COQUILLE INDIAN TRIBAL CODE

Chapter 620
Part 6 – Public Safety and Justice

Coquille Rules of Civil Procedure

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Adoption Date: 12/20/97
Amended Date: 10/23/04
Adopted Date: 03/26/05

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CHAPTER 620
COQUILLE RULES OF CIVIL PROCEDURE

Article VII, Section 3 of the Constitution of the Coquille Indian Tribe ("Tribe") authorizes the Chief Judge of the Coquille Indian Tribal Court ("Court"), in consultation with the Tribal Council of the Tribe, to "promulgate rules of pleading, practice and procedure applicable to Tribal Court proceedings". The following rules are adopted to govern civil proceedings in the Court.

620.010 General

1. Citation of Rules; Scope and Application of Procedural Rules.

(a) These rules may be referred to as CRCP and may be cited, for example, by citation of 620.120, Section 13, Subsection (a), Paragraph (1), as 620.120.13(a)(1).

(b) These rules shall govern all civil proceedings or actions filed in the Court, except where a different procedure is specified by ordinance or regulation approved by the Tribal Council, or by supplemental rule promulgated by the Chief Judge.

(c) These rules shall be construed to secure the just, speedy and inexpensive determination of every case. The rules, and amendments thereto, shall apply to all actions pending at the time of or filed after their effective date except where their application to a pending case would not be feasible or would work an injustice, in which event the former procedure applies. Non-compliance with a rule shall defeat an action in whole or in part only in the event that the non-compliance shall be shown to have substantially prejudiced the challenging party.

2. Law Applicable in Civil Actions.

(a) In all civil cases, the Court shall apply the Constitution and the written laws and ordinances of the Tribe, decisions of this Court which have been certified for publication by the Chief Judge, and applicable laws of the United States.

(b) Where necessary, the Court may apply the laws of traditional customs as are generally accepted by the Tribe. Where there is doubt as to generally accepted custom or traditional law, the Court may consider the testimony of

impartial Tribal members who are familiar with the relevant customs or traditional law.

(c) Except as provided elsewhere, the laws of any other Indian tribe and of any state may be used for guidance, but are not binding upon the Tribal Court.

620.100 Court and Clerk

1. Court Hours.

The Court shall be open for the purpose of filing any pleading or other proper papers and for the conduct of other Court business on such days and at such times as shall be established by the Chief Judge of the Court.

2. Judicial Power.

(a) The judicial power of the Court with respect to any civil action shall be exercised by the Chief Judge and such Associate Judges which have appointed by the Tribal Council and which have been assigned by the Chief Judge to hear a case before the Court. The Judge shall preside over assigned cases and shall schedule necessary hearings and trials, in consultation with the Clerk of the Court ("Clerk"), and shall perform all other necessary judicial functions.

(b) No person shall attempt to influence a decision of the Court outside of the regular court proceedings. Persons who engage in such attempts shall be subject to the contempt power of the Court.

3. Assignment of Cases.

(a) After the complaint has been filed, the Chief Judge and the Clerk shall assign the case to a Judge.

(b) At the time an action is filed, the party or attorney filing the action shall file with the Court and serve on all parties to the action a "Notice of Related Cases". The Notice shall state whether any pending action and the action being filed:

(1) Arise from the same or substantially identical transactions, happenings or events;

(2) Call for a determination of the same or substantially identical questions; or

(3) For some other reason involve substantial duplication of labor if heard by a different Judge.

4. Trials and Hearings.

Except as provided elsewhere, all trials and hearings shall be conducted in open court and shall be recorded. Other acts or proceedings may be done or conducted by a Judge informally.

5. Clerk's Office.

All papers presented for filing with the Court shall be filed with the Clerk. The Clerk shall file and impress the Clerk's official seal upon all papers presented for filing upon payment of the appropriate fee. All pleadings presented for filing with the Court that do not conform to these rules shall be returned by the Clerk to the party requesting the filing, bringing the non-compliance to his/her attention. All files of the Court shall remain in the custody of the Clerk. The Clerk shall, upon the payment of all appropriate fees, provide endorsed or certified copies of all pleadings filed with the Court to any party requesting the same.

6. Fee Schedule.

Fees payable to the Court are payable in advance. All checks are to be made payable to the "Clerk of the Coquille Indian Tribal Court". Fees shall be established by resolution of the Tribal Council for the Tribe for such things as:

(a) Admission to practice and issuance of a certificate thereof;

(b) Certificate of Good Standing;

(c) Filing of Complaint;

(d) Filing of responsive motion or answer;

(e) Certifying any document or paper;

(f) Reproducing any record, entry or other paper;

(g) Filing a notice of appeal; and

(h) Such other fees authorized by the Tribal Council, except that no fee is to be charged to the Tribe.

7. Scheduling Courtrooms.

The Clerk shall be responsible for scheduling the use of courtrooms and shall be responsible for all arrangements for courtrooms and other facilities for the Court's business.

8. Case Management.

(a) Individual case management shall be the responsibility of the Chief Judge or the Judge to whom the case is assigned. The Judge shall manage assigned cases so as to provide for the just and prompt dispatch of business.

(b) Scheduling.

(1) All conferences, oral argument, trials, and other appearances shall be scheduled by the Judge. In an emergency, the Judge may schedule conferences by such informal directions as may be appropriate.

(2) The Judge may establish times not inconsistent with these rules at intervals sufficiently frequent for the dispatch of business.

9. Books and Records Kept by the Clerk.

The Clerk shall keep a book known as a "docket" in such form and style as the Chief Judge shall determine and shall enter therein each action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereon the first entry of the action is made. All papers filed with the Clerk, all process issued and returns made thereon, all appearances, orders, and judgments shall be entered chronologically in the docket on the folio assigned to the action and shall be marked with its file number. The entries shall be brief but shall show the nature of each paper or writ issued and the substance of each order or judgment of the returns showing execution for process. The entry of an order or judgment shall show the date the entry is made. The Clerk shall also keep, in such form and manner as the Chief Judge and Clerk shall determine, a correct copy of every order, and judgment, whether

appealable or not, issued or entered by the Court. The Clerk shall also keep such other books and records as the Chief Judge and the Clerk shall determine is necessary for the orderly operation of the Court, including such records as deposits and accounts of fees, fines and other sums collected and deposited by the Clerk. The Clerk, as authorized by the Chief Judge, will arrange for recording services for all trial proceedings, and any other proceedings that require a verbatim transcript, held by the Court. The parties may obtain copies of recordings or of transcripts of the recordings from the Court at prices fixed by the Court.

620.110 DOCUMENTS

1. Form, Size and Duplication of Documents.

(a) Form of Documents. The form of all documents, including pleadings and motions, except where a different procedure is specified by statute or rule shall comply with the requirements set out in parts B through P below:

(b) Definitions.

(1) Document, as used in this rule, means every paper filed in any type of proceeding.

(2) Printed document means documents wholly or partially printed. With legal turns means documents printed on both sides so that, when the first side of the printed page is turned, the beginning of the second side will appear on the reverse side of the end of the first side.

(c) Size of Documents. All documents, except exhibits and wills, must be prepared on letter-size (8 ½ X 11 inches) paper with at least a one-inch top margin, except that smaller size paper may be used for commitments, uniform citations and complaints and other documents otherwise designated by the Court.

(d) Documents Must Be Printed or Typed. All documents must be printed or typed, except that blanks in preprinted forms may be completed in handwriting and notations by the clerk or Judge may be in handwriting.

(e) Spacing, Paging and Numbered Lines.

(1) All pleadings, motions and requested instructions must be double-spaced, prepared on one side only and on paper with numbered lines; formal matters such as proof of service may be on the back side with legal turn.

(2) All other documents may be single-spaced and the lines need not be numbered. Preprinted forms may be prepared on both sides with legal turns.

(3) On the first page of each pleading or similar document, not less than two inches or more than four inches from the top of the page shall be left blank.

(f) Backing Sheets. The use of backing sheets is discouraged. If used, they must be 81/2 X 11 inches, no heavier than 16-pound weight and not folded over at the top.

(g) Signature. The name of the party or attorney signing any pleading or motion must be typed or printed immediately below the signature.

(h) Attorney or Litigant Information. All documents must include the author's name, address, telephone number, if any, and, if prepared by an attorney, the name and the Bar number of the author and the trial attorney assigned to try the case. Any document not bearing the name and Bar number of an attorney as the author or preparer of the document must bear or be accompanied by a certificate in substantially the following form:

Certificate of Document Preparation. You are required to truthfully complete this certificate regarding the document you are filing with the Court. Check all boxes and complete all blanks that apply:

[ ] I selected this document for myself, and I completed it without paid assistance.
[ ] I paid or will pay money to _____ for assistance in preparing this form/document.

_____
(Signature)

(i) Distinct Paragraphs. All paragraphs in a pleading or motion must be numbered consecutively in the center of the page with Arabic numerals, beginning with the first paragraph of the document and continuing through the last. Subdivisions within a

paragraph must be designated by lower case letters, enclosed in parentheses, placed at the left margin of each subdivision.

(j) Exhibits.

(1) When an exhibit is appended to a filed document, each page of the exhibit must be identified by the word "Exhibit" or "Ex" to appear at the bottom right-hand side of the exhibit, followed by an Arabic numeral identifying the exhibit. Each page number of the exhibit must appear in Arabic numerals immediately below the exhibit number;

e.g.: "Exhibit 2
Page 10"

(2) Exhibits appended to a pleading may be incorporated by reference in a later pleading.

(k) Information at Bottom of Each Page. The name of the document, and the page number expressed in Arabic numerals, must appear at the bottom left-hand side of each of each document.

(l) Document Title.

(1) The title of each document filed with the court must include an identification of the filing party, such as "Plaintiff" or "Defendant". When there are multiple parties on a side, the party submitting the document must be suitably identified, such as "Plaintiff Smith" or "Defendant Jones".

