on appeal. In all juvenile appeals other than appeals from adoption orders, the record on appeal shall be completed for transmission no later than sixty (60) days from the date of the order or judgment appealed. In appeals pursuant to the Adoption Code the record on appeal shall be completed no later than thirty (30) days from the date the petition in error is filed in the Court of Appeals.

(c) **Extension of Date for Completion of Record.** The appealing party, whether an appellant, counter or cross-appellant, bears responsibility to ensure timely preparation of an adequate record to review the issues urged by that party. The appealing party must

timely order and pay for transcripts, designate record, monitor proper completion in the trial court, and request any extensions of time if necessary for the performance of duties of the court reporter or district court clerk.

To obtain an extension of time to file the Notice of Completion of Record in the Court of Appeals the appellant must file a motion for extension of time prior to the due date of the Notice of Completion of Record. A court reporter or court clerk may not file a motion for extension of time to file the Notice of Completion of Record.

The appellant's motion for extension of time must show good cause for the extension. Good cause for the delay in completing the transcripts or compiling the record shall be shown by attachment of an affidavit of the court reporter or court clerk, as applicable. No more than one thirty (30) day extension of time shall be granted to file a Notice of Completion of Record. The motion must comply with Rule 1.6.

(d) **Duties of Clerk on Completion of Record.** The clerk of the trial court shall upon completing the record for the appeal:

I. file with the Clerk of the Court of Appeals a Notice of Completion of Record (Rule 1.301, Form 12, with Index of Record attached) stating that the record on appeal has been completed for transmission, and the parties or their counsel have been notified and;

II. notify all parties or their counsel when the record on appeal has been completed and the Notice of Completion of Record has been filed with the Court of Appeals.

(e) **Duty of Clerk if Designations Do Not Require Proceedings or Evidence to Be Transcribed.** If the designations do not require any part of the proceedings or evidence to be transcribed, the clerk shall immediately file a Notice of Completion of Record with the Clerk of the Court of Appeals and notify the parties that the record on appeal has been completed, is ready for transmission to the court, and that a Notice of Completion of Record has been filed.

(f) **Record in Appeals From Summary Judgments and Dismissals.** In appeals from summary judgments and dismissals governed by Rule 1.36 the record is required to be filed with the petition in error and any supplement may be filed with the response to the petition in error, as provided therein.

Rule 1.35. Fees for Assembling Record and Transcribing Proceedings.

The fees which the clerk of the trial court shall be paid for preparing, filing and transmitting the record and the fees to which the court reporter shall be entitled for transcribing notes of testimony and proceedings and for copying any papers required by the trial court or this court to be copied shall be those which are now or subsequently may be provided by statute. The required fee for preparing and transmitting the record shall be paid by the party taking the appeal. The costs of transcribing proceedings are governed by Rule 1.28.

Rule 1.36. Accelerated Procedure for Summary Judgments and Certain Dismissals.

(a) Cases applied.

The accelerated procedure contained in Rule 1.36 will govern appeals from:

1. summary judgments in cases in which the motions were filed under District Court Rule 13; and

2. final orders in cases in which motions to dismiss for failure to state a claim or lack of jurisdiction (of a person or subject matter) under District Court Rule 4.

   In multi-party or multi-claim cases the summary judgment or dismissal order must either (1) dispose of all claims and all parties or (2) entirely dispose of at least one claim or one party and contain the express determination that there is no just reason for delay with the express direction by the trial judge that judgment be filed.

(b) Commencement of Appeal.

Appeals in these cases will be commenced by filing a petition in error with the certified copy of dismissal order or of summary judgment and, where applicable, a certified copy of the order denying new trial, with payment of costs or an affidavit in forma pauperis. The petition in error must comply with all Rules to the extent they are consistent with Rule 1.36. The record shall be filed at the same time as the petition in error. Rule 1.36(d).

(c) Record on Appeal.

The record on appeal will stand limited to:

(A) In appeals from summary judgment:

(1.)the memorialized order by which summary judgment was entered;

(2.)pleadings proper as defined by 12 O.S.1991 2007(A), (petition, answer, etc.);

(3.)applicable instruments on file, including the motion and response with supporting briefs and attached materials filed by the parties as required by District Court Rules 13(a) and 13(b);

(4.)any other item on file which, according to some recitation in the trial court's journal entry or in some other order, was considered in the decisional process;

(5.)any other order dismissing some but not all parties or claims;

(6.)any transcripts of proceedings on the motion(s);

(7.)any motions, along with supporting and responsive briefs, for new trial (re-examination) of the summary judgment process;

(8.)the appearance docket; and

(9.)a cover page and Index of the record prepared by the party.

(B) In appeals from final orders on motions to dismiss:

(1.) the memorialized order of dismissal;

(2.) pleadings proper as defined by 12 C.N.S. § 2007(A), (petition, answer, etc.);

(3.) the instruments upon which the dismissal is rested;

(4.) the motion(s) to dismiss and any supporting brief(s);

(5.) any responsive brief by the party asserting the claim;

(6.) any other item on file which, according to some recitation in the trial court's dismissal order or in some other order, was considered in its decision;

(7.) any other order dismissing some but not all parties or claims;

(8.) any transcripts of proceedings on the motion;

(9.) any motions, along with supporting and responsive briefs, for a new trial (re-examination) of the dismissal order;

(10.) the appearance docket;

(11.) a cover page and Index of the record prepared by the party.

(d) Record, Filing, Index, Copies, Transcripts, Costs, Supplement to Record, and Additional Copies on Certiorari.

The record shall be filed by appellant as a separate document, not attached to the petition in error. The record shall be titled "Record on Accelerated Appeal," and shall be preceded by a separate page containing signature of counsel (or pro se parties) and a certificate of service, followed by an "Index to Contents of Record." The index shall use numeric references which shall correspond to tabs for each of the documents or transcripts included in the record. The record shall consist of copies of instruments authorized by Rule 1.36(c), selected for inclusion by the appellant. To the front of the original and each of the copies of the record there shall be appended the court clerk's certificate identifying each of the included instruments as a true and correct copy of the original on file in the court clerk's office.

