



# **Title III – Civil Procedure Code**

---

## **Alabama-Coushatta Tribe of Texas Comprehensive Codes of Justice**

**Adopted and Codified as Title III- Civil Procedure Code of the A-C, C.C.J. on  
November 24, 2014, by Tribal Council Resolution #2014-84**

*Title III- Civil Procedure Code is comprised of all Tribal statutes relevant to the Rules of Civil Procedure applicable to the Tribal trial and appellate courts.*

## Table of Contents

<b>CHAPTER I. CIVIL PROCEDURE CODE.....</b>	<b>4</b>
Sec. 101    Scope of Rules.....	4
Sec. 102    Commencement of Action; Service of Process.....	4
Sec. 103    Time.....	5
Sec. 104    Pleadings, Motions and Orders .....	6
Sec. 105    General Rules Of Pleading.....	6
Sec. 106    Form of Pleadings .....	7
Sec. 107    Defenses and Objections .....	8
Sec. 108    Counterclaim or Cross-Claim .....	8
Sec. 109    Amendment of Pleadings.....	8
Sec. 110    Parties.....	9
Sec. 111    Intervention .....	9
Sec. 112    Substitution of Parties .....	9
Sec. 113    Discovery.....	9
Sec. 114    Trials .....	11
Sec. 115    Assigning Cases for Trial.....	11
Sec. 116    Dismissal of Actions.....	11
Sec. 117    Consolidation; Separate Trials .....	12
Sec. 118    Evidence.....	12
Sec. 119    Subpoenas.....	13
Sec. 120    Motions for Directed Verdict and for Judgment Notwithstanding the Verdict.....	14
Sec. 121    Finding by the Tribal Court.....	14
Sec. 122    Judgments; Costs.....	14
Sec. 123    Default .....	15
Sec. 124    Summary Judgment.....	15
Sec. 125    Entry of Judgment.....	16
Sec. 126    Motion for Reconsideration or New Trials; Amendments.....	16
Sec. 127    Relief from Judgment or Order.....	17
Sec. 128    Harmless Error .....	18
Sec. 129    Stay of Proceedings Judgment.....	18

Sec. 130	Disability or Disqualification of a Judge .....	19
Sec. 131	Injunctions .....	20
Sec. 132	Extraordinary Writs.....	22
Sec. 133	Execution.....	22
Sec. 134	Citation .....	22

**CHAPTER I. CIVIL PROCEDURE CODE**

**Sec. 101 Scope of Rules**

**(A) Scope.** Except when different rules proscribed in these Rules specifically apply, these Rules shall govern the procedure in the Tribal and appellate courts of the Alabama-Coushatta Tribe in all actions, suits and proceedings of a civil nature.

**(B) Construction.** These rules shall be liberally construed to ensure that the least expense practicable, to both the litigants and the Tribe, is secured through a just, speedy, and impartial determination in every action.

**(C) One Form of Action.** There shall be one form of action known as a "**civil action.**"

**(D) Collateral References.** The Court may look for guidance on any procedure or matters not specifically set forth herein first in the Federal Rules of Civil Procedure, the Title 25 of the Code of Federal Regulations, Chapter 11, Subpart E (25 CFR 11E), and finally the Texas Rules of Civil Procedure insofar as such are not inconsistent with these Rules, and with general principles of fairness and justice as prescribed and interpreted by the Court.

**Sec. 102 Commencement of Action; Service of Process**

**(A) Commencement of Action.** A Tribal civil action is commenced by filing a written complaint with the Clerk of the Tribal Court. The Tribal Court shall have jurisdiction from such time as both the complaint is filed and properly served upon the defendant and a return of service is filed with the Clerk.

**(B) Service of Process.** Service of process shall consist of delivering to the party served a copy of the complaint along with the summons, which need not be issued by the Judge or Clerk, which advises the defendant that he is required to answer the complaint within twenty (20) days after date of service or a default judgment will be entered against him.

**(1)** The return of service shall be endorsed with the name of the person serving and the date, time, and place of service and shall be filed with the Clerk.

**(2)** Service may be made on a party by delivery of the required papers to the party himself or upon some person of suitable age and discretion who is eighteen (18) years of age or older at the party's house or principal place of business, or an officer, managing agent, employee, or partner of a non-individual party.

(3) Service by publication may be made upon order of the Tribal Court for good cause shown by publishing the contents of the summons in a local newspaper of general circulation at least once per week for four weeks and by leaving an extra copy of the complaint or paper with the Tribal court for the party.

