CHAPTER SEVEN

TRIALS

Section 701. Trial Defined

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

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 701]

Section 702. Trial of Issues

Issues of law must be tried by the Court. Issues of fact arising in actions for which a jury trial is provided by law may be tried by a jury, if a jury trial is demanded, unless a reference be ordered, as hereinafter provided. All other issues of fact shall be tried to the Court.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 702]

Section 703. Jury Trial of Right

(a) **Right Preserved.** The right of a trial by jury as declared by the Tribal Constitution or a statute of the Tribe, or the Indian Civil Rights Act of 1968 shall be preserved inviolate. In all actions, forcible entry and detainer, arising in contract or tort where the amount in controversy, or the value of the property to be recovered, as stated in the prayer for relief or an affidavit of a party, or as found by the Court where the amount in controversy is questioned by the affidavit of the adverse party, exceeds ten thousand dollars ($10,000.00), except as otherwise specifically provided by law and in tax cases, and in all actions for the involuntary removal of children from the custody of their parents or custodian and the involuntary termination of parental rights, the action may be tried to a jury upon demand of any party. All other actions and issues of fact shall be tried to the Court.

(b) **Demand.** Any party entitled to a jury trial may demand a trial by jury of any issue triable of right by a jury pursuant to any law of the Tribe by serving upon the other parties a

demand therefore in writing at any time after the commencement of the action and not later than ten (10) days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party. Such demand shall not be effective unless, at the time of filing or at such later time as the Court shall by rule allow, the party making such demand deposit with the Court Clerk a reasonable jury fee in such amount as the Court shall by rule determine. The amount of such deposit shall be set by the Court in such amount as may be reasonably necessary to offset the costs of juror fees for the impaneling and trying of the action, without being in an amount which may preclude or prevent a party from exercising their right to a jury trial. Such rules shall contain a provision for waiver of the deposit requirement for persons proceeding in forma pauperis.

(c) **Same; Specification of Issues.** In his demand a party may specify the issues which he wished so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within ten (10) days after service of the demand or such lesser time as the Court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) **Waiver.** The failure of a party to serve a demand as required by this Section and to file it as required by Section 231(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 consent of the parties. Even though previously demanded, the trial by jury may be waived by the parties, in actions arising on contract, and with the assent of the Court in other actions, in the following manner:

(1) By the consent of the party appearing, when the other party fails to appear at the trial by himself or attorney;

(2) By written consent, in person or by attorney, filed with the clerk; or

(3) By oral consent, in open court, entered on the journal.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 703]

Section 704. Trial by Jury or by the Court

(a) **By Jury.** When Trial by jury has been demanded as provided in Section 703, the action shall be designated upon the docket as a jury action. The trial of all issues shall be by jury, unless:

(1) The parties or their attorneys of record, by written stipulation filed with the Court or by an oral stipulation made in open Court and entered in the record, consent to trial by the Court sitting without a jury;

(2) The Court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Constitution and laws of the Tribe, or under the Indian Civil Rights Act.

(b) **By the Court.** Issues not demanded for trial by jury as provided in Section 703 of this Title shall be tried by the Court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the Court in its discretion or upon motion of a party may order a trial by a jury of any or all issues properly triable to a jury.

(c) **Advisory Jury and Trial by Consent.** In all actions not triable of right by a jury the Court upon motion or its own initiative may try any issue with an advisory jury or, except in actions against the Tribe when a statute of the Tribe provides for trial without a jury, the Court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial had been a matter of right.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 704]

Section 705. Assignment of Cases for Trial

The Tribal District Court shall provide by rule for the placing of actions upon the trial calendar:

(1) Without the request of the parties; or

(2) Upon request of a party and notice to the other parties; or

(3) In such other manner as the Courts deem expedient.

Precedence shall be given to actions entitled thereto by any statute of the Tribe.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 705]

Section 706. Consolidation; Separate Trials

(a) **Consolidation.** When different 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 make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delays.