An original and four (4) copies of the record and certificate of the clerk shall be filed. One copy shall be served on every other party to the appeal unless waived, and any such waiver must be reflected on the certificate of service.

An appellant who is an inmate, is without a lawyer and unable to produce the record required by this subsection, may attach to the petition in error an affidavit that discloses his (or her) prisoner status and sets out a designation of record to be assembled for the appeal. When such affidavit is filed, the Clerk of the Court of Appeals shall order from the clerk of the trial the original record which is to be compiled in accordance with the inmate's designation in the text of his (or her) affidavit. If the appealing inmate's pauper's affidavit is on file in this court, the record shall be prepared and transmitted to this court - without payment of costs - within thirty (30) days of the date the inmate's affidavit (with designation of record) is transmitted to the trial court by this court's clerk.

It shall be the appellant's duty to order transcripts from the court reporter and to pay costs to ensure timely completion of transcripts. If the transcripts are not filed with the petition in error because of delay in transcription, no more than one 30-day extension of time to complete transcripts will be granted by the court for good cause shown.

If the appellee desires to include documents or transcripts not included by the appellant in the record on appeal, the appellee shall order any such transcript and file a separate document titled "Supplement to Record on Accelerated Appeal," attaching any instruments or transcripts in the same form and manner as required for an appellant under Rule 1.36 herein. Any such supplement to the record shall be filed concurrently with the Response to the petition in error. The cost of transcribing appellee-ordered portion of the record will be borne by the appellant unless: (1) The trial judge finds that the portion supports a counter or cross- appeal, or (2) The trial judge directs otherwise for good cause shown. In the latter event the appellee shall pay the transcription fee.

(e) Response.

Response(s) to the petition in error shall be filed within 20 days of the petition in error. If the appellee desires to include documents or transcripts not included by the appellant the appellee shall comply with Rule 1.36(d).

(f) Appellate Review and Briefs.

The appellate court shall confine its review to the record actually presented to the trial court. Unless otherwise ordered by the appellate court, no briefs will be allowed on review. If briefs are ordered, the appellate court will prescribe a briefing schedule. Motions for leave to submit appellate briefs shall be deemed denied unless affirmatively granted by the court. No briefs shall be tendered by attachment to a motion for leave to brief, and the clerk shall not accept or file an appellate brief without prior leave of the court. A motion for appeal related attorney's fees must be made by motion prior to mandate. See Rule 1.14.

(g) Oral Argument.

Appeals may be decided pursuant to this rule with or without argument. If argument is granted and the appellate court should orally announce its decision from the bench, it shall also, as in other cases, hand down a memorandum opinion or order.

(h) Appeals from Same Trial Court Case.

An appeal governed by Rule 1.36 is prosecuted separately from another appeal from the same trial court case when the appeals challenge different appealable decisions. An appeal subject to Rule 1.36 must be filed separately and accompanied by payment of costs in all cases except when it is a cross, counter, or co-appeal to an appeal governed by this Rule, or when filed as an amended petition in error as authorized by Rule 1.36(l). The petition in error for a cross, counter, or co-appeal shall have the accompanying record as required for a petition in error by this Rule.

The party filing a subsequent appeal shall clearly notify the court that prior or related appeals have been brought pursuant to Rule 1.36. An appeal governed by this rule may be considered for consolidation or as a companion appeal pursuant to Rule 1.27 when appropriate.

(i) Amended Petition in Error on Post-Judgment Order Granting or Denying Attorney's Fees, Interest, or Costs.

An amended petition in error challenging a post-judgment order granting or denying costs, interest, or attorney's fees may be filed in an appeal governed by Rule 1.36 when the order granting or denying costs, interest, or attorney's fees relates to the order previously appealed pursuant to Rule 1.36. The amended petition in error may be filed without payment of costs. The amended petition in error must be filed with this court within thirty (30) days of the date of the order granting or denying the interest, costs, or attorney's fees. The record for the amended petition in error shall comply with Rule 1.36. The response to the amended petition in error shall comply with Rule 1.36(e). All provisions of Rule 1.36 apply to proceedings on the amended petition in error. Provided, an appellate court may, on application of a party or sua sponte, call for briefs on the amended petition in error.

Rule 1.37. Jurisdiction of Trial Court while Appeal is Pending and Remedial Writs in an Appeal.

(a) Trial Court Jurisdiction.

After a petition-in-error has been filed, the trial court retains jurisdiction in the case for the following purposes:

(1.) To facilitate the completion of the record and allocate the costs of its preparation.

(2.) To grant or modify orders in regard to custody, guardianship, support, and maintenance.

(3.) To decide motions for a new trial which assert grounds that are provided by 12 C.N.S. § 655 or a motion or petition for relief on grounds provided for by 12 C.N.S. § 1031 and 12 C.N.S. § 1031.1.

(4.) To decide motions in regard to staying the enforcement of judgments, decrees or final orders or of interlocutory orders appealable by right, whether subject to stay of enforcement as a matter of statutory right, or subject to a discretionary stay order.

(5.) In matrimonial litigation, to award attorney's fees for services rendered or to be rendered in connection with the appeal, to award alimony pending the appeal or to issue orders affecting the custody of children or the property of the parties pending the appeal.

(6.) To change the status of a litigant from that of next friend to guardian ad litem, or to appoint an attorney for such litigant and to impound funds that are in dispute.

(7.) To take action with respect to any issue collateral to a pending appeal.

(8.) To determine any matter ordered by the Court of Appeals.

(9.) To determine any issue whose resolution pending appeal is explicitly authorized by law.

(10.) When the parties to a cause pending on appeal or on certiorari have agreed to a settlement of the claim and their agreement requires the trial court's approval, the parties may file in the Court of Appeals a joint motion (a) for an order staying further proceedings for a period to be specified and (b) for leave to proceed before the trial court to secure approval of the settlement. If settlement is approved, a certified copy of the trial court's order attached to a joint motion should then be brought in this court for dismissal of the appeal or certiorari.

An approved settlement need not and shall not be submitted for this court's review in the pending appeal. If a dispute should arise over the correctness of the trial court's settlement approval or over any of its terms, and corrective relief be sought, it must be by a timely-perfected appeal from the trial court's order that resolved the parties' settlement dispute.