(4) Service may be made by any Tribal law enforcement officer or tribal member who is a resident of the Alabama-Coushatta Reservation, not a party, eighteen (18) years of age or older and trained and approved by the Tribal Police Department

(5) Service upon a resident otherwise subject to the jurisdiction of the Alabama-Coushatta Tribal Court may be made anywhere in the United States; otherwise, service shall be made within the trust lands of the Alabama-Coushatta Tribe of Texas.

(6) If a person personally refuses to accept service, service shall be deemed performed once the person is informed of the purpose of the service and is offered copies of the papers being served.

(C) Service of all papers, except the complaint may be made by mail, First Class postage pre-paid and properly addressed to the last known address of recipient. All pleadings shall be served within five (5) days of filing.

### Sec. 103 Time

(A) **Computation.** In computing any period of time set forth herein, the day that the period is to commence from shall not be counted and the last day of the period shall be counted; provided however, that any time period under seven (7) days will not include intermediate Saturdays, Sundays, or Tribal holidays in the period and any period which would otherwise end on a Saturday, Sunday or Tribal holiday will be deemed to end on the next day which is not a Saturday, Sunday or Tribal holiday.

(B) **Extension of Time.** The Tribal Court for good cause shown may enlarge the prescribed period of time within which any required act may be done.

(C) **Notice of Motions.** Written motions and notice of hearing thereon, other than one which may be heard ex parte, shall be served not later than five (5) days prior to the time specified for hearing.

(D) **Service by Mail.** Whenever service is accomplished by mail, five (5) days shall be added to the prescribed period of time, but such additional time shall not cause Saturdays, Sundays or Tribal holidays to be counted in the time period if they would not otherwise have been counted.

(E) Service of Summons and Complaint. An action shall be dismissed if a summons is not issued and service is not completed within six (6) months of filing a Complaint.

**Sec. 104 Pleadings, Motions and Orders**

(A) **Pleadings.** There shall be a complaint and an answer; plus a responsive pleading shall be allowed whenever, by cross-claim, counterclaim or otherwise, a party is first claimed against unless the court shall otherwise order. The Tribal Court may grant additional leave to plead in the interest of narrowing and defining issues or as justice may require.

(B) **Motions and Orders.**

(1) **Motions.** An application to the Tribal Court for an order shall be by motion and shall be in writing, unless made orally during a hearing or trial, and shall set forth the relief or order sought and the grounds therefore stated with particularity. A motion and notice of motion may be set forth together.

(2) **Orders.** An order includes every direction of the Tribal Court whether included in a judgment or not, and may not be made without notice to adverse parties nor vacated or modified without notice, except as provided herein.

(3) **Hearings on Motions and Orders.** A motion or hearing on an order shall be automatically continued if the judge before whom it was to be heard is unable to hear it on the day specified and no other judge is available to hear it.

**Sec. 105 General Rules Of Pleading**

(A) **Claims for Relief.** A pleading which sets forth a claim for relief shall contain:

(1) A short, plain statement of the grounds upon which the Tribal Court's jurisdiction depends, unless the Court's jurisdiction over the matter has been established by prior pleadings.

(2) A short, plain statement of the facts giving rise to the action and a showing that the pleader is entitled to relief; and

(3) A demand for judgment for the relief to which the pleader considers himself entitled. Such claim for relief can be in the alternative or for several types of relief.

**Title III- Civil Procedure Code/C.C.J.**

**(B) Defenses and Denials.** A party shall state in plain, concise terms the grounds upon which he bases his defense to claims pleaded against him, and shall admit or deny the claims and statements upon which the adverse party relies. If he is without information or knowledge regarding a statement or claim, he shall so state and such shall be deemed to be a denial. Denials shall fairly meet the substance of the claims or statements denied and may be made as to specified parts but not all of a claim, statement, or averment. A general denial shall not be made unless the party could in good faith deny each and every claim covered thereby. A claim to which a responsive pleading is required, except for amount of damages, shall be deemed admitted unless denied; if no responsive pleading is allowed the claims of the adverse party shall be deemed denied. The party filing the answer has a duty to admit the claims he knows to be true.

**(C) General Content of Claims and Defenses.** Claims and defenses shall be simply, concisely, and directly stated, but may be in alternative or hypothetical form, on one or several counts or defenses, need not be consistent with one another, and may be based on legal or equitable grounds or both.

**(D) Affirmative Defenses.** Matters constituting an affirmative defense or avoidance shall be affirmatively set forth. When a party has mistakenly designated a defense as a counterclaim or vice versa, the court may treat the pleading as if it had been properly designated if justice so requires.

