

INDIAN CLAIMS COMMISSION

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General Rules of Procedure

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EDGAR E. WITT, Chief Commissioner
WILLIAM M. HOLT, Associate Commissioner
LOUIS J. O'MARR, Associate Commissioner

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INDIAN CLAIMS COMMISSION

GENERAL RULES OF PROCEDURE

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SECTION 1. *Petitioners.* (a) Claims within the jurisdiction of the Indian Claims Commission of the United States (60 Stat. 959; 25 U. S. C. 70), hereafter referred to as the Commission, may be presented by any Indian tribe, band, or other identifiable group of Indians.

(b) Claims by Indian tribes, bands, or groups which have tribal organizations recognized by the Secretary of the Interior as having authority to represent such tribe, band, or group shall be filed and presented by the duly appointed or elected officers of such organization, except as provided in paragraph (c) of this section.

(c) Where by virtue of fraud, collusion, or laches on the part of a recognized tribal organization a claim has not been presented (or has not been included as part of a presented claim), any member of such tribe, band, or group may file claim on behalf of all the other

members of such tribe, band, or group upon complying with the provisions of section 8 (b).

(d) Claims on behalf of any unorganized tribe, band, or other identifiable group may be filed by any member of such tribe, band or identifiable group as the representative of all its members.

SEC. 2. *Commencement of action.* (a) A claim shall be commenced by the filing of a petition with the Commission.

(b) Twenty printed copies of each petition shall be filed. The Commission on motion accompanying a typewritten petition assigning good and sufficient cause, may waive or postpone printing of the petition. When printing of the petition is waived eight legible typewritten copies thereof shall be filed.

SEC. 3. *Service of petition.* Service shall be made upon the United States as follows:

By sending 15 copies of the printed petition or 4 copies of the typed petition by registered mail (return receipt requested) to the Attorney General of the United States at Washington, D. C. Service by mail is complete upon mailing. The return receipt shall be delivered to the clerk of the Commission to be filed in the case.

SEC. 4. *Service and filing of other papers.* (a) *Service:* (1) *When required.* Every order required by its terms to be served, every pleading subsequent to the original petition, every written motion other than one which may be heard *ex parte*, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties affected thereby, but no service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief shall be served in the manner provided for service in section 3.

(2) *How made.* Whenever under the rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney of record (hereinafter provided for in this paragraph) unless service upon the party himself is ordered by the Commission. Service upon the attorney of record or upon a party shall be made by delivering a copy to him or by mailing it to him at his address registered with the clerk as required by section 35. Delivery of a copy within the provisions of this section means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(b) *Proof of service.* (1) *File before taking action.* Proof of service of papers required or permitted to be served, other than those for which a method of proof is prescribed by the Federal Rules of Civil Procedure, shall be filed before action is to be taken thereon.

(2) *Form of.* The proof shall show the time and manner of service, and may be by written acknowledgment of service, by affidavit of the person making service, by certificate of a member of the bar of this Commission, or by other proof satisfactory to the Commission.

(3) *Failure to make.* Failure to make proof of service will not affect the validity thereof. The Commission may at any time allow the proof to be amended or supplied, unless to do so would result in material prejudice to a party.

(c) *Filing.* All papers after the petition required to be served upon a party shall be filed with the Commission either before service or within a reasonable time thereafter.

(d) *Filing with the Commission defined.* The filing of pleadings and other papers with the Commission as required by these rules shall be made by filing them with the clerk of the Commission, except that a Commissioner or examiner when a claim is being heard by him may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

SEC. 5. *Time.* (a) *Computation.* In computing any period of time prescribed or allowed by these rules, by order of Commission, Commissioner, or examiner or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday in the District of Columbia, in which event the period runs until the end of the next day upon which the Commission is open for business. Legal holidays in the District of Columbia are as follows:

1st day of January, New Year's Day;

Day of the inauguration of the President in every fourth year,
January 20;

22d day of February, Washington's Birthday;

30th day of May, Decoration Day;

4th day of July, Independence Day;

First Monday in September, Labor's Holiday;

11th day of November, Armistice Day;

Any day appointed or recommended by the President of the United States as a day of public fasting or thanksgiving (Thanksgiving, generally the last Thursday in November);

25th day of December, Christmas Day.

(Code of Law for the District of Columbia, sec. 1389, 31 Stat. 1405.)

When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

(b) *Enlargement.* When by these rules or by a notice given thereunder or by order of the Commission an act is required or allowed to be done at or within a specified time, the Commission, or a Commissioner or examiner in a case being heard by him, or by stipulation of the parties, for cause shown may at any time in its or his discretion (1) with or without motion or notice if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

(c) *For motions—affidavits.* A written motion, other than one which may be heard *ex parte*, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the Commission. Such an order may for cause shown be made on *ex parte* application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not later than 1 day before the hearing, unless the Commission permits them to be served at some other time.

(d) *Additional time after service by mail.* Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period.