(b) **Separate Trials.** The Court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, or third-party claims, or issues, always preserving inviolate the right to trial by jury as declared by the Indian Civil Rights Act, the Tribal Constitution or as given by a statute of the Tribe.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 706]

SUBCHAPTER A

IMPANELING JURY

Section 721. Summoning Jury

The general mode of summoning and impaneling the jury, in cases in which a jury trial may be had, is such as is or may be provided by Chapter 6 of this Title.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 721]

Section 722. Causes for Challenging Jurors

If there shall be impaneled, for the trial of any action, any juror, who shall have been convicted of any crime which by law renders his disqualified to serve on a jury; or who has been arbitrator on either side, relating to the same controversy; or who has an interest in the action; or who has an action pending between him and either party; or who has formerly been a juror on the same claim; or who is the employer, employee, counselor, agent, steward or attorney of either party; or who is subpoenaed as a witness; or who is kin of either party within the second degree by blood or marriage, he may be challenged for such causes; in either of which cases the same shall be considered as a principal challenge, and the validity thereof be tried by the Court; and any juror who shall be returned upon the trial of any of the causes hereinbefore specified, against whom no principal cause of challenge can be alleged, may, nevertheless, be challenged on suspicion of prejudice against, or partiality for either party, or any other cause that may render him, at the time, an unsuitable juror; but a resident or taxpayer of the tribal jurisdiction, or a member of the Tribe or any municipality therein shall not be thereby disqualified in actions in which the Tribe or such municipality is a party. The validity of all principal challenges and challenges for cause shall be determined by the Court.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 722]

Section 723. Examination of Jurors

The Court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the Court shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions of the parties or their attorneys as it deems proper.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 723]

Section 724. Alternate Jurors

The Court may direct that not more than three (3) jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to one (1) peremptory challenge in addition to those otherwise allowed by law if alternate jurors are to be impaneled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by law shall not be used against an alternate juror.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 724]

Section 725. Order of Challenges

The plaintiff first, and afterward the defendant, shall complete his challenges for cause. They may then, in turn, in the same order, have the right to challenge one juror each shall have peremptorily challenged three (3) jurors, but no more.

[History: L. 1993, January 6; R-30-92

PUBLIC LAW # T 6 § 725]

Section 726. Challenges to Jurors - Filling Vacancies

After each challenge, the vacancy shall be filled before further challenges are made; and any new juror thus introduced may be challenged for cause as well as peremptorily.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 726]

Section 727. Alternate Method of Selecting Jury

Notwithstanding other methods authorized by law, the trial judge may direct in his discretion that a jury in an action be selected by calling and seating twelve (12) prospective jurors in the jury box and then examining them on voir dire; when twelve (12) such prospective jurors have been passed for cause, each side of the lawsuit shall exercise peremptory challenges out of the hearing of the jury by alternately striking three names each from the list of those so passed for cause, and the remaining six persons shall be sworn to try the case.

If there be more than one (1) defendant in the case, and the trial judge determines on motion that there is a serious conflict of interest between them, he may, in his discretion, allow each defendant to strike three names for the list of jurors seated and passed for cause. I such case he shall appropriately increase the number of jurors initially called and seated in the jury box for voir dire examination.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 727]

Section 728. Oath of Jury

The jury shall be sworn to well and truly try the matters submitted to them in the case before them, and to give a true verdict, according to the law and the evidence.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 728]

Section 729. Juries of Less than Six - Majority Verdict

All juries shall be composed of six (6) persons, and a unanimous verdict shall be required, except that the parties may stipulate that the jury shall consist of any number less than six (6) and greater than two (2), or that a verdict finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 729]

SUBCHAPTER B

TRIAL PROCEDURE

Section 731. Order of Trial

When the jury has been sworn in an action before a jury, and in trials to the Court, when the Court is ready to proceed, the trial shall proceed in the following order, unless the Court for special reasons otherwise directs:

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

(b) The adverse party may then briefly state his defense and the evidence he expects to offer in support of it, or the adverse party may reserve his opening statement until the beginning of the presentation of his evidence.

(c) The party on whom rests the burden of proving the issues must first produce his evidence; after he has closed his evidence the adverse party may interpose a motion for a directed verdict thereto upon the ground that no claim for relief or defense is proved. If the Court shall sustain the motion, no formal verdict of the jury shall be required, but judgment shall be rendered for the party whose motion for a directed verdict is sustained as the state of the pleadings or the proof shall demand.