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

**(F)** Attorneys or parties who shall bring a fictitious suit as an experiment to get an opinion of the court, or who shall file any fictitious pleading in a cause for such a purpose, or shall make statements in pleading which they know to be groundless and false, for the purpose of securing a delay of the trial of the cause, shall be held guilty of contempt.

**Sec. 106 Form of Pleadings**

**(A) Caption.** Every pleading shall contain a caption heading, the name of the Tribal Court, the title of the action, the Tribal Court file number (if known) and a designation as to what kind of pleading it is. All pleadings shall contain the names of all the parties except the name of the first party on each side, followed by "et al." may be used on all pleadings after the complaint.

**(B) Paragraphs.** All statements of claim or defense shall be set forth in separate numbered paragraphs each of which is limited, as nearly as possible, to a single circumstance. Claims or defenses founded upon separate transactions or occurrences should be set forth in separate counts or defenses.

**(C) Exhibits; Adoption by Reference.** 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 a written instrument which is an exhibit to a pleading is a part thereof for all purposes.

**(D) Paper Used in Pleadings.** Pleadings and other papers filed in any action shall be on letter size paper, double-spaced, except for matters customarily single-spaced or allowed by Court form to be legibly handwritten, contain at least a 2-inch top margin and a 1-inch left side margin, and contain the court file number on the first page thereof. Substantial compliance with this rule will be sufficient for all parties not represented by a licensed attorney.

**(E)** The signature of a party or legal counsel must be included and is a certificate that the pleading is submitted in good faith and is true and accurate to the best of the signer's knowledge.

#### **Sec. 107 Defenses and Objections**

**(A) When Presented.** A defendant or other party against whom a claim has been made for affirmative relief shall have twenty (20) days from the date of service upon him to answer or respond to the claim.

**(B) Motions.** Motions to dismiss or to make the opposing parties' pleadings more definite may be made prior to answering a claim and an answer will not be due until ten (10) days after the disposition of the motion by the Court. Motions for lack of jurisdiction, insufficient process and failure to state a claim must be decided before trial.

#### **Sec. 108 Counterclaim or Cross-Claim**

**(A) Counterclaim.** A party against whom a claim is made may assert in his answer any claims he has against the party claiming against him and both claims shall be resolved at trial.

**(B) Cross-Claim.** A party against whom a claim is made may assert any claim he has against a co-party and have such claim resolved at trial.

**(C) Third Party Claim.** A party against whom a claim is made may complain against a third party who is or may be liable for payment or performance of the claim of the opposing party and have such complaint resolved at trial.

#### **Sec. 109 Amendment of Pleadings**

**(A) Amendment before Trial.** A party may amend his pleadings once before the opposing party has replied or if no reply is required, not less than twenty (20) days before the case is scheduled for trial. The opposing party may respond, if appropriate, and the trial date rescheduled if necessary. Other amendments shall be allowed only upon



motion and order of the Tribal Court. Leave to amend shall be freely given when justice requires.

**(B) Amendment at Trial.** When issues or evidence not raised in the pleadings are heard at trial, the judgment may conform to such issues or evidence without the necessity of amending the pleadings.

**Sec. 110 Parties**

**(A) Real Party in Interest.** Every action shall be prosecuted in the name of the real party in interest, except a personal representative or other person in a fiduciary position can sue in his own name without joining the party for whose benefit the action is maintained.

**(B) Guardian Ad Litem.** When an infant or mentally incompetent person who has not had a general guardian appointed is a party, the Tribal Court shall appoint a guardian ad litem to represent such person in the suit or action.

**(C) Joinder of Parties and Claims.** To the greatest extent possible given the jurisdiction of the Alabama-Coushatta Tribal Court, all persons or parties interested in a particular action may be joined in the action, but failure to join a party over whom the Tribal Court has no jurisdiction will not require dismissal of the action unless it would be impossible to reach a just result without such party; otherwise, the failure to join a party may be taken into account to assure that justice is done.

**Sec. 111 Intervention**

A person may intervene and be treated in all respects as a party to an action in cases in which he has an interest when may be affected or a question or law or fact common to a claim of his may be litigated.

**Sec. 112 Substitution of Parties**

If a party dies or becomes incompetent or transfers his interest or separates from some official capacity, a substitute party may be joined or substituted as justice requires.

**Sec. 113 Discovery**

**(A) Interrogatories.** A party may submit no more than twenty-five (25) written interrogatories to any other party who must answer them in writing, under oath, within thirty-five (35) days of receipt of such. Each discrete subpart of an interrogatory is considered a separate interrogatory.