SEC. 6. *Pleadings allowed, form of motions.* (a) *Pleadings.* There shall be a petition and an answer; and there shall be a reply to a counterclaim denominated as such. No other pleading shall be allowed, except that the Commission may order a reply to an answer.

(b) *Motions and other papers.* (1) An application to the Commission for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

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

(c) *Demurrers, pleas, etc.* Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

SEC. 7. *General rules of pleading.* (a) *Pleading to be concise and direct; consistency.* (1) Each averment of a pleading shall be simple,

concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them, if made independently, would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has, regardless of consistency and regardless of the nature of the grounds on which they are based. All statements shall be made subject to the obligations set forth in section 10 (b).

(b) *A petition shall state with particularity.* (1) Any action on the claim previously taken by Congress or by any department of the Government or in any judicial proceeding and whether the claim or any part thereof is included in any suit pending in the Court of Claims or in the Supreme Court of the United States or whether the same has been filed in the Court of Claims under any legislation in effect on the date of the approval of the Indian Claims Commission Act.

(2) If the claim or defense is founded upon an act of Congress or upon the regulation of an executive department or independent establishment, the act and the section thereof on which the pleader relies shall be specified and the particular regulation of the department or independent establishment stated, and a copy of such regulation attached to the petition.

(3) If the claim or defense is founded on a contract or treaty with the United States or an Executive order of the President, the substance of the same shall be set forth in the petition; if in writing, the original or a copy thereof shall be annexed thereto. All parts immaterial to the claim or defense or to the relief sought may be omitted.

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

SEC. 8. *Capacity.* (a) Petitions filed by any tribal organization recognized by the Secretary of the Interior as having authority to represent a tribe, band, or group need not aver the capacity of such organization to sue except to the extent required to show the jurisdiction of the Commission. When the United States desires to raise an issue as to the capacity of such a recognized tribal organization to sue, it shall do so by specific negative averments, which shall include supporting particulars.

(b) If a petition is filed by one or more members of a tribe, band, or other identifiable group having a tribal organization which is recognized by the Secretary of the Interior because the tribal organization has failed or refused to take any action authorized by the act,

the petition shall be verified and shall aver that the petitioner is a member of the tribe, band, or group. The petitioner shall also set forth with particularity the efforts of the petitioner to secure from the duly constituted and recognized officers of said tribal organization such action as he desires and the reasons for his failure to obtain such action (such as fraud, collusion, or laches) or the reasons for not making such effort.

(c) Petitions filed by one or more members on behalf of an unorganized tribe, band, or other identifiable group shall be verified and shall aver (1) that the petitioner or petitioners are members of the tribe, band, or group (2) a description of the unorganized tribe, band, or group of sufficient comprehension to identify the tribe, band, or group on whose behalf the petition is filed.

SEC. 9. *Form of pleadings.* (a) *Caption; names of parties.* Every pleading shall contain a caption setting forth the name of the Commission, and the title of the action, and a designation as in section 6 (a). A petition filed on behalf of a tribal organization under the provisions of section 1 (b) shall be commenced in the name of such tribe, band, or group. A petition filed on behalf of an organized tribe, band, or group under the provisions of section 1 (c), or an unorganized group under section 1 (d), shall be in the name of the member or members filing the same on the relation of the tribe, band, or group. In the petition the title of the action shall include the names of all the parties, but in other pleadings it shall be unnecessary to name more than one of the petitioners.

(b) *Paragraphs; Separate Statements.* All averments of claims or defenses shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

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

SEC. 10. *Signing of Pleadings.* (a) *Petitioner.* Every pleading of a party other than the United States represented by an attorney shall be signed by the attorney of record, designated under section 35, in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign its pleading and state its address.

(b) *Effect of.* The signature of an attorney constitutes a certificate by him that he has read the pleadings; that to the best of his knowledge,

information, and belief there is good ground to support it; and that it is not interposed for delay.

SEC. 11. *Defenses and objections.* (a) *When presented.* The United States shall serve its answer to the petition except a demand for a counterclaim or set-off, within 30 days after service on the Attorney General as herein provided. The service of any motion permitted under this section alters this period of time as follows, unless a different time is fixed by order of the Commission: (1) If the Commission denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 30 days after notice of the Commission's action or before the expiration of 60 days from the service of the petition, whichever is latest; (2) if the Commission grants a motion for a more definite statement the responsive pleading shall be served within 60 days after the service of the more definite statement.

(b) *How presented.* Every defense to a claim for relief in any pleading except a counterclaim or set-off by the United States, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) insufficiency of service, (4) failure to state a claim upon which relief can be granted. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, it may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (4) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the Commission, the motion shall be treated as one for summary judgment and disposed of, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion.

(c) *Motion for judgment on the pleadings.* After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Commission, the motion shall be treated as one for summary judgment and disposed of, and all parties shall be given a reasonable opportunity to present all material pertinent to such a motion.