(2) In the title of each complaint or, petition and at the beginning of each claim for relief, in the body of the pleading, there must be indicated the type of claim such as "personal injury", "breach of contract", "specific performance" or "custody". The Court case number must appear in the caption of every document. Every motion must show in the title the name of the pleading against which it is directed.

m. Orders, Judgments or Writs.

(1) The Judge's signature portion of any order, judgment or writ prepared for the Court must appear on a page containing at least two lines of the text. Orders, judgments or writs embodying the ruling of a particular

Judge must have the name of the Judge typed, stamped or printed under the signature line.

(2) If the order, judgment or writ is prepared by a party, the name and identity of the party submitting the order must appear therein, preceded by the words "submitted by".

(3) Motions and orders submitted as a single document must contain a double solid line across the page separating the motion portion of the document from the order portion. The caption of the document must be labeled "Motion xxxxxxxx and Order" in the upper right-hand corner of the document. The full description of the motion must be included in the title. The order portion must be clearly labeled "Order" in the upper left-hand corner of the order portion of the document. A 2-inch by 2-inch space must be provided below the double solid line in the upper right-hand corner of the order portion for the file/date stamp of the order. The order portions must be written as clearly and simply as possible. Where appropriate, the order must consist of only two check boxes as follows: one for allowed, the other for denied. Where such check boxes are used in the order portion, they must be placed above the standard date and signature lines.

Commentary

Subsection (b) of Section 620.110.1 requires that the information include the author's name (signature not required), followed by an identification of party being represented, plaintiff or defendant.

Example: Submitted by:
A. B. Smith
Attorney for Plaintiff (or Defendant)

An exception to this style would be in cases where there is more than one plaintiff or one defendant. In those situations, the author representing one defendant or plaintiff, but not all, should include the last name (full name when necessary for proper identification) after the designation of plaintiff or defendant.

Example: Submitted by:
A. B. Smith

Attorney for Plaintiff Clarke

(n) Citation of Cases. In all matters submitted to the Court, cases must be cited by conventional, proper reference to the appropriate Court. For example, reference to the Oregon Reports: Blank v. Blank, _____Or _____(year) or as State v. Blank, _____ Or App _____(year). Parallel citations may be added.

(o) Notice of Address or Telephone Number Change. An attorney or unrepresented party whose address or telephone number changes must immediately mail or deliver notification of such changes to the trial court administrator and all other parties.

(p) Application to Court Forms. Forms created by the Court are not required to comply with the provisions of CRCP 12 where the Court determines variation from those provisions will promote administrative convenience for court or parties. Such forms and exact copies of such forms may properly be used and submitted to the Court.

620.120 ACTIONS AND PLEADINGS

1. Commencement of Action.

A civil action in the Court shall be commenced by filing a complaint with the Clerk of the Court.

2. Process.

(a) Summons Issuance. Upon the filing of the complaint the Clerk shall forthwith issue summonses to the plaintiff or its attorney, who shall be responsible for service of the summons and complaint upon each defendant as provided in these rules.

(b) Form of Summons. The summons shall contain the name of the Court, the names of the parties, and shall be signed by the Clerk. The summons shall direct the defendant or defendants to appear and defend within the time provided for in these rules and shall notify defendant(s) that if the defendant(s) fails to appear timely the other side will win automatically.

(c) Service.

(1) The summons and complaint shall be served by any person 18 years of age or older and not a party to that suit. The summons and complaint shall be served together. Service shall be made by delivering true copies of the summons and complaint to the defendant personally or by leaving copies thereof at the individual's dwelling house or usual place of residency with a person 14 years of age or older residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process. If service must be made off of tribal land, and service cannot be accomplished as provided for herein, service shall be made in accordance with the laws of the tribe or the state within whose jurisdiction the defendant is to be served.

(2) On motion upon a showing by affidavit or declaration that service cannot be made by any method otherwise specified in these rules or other rule or statute, the court, at its discretion, may order service by any method or combination of methods which under the circumstances is most reasonably calculated to apprise the defendant of the existence and pendency of the action, including but not limited to: publication of summons; mailing without publication to a specified post office address of the defendant by first class mail and by any of the following: certified or registered mail, return receipt requested, or express mail; or posting at specified locations. If service is ordered by any manner other than publication, the court may order a time for response.

(3) In addition to the contents of a summons as described in paragraph (c)(1) of this rule, a published summons shall also contain a summary statement of the object of the complaint and the demand for relief, and the published notice shall state: "The 'motion' or 'answer' (or 'reply') must be given to the court clerk or administrator within 30 days of the date of first publication specified herein." The published summons shall also contain the date of the first publication of the summons.

(4) An order for publication shall direct publication of a summons of the action to be made in a newspaper of general circulation to be designated as most likely to give notice to the person to be served. Such published summons shall be published four times in successive calendar weeks. If the plaintiff knows of a specific location other than the county where the action is commenced where publication might reasonably result in actual notice to the defendant, the plaintiff shall so state in the affidavit or declaration required by paragraph (a) of this

subsection, and the court may order publication in a comparable manner at such location in addition to, or in lieu of, publication in the county where the action is commenced.

(5) If the court orders service by publication and the plaintiff knows or with reasonable diligence can ascertain the defendant's current address, the plaintiff shall mail a copy of the summons and the complaint to the defendant at such address by first class mail and by any of the following: certified or registered mail, return receipt requested, or express mail. If the plaintiff does not know and cannot upon diligent inquiry ascertain the current address of any defendant, a copy of the summons and the complaint shall be mailed by the methods specified above to the defendant at the defendant's last known address. If the plaintiff does not know, and cannot ascertain upon diligent inquiry, the defendant's current and last known addresses, mailing of a copy of the summons and the complaint is not required.

(d) Proof of service. Whenever any pleading or other paper presented for filing is required or permitted by any rule to be served on any party or person, it shall bear or have attached to it either an acknowledgment of service by the person served, an affidavit of publication of a summons and complaint that complies with the service by publication procedures of this section, or proof of service and the names of the persons served, certified by the person who made service. The proof of service shall also contain the day and manner of service, and the method of service employed. Every pleading subsequent to the original complaint and answer, unless the Court orders otherwise, shall be served by first class mail upon each party by mailing it to the attorney of record or party at the attorney's or party's last known address.

(e) Time for Response. The defendant shall appear and defend within thirty (30) days from the date of service. Appear and defend means to file an answer (CRCP 620.120.11) or a motion (CRCP 620.120.12)

3. Time.

(a) Computation. In computing any period of time prescribed or allowed by these rules, by order of Court, or by any applicable law, the day of the act, event, or default from which the designated period of time begins to run shall not be

included. The last day of the period so computed shall be included, unless it is a Saturday or a legal holiday, including Sunday, in which event the period runs until the end of the next day which is not a Saturday or a legal holiday. If the period so computed relates to serving a public officer or filing a document at a public office, and if the last day falls on a day when that particular office is closed before the end of or for all of the normal work day, the last day shall be excluded in computing the period of time within which service is to be made or the document is to be filed, in which event the period runs until the close of office hours on the next day the office is open for business. When the period of time prescribed or allowed (without regard to section (c) of this rule) is less than seven days, intermediate Saturdays and legal holidays, including Sundays, shall be excluded in the computation.

As used in this rule, "legal holiday" means paid legal holiday for Tribal employees, as set forth in the personnel ordinance of the Tribe.

(b) Unaffected by Expiration of Term. The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of Court. The continued existence or expiration of a term of Court in no way affects the power of the Court to do any act or take any proceeding in any civil action which is pending before it.

(c) Additional Time After Service by Mail. Except for service of summons, 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 such party and the notice or paper is served by mail, 3 days shall be added to the prescribed period.

4. Pleadings Liberally Construed; Disregard of Error.

(a) Liberal Construction. All pleadings shall be liberally construed with a view of substantial justice between the parties.

(b) Disregard of Error or Defect Not Affecting Substantial Right. The Court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the adverse party.

5. Kinds of Pleadings Allowed; Former Pleadings Abolished.

(a) Pleadings. The pleadings are the written statements by the parties of the facts constituting their respective claims and defenses.

(b) Pleadings Allowed. There shall be a complaint and an answer. An answer may include a counterclaim against a plaintiff, and a cross-claim against a defendant. There shall be an answer to a cross-claim. There shall be a reply to a counterclaim denominated as such and a reply to assert any affirmative allegations in avoidance of any defenses asserted in an answer. There shall be no other pleading unless the Court orders otherwise.

(c) Pleadings Abolished. Demurrers and pleas shall not be used.

6. Motions.

(a) Motions; In Writing; Grounds. An application for an order is a motion. Every motion, unless made during trial, shall be in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought.

(b) Form. The rules applicable to captions, signing, and other matters of form of pleadings, including 620.120.9, apply to all motions and other papers provided for by these rules.

7. Time for Filing Pleadings or Motions.

(a) Time for Filing Motions and Pleadings. A motion or answer to the complaint and the reply to a counterclaim or answer to a cross-claim shall be filed with the clerk by the time required by 620.120.2(e) to appear and defend. Any other motion or responsive pleading shall be filed not later than 10 days after service of the pleading moved against or to which the responsive pleading is directed.

(b) Pleading After Motion.

(1) If the Court denies a motion, any responsive pleading required shall be filed within 10 days after service of the order, unless the order otherwise directs.

(2) If the Court grants a motion and an amended pleading is allowed or required, such pleading shall be

filed within 10 days after service of the order, unless the order otherwise directs.

(c) Responding to Amended Pleading. A party shall respond to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the Court otherwise directs.

(d) Enlarging Time to Plead or Do Other Act. The Court may, in its discretion, and upon such terms as may be just, allow an answer or reply to be made, or allow any other pleading or motion after the time limited by the procedural rules, or by an order enlarge such time.