(b) Review of Trial Court's Rulings Pending Appeal.

Except as provided in Subdivision (a)(3) & (10), review of the trial court's ruling upon any of the matters set forth in part (a) of this Rule shall be by motion filed in the Court of Appeals which shall be entertained in the principal appeal. However, a petition in error or amended petition in error shall be filed in the Court of Appeals to seek review of the trial court's ruling when statute or the Rules of the Court of Appeals require review of the trial court's ruling by a petition or amended petition in error. See, e.g., Rule 1.36(k). When review of a trial court's

ruling is sought by motion, it must be filed in the Court of Appeals within thirty (30) days of the date the trial court's ruling is filed in the trial court.

(c) Remedial Writs within an Appeal.

All applicants to the Court of Appeals seeking relief in the form of remedial or extraordinary writs pursuant to the court's appellate jurisdiction shall conform to Rule 1.191.

Rule. 1.38. Reserved.

Rule 1.39. Reserved.

PART III. APPEALS AND CERTIORARI REVIEW FROM INTERLOCUTORY ORDERS OF THE DISTRICT COURT.

Rule.1.40. Definitions; Rules Applicable, New Trial; and Effect of Failure to Appeal.

(a) Definition of Interlocutory Order.

See Rule 1.60 for citation to statutes defining interlocutory orders appealable by right and for examples of interlocutory orders.

(b) Rules Applicable to Appeals of Interlocutory Orders.

The rules of general application (Part I of these Rules) shall apply to appeals from a district court's interlocutory orders appealable by right. Unless specifically provided otherwise, the rules governing appeals from judgments or final orders of the district court (Part II of these Rules) shall apply to appeals from a district court's interlocutory orders appealable by right.

(c) Rules Applicable to Review of Certified Interlocutory Orders.

The rules of general application (Part I of these Rules) shall apply to review of certified interlocutory orders when the application of the rule is consistent with this court's review process pursuant to 12 C.N.S. § 952(b)(3). The rules governing appeals from judgments or final orders of the district court (Part II of these Rules) shall apply to review of certified interlocutory orders when the application of the rule is consistent with this Court's review process pursuant to 12 O.S. § 952(b)(3).

(d) Orders Granting a New Trial or Vacating a Judgment.

An order granting a new trial or vacating a judgment based upon any ground, including that of newly discovered evidence or the impossibility of making a record [12 O.S. § 655] is an interlocutory order appealable by right [12 O.S. § 952(b)(2)].

(e) Appeal Time, Motions for New Trial, and Interlocutory Orders.

The filing of a motion or petition for new trial, reconsideration, re-examination, rehearing, or to vacate a judgment, shall not extend the time to appeal from any interlocutory order, except as authorized by Rule 1.22.

(f) Effect of Failure to Appeal From an Interlocutory Order.

Failure of a party to appeal from any interlocutory order that is appealable either under the provisions of 12 C.N.S. § 952(b)(2) or (3), shall not preclude it from asserting errors in that interlocutory order in an appeal taken from the judgment or final order in the case.

PART III(A). REVIEW OF CERTIFIED INTERLOCUTORY ORDERS PURSUANT TO 12 C.N.S. § 952(B)(3).

Rule 1.50. Definition of Certified Interlocutory Order.

Any interlocutory order not appealable by right under the statutes, which order affects a substantial part of the merits of the controversy, may be brought for review to this court in compliance with the rules in this Part when the trial judge or the judge's successor has certified that an immediate appeal from that order may materially advance the ultimate termination of the litigation. In the exercise of its statutory discretion this court may refuse to review a certified interlocutory order. 12 C.N.S. § 952(b)(3).

No certified interlocutory order shall be considered if taken from an order overruling a motion for summary judgment. See Rule 1.40 for the application of other rules to review of a certified interlocutory order.

Rule 1.51. Commencement of Proceeding and Entry of Appearance.

(a) Commencement. Time for the commencement of a proceeding to review a certified interlocutory order shall begin to run from the date of the filing of the certification order wherein the trial court certifies in writing that an immediate review may materially advance the ultimate termination of the litigation. A proceeding to review a certified interlocutory order shall be commenced by filing a petition for certiorari within 30 days of the date the certification is filed in the trial court. This time limit cannot be extended either by the trial court or by this Court. A petition for certiorari to review a certified interlocutory order will be deemed filed when mailed in compliance with Rule 1.4. See Rule 1.4(e).

(b) Motion for New Trial. The filing of a motion for new trial, reconsideration, re-examination, rehearing, or to vacate the interlocutory order shall not operate to extend the time to appeal from such order.

(c) Petition, Entry of Appearance, and Costs. A proceeding for review of a certified interlocutory order shall be regarded as commenced when the petition is filed and costs are deposited as set out in Rule 1.23. The petitioner and respondent shall file entries of appearance in conformity with Rules 1.23 and 1.25.

Rule 1.52. Content of Petition for Certiorari to Review Certified Interlocutory Order and Trial Court Statement.

(a) Petition.

The petition for certiorari shall refer to the party seeking review as "petitioner" and to the other parties as "respondents." The caption of the petition for certiorari shall correspond with the sequence in which the designation of the parties appeared in the trial court case. The original and fourteen copies of the petition shall be filed. The petition for certiorari shall follow Rule 1.301, Form No. 7.

(b) Statement by Trial Court.

A concise statement of what the pertinent parts of the record, when transcribed, will disclose and a like statement of the reasons why the order should be reviewed in advance of final judgment signed by the trial court shall be appended to the petition.

Rule 1.53. Response to Petition for Certiorari to Review Interlocutory Order.

Respondent shall have fifteen (15) days after the filing of a petition for certiorari to file a response which shall include the information in Rule 1.301, Form No. 8. The original and four copies of the response to the petition shall be filed.

Rule 1.54. Record.

(a) Record on Certiorari.

The record shall be prepared in the same manner as that prescribed for perfecting an appeal from a final judgment or final order of the district court, except that petitioner for certiorari shall file and serve petitioner's designation of instruments to be included or portions of the evidence to be transcribed, within ten (10) days after this court grants certiorari. The record shall consist of the same materials as those set forth in Rule 1.33(d).