(d) *Preliminary hearings.* The defenses specifically enumerated

as subparagraphs (1)-(4) in paragraph (b) of this section, whether made in a pleading or by motion, and the motion for judgment mentioned in paragraph (c) of this section shall be heard and determined before trial on application of any party, unless the Commission orders that the hearing and determination thereof be deferred until the trial. Any pleading which includes any of the defenses enumerated in paragraph (b) of this section shall be accompanied by the statement of points and authorities required by section 22 (a) (1).

(e) *Motion for more definite statement.* If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, it may move for a more definite statement before interposing its responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the Commission is not obeyed within 10 days after notice of the order or within such other time as the Commission may fix, the Commission may strike the pleading to which the motion was directed or make such order as it deems just.

(f) *Motion to strike.* Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon it or upon the Commission's own initiative at any time, the Commission may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) *Consolidation of motions.* A party who makes a motion under this section may join with it the other motions provided for in this section and then available to it. If a party makes a motion under this section and does not include therein all defenses and objections then available to it which this section permits to be raised by motion, it shall not thereafter make a motion based on any of the defenses or objections so omitted, except as provided in paragraph (h) of this section.

(h) *Waiver of defenses.* The United States waives all defenses and objections which it does not present either by motion as hereinbefore provided or, if it has made no motion, in its answer or reply, except (1) that the defense of failure to state a claim upon which relief can be granted, and the objection of failure to state a defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleading or at the trial on the merits, and except (2) that, whenever it appears by suggestion of the parties or otherwise that the Commission lacks jurisdiction of the subject matter, the Commission shall dismiss the action. The objection or defense, if made at the trial, shall be disposed of as provided in section 13 in the light of any evidence that may have been received.

(i) *Default by United States.* Unless the Attorney General shall within 60 days after the service of the petition serve a defensive pleading upon the petitioner, if the time is not extended by order of the Commission, or consent of the parties, the Commission may, on motion of the petitioner and after notice to the Attorney General, have the clerk note on the docket that no answer has been filed and the Commission shall hear the petitioner's evidence and such facts as the Investigation Division of the Commission may assemble, before making its final determination.

SEC. 12. *Counterclaim, cross-claim, and set-off.* (a) *Set-offs.* If, after a preliminary hearing under section 22 (f), it is determined that the United States is liable to the petitioner in any amount, the United States shall, within 60 days after the entry of the final order determining that right, unless extended by the Commission, amend its answer by setting forth the amount of any offsets, counterclaims, or any other demands against the petitioner authorized by the act.

(b) *Omitted counterclaim or set-off.* When the United States fails to set up a counterclaim or set-off, through oversight, inadvertence, or excusable neglect, or when justice requires, it may by leave of the Commission set up the counterclaim or set-off by amendment.

(c) *Answer to counterclaim or set-off.* Within 40 days after the filing of a set-off or counterclaim or other demand by the defendant, the petitioner or his attorney shall serve a reply thereto.

SEC. 13. *Amended and supplemental pleadings.* (a) *Amendments.* (1) A party may amend its pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been set for hearing, it may so amend it at any time within 20 days after it is served. Otherwise a party may amend its pleading only by leave of the Commission or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time allowed for responding to an original pleading, unless the Commission otherwise orders.

(2) *Printed or by interlineation.* Amended petitions shall be printed and the same number filed as in the case of original petitions, unless printing is waived by the Commission. Where the amendments are slight and can be understood without a reprint of the entire petition they may either be interlined in the existing petition or printed pasters may be attached to the original petition.

Where a petition is amended in accordance with that portion of this section which permits interlineations or printed pasters to be attached to the original petition, the clerk shall endorse on its face the fact that it is an amended petition and also the date of the amendment or amend-

ments, and such amended petition shall be verified when required by section 8.

(b) *Amendments to conform to the evidence.* When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to so amend does not effect the result of the trial of these issues. If evidence not within the issues made by the pleadings is offered at a hearing held by a Commissioner or an examiner, upon objection such evidence shall be rejected; whereupon the party may make an offer of proof. Upon motion to amend the pleading the Commission shall after notice to the adverse party allow the pleading to be amended to conform to the offered evidence and shall do so freely when the presentation of the merits of the claim or defense will be subserved thereby and the objecting party fails to satisfy the Commission that the amendment of the pleading and the admission of such evidence would prejudice it in maintaining its claim or defense. The Commission may grant a continuance to enable the objecting party to meet such evidence.

(c) *Relation back of amendments.* Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

SEC. 14. *Interrogatories to parties and depositions pending action.*

(a) *Interrogatories to parties.* Any party may serve upon any adverse party written interrogatories to be answered by the party served or, if the party served is the United States, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may be served after commencement of the action and without leave of the Commission. The interrogatories shall be answered separately and fully in writing under oath. The answers shall be signed by the person making them; and the party upon whom the interrogatories have been served shall serve a copy of the answers on the party submitting the interrogatories within 15 days after the service of the interrogatories, unless the Commission, on motion and notice and for good cause shown, enlarges or shortens the time. Within 10 days after service of interrogatories a party may serve written objections thereto together with a notice of hearing the objections at the earliest practicable time. Answers to interrogatories to which objection is made shall be deferred until the objections are determined.