8. Form of Pleadings.

(a) Captions; Names of Parties. Every pleading shall contain a caption setting forth the name of the Court, the title of the action, the register number of the cause, and a designation in accordance with 620.120.5(b). 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.

(b) Concise and Direct Statement; Paragraphs; Separate Statement of Claims or Defenses. Every pleading shall consist of plain and concise statements in paragraphs consecutively numbered throughout the pleading with Arabic numerals, the contents of which shall be limited as far as practicable to a statement of a single set of circumstances, and a paragraph may be referred to by number in all succeeding pleadings. Each separate claim or defense shall be separately stated. Within each claim alternative theories of recovery shall be identified as separate counts.

(c) Consistency in Pleading Alternative Statements. Inconsistent claims or defenses are not objectionable, and when a party is in doubt as to which of two or more statements of fact is true, the party may allege them in the alternative. A party may also state as many separate claims or defenses as the party has, regardless of consistency and whether based upon legal or equitable grounds or upon both. All statements shall be made subject to the obligation set forth in 620.120.9.

(d) Adoption by Reference. Statements in a pleading may be adopted by reference in a different part of the same pleading.

9. Signing of Pleadings, Motions and Other Papers; Sanctions.

(a) Signing by Party or Attorney; Certificate. Every pleading, motion and other paper of a party represented by an attorney shall be signed by at least one attorney of record who is an active member of the Coquille Indian Tribal Court Bar. A party who is not represented by an attorney shall sign the pleading, motion or other paper and state the address of the party. Pleadings need not be verified or accompanied by affidavit.

(b) Pleadings, Motions and Other Papers Not Signed. If a pleading, motion or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(c) Certifications to Court.

(1) An attorney or party who signs, files or otherwise submits an argument in support of a pleading, motion or other paper makes the certifications to the Court identified in subsections (2) to (5) of this section, and further certifies that the certifications are based on the person's reasonable knowledge, information and belief, formed after the making of such inquiry as is reasonable under the circumstances.

(2) A party or attorney certifies that the pleading, motion or other paper is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(3) An attorney certifies that the claims, defenses, and other legal positions taken in the pleading, motion or other paper are warranted by existing law or by a non-frivolous argument for the extension, modification or reversal of existing law or the establishment of new law.

(4) A party or attorney certifies that the allegations and other factual assertions in the pleading, motion or other paper are supported by evidence. Any allegation or other factual assertion that the party or attorney does not wish to certify to be supported by evidence must be

specifically identified. The attorney or party certifies that the attorney or party reasonably believes that an allegation or other factual assertion so identified will be supported by evidence after further investigation and discovery.

(5) The party or attorney certifies that any denials of factual assertion are supported by evidence. Any denial of factual assertion that the party or attorney does not wish to certify to be supported by evidence must be specifically identified. The attorney or party certifies that the attorney or party believes that a denial of a factual assertion so identified is reasonably based on a lack of information or belief.

(d) Sanctions.

(1) The Court may impose sanctions against a person or party who is found to have made a false certification under section (c) of this rule, or who is found to be responsible for a false certification under section (c) of this rule. A sanction may be imposed under this section only after notice and an opportunity to be heard are provided to the party or attorney. A law firm is jointly liable for any sanction imposed against a partner, associate or employee of the firm, unless the Court determines that joint liability would be unjust under the circumstances.

(2) Sanctions may be imposed under this section upon motion of a party or upon the Court's own motion. If the Court seeks to impose sanctions on its own motion, the Court shall direct the party or attorney to appear before the Court and show cause why the sanctions should not be imposed. The Court may not issue an order to appear and show cause under this subsection at any time after the filing of a voluntary dismissal, compromise or settlement of the action with respect to the party or attorney against whom sanctions are sought to be imposed.

(3) A motion by a party to the proceeding for imposition of sanctions under this section must be made separately from other motions and pleadings, and must describe with specificity the alleged false certification. A motion for imposition of sanctions based on a false certification under subsection 4 of this rule may not be filed until 120 days after the filing of a complaint if the

alleged false certification is an allegation or other factual assertion in a complaint filed within 60 days of the running of the statute of limitations for a claim made in the complaint. Sanctions may not be imposed against a party until at least 21 days after the party is served with the motion. Notwithstanding any other provision of this section, the Court may not impose sanctions against a party if, within 21 days after the motion is served on the party, the party amends or otherwise withdraws the pleading, motion, paper or argument in a manner that corrects the false certification specified in the motion. If the party does not amend or otherwise withdraw the pleading, motion, paper or argument but thereafter prevails on the motion, the Court may order the moving party to pay to the prevailing party reasonable attorney fees incurred by the prevailing party by reason of the motion for sanctions.

(4) Sanctions under this section must be limited to amounts sufficient to reimburse the moving party for attorney fees and other expenses incurred by reason of the false certification, including reasonable attorney fees and expenses incurred by reason of the motion for sanctions, and amounts sufficient to deter future false certification by the party or attorney and by other parties and attorneys. The sanction may include monetary penalties payable to the Court. The sanction must include an order requiring payment of reasonable attorney fees and expenses incurred by the moving party by reason of the false certification.

(5) An order imposing sanctions under this section must specifically describe the false certification and the grounds for determining that the certification was false. The order must explain the grounds for the imposition of the specific sanction that is ordered.

10. Claims for Relief.

A pleading which asserts a claim for relief, whether an original claim, counterclaim, or cross-claim, shall contain:

(a) A plain and concise statement of the ultimate facts constituting a claim for relief without unnecessary repetition.

(b) A demand of the relief which the party claims; if recovery of money or damages is demanded, the amount thereof

shall be stated; relief in the alternative or of several different types may be demanded.

11. Responsive Pleadings.

(a) Defenses; Form of Denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the allegations upon which the adverse party relies. If the party is without knowledge or information sufficient to form a belief as to the truth of an allegation, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. When a pleader intends in good faith to deny only a part or a qualification of an allegation, the pleader shall admit so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the allegations of the preceding pleading, the denials may be made as specific denials of designated allegations or paragraphs, or the pleader may generally deny all the allegations except such designated allegations or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all of the allegations of the preceding pleading, the pleader may do so by general denial of all allegations of the preceding pleading subject to the obligations set forth in section 620.120.9.

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

(c) Effect of Failure to Deny. Allegations in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted when not denied in the responsive pleading. Allegations in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

12. Defenses and Objections; How Presented; By Pleading or Motion; Motion for Judgment on the Pleadings.

(a) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a complaint, counterclaim, or cross-claim, shall be asserted in the responsive pleading thereto, except that the following defenses may at the option of the pleader be made by motion to dismiss: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) that there is another action pending between the same parties for the same cause, (4) that plaintiff has not the legal capacity to sue, (5) insufficiency of summons or process or insufficiency of service of summons or process, (6) that the party asserting the claim is not the real party in interest, (7) failure to join a party under 620.120.20, (8) failure to state ultimate facts sufficient to constitute a claim, and (9) that the pleading shows that the action has not been commenced within the time limited by statute. A motion to dismiss making any of these defenses shall be made before pleading if a further pleading is permitted. The grounds upon which any of the enumerated defenses are based shall be stated specifically and with particularity in the responsive pleading or motion. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If, on a motion to dismiss asserting defenses (1) through (7), the facts constituting such defenses do not appear on the face of the pleading and matters outside the pleading, including affidavits and other evidence, are presented to the court, all parties shall be given a reasonable opportunity to present evidence and affidavits, and the Court may determine the existence or nonexistence of the facts supporting such defense or may defer such determination until further discovery or until trial on the merits. When a motion to dismiss has been granted, judgment shall be entered in favor of the moving party unless the Court has given leave to file an amended pleading under 620.120.16.

(b) 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.

(c) Preliminary Hearings. The defenses specifically denominated (1) through (9) in section (a) of this rule, whether made in a pleading or by motion, and the motion for judgment on the pleadings mentioned in section (b) of this rule shall be heard and determined before trial on application of any party,

unless the Court orders that the hearing and determination thereof be deferred until the trial.

(d) Motion to Make More Definite and Certain. Upon motion made by a party before responding to a pleading, or if no responsive pleading is permitted by these rules upon motion by a party within 10 days after service of the pleading, or upon the Court's own initiative at any time, the Court may require the pleading to be made definite and certain by amendment when the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge, defense, or reply is not apparent. If the motion is granted and the order of the Court is not obeyed within 10 days after service 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.

(e) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 10 days after the service of the pleading upon such party or upon the court's own initiative at any time, the Court may order stricken: (1) any sham, frivolous, or irrelevant pleading or defense or any pleading containing more than one claim or defense not separately stated; (2) any insufficient defense or any sham, frivolous, irrelevant, or redundant matter inserted in a pleading.

(f) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule, except a motion to dismiss for lack of jurisdiction over the person or insufficiency of summons or process or insufficiency of service of summons or process, but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subsection (g)(3) of this rule on any of the grounds there stated. A party may make one motion to dismiss for lack of jurisdiction over the person or insufficiency of summons or process or insufficiency of service of summons or process without consolidation of defenses required by this section.

(g) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, that there is another action pending between the same parties for the same cause, insufficiency of summons or process, or insufficiency of service of summons or process, is waived under either of the following circumstances: (a) if the defense is omitted from a motion in the circumstances described in section (f) of this rule, or (b) if the defense is neither made by motion under this rule nor included in a responsive pleading. The defenses referred to in this subsection shall not be raised by amendment.

(2) A defense that a plaintiff has not the legal capacity to sue, that the party asserting the claim is not the real party in interest, or that the action has not been commenced within the time limited by statute, is waived if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof. Leave of Court to amend a pleading to assert the defenses referred to in this subsection shall only be granted upon a showing by the party seeking to amend that such party did not know and reasonably could not have known of the existence of the defense or that other circumstances make denial of leave to amend unjust.