(b) Record Required.

The court may, in its discretion, at any time before certiorari is granted to review the interlocutory order, require the petitioner to supply the record prepared under the rules herein prescribed.

(c) Time for Completion and Transmission of Record on Certiorari.

The record shall be ready for transmission to this court not later than 30 days from the date certiorari is granted. If a transcript is sought to be included in the record on review, the trial court shall expedite the preparation thereof by such orders, prospective or retrospective in effect, as may seem proper to assure the earliest possible completion of the record. The petitioner must seek the appropriate order from the trial court to expedite the preparation of the record when necessary. On completion of the record the clerk of the trial court shall perform the duties required by Rule 1.34(h).

(d) Extension of Time to Complete and Transmit Record on Certiorari.

To obtain an extension of the time limit prescribed in Rule 1.54(c) for completing the record good cause must be shown in this court in the manner provided in Rule 1.34(g).

(e) Fees to be Charged for Record.

The fees which the clerk of the trial court and the court reporter shall charge shall be the same as those prescribed in Rules 1.28 and 1.35.

Rule 1.55. Briefs.

Petitioner's Brief-in-Chief shall be filed in this court within 20 days from the date the Notice of Completion of Record is filed in the Court of Appeals. Respondent's Answer Brief shall be filed within 10 days after the filing of the Brief-in-Chief. Petitioner may file a Reply Brief within 5 days after the filing of the Answer Brief. Parties shall comply with Rule 1.10 when applicable as required by Rule 1.40(c). See e.g., Rule 1.10(a)(3), (5), (6), and (d) and (e). The form of the briefs shall comply with Rule 1.11. See Rule 1.40(c).

Rule 1.56. Other Rules Applicable to Certiorari to Review Certified Interlocutory Order.

Rules in Part I and Part II of these rules shall apply to review of certified interlocutory orders when the application of the rule is consistent with this court's review process pursuant to 12 C.N.S. § 952(b)(3), and Rules 1.50 through 1.55 inclusive. See Rule 1.40(c).

PART III(B). APPEALS FROM ORDERS GRANTING A NEW TRIAL OR VACATING A JUDGMENT AND FROM ORDERS DEALING WITH ATTACHMENTS, TEMPORARY INJUNCTIONS, RECEIVERS, AND OTHER PROVISIONAL REMEDIES.

Rule 1.60. Definition of Interlocutory Orders Appealable by Right.

Orders of the district court that are interlocutory and may be appealed by right in compliance with the rules in this part are those that:

(a) Grant a new trial or vacate a judgment on any ground, including that of newly discovered evidence or the impossibility of making a record (12 C.N.S. § 655, 12 C.N.S. § 952(b)(2));

(b) Discharge, vacate or modify or refuse to discharge, vacate or modify an attachment (12 C.N.S. § 993(A)(1));

(c) Deny a temporary injunction, grant a temporary injunction except where granted at an ex parte hearing, or discharge, vacate or modify or refuse to discharge, vacate or modify a temporary injunction (12 C.N.S. § 952(b)(2) and 12 C.N.S. § 993(A)(2));

(d) Discharge, vacate or modify or refuse to discharge, vacate or modify a provisional remedy which affects the substantial rights of a party (12 C.N.S. § 952(b)(2) and 12 C.N.S. § 993(A)(3));

(e) Appoint a receiver except where the receiver was appointed at an ex parte hearing, refuse to appoint a receiver or vacate or refuse to vacate the appointment of a receiver (12 C.N.S. § 993(A)(4));

(f) Direct the payment of money pendente lite except where granted at an ex parte hearing, refuse to direct the payment of money pendente lite, or vacate or refuse to vacate an order directing the payment of money pendente lite (12 C.N.S. § 993(A)(5)); or

(g) Are interlocutory probate orders but not orders allowing a final account and granting a decree of distribution.

Rule 1.61. Time and Manner for Commencing Appeal.

An appeal from these interlocutory orders of the district court may be commenced by filing a petition in error (and fourteen (14) copies) in conformity with Rule 1.63, filing an entry of appearance in conformity with Rule 1.23, and remitting to the Clerk of the Court of Appeals the statutory cost deposit (or affidavit in forma pauperis), all within thirty days of the date the order, conforming to the statutorily required form, was filed in the trial court, or from the date of mailing if taken under advisement. See 12 C.N.S. §§ 696.2, 696.3. 990A(A). See Rule 1.40 for rules applicable to appeals from interlocutory orders and the effect of a motion for new trial. A petition in error appealing an interlocutory order appealable by right will be deemed filed when mailed in compliance with Rule 1.4. See Rule 1.4(e).

Rule 1.62. When Appeal Commenced.

An appeal under this Part shall be regarded as commenced when the requirements set forth in Rule 1.23 shall have been met.

Rule 1.63. Content of Petition in Error and Response in the Appeal of an Interlocutory Order Appealable Right.

(a) Contents of Petition in Error.

The caption of the petitioner in error shall correspond with the sequence in which the designation of the parties appeared in the trial court case. The petition in error shall follow Rule 1.301, Form No. 5. If a cross or counter appeal is taken, that party shall file a petition in error using this form and no other.

(b) Response and Entry of Appearance.

Within ten days after the filing of the appellant's petition in error in the Court of Appeals, the appellee shall file a response in the Court of Appeals which shall follow Rule 1.301, Form No. 6. The appellee must file an entry of appearance with the response. See Rules 1.5 and 1.25. If cross-appeal or counter-appeal is taken, a response using Rule 1.301, Form No. 6, shall be filed within ten days of the date the cross-appeal or counter-appeal was filed.

Rule 1.64. Record.

The record shall be designated and prepared in the same manner as that prescribed for perfecting an appeal from a final judgment or final order of the district court. See Rule 1.28.

If transcripts are ordered the Notice of Completion of Record (Rule 1.301, Form No. 12) shall be filed within sixty (60) days of the filing of the interlocutory order. The record shall consist of the same items as in appeals from final decisions of a district court (Part II of these Rules, See Rule 1.33).

