CHAPTER III CIVIL PROCEDURE

Section 1 — Civil Matters

The Shoshone Bannock Tribal Court shall have jurisdiction over all civil matters and actions as described within this Law and Order Code, as well as civil jurisdiction over all ordinances that may hereafter be passed by the Fort Hall Business Council and amendments to this Code that may hereafter by adopted.

Section 1.1 — Law Applicable in Civil Actions

In all civil cases, the Shoshone Bannock Tribal Court shall apply the provisions of this Law and Order Code and any additional ordinance hereafter adopted by the Shoshone Bannock Tribes.

In any matters that are not covered by the provisions of this Code or by Ordinance, the Court shall apply the traditional customs and usages of the Shoshone Bannock Tribes and for any doubt arising as to the customs and usages of the Tribes, the Court may request the advice of the counselors familiar with these customs and usages.

In any matters that are not covered by the provisions of this Code, or by Ordinances or customs and usages of the Tribes, the Court shall apply any laws of the United States that may be applicable any authorized regulation of the Interior Department of the Untied States.

Section 1.2 — Jurisdiction in Civil Matters

The jurisdiction of the Shoshone Bannock Tribal Court in civil matters shall be governed by Chapter I, Section 2 & 2.1 and any other applicable Chapter and Section of this Law and Order Code.

Section 1.3 — Notice

No judgment shall be given on any suit unless the court is satisfied by competent evidence that all parties have actually or constructively received noticeof such suit and has had ample opportunity to appear in court on the matter.

Section 1.4 — Receipt of Notice

Written evidence of the receipt of the notice shall be kept as part of the record in each case.

Section 1.5 Deposit of Fee

In all civil suits, the plaintiff may be required to deposit with the Clerk of the Court a fee or other security in a reasonable amount to cover costs and disbursements in the case.

Section 1.6 Tribe Immune From Suit

The Shoshone Bannock Tribal Court shall have no jurisdiction over any suit brought against the Shoshone Bannock Tribes without the consent of that tribe. Nothing in this Code shall be construed as consent by the Tribe to be sued.

Section 2 Procedure in a Civil Action

Section 2.1 Parties to Actions

Section 2.1.1 Married Women as Parties

A woman may while married sue and be sued in the same manner as if she were single; provided, that except in actions between husband and wife, the husband shall not be chargeable in any manner with the wife's costs or other expenses of suit.

Section 2.1.2 Husband and Wife Sued Together

If a husband and wife be sued together the wife may defend her own right, and if the husband neglect to defend, she may defend for his right also. The husband may also defend his rights.

Section 2.1.3. Infants and Insane Persons - Guardian ad litem

When an infant or an insane or incompetent person is a party, he must appear either by his general guardian or by a guardi. ad litem appointed by the court in which the action is pendin, in each case, or by a judge thereof. A guardian ad litem may be appointed in any case when it is deemed by the court expedient to represent the infant, insane or incompetent person in the action or proceeding, notwithstanding he may have a general guardian and may have appeared by him in the past.

Section 2.1.4 Action for Injury or Death of Unmarried Child

The parents may maintain an action for the injury or death of their unmarried minor child, and for the injury or death of their minor child who was married at the time of his or her death and whose spouse died as a result of the same occurrence and who leaves no issue, and a guardian for the injury or death of his ward, when such injury or death is caused by the wrongful act or neglect of another, but if either the father or mother be dead or has abandoned his or her family, the other is entitled to sue alone. Such action may be maintained against the person causing the injury or death, or if such person be employed by another person, who is responsible for his conduct, also against such other person.

Section 2.1.5 Action for Wrongful Death

When the death of a person, not being a person provided for in Section 2.1.4. is caused by the wrongful act or neglect of another, his heirs or personal representatives may maintain an action for damages against the person causing the death; or if such person be employed by another person who is responsible for his conduct, then also against such other person. In every action under this and the preceding section, such damages may be given as under all the circumstances of the case may be just.

Section 2.1.6 Death or Transfer of Interest - Procedures

An action or proceeding does not abate by the death or any disablity of a party, or by the transfer of any interest therein, if the cause of action or proceeding survive or continue. In case of the death or any disability of a party, the court, on motion, may allow the action or proceeding to be continued by or against his representative or successor in interest. In case of any other transfer of interest the action or proceeding may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action or proceeding.

Section 2.1.7 Interpleader

In an action commenced by a person possessing specific personal property which is claimed by two (2) or more persons to determine to which the property should be delivered, or in an action for the recovery of specific personal property where a third person demands of the defendant the same property, and notice to the persons claiming the property having been made whether or not they are parties to the action, the court may make an order discharging the person and interplead such claiming person or persons in the action. The order shall not be made except on the condition that the person possessing the property shall deliver the property or its value to the clerk of the court or to such custodian as the court may direct, and unless it appears from the affidavit of the person possessing the property, filed with the clerk with the motion, that such person or persons claiming makes or make such demand without collusion with the party possessing the property. The affidavit of such third person as to whether he makes such demand of the defendant may be read on the hearing of the motion. This rule shall be construed and administered in conjunction with Section 3.22 of this same chapter.