(3) A defense of failure to state ultimate facts constituting a claim, a defense of failure to join a party indispensable under 620.120.20, and an objection of failure to state a legal defense to a claim or insufficiency of new matter in a reply to avoid a defense, may be made in any pleading permitted or ordered under 620.120.5(b) or by motion for judgment on the pleadings, or at the trial on the merits. The objection or defense, if made at trial, shall be disposed of as provided in 620.120.14(b) in light of any evidence that may have been received.

(4) If it appears by motion of the parties or otherwise that the Court lacks jurisdiction over the subject matter, the Court shall dismiss the action.

13. Counterclaims and Cross-claims.

(a) Counterclaims.

(1) Each defendant may set forth as many counterclaims, both legal and equitable, as such defendant may have against a plaintiff.

(2) 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.

(b) Cross-Claim Against Codefendant.

(1) In any action where two or more parties are joined as defendants, any defendant may in such defendant's answer allege a cross-claim against any other defendant. A cross-claim asserted against a codefendant must be one existing in favor of the defendant asserting the cross-claim and against another defendant, between whom a separate judgment might be had in the action and shall be: (a) one arising out of the occurrence or transaction set forth in the complaint; or (b) related to any property that is the subject matter of the action brought by plaintiff.

(2) A cross-claim may include a claim that the defendant against whom it is asserted is liable, or may be liable, to the defendant asserting the cross-claim for all or part of the claim asserted by the plaintiff.

(3) An answer containing a cross-claim shall be served upon the parties who have appeared.

(c) Joinder of Additional Parties.

(1) Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of 620.120.19 and 620.120.20.

(2) In any action against a party joined under this section of this rule, the party joined shall be treated as a defendant for purposes of service of summons and time to answer under 620.120.2.

(d) Separate Trial. Upon motion of any party or on the Court's own initiative, the Court may order a separate trial of any counterclaim, cross-claim, or third party claim so alleged if to do so would: (1) be more convenient; (2) avoid prejudice; or (3) be more economical and expedite the matter.

14. Amended and Supplemental Pleadings.

(a) Amendments. A pleading may be amended by a party once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted, the party may so amend it at any time within 30 days after it is served. Otherwise a party may amend the pleading only by leave of Court or by written consent of the adverse party; and leave shall be freely given when justice so requires. Whenever an amended pleading is filed, it shall be served upon all parties who are not in default, but as to all parties who are in default or against whom a default previously has been entered, judgment may be rendered in accordance with the prayer of the original pleading served upon them; and neither the amended pleading nor the process thereon need be served upon such parties in default unless the amended pleading asks for additional relief against the parties in default.

(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 so to 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 when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice such party in maintaining an action or defense upon the merits. The Court may grant a continuance to enable the objecting party to meet such evidence.

(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 the party to be brought in by amendment, such party (1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining any 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 the party brought in by amendment.

(d) How Amendment Made. When any pleading is amended before trial, mere clerical errors excepted, it shall be done by filing a new pleading, to be called the amended pleading, or by interlineation, deletion, or otherwise. Such amended pleading shall be complete in itself, without reference to the original or any preceding amended one.

(e) Supplemental Pleadings. Upon motion of a party the Court may, upon reasonable notice and upon such terms as are just, permit the party 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.

15. Joinder of Claims.

(a) Permissive Joinder. A plaintiff may join in a complaint, either as independent or as alternate claims, as many claims, legal or equitable, as the plaintiff has against an opposing party.

(b) Separate Statement. The claims joined must be separately stated and must not require different places of trial.

16. Effect of Proceeding After Motion or Amendment.

(a) Amendment or Pleading Over After Motion; Non-waiver of Defenses or Objections. When a motion to dismiss or a motion to strike an entire pleading or a motion for a judgment on the pleadings under 620.120.12 is allowed, the Court may, upon such terms as may be proper, allow the party to amend the pleading. In all cases where part of a pleading is ordered stricken, the pleading shall be amended in accordance with 620.120.14(d). By amending a pleading pursuant to this section, the party amending such pleading shall not be deemed thereby to have waived the right to challenge the correctness of the Court's ruling.

(b) Amendment of Pleading; Objections to Amended Pleading Not Waived. If a pleading is amended, whether pursuant to

section (a) or (b) of 620.120.14 or section (a) of this rule or pursuant to other rule or statute, a party who has filed and received a Court's ruling on any motion directed to the preceding pleading does not waive any defenses or objections asserted in such motion by failing to reassert them against the amended pleading.

(c) Denial of Motion; Non-waiver by Filing Responsive Pleading. If an objection or defense is raised by motion, and the motion is denied, the party filing the motion does not waive the objection or defense by filing a responsive pleading or by failing to re-assert the objection or defense in the responsive pleading or by otherwise proceeding with the prosecution or defense of the action.

17. Real Party in Interest; Capacity of Partnerships and Associations.

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

(b) Partnerships and Associations. Any partnership or other unincorporated association, whether organized for profit or not, may sue in any name which it has assumed and be sued in any name which it has assumed or by which it is known. Any member of the partnership or other unincorporated association may be joined as a party in an action against the partnership or unincorporated association.

18. Minor or Incapacitated Persons.

(a) Appearance of Minor Parties by Guardian or Conservator. When a minor, who has a conservator of such minor's estate or a

guardian, is a party to any action, such minor shall appear by the conservator or guardian as may be appropriate or, if the Court so orders, by a guardian ad litem appointed by the Court. If the minor does not have a conservator of such minor's estate or a guardian, the minor shall appear by a guardian ad litem appointed by the Court. The Court shall appoint some suitable person to act as guardian ad litem:

(1) When the minor is plaintiff, upon application of the minor, if the minor is 14 years of age or older, or upon application of a relative or friend of the minor if the minor is under 14 years of age.

(2) When the minor is defendant, upon application of the minor, if the minor is 14 years of age or older, filed within the period of time specified by these rules or other applicable rule for appearance and answer after service of summons, or if the minor fails so to apply or is under 14 years of age, upon application of any other party or of a relative or friend of the minor.

(b) Appearance of Incapacitated Person by Conservator or Guardian. When a person who is incapacitated or financially incapable, who has a conservator of such person's estate or a guardian, is a party to any action, the person shall appear by the conservator or guardian as may be appropriate or, if the Court so orders, by a guardian ad litem appointed by the Court in which the action is brought. If the person does not have a conservator of such person's estate or a guardian, the person shall appear by a guardian ad litem appointed by the Court. The Court shall appoint some suitable person to act as guardian ad litem:

(1) When the person who is incapacitated or financially incapable is plaintiff, upon application of a relative or friend of the person.

(2) When the person is defendant, upon application of a relative or friend of the person filed within the period of time specified by these rules or other rule or statute for appearance and answer after service of summons, or if the application is not so filed, upon application of any party other than the person.

19. Joinder of Parties.

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

(b) Separate Trials. The Court may make such orders as will prevent a party from being embarrassed, delayed, or put to unnecessary expense by the inclusion of a party against whom that party asserts no claim and who asserts no claim against that party. The Court may order separate trials or make other orders to prevent delay or prejudice.

20. Joinder of Persons Needed for Just Adjudication.

(a) Persons to Be Joined if Feasible. A person who is subject to service of process shall be joined as a party in the action if (1) in that person's absence complete relief cannot be accorded among those already parties, or (2) that person claims an interest relating to the subject of the action and is so situated that the disposition in that person's absence may (a) as a practical matter impair or impede the person's 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 their claimed interest. If such person has not been so joined, the Court shall order that such person be made a party. If a person should join as a plaintiff but refuses to do so, such person shall be made a defendant, the reason being stated in the complaint.

(b) Determination by Court Whenever Joinder Not Feasible. If a person as described in subsections A(1) and (2) of this rule cannot be made a party, the Court shall determine whether in

equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the Court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, 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; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

21. Misjoinder and Nonjoinder of Parties.

Misjoinder and Nonjoinder 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. Any claim against a party may be severed and proceeded with separately.

22. Substitution of Parties.

(a) Nonabatement of Action by Death, Disability, or Transfer. No action shall abate by the death or disability of a party, or by the transfer of any interest therein, if the claim survives or continues.

(b) Death of a Party; Continued Proceedings. In case of the death of a party, the Court shall, on motion, allow the action to be continued:

(1) By such party's personal representative or successors in interest at any time within one year after such party's death; or

(2) Against such party's personal representative or successors in interest at any time within four months after the date of the first publication of notice to interested persons, but not more than one year after such party's death.

(c) Disability of a Party; Continued Proceedings. In case of the disability of a party, the Court may, at any time within one year thereafter, on motion, allow the action to be continued

by or against the party's guardian or conservator or successors in interest.

(d) Death of a Party; Surviving Parties. In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be shown upon the record by a written statement of a party signed in conformance with 620.120.9 and the action shall proceed in favor of or against the surviving parties.

(e) 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.

(f) Public Officers; Death or Separation From Office.

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

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

(g) Procedure. The motion for substitution may be made by any party, or by the successors in interest or representatives of the deceased or disabled party, or the successors in interest of the transferor and shall be served on the parties as provided in 620.120.2(d) and upon persons not parties in the manner provided in 620.120(b) for the service of a summons.

620.130 DISCOVERY

1. [RESERVED FOR EXPANSION]

2. 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; 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.

(b) Scope of Discovery. Unless otherwise limited by order of the Court in accordance with these rules, the scope of discovery is as follows:

(1) In General. For all forms of discovery, parties may inquire regarding any matter, not privileged, which is relevant 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 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.

(2) Insurance Agreements or Policies.

(A) A party, upon the request of an adverse party, shall disclose the existence and contents of any insurance agreement or policy under which a person transacting insurance 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.