Interrogatories may relate to any matters which can be inquired into under paragraph (c) hereof, and the answers may be used to the same extent as provided in paragraph (e) hereof for the use of the deposi-

tion of a party. Interrogatories may be served after a deposition has been taken, and a deposition may be sought after interrogatories have been answered. The number of interrogatories or of sets of interrogatories to be served is not limited except as justice requires to protect the party from annoyance, expense, embarrassment, or oppression.

(b) *When depositions may be taken.* Any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the action or for both purposes. After service of the petition the deposition may be taken without leave of the Commission, except that leave, granted with or without notice, must be obtained if notice of the taking is served by the petitioner within 20 days after service of the petition. The attendance of witnesses may be compelled by the use of subpoena as provided in section 24 (a) (1). Depositions shall be taken only in accordance with the rules.

(c) *Scope of examination.* Unless otherwise ordered by the Commission, the deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the examining party or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts. It is not ground for objection that the testimony will be inadmissible at the trial if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence.

(d) *Examination and cross-examination.* Examination and cross-examination of deponents may proceed as permitted at the hearings under the provisions of section 23.

(e) *Use of depositions.* At a hearing before the Commission, a Commissioner or examiner or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Commission, Commissioner, or examiner finds: (i) that the witness is dead; or (ii) that the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or (iii) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (iv) that the party offering

the deposition has been unable to procure the attendance of the witness by subpoena; or (v) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(3) If only a part of a deposition is offered in evidence by a party, an adverse party may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts.

(f) *Objections to admissibility.* Subject to the provisions of section 19 (c), objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(g) *Effect of taking or using depositions.* A party shall not be deemed to make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition. At the hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

SEC. 15. *Depositions to perpetuate testimony.* Depositions taken under the provisions of section 13 (a) of the act creating the Commission shall be taken pursuant to the notices hereinafter provided for, which shall be given to the Attorney General of the United States, and if a petition has been filed, to the attorney of record for the petitioner, of which the aged or invalid Indians whose depositions are to be taken are members, provided that the Commission may, if it deems it necessary, authorize the taking of such depositions on shorter notice than that hereinafter provided for. Depositions of such aged or invalid Indians may be used in any case in which the same may be material.

SEC. 16. *Persons before whom depositions may be taken.* (a) *Within the United States.* Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the Commission. A person so appointed has power to administer oaths and take testimony.

(b) *Disqualification for interest.* No deposition shall be taken before a person who is directly or indirectly interested in the outcome of the claim.

SEC. 17. *Depositions upon oral examination.* (a) *Notice of examination; time and place.* A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. On motion of any party upon whom the notice is served, the Commission may for cause shown enlarge or shorten the time.

(b) *Witnesses by other party.* When depositions are taken on notice, as provided herein, if both parties are present or represented at the time and place specified in the notice, either party may, after the examination of the witnesses summoned under the notice, be entitled to summon and examine other witnesses; but in such case 1 day's notice shall be given to the adverse party or its attorney there present, unless such notice is waived.

(c) *Record of examinations; oath; objections.* The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by some one acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed unless the parties agree otherwise. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties served with notice of taking a deposition may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim.

(d) If a witness is in need of an interpreter the interpreter shall be sworn to well and truly translate all questions asked and answers given.

(e) *Submission to witness; changes; signing.* When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness. If the witness refuses to sign the deposition, the officer shall sign it and state on the record the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless

on a motion to suppress under section 19 (d), the Commission holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) *Certification and filing by officer; copies; notice of filing.* (1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly file it with the Commission or send it by registered mail to the clerk thereof for filing.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

SEC. 18. *Depositions of witnesses upon written interrogatories.*

(a) *Serving interrogatories; notice.* A party desiring to take the deposition of any person upon written interrogatories shall serve them upon every other party with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within 10 days thereafter, a party so served may serve cross-interrogatories upon the party proposing to take the deposition. Within 5 days thereafter, the latter may serve redirect interrogatories upon a party who has served cross-interrogatories. Within 3 days after being served with redirect interrogatories, a party may serve recross interrogatories upon the party proposing to take the deposition.

(b) *Officer to take responses and prepare record.* A copy of the notice and copies of all interrogatories served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by sections 17 (c), (d), and (e) to take the testimony of the witness in response to the interrogatories and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the interrogatories received by him.

(c) *Notice of filing.* When the deposition is filed, the party taking it shall promptly give notice thereof to all other parties.