**Title III- Civil Procedure Code/C.C.J.**

**(B) Depositions.** A party may take the oral deposition of an adverse party or non-party witness under oath upon serving not less than ten (10) days' notice to the person to be deposed or their attorney of record in that matter, specifying the time and place on the Reservation where such will occur. The testimony, objections, and any other statements during the deposition must be recorded at the time they are given or made. In deposition, no side may examine or cross-examine an individual witness for more than six (6) hours absent Court approval or agreement of the parties. Breaks during depositions do not count against this limitation. Except as provided below, a person served with proper notice must comply with the command stated therein unless discharged by the court or by the party summoning such witness.

**(C) Production, Entry, or Inspection.** A party may request another party to produce any documents or things in his custody or possession for inspection or copying or request permission to enter and inspect property reasonably related to the case, and the opposing party shall within thirty-five (35) days reply as to whether or not such will be allowed and if not, why not.

**(D) Scope of Discovery.** Parties may obtain discovery regarding any matter, not privileged, which is relevant to the pending action, whether or not such would be admissible at trial, if such appears reasonably calculated to lead to the discovery of admissible evidence; except that discovery may not be had of work product. Work product is defined as material prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees, or agents. The work product of an attorney or an attorney's representative that contains the attorney's or the attorney's representative's mental impressions, opinions, conclusions, or legal theories is not discoverable. Any other work product is discoverable only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the material by other means.

**(E) Protective Order.** A party against whom discovery is sought may move the Court for a protective order to prevent undue annoyance, harassment, embarrassment, oppression, or undue burden or expense, and the Tribal Court may order that the discovery cease or proceed only upon specified conditions.

**(F) Failure to Make Discovery.** If a party fails to respond or appear for discovery as provided in this rule, the opposing party may move for an order to compel the defaulting party to perform and the Tribal Court may award costs to the non-defaulting party. If a party fails to perform after being ordered to do so by the Tribal Court, the Tribal Court may, upon motion, order that a certain fact, claim, or defense be deemed established

or, strike part of a claim or defense, or dismiss or render a judgment by default against the non-complying party.

**(G) Use of Discovery.** Answers to interrogatories and depositions may be used in a motion, hearing or at trial to impeach or contradict the testimony of the person discovered, or by an adverse party for any purpose.

#### **Sec. 114 Trials**

**(A) When Allowed.** Trials of all civil actions shall be to the Tribal Court without a jury.

**(B) Issues Triable.** Unless the requesting party specifies otherwise, all factual issues properly triable shall be decided by the Tribal Court.

#### **Sec. 115 Assigning Cases for Trial**

**(A) Assignment of Judge and Date.** The Chief Judge of the Trial Division shall determine which judge shall hear a case, and shall provide by rule for the placing of cases on the court calendar with or without the request of any party provided all parties are given adequate notice of trial dates.

**(B) Postponement.** Upon motion of a party, the Tribal Court may in its discretion, and upon such terms as it deems just, postpone a trial or proceeding upon good cause shown.

#### **Sec. 116 Dismissal of Actions**

**(A) Voluntary Dismissal.** Prior to the filing of a responsive pleading, Motion to Dismiss, or Motion for Summary Judgment by a party against whom a claim has been made, the party who filed the claim may file a notice of dismissal and his claim shall be deemed dismissed without prejudice. In all other circumstances a party may move, or the parties may stipulate, the Tribal Court to dismiss its own claim and the court shall do so either with or without prejudice as is just and proper given the stage of the proceedings. If a crossclaim or counterclaim has been filed against the moving party, the Judge shall dismiss the claim only with the consent of the adverse party or only if it appears that the other party can prosecute his claim independently without undue additional hardship.

**(B) Involuntary Dismissal.** A party against whom a claim has been made may move the Tribal Court to dismiss the claim of the adverse party upon any of the following grounds:

- (1)** Failure of the adverse party to prosecute his claim;
- (2)** Failure of the adverse party to comply substantially with these rules;
- (3)** Failure of the adverse party to comply with an order of the court;

**Title III- Civil Procedure Code/C.C.J.**

(4) At the close of the presentation of the other party's evidence and without prejudicing his own right to present evidence, failure of the opposing party to establish a right to relief based on the facts and law presented; or

(5) Whenever dismissal appears proper based upon a failure to prove a claim.

(C) Such dismissal shall be deemed an adjudication of the merits of the issue dismissed unless the court shall, for good cause shown, order otherwise. The Tribal Court may postpone ruling on a motion to dismiss for failure to establish a right to any relief until the close of all the evidence.

(D) The Tribal Court may order a party moving to dismiss his own claim to pay the costs of the adverse party if the proceeding has progressed beyond the pleading stage, and may order payment of costs in other circumstances where such is deemed appropriate.