If a transcript is designated for inclusion in the record on appeal, it shall be the responsibility of the trial court to expedite the preparation thereof by such orders, prospective or retrospective in effect, as may seem proper to assure the earliest possible completion of the record. Appellant bears the burden of monitoring the preparation of the record and requesting the appropriate relief from the trial court for the timely preparation and completion of the record.

Rule 1.65. Briefs.

Appellant's Brief-in-chief shall be filed within thirty (30) days from the date the Notice of Completion of Record is filed in the Court of Appeals. The appellee shall file an Answer Brief within twenty (20) days after the filing of the Brief-in-chief of the appellant. The appellant may file a Reply Brief within ten (10) days after the filing of the Answer Brief by appellee. The briefs must comply with the rules for briefs in Part I of these Rules to the extent that they are consistent with Rules 1.60 through 1.67 inclusive. See Rules 1.10, 1.11, 1.40(b), 1.67.

Rule 1.66. Requirements in Appeals from Order Refusing to Vacate Appointment of Receiver.

In appeals from an order refusing to vacate the appointment of a receiver the party taking an appeal from such order shall post in the trial court, within 10 days from the date of the order sought to be reviewed, an appeal bond in the penal sum fixed by the trial court, conditioned as provided in 12 C.N.S. § 993(C)

Rule 1.67. Other Rules Applicable.

Rules in Part I and Part II of these rules shall apply to an appeal of an interlocutory order appealable by right when they are consistent with Rules 1.60 through 1.67 inclusive. See Rule 1.40(b).

PART IV(A). GENERAL PROVISIONS APPLICABLE TO OTHER CIVIL APPEALS.

Rule. 1.75. Definitions.

(a) Definition of "Tribunal".

The word "tribunal", as used in this Part of the rules, shall mean any court, agency, board or commission, other than the district court, from which an appeal may be brought to this court.

(b) Definition of "Decision".

Any appealable action of the tribunal shall be referred to as "decision".

Rule 1.76. Record in Appeals from Tribunals Other than the District Court.

(a) Specific Record Rules Control.

Where record rules are provided for specific appeals (e.g. Rules 1.104, 1.118, 1.129) those specific rules shall supersede and control Rule 1.76 and all other record rules to the extent of any conflicting provisions between the specific rules and other record rules.

(b) Designation, Definition, and Preparation of the Record on Appeal.

The record shall be prepared in the same manner as that prescribed for perfecting an appeal from a final judgment or final order of the district court, and it shall consist of the same materials as those set forth in Rule 1.33(d). Provided that:

1. The prohibition on designating the entire trial court record in appeals from the District Court does not apply to appeals from tribunals other than the District Court;

2. An appearance docket shall not be included in the record on appeal unless required by the Rules governing the specific appeal.

3. The Designation of Record shall be made using Rule 1.301, Form No. 15 for proceedings to review an order in a Workers' Compensation case. The Designation of Record shall be made using Rule 1.301, Form No. 16 for appeals from tribunals other than the District Courts. Form Nos. 15 and 16 shall not be used in the District Courts.

(c) Extension of Time to Prepare Record.

An extension of time to prepare the record is obtained in the manner provided by Rule 1.34(g).

(d) Court Reporter Duties and Fees.

The trial exhibits shall be indexed and incorporated into the transcript either by reference or physical attachment, as the court reporter may deem advisable. Only two dimensional exhibits not larger than 8 1/2 " x 14" may be transmitted to the Court of Appeals with the record, except upon order of the court.

The original transcript, indexed and certified as correct together with two (2) certified copies, and the exhibits in the case, if any are attached thereto, shall be filed in the tribunal by the court reporter. If any party desires a copy for that party's sole use such party shall procure it from the court reporter on payment of cost.

The fees which a court reporter shall charge shall be the same as those prescribed by Rule 1.35.

(e) Timely Preparation of Record and Monitoring by Appellant.

If a transcript is sought to be included in the record on appeal, it shall be the responsibility of the trial judge, or the judge's successor, the presiding judge, or the head of the tribunal to expedite the preparation thereof by such orders, prospective or retrospective in effect, as will assure the earliest possible completion of the record. Appellant bears the burden of monitoring the preparation of the record and seeking the appropriate order from the tribunal to assure timely completion of the record.

If a transcript of evidence or proceedings is designated, a copy of the designation shall be delivered by the appealing party to the court reporter concerned on the day such designation is filed, and the cost of preparing the transcript shall be advanced forthwith by the designating party.

(f) Duties of Clerk, Time for Completion of Record, and Notice of Completion of Record.

The secretary of the tribunal other than the district court shall perform the duties prescribed for the clerk.

After a designation of the record is made, the clerk shall promptly assemble in chronological sequence all of the instruments on file which have been designated for inclusion in the record on appeal and all orders made in the tribunal with respect to the content of the transcript and assessment of cost. The instruments, numbered consecutively, indexed and bound, shall be certified under the seal of the clerk. All designations of record shall be included.

Unless a different time is prescribed by statute or rule specific for the type of appeal, the record shall be ready for transmission to this court not later than three months from the date of the date of the judgment or order appealed from. If the designations do not require any part of the proceedings or evidence to be transcribed, the clerk shall immediately file a Notice of Completion of Record with this court, notify the parties that the record on appeal has been completed, and that a Notice of Completion of Record has been filed with this court.

Upon completion of the record on appeal the clerk of the tribunal shall:

I. file with the Clerk of this Court a Notice of Completion of Record on a form furnished by this court, stating that the record on appeal has been completed for transmission and;

II. notify all parties or their counsel when the record on appeal has been completed, is ready for transmission, and that a Notice of Completion of Record has been filed.

The clerk shall use Form No. 17, in a Workers' Compensation case, Rule 1.301, Notice of Completion of Record On Appeal, to satisfy Rule 1.76(f). The clerk or secretary of other tribunals shall use Form No. 18, Rule 1.301, Notice of Completion of Record on Appeal, to satisfy Rule 1.76(f). Form Nos. 17 and 18 apply to appeals from tribunals other than the District Court. The Clerk of the District Court shall use Form No. 12 for Notice of Completion of Record.

(g) Other Record Rules.