SEC. 19. *Effect of errors and irregularities in depositions.* (a) *As to notice.* All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(b) *As to disqualification of officer.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(c) *As to taking of deposition.* (1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

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

(3) Objections to the form of written interrogatories submitted under section 18 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other interrogatories and within 3 days after service of the last interrogatories authorized. Answers to interrogatories to which objection is made shall be deferred until the objections are determined.

(d) *As to completion and return of deposition.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under sections 17 and 18 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

SEC. 20. *Calls on departments or agencies of the Government.* (a) A call will be made on any department or agency of the Government on motion of any party upon the approval of the Commission.

(b) The motion shall show with particularity what is sought to be proved by the papers or information desired, and how or in what respect they are relevant and material to the issues of the case.

(c) Motions for calls upon any department or agency of the Government shall be filed in the clerk's office. If no objection is filed with the clerk within 10 days after the motion has been served on the Attorney General, the motion will be presented to and acted upon by the Chief Commissioner or a Commissioner acting in his stead, as in the case of other motions.

(d) The Attorney General may offer in evidence duly certified information and papers from any department or agency of the Government without calling for the same under the provisions of paragraph (a) of this section.

(e) All information and papers furnished by any department or agency of the Government in response to a call or offered in evidence by the Attorney General shall be subject to objection by either party; but as to duly certified copies furnished on call or offered by the

Attorney General, neither party will be required to produce the originals of such papers or prove their execution.

SEC. 21. *Documentary evidence.* (a) At any hearing held under these rules, any official letter, paper, document, map, or record in the possession of any officer or department or court of the United States, or committee of Congress (or a certified copy thereof), may be used in evidence insofar as the same is relevant or material.

(b) Original depositions or original transcripts of other testimony of record (or certified copies of either) in any suit or proceeding in any court of the United States to which an Indian or Indian tribe or group was a party may be used in evidence insofar as relevant and material.

(c) Objections to the competency, relevancy, and materiality of any evidence hereunder shall be made at the time it is offered in evidence.

SEC. 22. *Hearings.* (a) *Motions.* (1) With each motion there shall be filed and served a separate paper stating the specific points of law and authorities to support the motion. Such statement shall be additional to a statement of grounds in the motion itself, and shall be entered on the docket but shall not be a part of the record. A statement of opposing points and authorities shall be similarly filed, noted, and served within 10 days or such further time as the Commission may grant or the parties agree upon. If not filed within the prescribed time, the Commission may treat the motion as conceded. If so filed, the motion shall be treated as submitted unless the Commission directs or either party requests an oral hearing.

(2) *Nonappearance of parties.* If at the time set for hearing there be no appearance for the moving party, the Commission may treat the motion as submitted or waived, or continue or strike it from the motion calendar. If there be no appearance for the opposing side, it may be treated as submitted or conceded.

(b) *Assignment of case.* When a claim is at issue, the same shall be assigned for hearing by the Commission. Any claim may be retained for hearing by the Commission or assigned for hearing to a Commissioner or an examiner. When retained by the Commission to determine the facts, the rules applicable to hearings by a Commissioner or an examiner shall be applicable.

(c) *Authority of Commissioner or examiner.* When a claim has been assigned to a Commissioner or to an examiner for hearing, such Commissioner or examiner shall act in the name of the Commission and all lawful and proper orders made and directions given by such Commissioner or examiner shall have the same force and effect as though made by the Commission; but any party feeling himself aggrieved at any order made or direction given may have such order or direction reviewed by the Commission by motion to review filed

within a reasonable time thereafter, or by objections to the findings of fact filed by said Commissioner or examiner.

(d) The Commission, the Commissioner, or the examiner shall rule on the competency, materiality, and relevancy of all evidence offered.

(e) *Pretrial procedure; formulating issues.* In any proceeding the Commission may in its discretion direct the attorneys for the parties to appear before it or a Commissioner designated for that purpose for a conference to consider:

- (1) The simplification of the issues;
- (2) The necessity or desirability of amendments to the pleadings;
- (3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (4) The limitation of the number of expert witnesses;
- (5) Such other matters as may aid in the disposition of the action.

If the proceeding has been assigned to a Commissioner or examiner he shall be present. The Commissioner shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice.

(f) *On merits.* (1) In every case, unless otherwise ordered, the hearing before the Commission, a Commissioner, or an examiner in the first instance shall be limited to the issue of fact and law relating to the right of the plaintiff to recover.

(2) The burden of going forward with its proof shall be on the petitioner and the defendant shall not be required to produce any evidence until the petitioner has closed its proof. When hearings are being held in any place other than the District of Columbia, the defendant may, if it so desires, take the testimony of any witness available at the time and place. If the hearing at any other place than the District of Columbia is on the part of the defendant, the petitioner may, at the same time and place, produce evidence in rebuttal of any evidence theretofore or then being produced.

(3) When the Commissioner or the examiner has reason to believe that there are other material witnesses and evidence which have not been procured by either party, he may, after reasonable notice to the parties, summon and examine such witnesses and procure such evidence and consider the same in connection with the proof submitted by the parties. When the Commissioner or the examiner has reason to believe that the case is being unnecessarily delayed by the failure of either or both parties to produce witnesses, he may fix a reasonable time in which said party delaying the same must close the testimony.