Section 2.1.8 Personal injuries - Property damage - Death of wrongdoer - Survival of action

Causes of action arising out of injury to the person or property, or death, caused by the wrongful act or negligence of another, except actions for slander or libel, shall not abate upon the death of the wrongdoer, and each one meeting death, as above stated, shall have a cause of action against thepersonal representative of the wrongdoer, provided, however, the punitive damages or exemplary damages shall not be awarded nor penalties adjudged inany such action provided, however, that the injured person shall not recover judgment except upon some competent, satisfactory evidence corroborating the testimony of said injured person regarding negligence and proximate cause.

Section 2.1.9 Immunity of person giving first aid from Damage Claim

No action shall lie or be maintained for civil damages against any person or persons, or group of persons, who in good faith, being at, or stopping at the scene of an accident, offers and administers first aid or medical attention to any person or persons injured in such accident unless it can be shown that the person or persons offering or administering first aid, is guilty of gross negligence in the care or treatment of said injured person or persons or has treated them in a grossly negligent manner. The immunity described herein shall cease upon delivery of the injured person to either a generally recognized hospital for treatment of ill or injured persons, or upon assumption of treatment in the office or facility of any person undertaking to treat said injured person or persons, or upon delivery of said injured person or persons into custody of an ambulance attendant. This immunity shall also extend to volunteer ambulance attendants who offer and administer first aid or emergency medical attention as part of their volunteer service as an ambulance attendant to any person or persons utilizing the volunteer services and facilities.

Section 3 Rules of Civil Procedure

Section 3.1 Scope of rules

These rules govern the procedures in all actions or proceedings, and appeal of a civil nature. All references in these rules to the court shall be to the Shoshone Bannock Tribal Court unless sepcifically designated otherwise. These rules shall be liberally construedto secure the just, speedy and inexpensive determination of every action and proceeding.

These rules may be amended or repealed by the Shoshone Bannock Tribal Council.

Section 3.2 Form of Action

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

Section 3.3 Commencement of Action

A civil action is commenced by filing a complaint with the court, which may be denominated as a complaint or petition. The party filing the same shall be designated as the plaintiff or petitioner, and the party against whom the same is filed shall be designated as the defendant or respondent.

The Clerk of the Court shall assign a case number to the complaint and shall indicate upon the face of the complaint the date and time of filing.

Section 3.3.1 Designation of Party

Any civil action for or against a person in his individual capacity shall designate such person by his name and any action against a person in his representative capacity shall indicate the nature of his representative capacity for which the person is made a party to the action. An action against a partnership or unincorporated association shall designate the name of the partnership or association as defendant, in which case any judgment obtained shall be enforceable against the partnership or association property; but no such judgment shall be entered personally against an individual partner or member unless he was named as an individual defendant in his own capacity and served with process.

Section 3.4 Process - Summons - Issuance

At any time within thirty (30) days after the filing ofthe complaint, at the request of the plaintiff, the clerk of the court shall forthwith issue a summons and deliver it for service as provided in Section 3.4.4 in this Chapter. Upon request of the plaintiff separate or additional summons shall issue against any defendant within such time as the original might have been issued.

Section 3.4.1 Form of Summons

Upon the date of the filing the Complaint and pursuant to the request of the plaintiff, the Clerk of the Court shall fill out a notice or Summons in the matter and shall indicate in the notice the time and date and location of a hearing to be held by the Court upon the claim. The notice or summons shall indicate that unless the defendant is present at the scheduled hearing, judgment by default may be entered against him.

The summons or Notice of hearing shall be signed by the Clerk of the Court, and shall also contain the assigned number of thecase and the names of parties.

Section 3.4.2 By Whom Served

Service of all process shall be made by an officer of the Fort Hall Police Department, Tribal Court Clerk, or such person authorized to do so by the Chief Judge of the Tribal Court.

Section 3.4.3 Service of Process

The Clerk of the Court shall furnish the plaintiff with a copy of the Complaint and a copy of the Notice showing the time and place of hearing. The Clerk shall then enter proof of service upon the original Notice as provided in this chapter. If the defendant does not personally appear in the Court Office Building and accept service of the Notice and Complaint, the Clerk shall furnish the original Notice together with the copy of the Notice and Complaint to the process server who shall serve a copy of the Notice and Complaint upon each individual defendant by delivering a copy of the Notice and Complaint to him personally or by leaving the copies thereof at his dwelling house or usual place of abode with some person over the age of 18 years then residing therein. The person serving the papers shall then make proof of service upon the original papers pursuant to the provisions of this Chapter.

Section 3.4.4 Proof of Service

The Clerk or the officer serving a copy of the Complaint and Notice of hearing upon a defendant, shall upon making service, sign a verified statement on the original Notice that he completed service in accordance with this Code and shall indicate the time and date of service. The Clerk or officer shall then affix their signature to the statement.

Section 3.4.5 Service by Publication

If, after reasonable attempts have been made to personally serve a party as required by Section 3.4.3 of this Chapter, said party cannot be located for personal service, the clerk of the court shall cause to be published said notice in the Sho-Ban News once a week for two consecutive weeks prior to the date of the hearing. The hearing shall thus not be scheduled sooner than ten (10) days after the date of the last publication of said notice. Proof of publication shall be by affidavit of the publisher or his designated agent stating the dates of publication and attaching a true copy of the publication, both of which shall be entered in the court file of that particular matter.