Rules 1.28(d), (e), (f), (h), (j), and 1.32 shall be applicable to all appeals.

Rule 1.77. Other Rules Applicable.

Unless specifically provided otherwise in any subsequent Part of these Rules the following provisions shall apply:

(a) The time for commencing the appeal cannot be extended either by the tribunal or by this court, and the filing of a motion for a new trial, reconsideration, re-examination, rehearing or to vacate the decision shall not operate to extend the time to appeal. Provided, however, that when a statute applicable to the particular appeal states that the time to appeal shall not commence until disposition of a motion for a new trial,

reconsideration, re-examination, rehearing or to vacate the decision, then the filing of the motion shall operate to extend the time to appeal.

(b) Part I of these rules apply to appeals from tribunals other than the District Court when application of the rule from Part I is consistent with both the rules specific for the appeal and the statutory authority governing the appeal. For example, in appeals from tribunals other than the District Court the briefs must comply with the provisions for appeals in Rule 1.10, Rule 1.11, and Rule 1.12, and those provisions applicable to any proceeding such as Rule 1.11(k)(3).

(c) Rule 1.24, Rule 1.26(a), (b), (c), and (e), Rule 1.27(a), (b), (c), (d) and (f), and Rule 1.37(b) shall apply to all appeals. Rule 1.25 shall apply to those appeals commenced by filing a petition in error.

(d) The appeal shall be regarded as commenced by filing a petition in error with four (4) copies with the Clerk of this Court within the time prescribed by rule or statute for the specific appeal, and remitting to the Clerk of the Court of Appeals the cost deposit provided by statute, or if the appellant (petitioner) is an indigent, an affidavit in forma pauperis shall be filed concurrently with the petition in error. The additional time for filing a petition in error by mail granted by Rule 1.4(c) applies to petitions in error from the District Court and other tribunals.

Rule 1.78. Reserved.

Rule 1.79. Reserved.

Rule 1.80. Reserved.

Rule 1.81. Reserved.

Rule 1.82. Reserved.

Rule 1.83. Reserved.

Rule 1.84. Reserved.

PART IV(B). RESERVED.

Rule 1.85. Reserved.

Rule 1.86 Reserved.

Rule 1.87. Reserved.

Rule 1.88. Reserved.

Rule 1.89. Reserved.

Rule 1.90. Reserved.

PART IV(C). PROCEEDINGS TO REVIEW A DECISION OF THE WORKERS' COMPENSATION COURT.

Rule 1.100. Mode and Time of Commencing Proceedings.

(a) Decisions Reviewable, Time for Commencement, and Time to Pay Costs Mandatory.

A decision of the trial judge in a Workers' Compensation case may be brought for review to this court in compliance with the Rules in Part IV(a) of these Rules unless a Rule in Part IV(c) of these Rules provides otherwise.

The proceeding shall be commenced by:

(1.)Filing a petition for review with four (4) copies with the Clerk of this Court within twenty days after a copy of the adverse decision shall have been sent to the parties affected, and

(2.)Remitting to the Clerk of the Court of Appeals the cost deposit provided by statute, or if the petitioner is an indigent, an affidavit in forma pauperis shall be filed concurrently with the petition in error. See Form No. 4.

A petition for review will not be filed until the entire cost deposit, or a properly executed pauper's affidavit, is received by the Clerk of the Court of Appeals. The cost deposit or pauper's affidavit must be received by the Clerk of the Court of Appeals within the same twenty-day period for filing the petition for review for the tendered petition to be timely filed. A petition for review will be deemed filed when mailed in accordance with Rule 1.4. See Rules 1.4(e), 1.77(d).

(b) Reserved.

(c) Cross or Counter Action to Review Same Decision.

A cross-action or counter-action or a separate proceeding to review the same decision shall be commenced within the same time and in like manner as the principal proceeding.

Rule 1.101. Requisites for Petition for Review.

The proceeding shall be commenced by filing a petition for review and payment of costs within the time prescribed in Rule 1.100(a). The following instruments shall be attached to the petition for review and to each of its copies:

1. A certified copy of the decision sought to be reviewed, and

2. If the proceeding is brought by the employer or employer's insurance carrier from a decision awarding benefits to claimant, a certificate by the clerk or secretary of the tribunal where the decision was made stating that the party taking the appeal has on file an approved statutory bond. The certificate is required for the Clerk of the Court of Appeals to accept the petition for filing.

On compliance with these requirements, the proceeding shall stand perfected and all parties to the proceeding in the tribunal as well as the court that heard the Workers' Compensation case shall be considered as parties to the appeal. Any defect in taking a proceeding, other than failure timely to file a petition for review or pay costs, must be disregarded unless a substantial right of the complaining party is affected, and no such defect, if correctable, shall result in dismissal of the appeal.

Rule 1.102. Designation of Parties.

All parties joining in the petition for review shall be designated as "petitioner"; the tribunal that decided the Workers' Compensation case and all other parties affected by the decision sought to be reviewed shall be joined in the appeal and designated as "respondent".

Rule 1.103. Petition for Review and Response.

The petition for review shall comply with Rule 1.301, Form No. 9. Within twenty days after the filing of the petitioner's petition for review in the Court of Appeals, the respondent (other than the court) shall file a response in the Court of Appeals. The response shall comply with Rule 1.301, Form No. 10. If a cross appeal is taken by respondent, in addition to the response, respondent must also file a petition for review in the same form prescribed for petitioner, and petitioner must file a response.

A petition for review shall be deemed amended to include errors set forth in the propositions in the Brief-in-Chief provided that the errors or issues were presented to the tribunal that decided the Workers' Compensation case. Error may not be raised for the first time in a reply brief.

Rule 1.104. Record.

(a) Ordering Transcripts and Filing Designation.

The party seeking review shall order any transcripts and file the designation of instruments and proceedings for inclusion in the record no later than the date of filing the petition for review. See Rule 1.76 and Rule 1.301, Form No. 15. Any additional transcripts shall be ordered and any counter-designation of record shall be filed within ten (10) days after the filing of the petition for review. If a transcript is sought to be included in the record on review, it shall be the responsibility of the trial judge or the presiding judge to expedite the preparation thereof by such orders, prospective or retrospective in effect, as will assure the earliest possible completion of the record.