(g) *Swearing witnesses.* Witnesses shall be sworn or affirmed by

the Commissioner or examiner. When testimony is taken orally before a Commissioner or examiner at a hearing, it shall not be necessary for the witness to sign the same.

(h) *Date and place.* When a claim has been assigned for hearing, the Commission, the Commissioner, or the examiner shall notify the interested parties to produce before it or him witnesses or evidence within such reasonable time and at such place as it or he may designate.

(i) *Reporter.* At all hearings, whether before the Commission, a Commissioner or an examiner, the testimony shall be taken by a disinterested reporter named by the Commission, a Commissioner or an examiner, as the case may be, who shall take the testimony and transcribe the same. The reporter shall be sworn by a member of the Commission or an examiner to well and truly take down and transcribe the questions propounded to and the answers given by the witnesses, and to do all other things required of him by the Commission, a Commissioner, or an examiner. A reporter who is in the regular employ of the Commission shall take the oath required by section 4 of the act creating the Commission and the oath prescribed in this paragraph and need not thereafter take the latter oath, but reporters selected for a particular case must be sworn as provided in this paragraph.

SEC. 23. *Evidence.* (a) *Form and admissibility.* In all hearings, the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these rules. All evidence shall be admitted which is admissible under the statutes of the United States or under the rules of evidence heretofore applied in the courts of the United States on the hearing of suits in equity, or under the rules of evidence at common law. In any case, the statute or rule which favors the reception of the evidence governs and the evidence shall be presented according to the most convenient method prescribed in any of the statutes or rules to which reference is herein made. The competency of a witness to testify shall be determined in like manner.

(b) *Record of excluded evidence.* If an objection to a question propounded to a witness is sustained, the examining attorney may make a specific offer of what he expects to prove by the answer of the witness, except that upon request the evidence shall be reported in full, unless it clearly appears that the evidence is not admissible on any ground or that the evidence of the witness is privileged.

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

(d) *Rulings—exceptions unnecessary.* The Commission or person presiding at any hearing shall rule on the competency, relevancy, and materiality of all evidence offered. Formal exceptions to rulings or orders are unnecessary.

(e) When at any hearing documentary evidence is offered and objection is made thereto the Commission, Commissioner, or examiner conducting the hearing, shall rule upon the same and, if the ruling is adverse to the party offering said evidence, the document may be marked for identification and added to the record.

SEC. 24. *Subpoena.* (a) *For attendance of witnesses; form; issuance; fees.* (1) Every subpoena shall be issued in the name of the Commission and shall be signed by the clerk under the seal of the Commission. Every subpoena shall state the title of the claim and the number and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

(2) The fees and mileage of witnesses shall be such as are now or may hereafter be prescribed by statute, for like service in the district courts of the United States, and shall be paid by the party at whose instance the witnesses appear.

(b) *For production of documentary evidence.* A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the Commission, upon motion made promptly and, in any event, at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive, or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(c) *Service.* (1) A subpoena may be served by any person who is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fees for 1 day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the United States, fees and mileage need not be tendered.

(2) The fees and mileage shall be the same as allowed by law for service of subpoenas issued by United States district courts, which shall be paid by the party requesting the service.

(d) *Return.* The person serving the process shall make proof of service thereon to the Commission promptly and in any event within the time during which the person served must respond to the process. If service is made by a person other than a United States marshal or his deputy, he shall make affidavit thereof. Failure to make proof of service does not affect the validity of the service.

SEC. 25. *Proposed findings of fact.* Upon the closing of proof by the parties in any case, the petitioner shall, unless otherwise directed by the Commission, a Commissioner, or an examiner, have 30 days

from the filing of the transcript within which to file proposed findings of fact and the defendant shall have 30 days after the service of petitioner's proposed findings of fact to file its objections to petitioner's proposed findings of fact and its own proposed findings of fact, and the petitioner shall have 20 days after the service of defendant's proposed findings of fact within which to file its objections thereto, but such requested findings of fact or objections to proposed findings need not be printed. The time designated in this section may be extended by the Commission, a Commissioner, or an examiner hearing the claim. Such proposed findings shall, upon the filing of the report, be filed with the original record in the case for consideration of the Commission in connection with any exceptions by either party and may be referred to by either party in support of any exceptions to the findings of fact.

SEC. 26. Report. When a case has been referred to a Commissioner or examiner and proof has been closed by both parties, the Commissioner or examiner shall proceed to ascertain the facts, including ultimate facts, considered by him to be established by the evidence, and make a report of his findings to the Commission within a reasonable time.

SEC. 27. Exceptions to findings of fact. The petitioner may have 40 days from the date of the filing of the report to file printed exceptions thereto, unless the time is extended. The defendant shall have 40 days after the filing of petitioner's exceptions within which to file its exceptions thereto, unless the time is extended. Each exception, at the end thereof, shall have appropriate references to the parts of the record relied upon for its support.