(d) If the motion for a directed verdict be overruled, the adverse party may then briefly state his case if he did not do so prior to the beginning of the presentation of the evidence, and, shall then produce his evidence.

(e) The parties will then be confined to rebutting evidence unless the Court, for good reasons in furtherance of justice, shall permit them to offer evidence in the original case.

(f) After the close of the evidence, and when the jury instructions have been finalized by the Court, the parties may then make their closing arguments as to the evidence proved and reasonable inferences to be drawn therefrom. The party having the burden of proving the issue shall first present his argument. Thereafter, the other party shall present his argument, and then, the party having the burden of proof shall

have the opportunity for rebuttal argument. The Court may place reasonable limitation upon the time allowed for closing argument, provided, that each side to the action should have the same total time for argument if time restrictions are placed thereon.

(g) After the closing arguments of the parties have been completed, the Court shall instruct the jury as to the law of the case, and shall give a copy of the written instructions to the jury for their use during their deliberations.

(h) The Court shall then place the bailiff or some other responsible person under oath to secure the jury against interference, and the jury shall retire to determine its verdict.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 731]

Section 732. Taking of Testimony

(a) **Form.** In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by a law of the Tribe or by this Title, the Tribal Rules of Evidence, or other rules adopted by the Supreme Court of the Tribe.

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

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

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 732]

Section 733. Exceptions Unnecessary

Formal exceptions to rulings or orders of the Court are unnecessary; but 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.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 733]

Section 734. Instruction to Jury - Objection

(a) 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 arguments are completed. No party may assign as error the giving or the failure to give an instruction unless he objects thereto or proposes the requested instruction 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.

(b) All instructions requested, and modifications thereof, shall be reduced to writing, numbered, and signed by the party or his attorney asking the same and filed in the record of the case.

(c) When either party asks special instructions to be given to the jury, the Court shall either give such instructions as requested, or positively refuse to do so; or give the instructions with modification in such manner that it shall distinctly app[ear what instructions were given in whole or part, and in like manner as asked for, or as modified, or to the modification, or to the refusal.

(d) All instructions given by the Court must be numbered, signed by the Judge; and filed together with those asked for by the parties as a part of the record.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 734]

Section 735. Uniform Jury Instructions

The Supreme Court, in its discretion, is authorized to promulgate by rule uniform instructions to be given in jury trials of civil or criminal actions, which, if applicable in a civil or criminal action, due regard being given to the facts and prevailing law, shall be used unless the Court determines that the instruction does not accurately state the law.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 735]

Section 736. Objections to Instructions - Copies to Parties

A party objecting to the giving of instructions, or the refusal thereof, shall not be required to file a formal bill of exceptions; but it shall be sufficient to make objection thereto by dictating into the record in open Court, out of the hearing of the jury, before the reading of all instructions, the number of the particular instruction that was requested, refused, and objected to, or the number of the particular instruction given by the Court that is excepted to. Provided, further, that the Court shall furnish copies of the instructions to the Plaintiff and Defendant prior to the time said instructions are given by the Court.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 736]

Section 737. View by Jury

Whenever, in the opinion of the Court, it is proper for the jury to have a view of the property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted, in a body, under the charge of an officer, to the place, which shall be shown to them by some person appointed by the Court for that purpose. While the jury are thus absent, no person, other than the person so appointed, shall speak to them on any subject connected with the trial.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 737]

Section 738. Deliberations of the Jury

When the case is finally submitted to the jury, they shall retire for deliberation. When they retire, they must be kept together, in some convenient place, under charge of an officer, until they agree upon a verdict or be discharged by the Court, subject to the discretion of the Court, to permit them to separate temporarily at night, and at their meals. The officer having them under this charge shall not suffer any communication to be made to them, or make himself, except to ask them if they are agreed upon their verdict, and to communicate a request by the jury to the Court in open Court, unless by order of the Court; and he shall not, before their verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 738]

Section 739. Admonition of Jury on Separation

If the jury are permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the Court that it is their duty not to converse with, or suffer themselves to be addressed by, any other person, on any subject of the trial, and that it is their duty not to form or express an opinion thereon, until the case is finally submitted to them.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 739]