(b) Contents of Record.

The instruments designated by the party or parties bound by the court clerk, together with the original of the court reporter's transcript and exhibits incorporated therein (if portions of proceedings or evidence were designated for inclusion), shall constitute the record in the proceeding for review. Only two dimensional exhibits no larger than 8 1/2" x 14" may be transmitted to the Court of Appeals with the record, except upon order of the court. A copy of the appearance docket shall be included in the record for the proceeding for review.

(c) Preparation of Record.

After a designation of record has been filed, the court clerk shall promptly assemble in chronological sequence all of the designated instruments on file. These instruments shall be certified under the seal of the court clerk. All designations of record shall be included. The form of the record shall comply with Rule 1.76.

(d) Court Clerk and Notice of Completion of Record.

The court clerk or secretary of the tribunal shall file and mail to all parties a Notice of Completion of Record within forty-five (45) days from the date the petition for review is filed in the Court of Appeals. See Rule 1.301 Form No. 17. Failure to timely file a Notice of Completion of Record within the time prescribed herein will result in the court's dismissal of the proceeding for review sua sponte.

(e) Extension of Time to Complete Record.

The time limit prescribed in this Rule for completing the record may be extended for an additional period of time not to exceed thirty (30) days by this Court upon application and good cause shown. Extensions of time to complete record are governed by Rule 1.76.

(f) Record in Pro Se Review.

Where the party seeking review is acting pro se, and no designation of record is filed by the pro se party, the clerk shall prepare the entire court file as the record. Duties as to ordering and paying costs of transcripts are not affected by the fact that the party seeking review is acting pro se.

Rule 1.105. Briefs.

(a) Time.

The petitioner shall file a Brief-in-chief in this court within twenty (20) days from the date of filing the Notice of Completion of Record (Rule 1.301, Form 17); the respondent shall file an Answer Brief within fifteen (15) days after the filing of the Brief-in-chief by the petitioner; the petitioner may file a Reply Brief within ten (10) days after the filing of the Answer Brief by respondent. The parties shall file a copy of each brief or waiver of brief with the clerk of the tribunal that decided the Workers' Compensation case within five days of filing in the Court of Appeals.

(b) Form.

The form and content of the briefs must comply with Rules 1.10 and 1.11 for briefs on an appeal. See Rule 1.77(b).

(c) Copy to Tribal Prosecutor.

A copy of all instruments and briefs filed in this Court shall be mailed to the Tribal Prosecutor.

Rule 1.106. Agreed Settlement Pending Review.

An agreed settlement may be approved by the tribunal that decided the Workers' Compensation case while a petition for review is pending in this court. The tribunal that decided the Workers' Compensation case is responsible for the filing, forthwith, of a copy of the approved settlement order, bearing the Court of Appeals case number, in this court. That filing shall constitute a dismissal of the pending review without further order of this court.

PART IV(D). RESERVED.

PART IV(E). RESERVED.

PART IV(F). RESERVED.

PART IV(G). RESERVED.

PART IV(H). RESERVED.

PART V. RESERVED.

PART VI. ORIGINAL JURISDICTION PROCEEDINGS BEFORE THE COURT OF APPEALS.

Rule 1.190. Rules Applicable.

Part VI of these Rules applies to all original jurisdiction proceedings before the Court of Appeals, except in those proceedings where by rule of the Court of Appeals a different procedure applies. Part I of these Rules and other rules specifically referenced apply to proceedings governed by Part VI.

Rule 1.191. Applications to Assume Original Jurisdiction.

(a) Style, Commencement, and Costs.

Original proceedings in the Court of Appeals shall be styled as shown in Rule 1.301, Form No. 13.

Original jurisdiction proceedings shall be commenced by filing with the clerk thereof an application to assume original jurisdiction and a petition (such as a petition for mandamus, prohibition or habeas corpus) and a brief in support of the application and petition. An entry of appearance shall be filed with the application and petition.

The cost deposit provided by statute shall be remitted to the Clerk of the Court of Appeals, or if the petitioner is an indigent, an affidavit in forma pauperis shall be filed concurrently with the application to assume original jurisdiction and petition. See Rule 1.301, Form No. 4.

(b) Application and Petition.

The application and petition may be combined in the same instrument and shall state concisely:

(1.)the reasons why such action or proceeding is brought in the Court of Appeals instead of another court of competent jurisdiction and why original jurisdiction should be assumed,

(2.)the nature of the remedy or relief sought, and

(3.)the facts entitling the petitioner to the remedy or relief sought.

(c) Copies and Brief.

One original and four (4) legible copies of the application, petition and brief shall be filed. The brief may not exceed fifteen (15) pages, 8 1/2" x 11" double spaced typed. The brief shall comply with Rule 1.11. No appendix or exhibits may be attached to the brief. If a response is filed by the respondent the petitioner shall not file a reply brief without leave of court. Failure to observe this rule may result in summary dismissal of the action.

(d) Appendix.

(a) A separate appendix may be submitted with the brief. Only one appendix, and one copy, shall be filed. The appendix may contain only:

(a) copies of cases cited and relied upon;

(b) the trial court order which has precipitated the bringing of the action;

(c) affidavit(s) presenting facts not of record in the Court of Appeals; and

(d) copies of exhibits admitted below or pertinent portions of the trial court record which a party believes are necessary to the court's understanding and disposition of the matter.

(b) Only those relevant portions of exhibits that are material to the original action may be included in the appendix. For a lengthy instrument copies of only the cover page and those relevant pages of the instrument should be included in the appendix. For example, a deposition exhibit should include only the cover page and those relevant pages of the deposition, and not the entire deposition. The same rule applies to contracts and other instruments.

(c) The appendix shall include an index of its contents. For each exhibit or item of the trial court record contained therein, the index shall contain the following information:

(a) a description of the item;

(b) the item's date, if dated;

(c) a concise statement of the relevancy of the item to the issues presented; and

(d) a synopsis of the item.

(d) Failure to observe this rule may result in summary dismissal of the action.