(B) The obligation to disclose under this subsection shall be performed as soon as practicable following the filing of the complaint and the request to disclose. The Court may supervise the exercise of disclosure to the extent necessary to insure that it proceeds properly and expeditiously. However, the Court may limit the extent of disclosure under this subsection as provided in section (c) of this rule.

(C) Information concerning the insurance agreement or policy is not by reason of disclosure admissible in evidence at trial. For purposes of this subsection, an application for insurance shall not be treated as part of an insurance agreement or policy.

(D) As used in this subsection, "disclose" means to afford the adverse party an opportunity to inspect or copy the insurance agreement or policy.

(3) Trial Preparation Materials. Subject to the provisions of 620.130.10, a party may obtain discovery of documents and tangible things otherwise discoverable under subsection (b) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including an attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of such party's case and 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, a statement concerning the action or its subject matter previously made by that party. Upon request, a person who is 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 or party requesting the statement may move for a Court order. The provisions of 620.130.12(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this subsection, a statement previously made is (i) a written statement signed or otherwise adopted or approved by the person making it, or (ii) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(c) Court Order Limiting Extent of Disclosure. Upon motion by a party or by the person from whom discovery is sought, and

for good cause shown, the Court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the Court; (6) that a deposition after being sealed be opened only by order of the Court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court; or (9) that to prevent hardship the party requesting discovery pay to the other party reasonable expenses incurred in attending the deposition or otherwise responding to the request for discovery.

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 620.130.12 (a)(4) apply to the award of expenses incurred in relation to the motion.

3. Perpetuation of Testimony or Evidence Before Action or Pending Appeal.

(a) Before Action.

(1) Petition. A person who desires to perpetuate testimony or to obtain discovery to perpetuate evidence under 620.130.9 or 620.130.10 regarding any matter that may be cognizable in the Court may file a petition in the Court. The petition shall be entitled in the name of the petitioner and shall show: (a) that the petitioner, or the petitioner's personal representatives, heirs, beneficiaries, successors, or assigns are likely to be a party to an action cognizable in the Court and are presently unable to bring such an action or defend it, or that the petitioner has an interest in real property or some easement or franchise therein, about which a controversy may arise, which would be the subject of such action; (b) the subject matter of the

expected action and petitioner's interest therein and a copy, attached to the petition, of any written instrument the validity or construction of which may be called into question or which is connected with the subject matter of the expected action; (c) the facts which petitioner desires to establish by the proposed testimony or other discovery and petitioner's reasons for desiring to perpetuate; (d) the names or a description of the persons petitioner expects will be adverse parties and their addresses so far as one is known; and, (e) the names and addresses of the parties to be examined or from whom discovery is sought and the substance of the testimony or other discovery which petitioner expects to elicit and obtain from each. The petition shall name persons to be examined and ask for an order authorizing the petitioner to take their depositions for the purpose of perpetuating their testimony, or shall name persons in the petition from whom discovery is sought and shall ask for an order allowing discovery under 620.130.9 or 620.130.10 from such persons for the purpose of preserving evidence.

(2) Notice and Service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the Court at a time and place named therein, for the order described in the petition. The notice shall be served either within or without the state in the manner provided for service of summons in 620.120.2, but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the Court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served with summons in the manner provided in 620.120.2, an attorney who shall represent them and whose services shall be paid for by petitioner in an amount fixed by the court, and, in case they are not otherwise represented, shall cross examine the deponent. Testimony and evidence perpetuated under this rule shall be admissible against expected adverse parties not served with notice only in accordance with the applicable rules of evidence. If any expected adverse party is a minor or incompetent, the provisions of 620.120.18 apply.

(3) Order and Examination. If the Court is satisfied that the perpetuation of the testimony or other discovery to

perpetuate evidence may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written questions; or shall make an order designating or describing the persons from whom discovery may be sought under 620.130.9 specifying the objects of such discovery; or shall make an order for a physical or mental examination as provided in 620.130.10. Discovery may then be had in accordance with these rules. For the purpose of applying these rules to discovery before action, each reference therein to the Court in which the action is pending shall be deemed to refer to the Court in which the petition for such discovery was filed.

(b) Pending Appeal. If an appeal has been taken from a judgment of a Court to which these rules apply or before the taking of an appeal if the time therefor has not expired, the Court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony or may allow discovery under 620.130.9 or 620.130.10 for use in the event of further proceedings in such Court. In such case the party who desires to perpetuate the testimony or obtain the discovery may make a motion in the Court therefor upon the same notice and service thereof as if the action was pending in the Court. The motion shall show: (1) the names and addresses of the persons to be examined or from whom other discovery is sought and the substance of the testimony or other discovery which the party expects to elicit from each; and (2) the reasons for perpetuating their testimony or seeking such other discovery. If the Court finds that the perpetuation of the testimony or other discovery is proper to avoid a failure or delay of justice, it may make an order as provided in subsection (3) of section (a) of this rule and thereupon discovery may be had and used in the same manner and under the same conditions as are prescribed in these rules for discovery in actions pending in the Court.

(c) Perpetuation by Action. This rule does not limit the power of a Court to entertain an action to perpetuate testimony.

(d) Filing of Depositions. Depositions taken under this rule shall be filed with the Court in which the petition is filed or the motion is made.

4. Persons Who May Administer Oaths for Depositions; Foreign Depositions.

(a) Within Oregon.

(1) Within this state, depositions shall be preceded by an oath or affirmation administered to the deponent by an officer authorized to administer oaths by the laws of this state or by a person specially appointed by the Court in which the action is pending. A person so appointed has the power to administer oaths for the purpose of the deposition.

(2) For purposes of this rule, a deposition taken pursuant to 620.130.5 (c)(7) is taken within this state if either the deponent or the person administering the oath is located in this state.

(c) Outside the State. Within another state, or within a territory or insular possession subject to the dominion of the United States, or in a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or (2) before a person appointed or commissioned by the Court in which the action is pending, and such a person shall have the power by virtue of such person's appointment or commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or 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. A letter rogatory may be addressed "To the Appropriate Authority in (here name the state, territory, or country)". Evidence obtained in a foreign country 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 United States under these rules.

(c) Foreign Depositions.

(1) Whenever any mandate, writ, or commission is issued out of any Court of record in any other state, territory, district, or foreign jurisdiction, or whenever upon notice or agreement it is required to take the testimony of a witness or witnesses in this state, witnesses may be compelled to appear and testify in the same manner and by the same process and proceeding as may be employed for the purpose of taking testimony in proceedings pending in this Court.

(2) This section shall be so interpreted and construed as to effectuate its general purposes to make uniform the laws of those states which have similar rules or statutes.

5. Depositions Upon Oral Examination.

(a) When Deposition May Be Taken. After the service of summons or the appearance of the defendant in any action, or in a special proceeding at any time after a question of fact has arisen, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of Court, with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of the period of time specified in 620.120.2 to appear and answer after service of summons on any defendant, except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) a special notice is given as provided in subsection (c)2 of this Rule. The attendance of a witness may be compelled by subpoena as provided in 620.140.13.

(b) Order for Deposition or Production of Prisoner. The deposition of a person confined in a prison or jail may only be taken by leave of Court. The deposition shall be taken on such terms as the Court prescribes, and the court may order that the deposition be taken at the place of confinement or, when the prisoner is confined in this state, may order temporary removal and production of the prisoner for purposes of the deposition.

(c) Notice of Examination.

(1) General Requirements. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not

known, a general description sufficient to identify such person or the particular class or group to which such person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) Special Notice. Leave of Court is not required for the taking of a deposition by plaintiff if the notice (a) states that the person to be examined is about to go out of the state, or is bound on a voyage to sea, and will be unavailable for examination unless the deposition is taken before the expiration of the period of time specified in 620.120.2 to appear and answer after service of summons on any defendant, and (b) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and such signature constitutes a certification by the attorney that to the best of such attorney's knowledge, information, and belief the statement and supporting facts are true.

If a party shows that when served with notice under this subsection, the party was unable through the exercise of diligence to obtain counsel to represent such party at the taking of the deposition, the deposition may not be used against such party.

(3) Shorter or Longer Time. The Court may for cause shown enlarge or shorten the time for taking the deposition.

(4) Non-stenographic Recording. The notice of deposition required under subsection (1) of this section may provide that the testimony be recorded by other than stenographic means, in which event the notice shall designate the manner of recording and preserving the deposition. The Court may require that the deposition be taken by stenographic means if necessary to assure that the recording be accurate.

(5) Production of Documents and Things. The notice to a party deponent may be accompanied by a request made in compliance with 620.130.9 for the production of documents and tangible things at the taking of the deposition. The procedure of 620.130.9 shall apply to the request.

(6) Deposition of Organization. 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, managing agents, or other persons who consent to testify on its behalf, and shall set forth, for each person designated, the matters on which such person will testify. 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 subsection does not preclude taking a deposition by any other procedure authorized in these rules.

(7) Deposition by Telephone. Parties may agree by stipulation or the court may order that testimony at a deposition be taken by telephone. If testimony at a deposition is taken by telephone pursuant to court order, the order shall designate the conditions of taking testimony, the manner of recording the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If testimony at a deposition is taken by telephone other than pursuant to court order or stipulation made a part of the record, then objections as to the taking of testimony by telephone, the manner of giving the oath or affirmation, and the manner of recording the deposition are waived unless seasonable objection thereto is made at the taking of the deposition. The oath or affirmation may be administered to the deponent, either in the presence of the person administering the oath or over the telephone, at the election of the party taking the deposition.