SEC. 28. Briefs. (a) *Petitioner.* (1) The petitioner shall within 40 days from the filing of such report file in the clerk's office 25 printed copies of its request for findings of fact and brief and serve 10 copies on the Attorney General.

(2) The petitioner's brief shall begin with a clear statement of the case and may include in the statement references to parts of the record. It shall present and discuss in its original brief all propositions upon which it relies for a recovery.

(b) *Defendant.* (1) Within 40 days from the filing of petitioner's brief as above, the defendant shall file in the clerk's office 25 printed copies of its brief and serve 10 copies on the attorney of record for other parties.

SEC. 29. Reply brief. (a) Petitioner may file a printed reply brief within 20 days after the filing of defendant's brief, unless the time is extended by order of the Commission, and no brief shall be received after the prescribed time except upon order of the Commission for cause shown; nor shall any briefs other than those described in sections 28 and 29 be received at any time except upon such order.

(b) Statements of fact or propositions of law presented in defendant's brief as matters of defense, and not properly within the scope of petitioner's original brief, may be discussed by petitioner in a reply brief, but matters within the proper scope of petitioner's original brief shall not again be discussed in a reply brief.

(c) After a cause has been submitted, any stipulation or additional authorities which counsel desires to call to the attention of the Commission shall by leave of the Commission be submitted by appropriate supplemental memorandum of at least eight copies filed with the Clerk of the Commission, and not by letter. The clerk shall serve a copy upon opposing counsel.

Supplemental or reply briefs shall be permitted only in accordance with the rules.

SEC. 30. *Trial calendar.* (a) The Commission shall dispose of (1) all motions or other pleadings containing the defenses enumerated in section 11 (b) and all other motions or requests for action by the Commission, (2) all exceptions to the report of a Commissioner or examiner, (3) all motions for rehearing and amendments of findings.

(b) Said matters when ordered by the Commission shall be placed on a trial calendar by the clerk and a copy of said trial calendar mailed to the attorneys of record interested therein in sufficient time to permit the attorneys of record to appear before the Commission on the date and place appointed for the hearing.

(c) All matters shall be calendared for hearing as follows:

(1) Motions and pleadings containing the defenses enumerated in section 11 (b) when the opposing points and authorities have been filed as required by section 22 (a) (1).

(2) All other motions or requests for action by the Commission upon the filing of a responsive pleading as provided for herein.

(3) All exceptions to the report of a Commissioner or examiner when the briefs have been filed as provided in sections 28 and 29.

(4) Motions for rehearing and amendments of findings when the briefs have been filed as provided in section 39.

(d) *Nonappearance of parties.* If at the time set for hearing there be no appearance for the moving party, the Commission may treat the motion as submitted or waived, or, for good cause shown, continue or strike it from the motion calendar. If there be no appearance for the opposing side, it may be treated as conceded.

SEC. 31. *Evidence in other cases.* (a) *Documents.* Any information or papers duly certified from any department or agency of the Government and filed in any case may, by leave of the Commission, a Commissioner, or an examiner in a case being heard by him, on motion made therefor, be used and applied in any other pending cause to which the same may be applicable or pertinent.

(b) *Depositions.* The deposition of a witness, subjected to cross-

examination, on file in a case may be used by leave of the Commission in another case, notice of the purpose to use it being given the adverse party; or if the Commission desires the benefit of evidence appearing in another case it may, by appropriate order and upon reasonable notice to the parties and an opportunity to them to be heard, consider the same.

SEC. 32. *Stipulations.* All stipulations shall be signed on behalf of the petitioner by the attorney of record, and on behalf of the United States by the Attorney General or Assistant Attorney General, unless made at a hearing or other proceeding before the Commission, a Commissioner, or an examiner by the attorney representing the United States and recorded by the reporter.

SEC. 33. *Motions for rehearing and for amendment of findings.*
 (a) Whenever either party desires to question the correctness or the sufficiency of the Commission's conclusions on its findings of fact or to amend the same, the complaining party shall file a motion which shall be known as a motion for a rehearing. All grounds relied upon for any or all of said objections shall be included in one motion. After the Commission has announced its decision upon such motion no other motion for a rehearing shall be filed by the same party unless by leave of the Commission. Motions for a rehearing shall be filed within 30 days from the time the final determination of the Commission is filed with the clerk.

(b) A motion for a rehearing shall be founded upon one or more of the following grounds: First, error of fact; second, error of law; and, third, newly discovered evidence.

(1) A motion founded upon an error of fact shall specify with minuteness the fact or facts which are regarded as erroneously found or erroneously omitted to be found by the Commission, with full references to the evidence which is relied upon to support the motion.

(2) A motion founded upon error of law shall specify with like minuteness the points upon which the Commission is supposed to have erred, with references to the authorities relied upon to support the motion.