Section 3.4.6 Service upon Infants and Incompetents

Upon a minor less than eighteen (18) years of age, service shall be upon his guardian. If there is no guardian then either upon his father or mother, and if no guardian, father or mother can be found within the Fort Hall Reservation, then upon any person having the care and custody of such minor, and unless the court otherwise orders,

Section 3.4.6 (cont.)
also upon the minor said service to be in the manner set forth in section 3.4.3 of this Chapter. Upon an incompetent person who has been judicially declared to be of unsound mind or incapable of conducting his own affairs, service shall be had upon his guardian if one (1) has been appointed in this state, or if there is none by service upon a competent adult member of his family with whom he resides, or if he is living in an institution then upon the chief executive officer of the institution, or if service cannot be had upon any of them, then as provided by order of the court, and unless the court otherwise orders, also upon the incompetent. If any of the parties upon whom service is directed to be made is a plaintiff, then service shall be upon such other persons the court may designate.

Section 3.4.7 Completion of Service
Personal service under this Chapter is complete on the date of delivery; service by publication is complete upon the date of the last publication.

Section 3.4.8 Amendment
At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended unless it clearly appears that material prejudice would result to the substantial right of the party against whom the process issued.

Section 3.4.9 Voluntary Appearance
The voluntary appearance of a party or the service of any pleading by him is equivalent to personal service of the summons and a copy of the complaint upon him.

Section 3.5 Service and Filing of Pleadings and Other Papers
Every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designations of record on appeal, brief and memorandum of law, and similar paper shall be served upon each of the parties affected thereby, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Section 3.4.

Section 3.5.1 Service - How Made

Whenever under these rules service is required or permitted to be made upon a party represented by an Advocate the service shall be made upon the Advocate unless service upon the party himself is ordered by the court. Service upon the advocate or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the advocate or to the party; or leaving it at his office with theperson in charge thereof, or, if there is no one in charge, or if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person over the age of eighteen years then residing therein. Service by mail is complete upon mailing.

Section 3.5.2 Service - Numerous Defendants

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

Section 3.5.3 Filing

All papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter except that briefs may be lodged with the court and need not be filed. If the papers have been filed before service, the filing date shall be noted thereon.

Section 3.5.4 Lodging and Service of Briefs

Unless otherwise ordered in a specific action, all briefs submitted by any party to an action, whether it be with regard to a hearing or the trial of the action, shall be lodged with the court and shall be served upon the parties to the action, unless otherwise ordered by the court, so that the court and the parties shall receive the same at least five (5) days prior to the hearing or the trial. Provided, the brief in response to a brief in support of a motion may be lodged with the court and served upon the parties no later than one (1) day before the hearing upon such motion. All briefs shall be lodged with the court by delivery to the presiding judge, or by delivery to the clerk of the court for delivery to the presiding judge, and need not be filed

Section 3.5.4 (cont.)
of record in the official court file of the action.

Section 3.5.5 Filing with the Court Defined
The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date, hour and minute and forthwith transmit them in the office of the clerk. The judge or clerk shall indorse upon every pleading and other paper filed with him the hour and minute of its filing.

Section 3.5.6 Procedures for Service of Off-Reservation Civil Process
It is the policy of the Shoshone Bannock Tribes and the Shoshone Bannock Tribal Court that all Civil Process: Warrants, Summons, Notices, Subpoenas, Juvenile Petitions or Summons, Notice for Jury Duty , and any other applicable documents or written instruments that are issued by State Courts, District or Magistrate, or other jurisdictions of a similar form, shall be subject to review by the Tribal Court Judge prior to any actual service by any police officer. All such process shall be reviewed and shall be initialed by the Tribal Judge to indicate that the document may be served. Any such process that is served or attempted to be served without review and approval by the Tribal Judge shall not be honored, and for all legal purposes, will not be considered proper and legal notice.

Section 3.6.1 Extension of Time
When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the parties, by written stipulation, which does not distrurb the orderly dispatch of business or the convenience of the court, filed in the action, before or after the expiration of the specified period may enlarge the period, or the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

Section 3.6.2 Time Computation
In computing any period of time prescribed or allowed by these rules, by order of court or by any applicable law theday of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, a Sunday or a legal holiday, in which

Section 3.6.2 (cont.)
event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday. As used in this section "legal holiday" shall be construed to mean those days appointed as a holiday by the Shoshone Bannock Tribal Council.

Section 3.6.3 Order to Show Cause
All applications for an order to show cause must be accompanied by an affidavit or supported by a verified complaint setting forth the facts and grounds upon which the application is based. An order to show cause must be served upon the party to whom it is directed, or his advocate, at least five (5) days prior to the date of the show cause hearing in the same manner as a notice for hearing of a motion under these rules. In show cause hearings any party has the right to produce testimony and evidence at the hearing or to cross-examine the adverse party or his affiant. The rules of evidence shall apply in show cause hearings. This rule shall apply for all other motions and affidavits before the court.

Section 3.6.4 Additional Time After Service by Mail
Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him my mail, three (3) days shall be added to the prescribed period.

Section 3.7 Pleadings Allowed; Forms of Motions
There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisons of Section 3.14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed except that the court may order a reply to an answer or a third-party answer.

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

Section 3.8 General Rules of Pleading

(a) Claims for Relief

A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

(b) Defenses; Forms of Denials

A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the avermen upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material, and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controver all its averments, including averments of the grounds upon which the court's jurisdiction depends, he may do so by general denial.

(c) Affirmative Defenses

In pleading to a preceding pleading, a party shall set for affirmatively all matters constituting an avoidance or affirmative defense.