(d) Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial. The person described in 620.130.4 shall put the witness on oath. The testimony of the witness shall be recorded either stenographically or as provided in subsection (c)4 of this rule. If testimony is recorded pursuant to subsection (c)4 of this rule, the party taking the deposition shall retain the original recording without alteration, unless the recording is filed with the court pursuant to subsection (g)2 of this rule, until the final disposition of the action. If requested by one of the

parties, the testimony shall be transcribed upon the payment of the reasonable charges therefor. All objections made at the time of the examination to the qualifications of the person taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted upon the record. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions on the party taking the deposition who shall propound them to the witness and see that the answers thereto are recorded verbatim.

(e) Motion to Terminate or Limit Examination. At any time during the taking of a deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted or hindered in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or any party, the Court or the Court in the jurisdiction the deposition is being taken shall rule on any question presented by the motion and may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in 620.130.2 (c). Those persons described in 620.130.12 (b)(2) shall present the motion to the Court. Non-party deponents may present the motion to the Court or the Court at the place of examination. If the order terminates the examination, it shall be resumed thereafter only upon the order of the Court. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of 620.130.12 (a)(4) apply to the award of expenses incurred in relation to the motion.

(f) Submission to Witness; Changes; Statement.

(1) Necessity of Submission to Witness for Examination. When the testimony is taken by stenographic means, or is recorded by other than stenographic means as provided in subsection (c)4 of this rule, and if any party or the witness so requests at the time the deposition is taken, the recording or transcription shall be submitted to the witness for examination, changes, if any, and statement of correctness. With leave of court such request may be made by a party or witness at any time before trial.

(2) Procedure After Examination. Any changes which the witness desires to make shall be entered upon the

transcription or stated in a writing to accompany the recording by the party taking the deposition, together with a statement of the reasons given by the witness for making them. Notice of such changes and reasons shall promptly be served upon all parties by the party taking the deposition. The witness shall then state in writing that the transcription or recording is correct subject to the changes, if any, made by the witness, unless the parties waive the statement or the witness is physically unable to make such statement or cannot be found. If the statement is not made by the witness within 30 days, or within a lesser time upon Court order, after the deposition is submitted to the witness, the party taking the deposition shall state on the transcription or in a writing to accompany the recording the fact of waiver, or the physical incapacity or absence of the witness, or the fact of refusal of the witness to make the statement, together with the reasons, if any, given therefor; and the deposition may then be used as fully as though the statement had been made unless, on a motion to suppress under 620.130.7 (d), the court finds that the reasons given for the refusal to make the statement require rejection of the deposition in whole or in part.

(3) No Request for Examination. If no examination by the witness is requested, no statement by the witness as to the correctness of the transcription or recording is required.

(g) Certification; Filing; Exhibits; Copies.

(1) Certification. When a deposition is stenographically taken, the stenographic reporter shall certify, under oath, on the transcript that the witness was duly sworn and that the transcript is a true record of the testimony given by the witness. When a deposition is recorded by other than stenographic means as provided in subsection (c)4 of this rule, and thereafter transcribed, the person transcribing it shall certify, under oath, on the transcript that such person heard the witness sworn on the recording and that the transcript is a correct transcription of the recording. When a recording or a non-stenographic deposition or a transcription of such recording or non-stenographic deposition is to be used at any proceeding in the action or is filed with the Court, the party taking the deposition, or such party's attorney, shall certify under oath that the recording, either filed or furnished to

the person making the transcription, is a true, complete, and accurate recording of the deposition of the witness and that the recording has not been altered.

(2) Filing. If requested by any party, the transcript or the recording of the deposition shall be filed with the Court where the action is pending. When a deposition is stenographically taken, the stenographic reporter or, in the case of a deposition taken pursuant to subsection (c)4 of this rule, the party taking the deposition shall enclose it in a sealed envelope, directed to the clerk of the Court or such other person as may by writing be agreed upon, and deliver or forward it accordingly by mail or other usual channel of conveyance. If a recording of a deposition has been filed with the Court, it may be transcribed upon request of any party under such terms and conditions as the Court may direct.

(3) Exhibits. Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party. Whenever the person producing materials desires to retain the originals, such person may substitute copies of the originals, or afford each party an opportunity to make copies thereof. In the event the original materials are retained by the person producing them, they shall be marked for identification and the person producing them shall afford each party the subsequent opportunity to compare any copy with the original. The person producing the materials shall also be required to retain the original materials for subsequent use in any proceeding in the same action. 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.

(4) Copies. Upon payment of reasonable charges therefor, the stenographic reporter or, in the case of a deposition taken pursuant to subsection (c)4 of this rule, the party taking the deposition shall furnish a copy of the deposition to any party or to the deponent.

(h) Payment of Expenses Upon Failure to Appear.

(1) Failure of Party to Attend. If the party giving the notice of the taking of the 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 such other party the amount of the reasonable expenses incurred by such other party and the attorney for such other party in so attending, including reasonable attorney's fees.

(2) Failure of Witness to Attend. 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 the attending party 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 amount of the reasonable expenses incurred by such other party and the attorney for such other party in so attending, including reasonable attorney's fees.

(A) Perpetuation of Testimony After Commencement of Action.

(1) After commencement of any action, any party wishing to perpetuate the testimony of a witness for the purpose of trial or hearing may do so by serving a perpetuation deposition notice.

(2) The notice is subject to subsections (c)1 through 7 of this rule and shall additionally state:

(A) A brief description of the subject areas of testimony of the witness; and

(B) The manner of recording the deposition.

(3) Prior to the time set for the deposition, any other party may object to the perpetuation deposition. Such objection shall be governed by the standards of 620.130.2 (c). At any hearing on such an objection, the burden shall be on the party seeking perpetuation to show that: (a) the witness may be unavailable as defined in the Coquille Evidence Code; or (b) it would be an undue hardship on the witness to appear at the trial or hearing; or (c) other good cause exists for allowing the perpetuation. If no objection is filed, or if perpetuation is allowed, the testimony taken

shall be admissible at any subsequent trial or hearing in the action, subject to the Coquille Evidence Code.

(4) Any perpetuation deposition shall be taken not less than seven days before the trial or hearing on not less than 14 days' notice, unless the Court allows a shorter period upon a showing of good cause.

(5) To the extent that a discovery deposition is allowed by law, any party may conduct a discovery deposition of the witness prior to the perpetuation deposition.

(6) The perpetuation examination shall proceed as set forth in section (d) of this rule. All objections to any testimony or evidence taken at the deposition shall be made at the time and noted upon the record. The Court shall rule on any objections before the testimony is offered. Any objections not made at the deposition shall be deemed waived.

6. Depositions Upon Written Questions.

(a) Serving Questions; Notice. Upon stipulation of the parties or leave of Court for good cause shown, and after commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in 620.140.13. The deposition of a person confined in prison may be taken only as provided in 620.130.5(b).

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 such person or the particular class or group to which the person 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 620.130.5(c)(6).

Within 30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party

may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The Court may for cause shown enlarge or shorten the time.

(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, who shall proceed promptly, in the manner provided by 620.130.5(d), (f), and (g), to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by the officer.

7. Effect of Errors and Irregularities in Depositions.

(a) 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.

(b) As to Disqualification of Officer. Objection to taking a deposition because of disqualification of the officer administering the oath 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.

(c) As to Taking of Deposition.

(1) 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.

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

(3) Objections to the form of written questions submitted under 620.130.6 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 20 days after service of the last questions authorized.

(d) As to Completion and Return of Deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with under 620.130.5 and 620.130.6 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.

8. [RESERVED FOR EXPANSION]

9. 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 behalf of the party making the request, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, and 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 620.130.2(b) 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 620.130.2(b).

(b) Procedure. The request may be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons upon that party. The request shall set forth the items to be inspected either by individual item or by category and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the

inspection and performing the related acts. A defendant shall not be required to produce or allow inspection or other related acts before the expiration of 45 days after service of summons, unless the court specifies a shorter time. The party upon whom a request has been served shall comply with the request, unless the request is objected to with a statement of reasons for each objection before the time specified in the request for inspection and performing the related acts. 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 620.130.12(a) 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.

(c) Writing Called for Need Not Be Offered. Though a writing called for by one party is produced by the other, and is inspected by the party calling for it, the party requesting production is not obliged to offer it in evidence.

(d) Persons Not Parties. A person not a party to the action may be compelled to produce books, papers, documents, or tangible things and to submit to an inspection thereof as provided in 620.140.13. This rule does not preclude an independent action against a person not a party for permission to enter upon land.

10. Physical and Mental Examination of Persons; Reports of Examinations.

(a) Order for Examination. When the mental or physical condition or the blood relationship of a party, or of an agent, employee, or person in the custody or under the legal control of a party (including the spouse of a party in an action to recover for injury to the spouse), is in controversy, the Court may order the party to submit to a physical or mental examination by a physician or a mental examination by a psychologist or to produce for examination the person in such party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) Report of Examining Physician or Psychologist. If requested by the party against whom an order is made under section A of this rule or the person examined, the party causing

the examination to be made shall deliver to the requesting person or party a copy of a detailed report of the examining physician or psychologist setting out such physician's or psychologist's findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows inability to obtain it. This section applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise.

(c) Reports of Examinations; Claims for Damages for Injuries. In a civil action where a claim is made for damages for injuries to the party or to a person in the custody or under the legal control of a party, upon the request of the party against whom the claim is pending, the claimant shall deliver to the requesting party a copy of all written reports and existing notations of any examinations relating to injuries for which recovery is sought unless the claimant shows inability to comply.

(d) Report; Effect of Failure to Comply.

(1) Preparation of Written Report. If an obligation to furnish a report arises under sections (b) or (c) of this rule and the examining physician or psychologist has not made a written report, the party who is obliged to furnish the report shall request that the examining physician or psychologist prepare a written report of the examination, and the party requesting such report shall pay the reasonable costs and expenses, including the examiner's fee, necessary to prepare such a report.