Section 740. Information After Retirement

After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed as to any part of the testimony, or if they desire to be informed as to any part of the law arising in the case, they may request the officer to conduct them to the Court, where the information on the point of law shall be given in writing, and the Court may give its recollections as to the testimony on the point in dispute, or cause the same to be read by the stenographer or played back on an electronic recording device by the reporter in the presence of, or after notice to, the parties or their Counsel. Upon motion in appropriate

circumstances, the Court may order that other portions of the record relating to the same issue also be read or played back to the jury jupon the questioned point.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 740]

Section 741. When the Jury May Be Discharged

The jury may be discharged by the Court on account of the sickness of a juror, or other accident or calamity requiring their discharge, or by consent of both parties, or after they have been kept together until it satisfactorily appears to the Court that there is no probability of their agreeing.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 741]

Section 742. Re-Trial

In all cases where the jury are discharged during the trial, or after the cause is submitted to them, it may be tried again immediately, or at a future time, as the Court may direct.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 742]

Section 743. Proof of Official Record

(a) **Authentication.**

(1) Domestic. An official record kept within the United States or any Indian Tribal jurisdiction, state, district, commonwealth, territory, or insular possession thereof, or within the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a Judge of a Court, or may be made by any public office having a seal of office and having official duties

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

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

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

(c) **Other Proof.** The Section does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 743]

Section 744. Determination of Foreign Law

A party who intends to raise an issue concerning the law of a foreign jurisdiction shall give notice in his pleadings or

other reasonable written notice. The Court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Tribal Rules of Evidence. The Court's determination shall be treated as a ruling on a question of law. The Tribal District Court shall take judicial notice of the law of any foreign jurisdiction within the United States published in an official publication of that jurisdiction upon reasonable notice of the law in question. The term "foreign jurisdiction within the United States" includes every federally recognized Indian Tribe, every state, territory, or possession of the United States, the United States, and their political subdivisions and agencies.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 744]

Section 745. Appointment and Duties of Masters

(a) **Appointment and Compensation.** The Tribal District Court with the concurrence of a majority of all the Judges thereof may appoint one or more standing masters, and the tribal judge, in an appropriate case, may appoint a special master to act in a particular case. The word "master" includes a referee, and auditor, and an examiner, a commissioner, and an assessor. The compensation to be allowed to a master shall be fixed by the Court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action which is in the custody and control of the Court as the Court may direct. The master shall not retain his report as security for his compensation; but when the party ordered to pay the compensation allowed by the Court does not pay it after notice and within the time prescribed by the Court, the master is entitled to a writ of execution against the delinquent party.

(b) **Reference.** A reference to a master shall be the exception and not the rule. In action to be tried by a jury, a reference shall be made only when the issues are complicated; in action to be tried without a jury, save in matter of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

(c) **Powers.** The order of reference to the master may specify or limit his powers and may direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place

for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measure necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. He may rule upon the admissibility of evidence unless otherwise directed by the order or reference and has the authority to put witnesses on oath and may himself examine them, and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Section 732(c) of this Title for a Court sitting without a jury.

(d) **Proceedings.**

(1) Meetings. When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof, unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within twenty (20) days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the Court for an order requiring the master to speed the proceedings and to make his report. If a party fails to appear at the time and place appointed, the master may proceed ex parte, or, in his discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) Witnesses. The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Section 222 of this Title. If without adequate excuse a witness fails to appear or give evidence, he may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in Sections 412(b) and 222(f) of this Title.

(3) Statement of Accounts. When matters of accounting are in issue before the master, he may prescribe the form in which the accounts shall be submitted and in any proper

case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as he directs.

(e) **Report.**

(1) Content and Filing. The master shall prepare a report upon the matters submitted to him by the order of reference and, if required to make findings of fact and conclusions of law, he shall set them forth in the report. He shall file the report with the Clerk of the Court and in an action to be tried without a jury, unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The Clerk shall forthwith mail to all parties notice of the filing.

(2) In Non-Jury Actions. In an action to be tried without a jury the Court shall accept the master's findings of fact unless clearly erroneous. Within ten (10) days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the Court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Section 240(d) of this Title. The Court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(3) In Jury Actions. In an action to be tried by a jury the master shall not be directed to report the evidence. His findings upon the issues submitted to him are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the Court upon any objections in point of law which may be made to the report.