(d) Effect of Failure to Deny

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

(e) Pleading to be Concise and Direct; Consistency

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

Section 3.8 (cont.)

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in the separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or equitable grounds. All statements shall be made subject to the obligations set forth in Section 3.11.

(f) Construction of Pleadings
All pleadings shall be so construed as to do substantial justice.

Section 3.9 Pleading Special Matters

(a) Fraud, Mistake, Condition of the Mind
In all averments of fraud or mistake : the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other conditon of mind of a person may be averred generally.

(b) Conditions Precedent
In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurrred. A denial of performance or occurrence shall made specifically and with particularity.

(c) Official Document or Act
In pleading on official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

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

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

(f) Special Damage
When items of special damage are claimed, they shall be specifically stated.

Section 3.10 Form of Pleadings

(a) Caption; Names of Parties
Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in Section 3.7. 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) Paragraphs; Separate Statements
All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denial shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by Reference; Exhibits
Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

(d) Lost Papers
If an original pleading or paper be lost, the court may authorize a copy thereof to be filed and used instead of the original.

(e) Language, abbreviation and numbers
Pleadings shall be in the English language. Such abbreviations as are in common use may be used, and numbers may be expressed by words or numerials in the customary manner.

(f) Unknown party
When a party does not know the true name of the adverse party he may state that fact in the pleadings and designate such adverse party by any name and the words, "whose true name is unknown," and when his true name is discovered the pleading must be amended accordingly.

(g) Designation of Unknown
When persons are made parties by the designation of unknown owners, there shall be added to such designation a brief description of the property of which such persons are claimed or supposed to be unknown owners. When persons are made parties by the designation of unknown heirs or devisees, there shall be added to such designation the name of the deceased person of whom they shall be claimed or supposed to be the heirs or devisees.

Section 3.11 Signing of Pleadings

Every pleading of a party represented by an Advocate shall be signed by at least one Advocate of record in his individual name. A party who is not represented by an Advocate shall sign his pleading and state his address. Except when otherwise specifically provided by rule, pleadings need not be verified or accompanied by affidavit. The signature of an Advocate constitutes a certificate by him that he ~~has read the pleading, that to the best of his knowledge, information and belief there is good ground to support it, and that it is not interposed for delay.~~ If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the pleading had not been served.

Section 3.11.1 Change of Advocate

In the event an Advocate ceases to act or a substitute Advocate appears, or a party heretofore represented by an Advocate elects to appear with a different spokesperson or without one, written notice must be given hereof as provided in Section 3.5 of this Chapter.

Section 3.11.2 Affidavits

Affidavits authorized or permitted under these rules shall be a written statement or declaration by a party or his Advocate of record sworn to or affirmed before the Court Clerk or a Notary that the affiant believes the facts stated to be true, unless a verification upon personal knowledge is required.

Section 3.12 Defenses and Objections

(a) All answers shall be filed and served within twenty (20) days after the service of the summons and complaint, and, all replies thereto shall be filed within ten (10) days after the service of the answer; unless otherwise specified in these rules or by the court.

(b) Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

Section 3.12 (cont.)

(1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) insufficiency of process (4) insufficiency of service of process (5) failure to state a claim upon which relief can be granted, (6) failure to join a party under section 3.19. A motion making any of these defenses shall be made before pleading if further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion.

(c) The defenses enumerated above, whether made by pleading or motion shall he 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) If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading.

The motion shall point out the defects complained of and the details desired, If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(e) 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 20 days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(f) A party who makes a motion under this rule may join with it any other motions herein provided for and then available to him. If a party makes a motion under this rule but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall be precluded from thereafter making the motion without leave of the court. The court shall require a show of good cause before granting the making of that motion.

Section 3.13 Counterclaim and Cross-Claim

(a) Compulsory Counterclaims
A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of the third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if at the time the action was commenced the claim was the subject of another pending action.

(b) Permissive Counterclaims
A pleading may state as a counterclaim any claim against an oposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) Counterclaim Exceeding Opposing Claim
A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) Counterclaim Maturing or Acquired after Pleading
A claim which either matured or was acquired by the pleader after serving this pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

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

(f) Cross - Claim Against Co-Party
A pleading may state as a cross-claim any claim by one against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action.

(g) Joinder of Additional Parties
Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of sections 3.19 and 3.20.

Section 3.14 Third Party Practice

(a) When Defendant may bring in Third Party
At any time after commencement of the action a defendant party, as a third-party plaintiff may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him. The third-party plaintiff need not obtain leave to make the service if he files the third-party complaint not later than 10 days after he serves his original answer. Otherwise he must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant shall make his defenses to the third-party plaintiff's claims as provided in Section 3.12 and his counterclaims against the third-party plaintiff and cross-claim against other third-party defendants as provided in Section 3.13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert his defenses as provided in Section 3.12 and his counterclaim and cross-claims as provided in Section 3.13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third party defendant may proceed under this rule against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third-party defendant.

(b) When Plaintiff may bring in Third-Party
When a counterclaim is asserted against a plaintiff, he may cause a third-party to be brought in under circumstances which under this rule would entitled a defendant to do so.

Section 3.15 Amended and Supplemental Pleadings

(a) Amendment

A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.

A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer unless the court otherwise orders.

