



# Council of the Cherokee Nation

Cherokee Nation Tribal Council  
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### TITLE 20 COURTS (INCLUDES 2019 POCKET PART PLUS AMENDMENTS)

*\*NOTICE: This document is provided as a courtesy. This document includes amendments to the Title 20 2019 Pocket Part as listed below and have not yet been officially codified. To ensure accuracy, anyone using this document should compare it to the official amendments available at: <<https://cherokee.legistar.com/Legislation.aspx>>*

Includes: LA 14-20, LA 03-24, LA 15-24, and LA 18-24

#### TITLE 20

#### COURTS

#### Chapter

- 1. General Provisions
- 2. District Court-Jurisdiction and Procedure
- 3. Supreme Court-Organization and Administration
- 4. Supreme Court-Powers and Duties Generally
- 5. Court on the Judiciary
- Appendix I-Supreme Court Rules and Procedures
- Appendix II-Court Rules for the District Court of Cherokee Nation

### CHAPTER 1

## GENERAL PROVISIONS

### Section

1. Courts may appoint Interpreter

2. Witness qualifications-Oath

3. Cross-examination

4. Non-attendance of witnesses

5. Costs and attorneys fees

#### § 1. Courts may appoint Interpreter

The several Courts of this Nation shall, whenever the Presiding Judge may deem necessary, appoint and compensate an Interpreter. The Interpreter shall be sworn to accurately interpret to the best of his ability.

#### § 2. Witness qualifications-Oath

Any person, of whatever religious belief, and of sufficient age and intelligence to comprehend the obligation of an oath, not excluded upon the ground of interest, and not otherwise disqualified by law, may be called as a witness in any suit brought before a Cherokee Nation Court. The following oath shall be administered to each witness when called for examination in any cause or proceeding, before making his statement:

"You do solemnly swear (or affirm) that the statement you will make, and the answers you will give, in the matter whereof you are about to be examined, shall be the truth, the whole truth, and nothing but the truth, to the best of your knowledge. So help you God."

#### § 3. Cross-examination

All matters, properly affecting the credibility of any witness who has been examined by one party, shall be allowed to be proven by the opposite party by means of cross-examination or by other witnesses, under the rules established by law or the Supreme Court and found applicable by the Presiding Judge. If no such rule be found applicable, the Presiding Judge shall determine it as justice shall appear to him to require, and shall cause his ruling on each point to be recorded with the reasons, in brief, thereof.

#### § 4. Non-attendance of witnesses

No excuse for non-attendance on the part of a witness, duly summoned to testify before any Court, shall be deemed lawful and valid, unless satisfactory showing be made to the Court that obedience to the summons was impossible, or would have been attended with serious and unavoidable loss, or with probable and serious danger to his own health, or to the health of his family.

#### § 5. Costs and attorneys fees

Necessary costs and reasonable fees may be awarded to a prevailing party in any lawsuit, action, claim, appeal, grievance, or controversy of any kind initiated within or brought before any department, agency, commission or board of Cherokee Nation or the District Court or Supreme Court of Cherokee Nation, if it is determined by the Judge, Justice, Administrative Law Judge or ultimate decision maker that the above described action or defense is frivolous or without merit.

LA 05-94, eff. October 10, 1994, repealed by LA 03-03, eff. January 20, 2003. Amended LA 03-03, eff. January 20, 2003.

## CHAPTER 2

### DISTRICT COURT-JURISDICTION AND PROCEDURE

#### Section

#### 11. Application and purpose

#### 12. Composition

#### 13. Terms of District Judges

14. Oath

15. Disability or vacancy in office of District Judge

16. Salaries-Travel expenses-Disciplinary action

17. Removal from office

18. Clerk

19. Special Judges - Designation

20. District Court Office

21. Place and terms of District Court proceedings

22. District Court deemed always open-Effect of sessions

23. Judicial Conference

24. Jurisdiction-Generally

25. Jurisdiction-Territorial

26. Writs or orders

27. Rules

§ 11. Application and purpose

The purpose of this chapter is to provide for the establishment of a Cherokee Nation District Court of general jurisdiction to hear cases and controversies arising under the Constitution, treaties and laws of Cherokee Nation. Decisions of the Cherokee Nation District Court will be subject to review by the Cherokee Nation Supreme Court as the court of final review.

LA 11-90, eff. December 13, 1990.