(4) Stipulation as to Findings. The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate

that a master's findings of fact shall be final, only questions of laws arising upon the report shall thereafter be considered.

(5) Draft Report. Before filing his report a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 745]

SUBCHAPTER C

VERDICT

Section 751. Findings by the Court

(a) **Effect.** In all actions tried upon the facts without a jury or with an advisory jury, the Court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Section 907 of this Title; and in granting or refusing interlocutory injunctions the Court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Request for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the Court adopts them, shall be considered as the findings of the Court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Section 112(b) or Section 121(b) of this Title.

(b) **Amendment.** Upon motion of a party made not later than ten (10) days after entry of judgment the Court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Section 108 of this Title. When findings of fact are made in actions tried by the Court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter by raised whether or not the party raising the question has made in the Tribal District Court an objection to such findings or has made a motion to amend them or a motion for judgment.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 751]

Section 752. Delivery of Verdict

When the jury have agreed upon their verdict they must be conducted into Court, and their verdict rendered by their foreman. When the verdict is announced, either party may

require the jury to be polled, which is done by the Clerk or the Court asking each juror if it is his verdict. If any one answers in the negative, the jury must again be sent out, for further deliberation.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 752]

Section 753. Requisites of Verdicts

The verdict shall be written, signed by the foreman and read by the Clerk to the jury, and the inquiry made whether it is their verdict. If any juror disagrees, the jury must be sent out again; but if no disagreement be expressed, and neither party requires the jury to be polled, the verdict is complete and the jury discharged from the case. If, however, the verdict be defective in form only, the same may, with the assent of the jury, before they are discharged, be corrected by the Court.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 753]

Section 754. General and Special Verdict

The verdict of a jury is either general or special. A general verdict is either that by which they pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury finds facts only. It must present the facts as established by the evidence and not the evidence to prove them; and they must be so presented as that nothing remains to the Court but to draw from their conclusions of law.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 754]

Section 755. Special Verdict and Interrogatories

(a) **Special Verdicts.** The Court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the Court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the

pleadings and evidence; or it may use other methods of submitting the issues and requiring the written findings thereon as it deems most appropriate. The Court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the Court omits any issue of fact raised by the pleadings or by the evidence, each party waived his right to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand the Court may make a finding; or, if it fails to do so it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(b) **General Verdict Accompanied by Answer to Interrogatories.** The Court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The Court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the Court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are consistent with each other, judgment shall be entered thereon, but, when the answers to one or more interrogatories is inconsistent with the general verdict, judgment may be entered pursuant to Section 907 in accordance with the answers, notwithstanding the general verdict, or the Court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the Court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 755]

Section 756. Jury Must Assess Amount of Recovery

When, by the verdict either party is entitled to recover money of the adverse party, the jury, in their verdict, must assess the amount of recovery.

[History: L. 1993, January 6; R-30-92

Section 757. Motion for a Directed Verdict and for Judgment Notwithstanding the Verdict

(a) **Motion for Directed Verdict: When Made; Effect.** A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right to do so and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for directed verdict shall state the specific grounds therefore. The order of the Court granting a motion for a directed verdict is effective without assent of the jury.

(b) **Motion for Judgment Notwithstanding the Verdict.** Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the Court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Not later than ten (10) days after entry of judgment, a party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned such party, within ten (10) days after the jury has been discharged, may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned the Court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of the judgment as if the requested verdict has been directed. If no verdict was returned the Court may direct the entry of judgment as if the requested verdict has been directed or may order a new trial.

(c) **Same: Conditional Rulings on Grant of Motion.**

(1) If the motion for judgment notwithstanding the verdict, provided for in subsection(b) of this Section, is granted, the Court shall also rule on the motion for a new trial, it any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the ground for granting or denying the motion

for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the Supreme Court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with order of the Supreme Court.

(2) The party whose verdict has been set aside on motion for judgment notwithstanding the verdict may serve a motion for a new trial pursuant to Section 908 of this Title not later than ten (10) days after entry of the judgment notwithstanding the verdict.