(b) Relation Back of Amendments

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

(c) Supplemental Pleadings

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

Section 3.16 Pre-Trial Conference

In any action, the court may in its discretion direct the advocates for the parties to appear before it for a conference to consider:

(1) the simplification of the issues;

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

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

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

(5) Such other matters as may aid in the action;

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

Section 3.17 Parties Plaintiff and Defendant

(a) Real Party in Interest

Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by law may sue in his own name without joining with him the party for whose benefit the action is brought. No action shall be dismissed on 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 joinder or substitution of the real party in interest; and such joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

Section 3.17 (cont.)

(b) Infants or Incompetent Persons

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

Section 3.18 Joinder of Claims and Remedies

(a) Joinder of Claims

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

(b) Joinder of Remedies

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

Section 3.19 Joinder of Persons Needed for just Adjudication

(a) Persons to be Joined if Feasible

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

Section 3.19 (cont.)

but refuses to do so he may be made a defendant. or, in a proper case, an involuntary plaintiff.

(b) Determination by Court Whenever Joinder not Feasible

If a person as described in subdivision (a) (1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by 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.

(c) Pleading Reasons for Nonjoinder

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

(d) Effect of Failure to Join

When persons who are not indispensable, but who ought to be parties if complete relief is to be accorded between those already parties, have not been made parties and are subject to the jurisdiction of the court the court shall order them summoned to appear in the action.

Section 3.20 Permissive Joinder of Parties

(a) Permissive Joinder

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

Section 3.20 (cont.)

Judgment may be given for one or more of the plaintiffs according to their respective rights torelief. 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 expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

Section 3.21 Misjoinder and Non-Joinder of Parties

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

Section 3.22 Interpleader

Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not grounds for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff aver that he is notliable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counter-claim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Section 3.20. This rule shall be construed and administered in conjunction with Section 2.1.7 of this same Chapter.

Section 3.23 Hearings

When the defendant(s) is presented before the Court, pursuant to the Notice of time and place to appear, the presiding Judge will proceed to: (1) Verify by the court records thatthe defendant(s) was duly served with a copy of the Notice and Complaint in the matter before the Court and that the parties are before the Court pursuant to Notice. That in the case of a petition before the Court, the Court shall determine that a copy of the petition and Notice of Hearing was duly served upon the adverse parties of interest; (2) The Court may order that an interpreter be present or may inquire of any parties if they desire to have an interpreter; (3) The Court shall

Section 3.23 (cont.)

inquire as to whether or not the defendant's true name appears on the Complaint; (4) Read aloud to the defendant the Complaint or Petition; (5) Inquire of the defendant if he understands the Complaint or Petition; (6) Inquire of the defendant if he is ready to proceed in defending himself against the Complaint or Petition.

If both parties are ready to proceed the plaintiff may either present or waive his opening statement. The defendant may then present or waive his opening statement or may reserve this right until the plaintiff has completed the presentation of his case.

If the defendant requires additional time to prepare his defense, the Court upon good cause being shown, shall by written order, set the hearing in the matter at a future date, at which time the defendant will be required to appear and defend.

In the event the defendant fails to appear at the time and place specified in the Notice of hearing or fails to appear at the time and place subsequently set for hearing, the Court in its discretion may set a subsequent hearing date or enter a default judgment against the defendant.

Section 3.24 Intervention

(a) Intervention of Right
Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest unless the applicant's interest is adequately representend by existing parties.

(b) Permissive Intervention
Upon timely application anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure
A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Section 3.5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

Section 3.25 Substitution of Parties

(a) Death

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Section 3.5 and upon persons not parties in the manner provided in Section 3.4 for the service of a summons. Unless the motion for substitution is made not later than 90 days after the death, the action shall be dismissed as to the deceased party.

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

(b) Incompetency

If a party becomes incompetent. the court upon motion served as provided in subdivision (a) of this rule may allow the action to be continued by or against his representative.

(c) Transfer of Interest

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

Section 3.26 Discovery

(a) Discovery Methods

Parties may obtain discovery by one or more of the following methods: written interrogatories, production of documents or things or permission to enter upon land or other property for inspection and other purposes, and physical and mental examinations. Unless the court orders otherwise under subdivision (c) of this rule, the frequency of these methods is not limited.

(b) Scope of Discovery

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

Section 3.26 (cont.)

(1) In General

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, discription, 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 reasobably calculated to lead to the discovery of admissible evidence.

(2) Insurance Agreements

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

(3) Trial Preparation: Materials

Subject to the provisions of subdivision (b) (4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b) (1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his advocate, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made the court shall protect against disclosure of the mental impressions, conclusions,

opinions, or legal theories of an advocate or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action of its subject matter previously made by that party.

Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. For purpose of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic mechanical, electrical, or other recording or transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial Preparation: Experts
Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b) (1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

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

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

Section 3.26 (cont.)

(c) Protective Orders

Upon motioon 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 be a method of discovery other 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 the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

(d) Sequence and Timing of Discovery

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

(e) Supplementation of Responses

A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows;

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

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (A) he knows that the response was incorrect when made, or (B) he knows that the response though correct when made is no longer true

Section 3.26 (cont.)

and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

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

Section 3.27 (Reserved for Future Use)

Section 3.28 " " " "

Section 3.29 " " " "

Section 3.30 " " " "

Section 3.31 " " " "

Section 3.32 " " " "

Section 3.33 Interrogatories

(a) Availability; Procedures for Use

Any party may serve upon any other party written interrogatories to be answered by the party served. Interrogatories may, without leave of court be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the advocate making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any within 15 days after the service of the interrogatories, except that a defendant may serve answers or objections within 20 days after service of the summons and complaint upon that defendant.