(2) Failure to Comply or Make Report or Request Report. If a party fails to comply with sections (b) and (c) of this rule, or if a physician or psychologist fails or refuses to make a detailed report within a reasonable time, or if a party fails to request that the examining physician or psychologist prepare a written report within a reasonable time, the Court may require the physician or psychologist to appear for a deposition or may exclude the physician's or psychologist's testimony if offered at the trial.

(e) Access to Hospital Records. Any party against whom a civil action is filed for compensation or damages for injuries may obtain copies of all records of any hospital in reference to and connected with any hospitalization or provision of medical treatment by the hospital of the injured person within the scope of discovery under 620.130.2(b). Hospital records shall be obtained by subpoena in accordance with 620.150.10.

11. Requests for Admission.

(a) Request for Admission. After commencement of an action, a party may serve upon any other party a request for the admission by the latter of the truth of relevant matters within the scope of 620.130.2(b) specified in the request, including facts or opinions of fact, or the application of law to fact, or of the genuineness of any relevant documents or physical objects described in or exhibited with the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Each matter of which an admission is requested shall be separately set forth. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request for admissions shall be preceded by the following statement printed in capital letters of the type size in which the request is printed: "FAILURE TO SERVE A WRITTEN ANSWER OR OBJECTION WITHIN THE TIME ALLOWED BY CRCP 45 B WILL RESULT IN ADMISSION OF THE FOLLOWING REQUESTS."

(b) Response. The matter is admitted unless, within 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 the party's attorney; but, unless the Court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon such defendant. 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 the answer or deny only a part of the matter of which an admission is requested, the party 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 the answering party states that reasonable inquiry has been made and that the information known or readily obtainable by the answering party is insufficient to enable the answering party 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; the party may, subject to the provisions of 620.130.12(c), deny the matter or set forth reasons why the party cannot admit or deny it.

(c) Motion to Determine Sufficiency. The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the Court determines that an objection is justified, it shall order that an answer be served. If the Court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The Court may, in lieu of these orders, determine that final disposition of the request be made at a designated time prior to trial. The provisions of 620.130.12(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Effect of Admission. Any matter admitted pursuant to this rule is conclusively established unless the Court on motion permits withdrawal or amendment of the admission. The Court may permit withdrawal or amendment when the presentation of the merits of the case will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice such party in maintaining such party's case or such party's defense on the merits. Any admission made by a party pursuant to this rule is for the purpose of the pending action only, and neither constitutes an admission by such party for any other purpose nor may be used against such party in any other action.

(e) Form of Response. The request for admissions shall be so arranged that a blank space shall be provided after each separately numbered request. The space shall be reasonably calculated to enable the answering party to insert the admissions, denials, or objections within the space. If sufficient space is not provided, the answering party may attach additional papers with the admissions, denials, or objections and refer to them in the space provided in the request.

(f) Number. A party may serve more than one set of requested admissions upon an adverse party, but the total number of requests shall not exceed 30, unless the Court otherwise orders for good cause shown after the proposed additional requests have been filed. In determining what constitutes a request for admission for the purpose of applying this limitation in number, it is intended that each request be counted separately, whether or not it is subsidiary or incidental to or dependent upon or included in another request, and however the requests may be grouped, combined, or arranged.

12. Failure to Make 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) Court.

(A) Parties. An application for an order to a party may be made to the Court, and, on matters relating to a deponent's failure to answer questions at a deposition, such an application may also be made to a court of competent jurisdiction in the political subdivision where the deponent is located.

(B) Non-parties. An application for an order to a deponent who is not a party shall be made to a court of competent jurisdiction in the political subdivision where the non-party deponent is located.

(2) Motion. If a party fails to furnish a report under 620.130.10(b) or (c), or if a deponent fails to answer a question propounded or submitted under 620.130.5 or 620.130.6, or if a corporation or other entity fails to make a designation under 620.130.5(c)(6) or 620.130.6(a), or if a party fails to respond to a request for a copy of an insurance agreement or policy under 620.130.2(b)(2), or if a party in response to a request for inspection submitted under 620.130.9 fails to permit inspection as requested, the discovering party may move for an order compelling discovery in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

If the Court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to 620.130.2(c).

(3) Evasive or Incomplete Answer. For purposes of this section, an evasive or incomplete answer is to be treated as a failure to answer.

(4) Award of Expenses of Motion. If the motion is granted, the Court may, 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's 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's 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 in the Jurisdiction Where the Deponent Is Located. If a deponent fails to be sworn or to answer a question after being directed to do so by a Judge in the jurisdiction in which the deponent is located, the failure may be considered a contempt of Court.

(2) Sanctions by Court. If a party or an officer, director, or managing agent or a person designated under 620.130.5(c)(6) or 620.130.6(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under section (a) of this rule or

620.130.10, the Court may make such orders in regard to the failure as are just, including among others, the following:

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

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the disobedient party 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 any part thereof, or rendering a judgment by default against the disobedient party;

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

(E) Such orders as are listed in paragraphs (a), (b), and (c) of this subsection, where a party has failed to comply with an order under 620.130.10(a) requiring the party to produce another for examination, unless the party failing to comply shows inability to produce such person for examination.

(3) Payment of Expenses. In lieu of any order listed in subsection 2 of this section or in addition thereto, the Court shall require the party failing to obey the order or the attorney advising such party or both to pay the reasonable expenses, including attorney's 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 Failure to Admit. If a party fails to admit the genuineness of any document or the truth of any matter, as requested under 620.130.11, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the party requesting the admissions may

apply to the Court for an order requiring the other party to pay the party requesting the admissions the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The Court shall make the order unless it finds that (1) the request was held objectionable pursuant to 620.130.11(b) or (c), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that such party might prevail on the matter, or (4) there was other good reason for the failure to admit.

(d) Failure of Party to Attend at Own Deposition or Respond to Request for Inspection or to Inform of Question Regarding the Existence of Coverage of Liability Insurance Policy. If a party or an officer, director, or managing agent of a party or a person designated under 620.130.5(c)(6) or 620.130.6(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition of that party or person, after being served with a proper notice, or (2) to comply with or serve objections to a request for production and inspection submitted under 620.130.9, after proper service of the request, the Court on motion may make such orders in regard to the failure as are just, including among others it may take any action authorized under subsection (b)2(A), (B), and (C) of this rule. In lieu of any order or in addition thereto, the Court shall require the party failing to act or the attorney advising such party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this section 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 620.130.2(c).

620.140 SUMMARY JUDGMENT

1. Summary Judgment.

(a) For Claimant. A party seeking to recover a claim or counterclaim, or to obtain a declaratory judgment may, at any time after the expiration of forty-five (45) days from the commencement of the action in this Court or after service of a motion for summary judgment by the adverse party, move with or

without supporting affidavits for summary judgment in his/her favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim or counterclaim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his/her favor to all or any part thereof.

(c) Motion and Proceedings Thereon. 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 rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Procedures. The following procedures shall be followed with respect to motions for summary judgment:

(1) The moving (or cross-moving) party shall file, together with its motion, a separate document titled Proposed Findings of Uncontroverted Fact. This document shall contain concise, separately numbered paragraphs setting forth all of the material facts upon which the party bases its motion and as to which party believes there is no genuine dispute. Each paragraph shall contain citations to the opposing party's pleadings or to documentary evidence (such as affidavits or exhibits) filed with the motion or otherwise part of the record in the case.

(2) The opposing party shall file, together with its opposition (or cross-motion), a separate document titled Statement of Genuine Issues. This document shall respond (by reference to specific paragraph numbers) to those Proposed Findings of Uncontroverted Fact as to which it claims there is a genuine dispute. The party shall state the precise nature of its disagreement and give its version of the events, supported by record citations. The opposing party may also file Proposed Findings of Uncontroverted Fact as to any relevant matters not covered by the moving party's statement.

(3) The parties may dispense with the documents called for in subdivision (d) 1-2 of this rule if they file, no later than the time of the initial motion, a comprehensive

stipulation of all of the material facts upon which they intend to reply.

In determining any motion for summary judgment, the Court will, absent persuasive reason to the contrary, deem the material facts claimed and adequately supported by the moving party to be included in the Statement of Genuine Issues and are controverted by affidavit or other written or oral evidence.

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

2. [RESERVED FOR EXPANSION]

3. [RESERVED FOR EXPANSION]

620.150 TRIALS

1. [RESERVED FOR EXPANSION]

2. [RESERVED FOR EXPANSION]

3. Postponement of Cases.

(a) Postponement. When a cause is set and called for trial, it shall be tried or dismissed, unless good cause is shown for a postponement. At its discretion, the Court may grant a postponement, with or without terms, including requiring the party securing the postponement to pay expenses incurred by an opposing party.

(b) Absence of Evidence. If a motion is made for postponement on the grounds of absence of evidence, the Court may require the moving party to submit an affidavit stating the evidence which the moving party expects to obtain. If the adverse party admits that such evidence would be given and that it be considered as actually given at trial, or offered and overruled as improper, the trial shall not be postponed. However, the Court may postpone the trial if, after the adverse party makes the admission described in this section, the moving party can show that such affidavit does not constitute an adequate substitute for the absent evidence. The Court, when it allows the motion, may impose such conditions or terms upon the moving party as may be just.

4. Consolidation; Separate Trials.

(a) Joint Hearing or Trial; Consolidation of Actions. Upon motion of any party, when more than one action involving a common question of law or fact is pending before the Court, the Court may order a joint hearing or trial of any or all of the matters in issue in such actions; the Court may order all such actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

5. Pretrial Conferences.

(a) Conferences. In any action, the Court in its discretion by appropriate order may direct the attorneys for the parties and any unrepresented parties to confer and/or exchange:

(1) lists containing the names and addresses of all witnesses they respectively expect to call at trial;

(2) lists of the documentary exhibits which they respectively intend to offer at trial;

(3) written statements of material matters of fact as to which they respectively believe there is no substantial controversy;

(4) written statements of issues of fact and law they respectively believe are in dispute; and,

(5) such other matters as may be directed by the Court.