(e.) Notice to Adverse Parties and Time to File Notice.

No application or petition, except for habeas corpus, will be heard without notice to the adverse party or parties unless by reason of an emergency this court determines the same should be heard without notice. Such notice shall state the date and time on which the application, petition and brief in support will be presented to the court. A copy of the filed application, petition, brief in support, and any appendix shall be attached to the notice. Such notice shall designate the day and hour the matter will be presented to the court. The matter will be heard at that time or as soon thereafter as

may meet the convenience of the court. Such notice shall comply with Rule 1.301, Form No. 14.

Hearing and response dates are to be secured from a judge at the time of filing. The court (by a referee or judge) may require different or additional service of notice.

The original notice, including a certificate of service on the adverse party or parties, shall be filed with the clerk at the time the application, petition and brief in support are filed.

(f.) Response.

The court may refuse to assume original jurisdiction without a response being filed. The date of any response shall be set by a referee or a judge of the court. The allowed response may not exceed fifteen (15) pages, 8 1/2" x 11" double spaced typed. A response in the nature of a brief shall comply with Rules 1.10, 1.11 as to form and content, but shall not exceed the page limitation of fifteen pages. No appendix or exhibits may be attached to the response.

If a response is ordered one original and four (4) legible copies shall be filed. If a response is ordered the respondent may file an appendix conforming to Rule 1.191(d). An entry of appearance shall be filed with the response. Service of the response shall be made in accordance with Rule 1.4(g), unless a referee or judge of the court require a different procedure. Failure to observe this rule may result in striking the response.

(g) Oral Argument.

Oral argument before the Court of Appeals, an assigned judge or a referee, is not a matter of right. The court may refuse to assume original jurisdiction without hearing oral presentation.

(h) Amicus Curiae.

Amicus curiae may not appear in an original jurisdiction proceeding unless an order of the court grants leave for the appearance. Amicus curiae practice and procedure in an original jurisdiction proceeding will be governed by court orders in that proceeding. Rule 1.12 shall apply.

(i) Commencement at least Ten Days before Hearing or Trial.

This court will not assume original jurisdiction in any matter except habeas corpus nor shall this court stay any proceedings unless the same is filed with the clerk of this court at least ten (10) days prior to the date said cause is set for hearing or trial. Provided however, the above limitation may be excused by this court if petitioner alleges and shows that asserted grounds for relief were not known, or could not reasonably have been discovered, prior to the ten-day period.

(j) Sanctions.

Sanctions for the filing of a frivolous application to invoke this court's extraordinary powers to issue original jurisdiction writs may be invoked against the party filing such proceeding in favor of the party required to defend against it (including a real party in interest). Sanctions may include an award of costs and attorney's fees.

A frivolous proceeding may include one brought for the sole purpose of delay or to disrupt the proceeding in the court below or a proceeding so obviously without any merit as to impute bad faith on the party bringing the action. Where the filing of such proceeding is in good faith, sanctions will not be imposed. See 12 C.N.S. § 995.

Rule 1.192. Evidence—Reference.

On any controverted question of a material fact, this court may, at the court's discretion, refer the cause to a referee for the purpose of taking testimony or hearing the evidence.

Rule 1.193. Effectiveness of Judgment and Rehearing.

In all original proceedings other than those to review a decision in a Workers' Compensation case or to impose bar discipline, the decision of this court, unless it is stayed with or without bond, shall become effective when its opinion or order is filed with the clerk.

A petition for rehearing in an original jurisdiction proceeding is governed by Rule 1.13.

Rule 1.194. Proceedings to Protest or to Object to Initiative and Referendum Petitions.

The proceeding shall be treated as an original action and the parties shall be afforded a trial de novo.

PART VII. RESERVED.

PART VIII. RESERVED.

PART IX. EXPUNGEMENT OF RECORDS.

Rule 1.260. Expungement of Records.

Persons who have obtained an order of expungement from a district court may seek expungement of related civil appellate records in this court. Those persons who seek a district court's expungement by appeal or writ may seek this court's order directing the clerk to keep certain materials sealed pending the outcome of the case.

Rule 1.261. Application for Expungement.

A party desiring expungement of appellate records must file an Application for Expungement with the clerk of this court. The Application shall state (1) the reason under which the person was qualified to seek expungement in the district court, and (2) the date the district court entered the order of expungement and the scope of that order. A certified copy of the party's motion for expungement and of the district court's order granting the motion shall be filed with the Application for Expungement.

Rule 1.262. Inspection of Expunged Appellate Records.

Inspection of expunged appellate records may thereafter be permitted only by order of this Court.

For purposes of this section, appellate records ordered expunged shall not be physically destroyed.

PART X. APPENDIX OF FORMS.

Rule 1.300 Required Forms

The forms provided in Part X of these Rules are to be used in the District Court, in Workers' Compensation cases, and the Court of Appeals when required by the Rules of this Court.

Rule 1.301. Forms.

FORM NO. AND TITLE

1. Entry of Appearance.
2. Entry of Appearance - Pro se.
3. Notice of Change of Address.
4. In Forma Pauperis Affidavit.
5. Petition in Error.
6. Response to Petition in Error.
7. Petition for Certiorari to Review Certified Interlocutory Order.
8. Response to Petition for Certiorari to Review Certified Interlocutory Order.
9. Petition for Review, Workers' Compensation Decision.
10. Response to Petition for Review, Workers' Compensation Decision.
11. Designation of Record for District Court.
12. Notice of Completion of Record, District Court.
13. Style for Application to Assume Original Jurisdiction.
14. Notice of Original Jurisdiction Court of Appeals Proceeding.
15. Designation of Record for Review of Orders of Workers' Compensation Decisions
16. Designation of Record for Tribunals Other Than the District Court.
17. Notice of Completion of Record for Workers' Compensation Cases.

18. Notice of Completion of Record for Tribunals Other than the District Court.
19. Order for Settlement Conference.
20. Settlement Conference Statement.
21. Motion for Withdrawal of Cause from Settlement Conference.
22. Notice of Continuance and/or Relocation of Settlement Conference.
23. Order Withdrawing Order for Settlement Conference.
24. Report of Settlement Conference.