The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Section 3.37(a) with respect to any objection to or other failure to answer an interrogatory.

(b) Scope; Use of Trial

Interrogatories may relate to any matters which can be inquired into under Section 3.26(b), and the answers may be used to the extent permitted by the rules of evidence.

Section 3.33 (cont.)

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial conference or other later time.

(c) Opition to Produce Business Records

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

Section 3.34 Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes

(a) Scope

Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phone-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Section 3.26(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 Section 3.26(b).

Section 3.34 (cont.)

(b) Procedure

The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon 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 related acts.

The party upon whom the request is served shall serve a written response within 15 days after the service of the request, except that a defendant may serve a response within 20 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Section 3.37(a) with respect to any objection to or other failure to respond to the request or any objection to or other failure to permit inspection as requested.

(c) Persons and Parties

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

Section 3.35 Physical and Mental Examination of Persons

(a) Order for Examination

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

Section 3.35 (cont.)

(b) Report of Examining Physician

(1) If requested by the party against whom an order is made under Section 3.35 (a) or the person examined. theparty causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physican setting out his findings, including results of all test made, diagnoses and conclusions. together with like reports of all earlier examinations of the same conditions. After delivery the party causing the exmination 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 shoes that he is unable to obtian it.

The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if a physician fails to refuses to make a report the court may exclude his testimony if offered at the trial.

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

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

Section 3.36 (Reserved for Future Use)

Section 3.37 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:

Section 3.37 (cont.)

(1) Motion
If a party fails to answer an interrogatory submitted under Section 3.33, or is a party, in reaponse to a request for inspection submitted under Section 3.34, fails to respond that inspection will be permitted as requested or fails to the discovering party may move for an order compelling an answer. or an order compelling inspection in accordance with the request. 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 Section 3.26(c).

(2) Evasive or Incomplete Answer
For purppses of this subdiviison an evasive or incomplete answer is to be treated as failure to answer.

(b) Failure to Comply with Order
If a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Section 35, the court in which the action is pending may make such orders in regard to the failure as are just, and amoung 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 defense; or prohibiting him from introducing designated matters in evidence·

(C) An order striking out pleadings or parts thereof, or staying further proceeding until the order is obeyed or dismissing the action of proceeding or an part thereof, or rendering a judgment by default against the disobedient party.

Section 3.38 Jury Trials of Right

(a) Demand

Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be indorsed upon a pleading of the party.

(b) Waiver

The failure of a party to serve a demand as required by this rule and to file it as required by Section 5(d) constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

Section 3.39 Questions of Law of Fact

In trials without a jury, the court shall determine all issues of fact and law; and where there is a jury the jury shall determine all issues of fact and the court shall determine all issues of law and shall instruct the jury in the law governing the case. The court shall not allow any party, advocate or spokesperson to explain the law to the jury.

Section 3.40 (Reserved for Future Use)

Section 3.41 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 (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States, or of any Tribal Court, or of any state any 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. If a counterclaim has been pleaded by a defendant prior to

Section 3.41 (cont.)

the service upon him of the plaintiff's motion to dismiss, theaction shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) Involuntary Dismissal: Effect Thereof
For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. Unless the court in this order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Section 3.19, operates as an adjudication upon the merits.

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

Section 3.42 Consolidation; Separate Trials

(a) Consolidation
When actions involving a common question of law or fact are pending before the court it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidate; and it may make such orders concerning proceeding therein as may tend to avoid unecessary costs or delay.

(b) Separate Trials
The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conductive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or thiry-party claim, or of any separate issue or of any number of claims, cross-claim, counter-claims, third-party claims, or issues, always preserving in violate the right of trial by jury.

Section 3.43 Evidence

(a) Oral Testimony
In all trials, the testimony of witnesses shall be given under oath in open court subject to the right of cross-examination. In all cases wherein an interpeter is used, the interpreter shall also take the oath.

(b) Order of Presentation
The case of the plaintiff shall be presented first followed by the case of the defendant and rebuttal by the plaintiff, if any and rebuttal by the defendant, if any.

(c) Cross-Examination
All witnesses called and examined by any party may be cross-examined by the adverse party. Pursuant to the rules of Evidence, leading questions may be asked on cross-ecamination. The cross-examination of any witness cannot exceed or go beyond the scope of the direct examination of that same witness.

(d) Final Argument
At the conclusion of all the evidence the plaintiff and the defendant each in turn may summarize the proof and make final arguments to the trier of fact.

(e) Rules of Evidence
The Rules of Evidence contained in this Law and Order Code shall be followed and applied in all cases.

Section 3.44 (Reserved for Future Use)

Section 3.45 Subpoena

(a) For Attendance of Witnesses; Issuance

Every subpoena shall be issued by the clerk of the court, 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.

(b) For Production of Documentary Evidence

A subpoena may also command the person to whom it is directed to produce the books, paper, documents, or tangible things designated therein; but the court upon motion promptly made and in any event at or before the time specified in the subpoena for compliance therewith, 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 may be served by the Fort Hall Police Department or by any other person who is not a party and is not less than eighteen (18) years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person.

(d) Subpoena for Hearing or Trial

At the request of any party subpoenas for attendance at a hearing or trial shall be issued by the clerk of the court. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the exterior boundaries of the Fort Hall Reservation, Idaho.