(b) Purposes of Conferences. In any action, the Court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference, or conferences, before trial or to arrange a telephone conference, or conferences for such purposes as

(1) expediting the disposition of the action;

(2) establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) discouraging wasteful pretrial activities;

(4) improving the quality of the trial through more thorough preparation;

(5) facilitating the settlement of the case; and,

(6) such other matters as may aid in the disposition of the action.

(c) Scheduling and Planning. After the initial status report or conference, the Court shall enter a scheduling order that limits the time:

(1) to join other parties and to amend the pleadings;

(2) to file and hear motions; and,

(3) to complete discovery.

The scheduling order also may include:

(4) the date or dates for conferences before trial, a final pretrial conference, and trial; and,

(5) any other matters appropriate in the circumstances of the case.

(d) Subjects to be Discussed at Pretrial Conferences. The participants at any conference under this rule may consider and take action with respect to:

(1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;

(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, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;

(4) the avoidance of unnecessary proof and of cumulative evidence;

(5) 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;

(6) the advisability of referring matters to a master or of eliciting testimony of impartial Tribal members who are familiar with relevant customs or traditional law.

(7) the possibility of settlement or the use of extra judicial procedures to resolve the dispute;

(8) the form and substance of the pretrial order;

(9) the disposition of pending motions;

(10) 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,

(11) such other matters as may aid in the disposition of the action. At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed.

(e) Final Pretrial Conference. Any final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including the

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 and by any unrepresented parties.

(f) Pretrial Orders. After any conference held pursuant to this rule, an order shall be entered reciting the action taken, except that after the final pretrial conference the Court may recite the contents of its order, other than scheduling matters, on the record. The pretrial order shall control the 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.

(g) Sanctions. If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith the Court, upon motion or its own initiative, may make such orders with regard thereto as are just including the imposition of sanctions.

6. Assignment of Cases for Trial.

Assignment of cases for trial is the responsibility of the Chief Judge or the Judge to whom the case is assigned, and may be made:

(a) without request of the parties; or,

(b) upon request of a party and notice to the other parties; or,

(c) in such other manner as the court deems expedient.

All trials shall be scheduled by the Judge by order filed with the Clerk.

7. Dismissal of Actions.

(a) Voluntary Dismissal: Effect Thereof.

(1) By Plaintiff; by Stipulation. An action may be dismissed by the plaintiff without order of Court

(A) by filing a notice of dismissal at any time before service of the answer or a response, 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 operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in this Court or in any Court of the United States an action based on or including the same claim.

(2) By Order of Court. Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the Court and upon such terms and conditions as the Court deems proper.

(b) Involuntary Dismissal: Effect Thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of Court, the Court may dismiss on its own motion or defendant may move for dismissal of an action or any claim. After the plaintiff has completed the presentation of his/her evidence, defendant, without waiving its right to offer evidence in the event the motions not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The Court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence.

8. Separate Trials.

The Court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedite the trial of a case , may order a separate trail on any claim, counterclaim, or cross claim or of any separate issue or of any number of claims, counterclaims, cross claims or issues.

9. Taking of Testimony.

(a) Form. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by order of the Court.

(b) Affirmation in Lieu of Oath. Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(c) Evidence on Motions. When a motion is based on facts not appearing in the record the Court the Court may hear the matter on affidavits presented by the respective parties, but the Court may direct that the matter be heard wholly or partly on oral testimony or deposition.

(d) Interpreters. The Court may appoint an interpreter of its own selection and may fix his/her reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct and may be awarded ultimately as costs, in the discretion of the Court.

10. Subpoena.

(a) For Attendance of Witnesses: Form Issuance. Every subpoena shall be issued by the Clerk under the seal of the Court, and shall state the name of the Court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. 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.

(b) For Production of Documentary Evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designate therein; but the Court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance there with, may:

(1) quash or modify the subpoena if it is unreasonable and oppressive; or,

(2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or, tangible things.

(c) Service. A subpoena shall be served by any person who is not a party and is not less than 18 years of age. Service of

a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him/her the fees for one day's attendance and mileage as established by the Tribal Council by resolution.

(d) Subpoena for Taking Depositions; Place of Examination.

(1) Proof of service of a notice a deposition as provided in 620.130.5(c) through 620.130.6(a) constitutes a sufficient authorization for the issuance by the Clerk of subpoenas for the persons named or described therein. Proof of service may be made by filing with the Clerk a copy of the notice together with a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by 620.130.1 through 620.130.12.

The person to whom the subpoena is directed may, within ten (10) days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than ten (10) days after service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the Court. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

(2) A witness may be required to attend an examination only in the county wherein he/she resides or is employed or transacts his/her business in person or at such other convenient place as is fixed by an order of the Court.

(e) Subpoena for a Hearing or Trial.

(1) At the request of any party, subpoenas for attendance at a hearing or trial shall be issued by the Clerk. A subpoena requiring the attendance of a witness may be served at any place that is within 100 miles of the place of the hearing or trial specified in the subpoena or a place

within the state where a state statute or rule of Court permits service of a subpoena issued by a state court of general jurisdiction sitting in the place where the Court is held; but the Court upon proper application and good cause shown may authorize the service of a subpoena at any other place.

(f) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon him/her may be deemed a contempt of the court.

620.160 JUDGMENTS

1. Entry of Judgment.

In every action or proceeding terminating in a judgment there shall be filed, separate from any findings of fact, conclusions of law, memorandum, opinion or order, a judgment which shall state concisely the judgment of the Court and shall be signed by the Judge assigned to the case. In all actions tried upon the facts, the Court shall state the facts it finds to be true specially and separately and any conclusions of law it reached in deciding the case and rendering judgment thereon. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open Court following the close of the evidence or appear in an opinion or memorandum of decision filed by the Court.

2. 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 these rules and that fact is made to appear by affidavit or otherwise, the Clerk shall enter his/her default.

(b) Judgment. Judgment by default may be entered as follows:

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

(2) By the Court. In all other cases, the party entitled to a judgment by default shall apply to the Court thereof; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, 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/she (or if appearing by representative, his/her representative) shall be served with written notice of the application for judgment at least three (3) days prior to the hearing, if any, 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 allegation 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.

(c) Setting Aside Default. For good cause shown by any party 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 these rules.

3. 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 on its own motion or on the motion of any party and after such notice to all parties who have appeared, if any, as the court orders. During the pendency of an appeal, a judgment may be corrected as provided in subsection 2 of section (b) of this rule.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence, etc.

(1) By Motion. On motion and upon such terms as are just, the Court may relieve a party or such party's legal representative from a judgment for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial; (c) fraud, misrepresentation, or other misconduct of an adverse party; (d) the judgment is void; or (e) 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. A motion for reasons (a), (b), and (c) shall be accompanied by a pleading or motion under 620.120.12(a) which contains an assertion of a claim or defense. The motion shall be made within a reasonable time, and for reasons (a), (b), and (c) not more than one year after receipt of notice by the moving party of the judgment. A copy of a motion filed within one year after the entry of the judgment shall be served on all parties as provided in 620.120.2(d), and all other motions filed under this rule shall be served as provided in 620.120. A motion under this section does not affect the finality of a judgment or suspend its operation.

(2) When Appeal Pending. A motion under sections 1 or 2 may be filed with and decided by the Trial Court during the time an appeal from a judgment is pending before the Coquille Indian Appellate Court. The moving party shall serve a copy of the motion on the Appellate Court. The moving party shall file a copy of the Trial Court's order in the Appellate Court within seven days of the date of the Trial Court order. Any necessary modification of the appeal required by the Court order shall be pursuant to rule of the Appellate Court.

(c) Relief From Judgment by Other Means. This rule does not limit the inherent power of a Court to modify a judgment within a reasonable time, or the power of a Court to entertain an independent action to relieve a party from a judgment, or the power of a Court to set aside a judgment for fraud upon the Court.

(d) Writs and Bills Abolished. Writs of coram nobis, coram vobis, audita querela, bills of review, and bills in the nature of a bill of review are abolished, and the procedure for obtaining any relief from a judgment shall be by motion or by an independent action.

620.170 TEMPORARY RESTRAINING ORDERS AND PRELIMINARY INJUNCTIONS

1. Generally.

An application for a temporary restraining order and/or preliminary injunction shall be filed with the Clerk along with the complaint, unless the complaint has been filed previously. The application shall be accompanied by the proposed order, affidavits, supporting memoranda, and other documents upon which plaintiff intends to reply.

A temporary restraining order may be granted without written or oral notice to the adverse party or his/her attorney only if:

(a) 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/her attorney can be heard in opposition.

(b) The applicant or his/her attorney certifies to the Court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his/her claim that notice should not be required.

Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the Clerk's office and entered or recorded; 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 15 days, as the Court fixes unless within the time so fixed, the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered in the 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 takes precedence over 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/she does 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.

No temporary restraining order will be issued except in conjunction with an order to show cause fixing the time for hearing on an application for a preliminary injunction. Orders under this Rule shall fix the time within which the restraining order and all supporting pleadings and papers shall be served upon the adverse party and the time for serving and filing by the adverse party of any opposing papers. Unless relieved by order of a judge for good cause shown, counsel applying for a temporary restraining order shall give reasonable advance notice of such application to opposing counsel or party.

All rules pertaining to the filing of motions unless otherwise inconsistent with this Rule, shall apply to the filing of motions for temporary restraining orders and preliminary injunctions.

2. Security.

No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the Court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the Tribe.

620.180 ORDER

These Rules shall govern all proceedings or actions filed in the Coquille Indian Tribal Court.

DATED this 26th day of March, 2005.

Donald Owen Costello
Chief Judge

APPROVED:

Coquille Tribal Council
by Edward L. Metcalf, Chairperson