## § 12. Composition

- A. The District Court of Cherokee Nation shall be composed of one (1) or more District Judges and Associate District Judges to be appointed by the Principal Chief and confirmed by the Council as needed for the orderly administration of justice.
- B. The Presiding District Court Judge of the Cherokee Nation may designate special judges, as needed, to hear and decide matters as assigned by the Presiding District Court Judge.
- C. Any citizen of Cherokee Nation who is a member in good standing of a state bar association who has never been convicted of a felony shall be eligible for appointment as District Judge or designation as a Special Judge.

LA 11-90, eff. December 13, 1990. Amended LA 03-24, eff. January 22, 2024.

## § 13. Terms of District Judges

District Judges and Associate District Judges shall be appointed for a term of four (4) years. Previous appointment and service by a District Judge shall not disqualify the Judge for continued appointment and service.

LA 11-90, eff. December 13, 1990.

## § 14. Oath

Any District Judge or Associate District Judge shall, before beginning their duties, take and subscribe to the following oath or affirmation:

"I, \_\_\_\_\_, do solemnly swear, or affirm, that I will faithfully execute the duties of District Judge of Cherokee Nation and will, to the best of my ability, preserve, protect and defend the Constitutions of Cherokee Nation and the United States of America. I swear or affirm further that I will do everything within my power to promote the culture, heritage and traditions of Cherokee Nation."

LA 11-90, eff. December 13, 1990. Amended LA 03-24, eff. January 22, 2024.

§ 15. Disability or vacancy in office of District Judge

Whenever a District Judge or Associate District Judge is unable to perform his duties of office or the office is vacant, his powers and duties shall devolve upon the Associate District Judge next in seniority who is able to act, until such disability is removed or another District Judge is appointed and duly qualified.

LA 11-90, eff. December 13, 1990.

§ 16. Salaries-Travel expenses-Disciplinary action

Salary for District Judges, Associate District Judges, and Special Judges shall be fixed by the Office of the Principal Chief with approval by the Council. District Court Judges and Associate District Court Judges shall be considered a special class of employees for travel purposes. District Court Judges and Associate District Court Judges are exempt from any disciplinary action through the Human Resource Department Policy and Procedures. Such Judges may only be disciplined or removed under the provision of the Constitution of Cherokee Nation or applicable statute.

LA 11-90, eff. December 13, 1990. Amended LA 29-07, eff. October 1, 2007, LA 03-24, eff. January 22, 2024.

§ 17. Removal from office

A. Any District Judge of the Cherokee Nation or the Council of Cherokee Nation may recommend the removal of any District Judge from office if, in the opinion of the District Judge or the Council, there is reasonable cause to believe a Judge to be guilty of malfeasance or misfeasance of office, neglect of duty, mental or physical incompetence to perform his duties of office, or the Judge has been convicted of a felony in state or federal court since entering upon duty or a crime under Cherokee law which if committed under the laws of Oklahoma would be a felony.

B. Such recommendation shall be presented promptly to the Council, and the Judge whom it has sought to remove from office shall be accorded an opportunity to appear before the Council and present evidence in his own defense. Thereafter, such Judge may be removed from office by a two-thirds (2/3) vote of the Council.

LA 11-90, eff. December 13, 1990. Amended LA 03-24, eff. January 22, 2024.

#### § 18. Clerk

The Office of the Principal Chief shall select a Clerk of the District Court to manage and otherwise maintain the business office of the District Court, and such clerkship may be combined with that of the Supreme Court.

LA 11-90, eff. December 13, 1990.

#### § 19. Special Judges - Designation

A "Notice of Intent to Designate Special Judge" shall be submitted to the Principal Chief, the Speaker of the Council, and the Chief Justice of the Cherokee Nation Supreme Court. Such Notice shall be submitted thirty (30) days prior to the effective date of such designation. Any special judge designated in accordance with this Chapter shall serve at the pleasure of the Presiding District Court Judge.

LA 03-24, eff. January 22, 2024.

#### § 20. District Court Office

The District Court of Cherokee Nation shall maintain an office at the seat of government. The purpose of said office is to conduct the regular business affairs of the District Court.

LA 11-90, eff. December 13, 1990.

#### § 21. Place and terms of District Court proceedings

The District Court shall hold Court at the seat of government or at such other place as deemed necessary for the orderly administration of justice. Terms of Court shall be set by the District Judges.

LA 11-90, eff. December 13, 1990.

## § 22. District Court deemed always open-Effect of sessions

A. The District Court shall be deemed always open for the purpose of filing papers, issuing and returning process and making motion and orders.