**Sec. 117 Consolidation; Separate Trials**

(A) **Consolidation.** The Tribal Court may, upon motion of any party or its own motion, order some or all of the issues of separate actions tried together when there is a common issue of fact or law relating the actions or if such will tend to avoid unnecessary cost or delay.

(B) **Separate Trials.** The Tribal Court may, to avoid prejudice or in furtherance of convenience, order a separate trial of a claim or issue.

**Sec. 118 Evidence**

(A) **Form and Admissibility.** At all hearings and trials, the testimony of witnesses shall be taken orally under oath, unless otherwise provided in these rules. All evidence admissible under the Federal Rules of Evidence or as specified in these Rules shall be admissible and the competency of witnesses to testify shall be similarly determined.

(B) **Examination and Cross Examination.**

(1) A party may use leading questions against an adverse party or hostile witness or whenever such appears reasonably necessary to elicit testimony from witnesses of tender years or poor ability to communicate.

(2) A party may call any person to be a witness and examine any witness so called on any matter relevant to the action. A party may impeach his own witness.

(3) Cross examination shall be limited to the general scope of direct examination; provided, however, that full examination of all witnesses shall be allowed on direct or cross examination to assure complete development of all relevant facts.

**Title III- Civil Procedure Code/C.C.J.**

**(C) Physical Evidence.** Written documents and other physical evidence shall be received upon being identified, authenticated, and shown to be relevant to the action.

**(D) Official Documents.** Official documents or an official law, record or copy thereof may be admitted into evidence upon the testimony of an official having custody or official knowledge thereof or without such testimony if the document or record or copy thereof is accompanied by a certificate identifying such thing and stating that it is a true and correct representation of what it purports to be.

**(E) Record of Excluded Evidence.** In an action tried to a jury, excluded evidence may upon request be included in the record for purposes of appeal and excluded oral testimony shall be put into evidence by means of an offer of proof made out of the hearing of the jury. In an action tried only to the court, the judge may receive such excluded testimony into the record.

**Sec. 119      Subpoenas**

**(A) Issuance.** Subpoenas for attendance of witnesses or production of documents or things shall be issued and served as provided below.

**(1) Attendance of witnesses.** Every subpoena shall be issued by the Clerk under the seal of the Court. It shall state the person who is being subpoenaed, the name and address of the party requesting the subpoena and his attorney, if any, and shall command each person to whom it is directed to attend and give testimony on the time and place therein specified.

**(2) Production of documentary evidence.** The subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the Court, upon motion, may quash or modify the subpoena if it is unreasonable and oppressive, or require the person requesting the production to advance the reasonable cost of producing the books, papers, documents, or tangible things.

**(3) Service.** The subpoena may be served by a police officer or by an officer of the Court, or by any other person who is not a party and is not less than eighteen (18) years of age and who is trained and approved by the Tribal Police Department. Service of the subpoena upon a person named therein shall be made by delivering a copy thereof to such person's last known address.

**(B) Failure to Appear or Produce.** A person who has been properly served with a subpoena and fails to appear or produce may be deemed in contempt of Tribal Court.

**Title III- Civil Procedure Code/C.C.J.**

**(C) Subpoena Unnecessary.** A person present in Tribal Court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpoena.

**Sec. 120 Motions for Directed Verdict and for Judgment Notwithstanding the Verdict**

**(A) Motion for a Directed Verdict.** A party who moves for a directed verdict at the close of the evidence offered by the opposing side may offer evidence as if no motion had been made in the event that the motion is denied. A motion for directed verdict shall state the grounds therefore and may be granted by the court.

**(B) Motion for Judgment Notwithstanding the Verdict.** A party who has made a motion for a directed verdict at the close of all the evidence, which motion has been denied or not granted may, within ten (10) days after entry of judgment move to have the verdict and any judgment entered thereon set aside and entered according to his motion for directed verdict; or if there has been a verdict, the party may so move within ten (10) days after verdict is rendered. A motion for a new trial may be made in the alternative. The Tribal Court shall enter judgment or make any orders consistent with its decision on the motions.

**Sec. 121 Finding by the Tribal Court**

In cases tried, and except in cases where a party defaults, fails to appear or otherwise waives such, findings of fact and conclusions of law shall be made by the Tribal Court in support of all final judgments. Upon its own motion or the motion of any party within ten (10) days of the entry of judgment, findings may be amended or added to and the judgment may be amended accordingly.