(3) A motion by either plaintiff or defendant upon the ground of newly discovered evidence shall not be entertained unless it appears therein that the newly discovered evidence came to the knowledge of such party, its attorneys of record, or counsel, after the hearing and before the motion was made; that it was not for want of due diligence that it did not sooner come to its knowledge; that it is so material that it would probably produce a different determination if the rehearing were granted; and that it is not cumulative.

Such motion shall be accompanied by the affidavit of the party or the attorney of record, setting forth—

(i) The facts in detail which the party expects to be able to prove, and whether the same are to be proved by witnesses or by documentary evidence.

(ii) The name, occupation, and residence of each and every witness whom it is proposed to call to prove said facts.

(iii) That the said facts were unknown to either the party or the attorney of record, and, if other counsel was employed at the hearing, were unknown to such counsel until after the close of the hearing.

(iv) The reason why the party, the attorney of record, or counsel, could not have discovered said evidence before the hearing by the exercise of due diligence.

(c) A motion for a rehearing shall also be accompanied by the brief of the moving party, a copy of which shall be served upon the opposing party, who may file its brief in response thereto within 15 days, unless the time is extended by the Commission.

(d) All motions for rehearing or for amendment of findings, and briefs thereon, and briefs in reply to such motions, exceeding 10 type-written pages in length, shall be printed before presentation for filing in the clerk's office, unless by order of the Commission first obtained the time for printing is extended.

SEC. 34. *Claims filed by attorney.* Claims may be filed on behalf of a claimant by an attorney or firm of attorneys retained for that purpose under the provisions of section 15 of the act creating the Commission. Where a claimant has retained more than one attorney or more than one firm of attorneys, only one of said attorneys shall be designated individually as the attorney of record. All pleadings, notices, or other papers required by these rules or by orders of the Commission to be served upon a claimant, shall be sent to such attorney of record at the address designated by him, and service upon him shall be deemed to be service upon the claimant.

SEC. 35. *Attorneys to register.* An attorney of record, on appearing in a case, shall register with the clerk of the Commission his name and post-office address or the designation as such and his post-office address may be shown at the end of the petition.

SEC. 36. *Attorney's death or incapacitation.* If the attorney of record dies or is incapacitated, a suggestion of his death or incapacity shall be made and a motion to substitute any other attorney shall be made by plaintiff or an attorney authorized by it.

SEC. 37. *Attorney's qualifications.* Any person of good moral character who has been admitted to practice in the Supreme Court of the United States or in any other Federal court, or in the highest court of any State or Territory, and is in good standing therein, may practice as an attorney before the Commission.

SEC. 38. *Disbarment and suspension.* Where it is shown to the Commission that any member of the bar representing a party before

the Commission has been disbarred or suspended from practice in the Supreme Court of the United States or in any other Federal court, or in any court of record of any State or Territory, he shall be forthwith suspended from practice before this Commission: and unless, upon notice mailed to him at the address shown in the clerk's records and to the clerk of any of the courts mentioned in which he shall have been disbarred, or suspended, he shows good cause to the contrary within 30 days, he shall be barred from appearing before the Commission as attorney for any claimant.

SEC. 39. *Clerk, docket, and journal.* (a) The administrative officer of the Commission, unless one is otherwise designated, shall be the clerk who shall receive and file all pleadings, reports, orders, briefs, documents, and other papers, and shall keep all records connected with all claims filed with the Commission. He shall also perform such other duties as the Commission may from time to time prescribe.

(b) The clerk shall, after filing, promptly mail or deliver to the party not filing the same, the required number of copies of all pleadings, motions, briefs, notices, or other papers, not required to be served by a party, and shall note on the docket the date the same were so mailed or delivered.

(c) The clerk shall be custodian of the seal of the Commission and shall affix the same to all papers, subpoenas, or instruments that he is now or may hereafter be required to sign or certify in his official capacity. He shall authenticate all papers where an authentication is required, under his hand and the seal of the Commission.

(d) It shall be the duty of the clerk to keep an appearance docket in which there shall be separately entered the title of each claim, the names of the attorneys filing the same, and the designated attorney of record; and there shall be entered thereon, on the date received, each pleading, motion, demurrer, brief, and other paper filed in a cause. Following each entry showing the filing of a paper required to be recorded in the journal of the Commission, there shall be shown the volume number of the journal, and the page thereof in which the paper is recorded.

(e) The clerk shall keep a journal in which shall be recorded in each cause all orders made by the Commission or a Commissioner, the final determination of each claim, including the way each Commissioner voted thereon, and the instrument or instruments by which employees of the Commission are designated by the Chief Commissioner for the purpose of administering oaths and examining witnesses. The journal shall be approved by the Commission, or any two members thereof.

SEC. 40. *Seal.* The Commission shall have an official seal, around the border of which shall be the name: "Indian Claims Commission," and in the center shall be the words: "Official Seal."

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