(d) **Same: Denial of Motion.** If the motion for judgment notwithstanding the verdict is denied, the party who prevailed on that motion may, on appeal, assert grounds entitling him to a new trial in the event the Supreme Court concludes that the trial court erred in denying the motion for judgment notwithstanding the verdict. If the Supreme Court reverses the judgment, nothing in this Section precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 757]

SUBCHAPTER D

MISCELLANEOUS TRIAL PROVISIONS

Section 771. Provisions Applicable to Trials by Court

The provisions of this Chapter respecting trials by jury apply, so far as they are in their nature applicable, to trial by the Court.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 771]

Section 772. Trial Docket

A trial docket shall be made out by the Clerk of the Court, at least fifteen days before the first day of each jury or non-jury docket of the Court, and the actions shall be set for particular days in the order prescribed by the Judge of the Court, and so arranged that the cases set for each day shall be considered as nearly as may be on that day. The trial docket shall be promptly mailed by the Clerk to each party or their attorney of record whose action is placed on the trial docket.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 772]

Section 773. Trial Docket for Bar

The Clerk shall make out a copy of the trial docket for the use of the bar, before the first day of the docket of the Court and cause the same to be available to the public.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 773]

Section 774. Order of Trial of Cases Docketed

The trial of an issue of fact, and the assessment of damages in any case, shall be in the order in which they are placed on the trial docket, unless by the request of the parties with the approval of the Court, or the order of the Court, they are continued or placed at the heel of the docket, unless the

Court, in its discretion, hear at any time a motion, and may by rule prescribe the time for hearing motions.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 774]

Section 775. Time of Trial

(a) Actions shall be triable at the first trial docket of the Court, after or during which the issues therein, by the time fixed for pleading are, or shall have been made up and discovery completed. When the issues are made up and discovery completed, or when the defendant has failed to plead within the time fixed, the cause shall be placed on the trial docket, and shall stand for trial at such term twenty (20) days after the issues are made up and discovery completed, and shall , in case of default, stand for trial forthwith.

(b) The Court shall arrange its business so that two non-jury trial dockets and two jury trial dockets are completed during each calendar year, unless the majority if the Judges of the Court by order determine that additional trial dockets are necessary to promptly dispose of the cases pending before the Court.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 775]

Section 776. Continuance

The trial of an action shall not be continued upon the stipulation of the parties alone, but may be continued upon order of the Court.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 776]

Section 777. Trial by Judicial Panel

(a) The Supreme Court may provide by rule for the trial of any action in the Tribal District Court by judicial panel in any or all cases when no jury is allowed by law or demanded by the parties. The judicial panel shall consist of the presiding Judge to whom the case was assigned, who shall make all rulings

on questions of law during the trial of the action, and two or more Judges, special Judges, Magistrates who shall hear the evidence. The Chief Justice of the Supreme Court, with the consent of the majority of the active Judges of the Supreme Court, is hereby authorized to freely appoint any person licensed to practice law before the Court as a Special Judge for the purpose of sitting upon a judicial panel, and may compensate such person out of the Court fund reasonable compensation for his services, in an amount not exceeding the daily rate paid to regular Judges of the Court.

(b) The judicial panel shall jointly, by majority vote, determine the facts proved by the evidence and the panel shall enter findings of fact and conclusions of law as in a trial before a single Judge.

(c) In a trial before a judicial panel, the votes of the Judges on the panel shall not be revealed, but the verdict and judgment shall be entered in accordance with the panel's findings of fact and conclusions of law.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 777]

Section 778. Bifurcated Jury Trials

(a) The Supreme Court may provide by rule for the bifurcation of any jury trial in a civil action sounding in tort so that the jury shall first hear evidence on, and render its verdict upon the issue of liability, and thereafter hear evidence on and render its verdict upon the issue of the amount of damages if liability has been found.

(b) In such bifurcated trials, evidence of insurance coverage or similar agreements by third parties to pay any part of a judgment, and the nature and extent of such coverage or agreement shall be admissible and relevant to the issue of damages.

(c) In any such cases not provided for by Court rule, the case may be determined in bifurcated proceedings as stated in subsections(a) and (b) of this Section by stipulation of the parties.

[History: L. 1993, January 6; R-30-92
PUBLIC LAW # T 6 § 778]