**Sec. 122 Judgments; Costs**

**(A) Definition.** A judgment includes any order finally and conclusively determining the rights of the parties.

**(B) Judgment on Multiple Claims.** When more than one claim for relief is presented in an action, however designated, a final judgment may be entered on less than all of such claims only upon the Court's specific finding that such is justified. Absent such a finding, an order or decision will not terminate the action as to any of the claims until all claims are finally decided, nor will the appeal period commence to run.

**(C) Demand for Judgment.**

**(1) Generally.** Except in the case of a default judgment, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if such relief is not demanded in the pleadings. It

**Title III- Civil Procedure Code/C.C.J.**

may be given for or against one or more of several claims; and it may, if justice so requires, determine the ultimate rights of the parties on each side as between or among themselves.

**(2) Judgment by Default.** A judgment by default shall not be different in kind from, or exceed in amount, that specifically requested for in the demand for judgment.

**(D) Costs.** Unless the Tribal Court shall otherwise direct, the Tribal Court shall award necessary costs and disbursements to the prevailing party or parties as a matter of course. Such prevailing party shall file with the Tribal Court a verified memorandum of his costs and necessary disbursements within five days of the entry of judgment and serve a copy of such on the opposing party. If such are not objected to within ten (10) days, they shall be deemed to be part of and included in the judgment rendered. The Tribal Appellate Court may award costs in a like manner.

**(E) Attorneys' Fees.** The Tribal Court shall not award attorneys' fees in a case unless such have been specifically provided for by a contract or agreement of the parties which is under dispute, or unless it reasonably appears that the case has been prosecuted for purposes of harassment only or that there was no reasonable expectation of success on the part of the affirmatively claiming party.

**Sec. 123      Default**

**(A) Entry Default.** When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, the Court will enter entry of default against the failing party.

**(B) Judgment by Default.** Judgment by default may be entered by the Tribal Court if at least ten (10) days have elapsed after the entry of default. A party's claim against the opposing party is for a sum of money which is or can by computation be made certain, and if the opposing party has been personally served in accordance with these Rules. Judgment by default for other relief can be entered only upon receipt of whatever evidence the court deems necessary to establish the claim. Notice of entry of a default judgment shall be served upon the party against whom it is taken.

**(C) Setting aside Default.** The Tribal Court may, for good cause shown, set aside either an entry of default or a default judgment.

**Sec. 124      Summary Judgment**

Any time thirty (30) days after commencement of an action, any party may move the Tribal Court for summary judgment as to any or all of the issues presented in the case. The party against whom summary judgment is sought may file a Response within thirty (30) days. Within five (5) days after the filing of a Response Motion, the moving party may then

**Title III- Civil Procedure Code/C.C.J.**

file a Reply Motion. Summary judgment shall be granted by the Tribal Court if it appears that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Such motions may be supported by affidavits, discovery, or memoranda, all of which must be made available to opposing parties.

**Sec. 125      Entry of Judgment**

**(A) Judgment.** Judgment upon verdict of a jury shall be signed by the Clerk and filed. All other judgments shall be signed by the judge and filed with the Clerk.

**(B) Effectiveness; Recordation.** A judgment is complete and shall be deemed entered for all purposes when it is signed and filed as provided herein. The Clerk shall immediately make a notation of the judgment in the judgment docket.

**(C) Death of a Party.** If a party dies after a verdict or decision upon any issue of fact and before judgment, judgment may nevertheless be entered thereon.

**(D) Satisfaction or Judgment.** A judgment may be satisfied in whole or in part, as to any or all of the judgment debtors by the owner thereof or his attorney of record executing under oath and filing an acknowledgment of satisfaction specifying the amount paid and whether such is full or partial satisfaction. A judge may order the entry of satisfaction upon proof of payment and failure of the judgment creditor to file a satisfaction. The Clerk shall file all satisfactions of judgment and note the amount thereof in the judgment docket.

**(E) Effect of Satisfaction; Limitation.** A judgment satisfied in whole, with such fact being entered in the judgment docket, shall cease to operate as such. A partially satisfied judgment or unsatisfied judgment shall continue in effect for eight (8) years or until satisfied. An action to renew the judgment remaining unsatisfied may be maintained any time prior to the expiration of eight (8) years and will extend the period of limitations an additional eight (8) years and may be thereafter extended once more by the same procedure.

**Sec. 126      Motion for Reconsideration or New Trials; Amendments**

**(A) Grounds; Time.** Any party may petition for a motion for reconsideration or a new trial on any or all of the issues presented by serving a motion not later than ten (10) days after the entry of judgment, for any of the following reasons:

- (1)** Error or irregularity within the Tribal Court's proceedings which
- (2)** Prevented any party from receiving a fair trial;
- (3)** Accident or surprise, or newly discovered evidence which ordinary prudence could not have guarded against or produced at trial;



**Title III- Civil Procedure Code/C.C.J.**

- (4) Damages so excessive or inadequate that they appear to have been given under the influence of passion or prejudice;
- (5) Insufficiency of the evidence to justify the verdict or other decision, or that it is contrary to the law; or
- (6) Error in law.