(e) Contempt

Failure by any person without adequate excuse to obey a subpoena served upon him may be deemd a Contempt of Court.

Section 3.46 Exceptions Unecessary

Formal exceptions to rulings or orders of the court are unnecessary: but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefore: and if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.

Section 3.47 (Reserved for Future Use)

Section 3.48 " " " "

Section 3.49 " " " "

Section 3.50 " " " "

Section 3.51 Instructions to Jury: Objection

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the agruments are completed. No party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection Opportunity shall be given to make the objection out of the hearing of the jury.

Section 3.51.1 Jury Verdict; Civil Cases

In a civil action the jury shall render a verdict for the plaintiff or the defendant. A verdict must be rendered by a concurring vote of at least four of the six jurors.

Section 3.52 (Reserved for Future Use)

Section 3.53 " " " "

Section 3.54 Judments

(a) Definition; Form

"Judgment" as used in these rules includes a decree and any order form which an appeal lies. A judgment shall not contain a recital of pleadings or the record of prior proceedings.

(b) Judgment Upon Multiple Claims or Parties

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

(c) Demand for Judgment

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

Section 3.55 Default

(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 default.

(b) Judgment

Judment 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 has been defaulted for failure to appear and if he is not an infant

Section 3.55 (cont.)

or incompetent person.

(2) By the Court
In all other cases the party entitled to a judgment by default shall apply to court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, he (or if appearing by representative, his representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by law.

(c) Setting Aside Default
For good cause shown the court may set aside an entry of default and, if a judgment by default and, if a judgment by default has been entered, may likewise set it aside in accordance with Section 3.60(b).

(d) Plaintiffs, Counterclaims, Cross-Claimants
The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff a third-party plaintiff, or a party who has pleaded a cross-claim or counter-claim. In all cases a judgment by default is subject to the limitations of Section 3.54(c).

Section 3.56 (Reserved for Future Use)

Section 3.57 " " " "

Section 3.58 Entry of Judgment

Subject to the provisions of Section 3 54(b): (1) upon a general verdict of a jury, or upon a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied the clerk, unless the court otherwise orders, shall forthwith prepare, sign. and enter the judgment without awaiting any direction by the court: (2) upon a decision by the court granting other relief, the court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it. Every judgment shall be set forth in a separate document. A judgment is effective only when so set forth and when entered. Entry of the judgment shall not be delayed for the taxing of costs.

Section 3.59 New Trial; Amendment of Judgment

(a) Grounds

A new trial may be granted to all or any of the parties and on all or part of the issues in an action for any of the following reasons:

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

2. Misconduct of the jury; and when any one or more of the jurors have been induced to assent to any verdict, or to a finding on any question submitted to them by the court, by a resort to determination of chance, such misconduct may be proved by the affidavit of any one (1) of the jurors.

3. Accident or suprise. which ordinary prudence could not have guarded against.

4. Newly discovered evidence, material for the party making the application which he could not, with reasonable diligence, have discovered and produced at the trial.

5. Excessive damages or inadequate damages apearing to have been given under the influence or passion or prejudice.

6. Insufficiency of the evidence to justify the verdict or other decision, or that it is against the law.

7. Error in law, occurring at the trial. Any motion for a new trial based upon any of the grounds set forth in subdivision 1,2,3 or 4 must be accompanied by an affidavit stating in detail the facts relied upon in support of such motion for a new trial. Any motion based on subdivision 6 or 7 must set forth the factual grounds therefor with particularity. On a motion for new trial in an action tried without a jury, the court may open the judgment if one has been entered

Section 3.59 (cont.)

take additional testimony and direct the entry of a new judgment.

(b) Time for Motion
A motion for a new trial shall be served not later than 10 days after the entry of the judgment.

(c) Time for Serving Affidavits
When a motion for new trial is based upon affidavits they shall be served with the motion The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 15 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d) On Initiative of Court
No later than 10 days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter the court may grant a motion for a new trial, timely served for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

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

Section 3.60 Relief from Judgment or Order

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

(b) Mistakes; inadvertence; Excusable Neglect; Newly Discovered Evidence: Fraud. Etc.
On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect: (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Section 3.59(b)

Section 3.60 (cont.)

(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation. or other misconduct of an adverse party: (4) the judgment is void; (5) the judgment has been satisfied released or discharged or a prior judgment upon which it is based has been reversed or otherwise vacated or it is no longer equitable that the judgment should have prosepective application· or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time. and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of the court to entertain an independant action to relieve a party from a judgment, order, or proceeding. or set aside a judgment for fraud upon the court.

Section 3.61 Harmless Error

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

Section 3.62 Stay of Proceedings to Enforce Judgment

(a) Stay of proceedings to enforce a Judgment-Stay upon entry of judgment

Execution or other proceedings to enforce a judgment may issue immediately upon the entry of judgment, unless the court in its descretion and on such conditions for the security of the adverse party as are proper. otherwise directs. Unless otherwise ordered by the court an interlocutory or final judgment in an action for an injunction or writ of mandate shall not be stayed during the period after its entry and until the appeal is taken or during the pendency of an appeal The provisions of subdivision (c) of this rule govern the suspending. modifying, restoring or granting of an injunction or writ of mandate during the pendency of an appeal.