**(B) Harmless Error.** A new trial shall not be granted on the basis of error or irregularity which was harmless in that it did not result in a substantial injustice.

**(C) Support for Motion.** Parties may include memoranda or affidavits in support of their motions to which reply memoranda and affidavits shall be allowed if desired.

**(D) Oral Argument.** A motion for reconsideration or new trial shall be submitted on briefs and affidavits only, without oral argument, unless the Tribal Court orders otherwise.

**(E) Court Initiative.** The Tribal Court may, on its own initiative, not later than ten (10) days after entry of judgment, order a new trial on any grounds ascertainable by a party to the action, and shall specify the reasons for so ordering.

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

**Sec. 127      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 Tribal Court at any time of its own initiative or on the motion of any party and after such notice as the court may direct; mistakes may be corrected before an appeal is docketed in the Tribal Appellate Court, and thereafter while the appeal is pending may be corrected with permission of the Tribal Appellate Court.

**(B) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud.** On motion and upon such terms as are just, the court may, in the furtherance of justice, 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 126 of these Rules;
- (3) Fraud, misrepresentation or other misconduct of an adverse party;

**Title III- Civil Procedure Code/C.C.J.**

(4) When, for any cause, the summons in an action has not been personally served upon the defendant and the defendant has failed to appear in said action;

(5) The judgment is void;

(6) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or

(7) Any other reason justifying relief from the operation of the judgment.

(C) The motion shall be made within a reasonable time and for reasons (1), (2), (3), or (4), not more than ninety (90) days after the judgment, order, or proceeding was entered or taken. A motion under subsection (B) does not affect the finality of a judgment or suspend its operation. This Rule does not limit the power of a Tribal Court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the Tribal Court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these Rules or by an independent action.

**Sec. 128 Harmless Error**

No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties, is grounds for granting a new trial or otherwise disturbing a judgment or order, unless refusal to take such action appears to the Tribal Court inconsistent with substantial justice. The Tribal Court at every stage of the proceedings shall disregard any error or defect which does not affect the substantial rights of the parties.

**Sec. 129 Stay of Proceedings Judgment**

(A) **Stay-upon Entry of Judgment.** Proceedings to enforce any judgment may be instituted no sooner than thirty (30) days after service except as otherwise provided in these Rules.

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

(C) **Stay Upon Appeal.** When an appeal is taken the appellant, by giving a bond in an amount set by the Tribal Court, may obtain a stay, unless such a stay is otherwise prohibited by law or these rules. The bond may be given within ten (10) days after the

**Title III- Civil Procedure Code/C.C.J.**

time of filing the notice of appeal. The stay is effective when the bond is approved and receivable by the Tribal Court.

**(D) Stay in Favor of the Tribe, Officer or Agency Thereof.** When an appeal is taken by the Tribe, or an officer or agency of the Tribe, and the operation or enforcement of the judgment is stayed, no bond, obligation or other security shall be required from the appellant.

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

**(F) Stay of Judgment upon Multiple Claims.** When a Tribal Court has ordered a final judgment on some but not all of the claims presented in the action, the Tribal 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.

**(G) Waiver of Undertaking.** In all cases the parties may by written stipulation, waive the requirements of this rule with respect to the filing of a bond or undertaking. In all cases where an undertaking is required by these rules, a deposit with the Tribal Court in the amount of such undertaking, or such lesser amounts as the Tribal Court may order, is equivalent to the filing of the undertaking.

**(H) Other Relief.** No stay, injunction, waiver of undertaking or security for costs or any other relief from a judgment or order shall be granted by the Tribal Court without actual notice and opportunity to be heard on the part of the adverse party to the action.

**Sec. 130 Disability or Disqualification of a Judge**

**(A) Disability.** If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the Tribal Court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then any other judge regularly sitting in or assigned to the Tribal Court may perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

**(B) Disqualification.** Whenever a party to any action or proceeding or his attorney makes and files an affidavit that the judge before whom such action or proceeding is to be tried or heard has a bias or prejudice, either against such party or his attorney or in

favor of any opposing party to the suit, such judge shall proceed no further therein, except to call in another judge to hear and determine the matter.

Every such affidavit shall state the facts and the reasons for the belief that such bias or prejudice exists, and shall be filed as soon as practicable after the case has been assigned or such bias or prejudice is known. If the judge against whom the affidavit is directed questions the sufficiency of the affidavit, he shall enter an order directing that a copy thereof be forthwith certified to another judge (naming him), which judge shall then pass upon the legal sufficiency of the affidavit. If the judge against whom the affidavit is directed does not question the legal sufficiency of the affidavit, or if the judge to whom the affidavit is certified finds that it is legally sufficient, another judge must be called in to try the case or determine the matter in question. No party shall be entitled in any case to file more than one affidavit; and no such affidavit shall be filed unless accompanied by a certificate of counsel of record that such affidavit and application are made in good faith.

**(C) “Sufficiency”** for the purpose of this rule means whether the affidavit sets forth facts which, if true would warrant disqualification of a judge. There shall be no hearing or other inquiry as to whether the facts as stated in the affidavit are indeed true, so as to preserve the dignity of the court and avoid the hint or appearance of impropriety.

**Sec. 131     Injunctions**

**(A) Preliminary Injunction; Notice.** No preliminary injunction shall be issued without notice to the adverse party and after a hearing is held.

**(B) Temporary Restraining Order; Notice; Rehearing; Duration.** No temporary restraining order shall be granted without notice to the adverse party unless 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 notice can be served and a hearing had thereon.

**(C)** Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance and shall be filed forthwith in the Clerk’s office and entered on the record. It shall define the injury and state why it is irreparable and why the order has been granted without notice; and shall expire by its terms within such time after entry, not to exceed fifteen (15) days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered in the record.

**(D)** In cases where a temporary restraining order is granted without notice, a motion for a preliminary injunction or show cause hearing must be set down for a hearing at the earliest possible time, taking precedence over all other matters except older matters of the same character. When the motion comes on for hearing, the party who obtained the

**Title III- Civil Procedure Code/C.C.J.**

temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On two (2) days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the Tribal Court may prescribe, the adverse party may appear and move for 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.

**(E) Security.** Except as otherwise provided by law, no restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States, the Alabama-Coushatta Tribe, or of an officer or agency of either, nor shall it be required of a married person in a suit against the other party to the marriage contract.

**(F)** A surety upon a bond or undertaking under this rule submits himself to the jurisdiction of the Tribal Court and irrevocably appoints the Clerk of the Tribal Court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the Tribal Court prescribes may be served on the Clerk of the court who shall forthwith mail copies to the persons giving the security if their addresses are known.

**(G) Form and Scope of Injunction or Restraining Order; Service.** Every order granting an injunction and every restraining order shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

**(H) Grounds for Injunction.** An injunction may be granted:

**(1)** When it appears by the pleadings on file that a party is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act complained of, either for a limited period or perpetually;

**(2)** When it appears from the pleadings or by affidavit that the commission or continuance of some act during the litigation would produce great or irreparable injury to the party seeking injunctive relief;

**(3)** When it appears during the litigation that either party is doing or threatens, or is about to do, or is procuring or suffering to be done, some act

in violation of the rights of another party respecting the subject matter of the action, and tending to render the judgment ineffectual;

(4) In all other cases where an injunction would be proper in equity.

Violation of a Tribal Court ordered injunction is punishable as contempt of court.

**Sec. 132      Extraordinary Writs**

(A) **Grounds for Relief.** Where no other plain, speedy and adequate remedy exists, relief may be obtained by obtaining an extraordinary writ which may be granted for one of the following reasons:

(1) Where any person usurps, intrudes into, or unlawfully holds or exercises a public office or does or permits to be done any act which by law works a forfeiture of his office; or

(2) Where an inferior tribunal, board or officer exercising judicial functions has exceeded its jurisdiction or abused its discretion; or

(3) Where the relief sought is to compel any inferior tribunal, board or person to perform an act which the law specially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully excluded by such inferior tribunal, board or person; or

(4) Where the relief sought is to arrest the proceedings of any tribunal, board or person, whether exercising functions judicial or ministerial, when such proceedings are without or in excess of the jurisdiction of such tribunal, board or person.

**Sec. 133      Execution**

(A) Upon a motion of the party obtaining judgment, the Court shall order the appearance of the party against whom judgment has been entered for oral examination under oath as to his financial status and ability to pay such judgment, and the Court shall make such supplementary orders as may seem just and proper to effectuate the payment of the judgment upon reasonable terms.

**Sec. 134      Citation**

These Rules shall be known as the Alabama-Coushatta Tribe Rules of Civil Procedure and may be abbreviated "A.C.T.R.C.P."