Section 3.62

(b) Stay on Motion for New Trial or for Judgment
In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Section 3.59, or of a motion for relief from a judgment or order made pursuant to Section 3.60.

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

(d) Power of Appellate Court not Limited
The provisions in this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(e) Stay of Judgment to Multiple Claims or Parties
When a court has ordered a final judgment under the conditions stated in Section 3.54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

Section 3.63

Satisfaction of Judgment

(a) Upon failure of a judgment debtor to satisfy any final judgment for money rendered by the Court, the Court may, after proper assurance that the judgment creditor has exhausted all possible efforts to satisfy such good judgment, request the Secretary of the Interior or his designated agent to pay over to the judgment creditor any funds which may be held or received by the Bureau of Indian Affairs for the credit of the judgment debtor in satisfaction of the judgment. Only monies of the individual and not of other members of his family may be requested to pay such judgments.

(b) No judgment of the Court for money shall be enforceable after five years from the date of entry, unless the judgment shall have been renewed before the date of expiration by filing a renewal statement with the Court in which the judgment is recorded.

Upon application of the judgment creditor prior to the expiration of five years after the date of entry of the judgment for money, the Court shall order the judgment renewed and extended for an additional five years.

Section 3.64 Limitation of Actions

Subject to the provisions of the Consumer Code, the Court shall have no jurisdiction over any action brought more than three (3) years after the cause of action accrued.

Section 3.65 Injunctions

(a) Preliminary Injunctions

(1) Notice

No preliminary injunction shall be issued without notice to the adverse party.

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

(b) Temporary Restraining Order; Notice; Hearing; Duration- A temporary restraining order may be granted without written or oral notice to the adverse party or his Advocate only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his Advocate can be heard in opposition, and (2) the applicant's Advocate certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record;

Section 3.65 (cont.)

shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injuction shall be set down for hearing at the earliest possible time and takes precedent 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 does not do so, the court shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restrianing 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.

(c) 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.

(d) Form and Scope of Injunction or Restraining Order
Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail and not by reference to the complaint or other document, the act or acts sought to be restrianed; and is binding only upon the parties to the action, their officers, agents, servants, employees, and advocates, and upon those person in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(e) Grounds for Preliminary Injunction
A preliminary injunction may be granted in the following cases:

Section 3.65 (cont.)

(1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof, consists inrestraining the commission or continuance of the acts complained of, either for a limited period or perpetually.

(2) When it appears by the complaint or affidavit that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury to the plaintiff.

(3) When it appears during the litigation that the defendant is doing or threatens, or is about to do, or is procuring or suffering to be done some act in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual.

(4) When it appears, by affidavit. that the defendant during the pendency of the action, threatens, or is about to remove, or to dispose of his property with intent to defraud the plaintiff, an injunction order may be granted to restrain the removal or disposition.

(5) A preliminary injunction may also be granted on the motion of the defendant upon filing a counterclaim praying for affirmative relief upon any of the grounds mentioned above in this section subject to the same rules and provisions provided for the issuance of injunctions on behalf of the plaintiff.

(6) The court, in addition to the powers already possessed, shall have power to issue writs of injunction for affirmative relief having the force and effect of a writ of restitution restoring any person or persons to the possession of any real property from the actual possession of which he or they may be ousted by force or violence, or fraud, or stealth, or any combination thereof, or from which he or they are kept out of possession by threats whenever such possession was taken from him or them by entry of the adverse party on Sunday or legal holiday, or in the nighttime, or while the party in possession was temporarily absent therefrom. The granting of such writ shall extend only to the right of possession under the facts of the case, in respect to the manner in which the possession was obtained, leaving the parties to their

legal rights on all other questions the same as though no such writ had issued; provided, that no such writ shall issue except upon notice in writing to the adverse party of at least five (5) days of the time and place of making application therefor.

Section 3.66 Bonds in Civil Cases

All bonds in civil cases shall be a proper amount fixed by a Judge and furnished in cash by the defendant or secured by two or more reliable persons subject to the jurisdiction of the Court, who shall appear before the Judge of the Court and execute a bond form in the amount fixed by the Judge. Any surety to a bond thereby submits himself to the jurisdiction of the Court, and irrevocably appoints the Clerk of the court as his agent upon whom any papers affecting his liability on the bond may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the Clerk prescribes may be served on the clerk of the Court, who shall forthwith mail copies by certified mail to the surety at his last known address.

Section 3.67 Exclusion of Witnesses

If either party requests it, the judge may exclude from the court room any or all prospective witnesses, other than a party to the action, not at the time under examination, so that he may not hear the testimony of other witnesses.

Section 3.68 Offer of Judgments

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

have the same effect as an offer made before trial if it is served within a reasonable time not less than ten (10) days prior to the commencement of hearings to determine the amount or extent of liability.

Section 3.69 Fee Schedule

The costs of any civil action shall be determined by the Court. A fee schedule shall be kept by the Court Clerk and shall be available for public inspection.

Section 3.70 Payment of Witnesses; Jurors

(a) Witnesses

Each party shall pay for its own witnesses.

(b) Jurors

Jurors shall be paid by the Court in an amount determined by the Court.

Section 4 Standard of Proof

The standard of proof in any civil action shall be a preponderance of the evidence.

*AUTHOR'S NOTE: PAGES 92 - 95 OF THIS CHAPTER ARE INTENTIONALLY LEFT BLANK AND ARE HEREBY RESERVED FOR FUTURE USE.