B. Continued existence or expiration of a session of the District Court in no way affects the power of the District Court to do any act or take any proceeding.

LA 11-90, eff. December 13, 1990.

## § 23. Judicial Conference

District Judges and Associate District Judges shall attend and participate in the annual Judicial Conference called by the Chief Justice of the Supreme Court.

LA 11-90, eff. December 13, 1990.

## § 24. Jurisdiction-Generally

The District Court of Cherokee Nation shall have general jurisdiction and is vested with original jurisdiction, not otherwise reserved to the Supreme Court, to hear and resolve disputes arising under the laws or Constitution of Cherokee Nation in both law and equity, whether criminal or civil in nature. Such actions shall include, but are not limited to, the following:

A. Crimes. All violations of the Criminal Code of Cherokee Nation committed within its territorial jurisdiction within the following categories:

1. Offenses committed by Indians, as defined by federal law, against all others, Indian and non-Indian; and

2. Offenses committed by Indians, as defined by federal law, which are victimless.

B. Civil causes of action. All causes of action which arise within the territorial jurisdiction of Cherokee Nation within the following categories:

1. Between all parties, Indian and non-Indian, who by their actions have submitted themselves to the jurisdiction of said Court; and

2. Where the defendant is Indian, as defined by federal law.

C. Domestic relations. All cases involving the domestic relations of Indians including child custody and adoption matters.

D. Child support enforcement.

1. All child support cases arising in Cherokee Nation Indian country regardless of whether the parties are Indian or non-Indian.

2. All child support cases arising on fee land within the jurisdictional boundaries of Cherokee Nation if the child in question is an enrolled citizen of Cherokee Nation or is eligible for enrollment as a citizen of Cherokee Nation except that the petitioning party may request that the matter be heard in state district court.

3. At the request of the custodial parent or entity, all child support cases arising on fee land outside the jurisdictional boundaries of Cherokee Nation where the noncustodial parent is a citizen of Cherokee Nation.

4. All child support cases presented to Cherokee Nation by the IV-D agencies of states or other tribes if Cherokee Nation District Court has personal jurisdiction over the noncustodial parent or the employer of the noncustodial parent.

5. All child support cases in which the noncustodial parent consents to the jurisdiction of the Cherokee Nation District Court.

E. Miscellaneous. All other matters over which jurisdiction has heretofore vested in Cherokee Nation District Court or which may hereafter be placed within the jurisdiction of said Court by enactment of the Council.

LA 11-90, eff. December 13, 1990. Amended LA 11-07, eff. March 18, 2007; LA 06-17, eff. March

25, 2017, LA 03-24, eff. January 22, 2024.

## Historical and Statutory Notes

### 2017 Legislation

LA 06-17, Section 2, provides:

"Section 2. Purpose. The purpose of this Act is to expand the jurisdiction of the District Court of the Cherokee Nation to include all child support cases in which the noncustodial parent voluntarily consents to the jurisdiction of the court."

### § 25. Jurisdiction-Territorial

The territorial jurisdiction of Cherokee Nation District Court shall extend to include all **"Indian country"** also known as **"Cherokee country"** within the fourteen- (14) county area of northeastern Oklahoma as defined by the Treaties of 1828, 1833 and 1835 and the Patent of 1838 between the United States of America and Cherokee Nation, and at such other locations within the United States which qualify as "Cherokee country."

LA 11-90, eff. December 13, 1990.

### § 26. Writs or orders

The District Court shall have the power to issue any writs or orders necessary and proper to complete the exercise of its jurisdiction.

LA 11-90, eff. December 13, 1990.

### § 27. Rules

The District Court shall have the power to adopt all such rules as are necessary for the proper and complete exercise of its jurisdiction and for orderly conduct of proceedings in the court.

LA 11-90, eff. December 13, 1990.

## CHAPTER 3

### SUPREME COURT-ORGANIZATION AND ADMINISTRATION

#### Section

31 to 42. Repealed

43. Salaries

44. Reimbursement of expenses incurred by members of Supreme Court-Annual disclosure

45. Establishment of a law library-Maintenance and expenditures-Use by Cherokee citizens-Annual disclosure

46. Supplies, material, postage, office equipment, telephone and facsimile expense-Annual disclosure

47. Filing fees and court costs

§§ 31 to 42. Repealed by LA 29-07, eff. October 1, 2007

#### History

The repealed sections, relating to the organization of the Supreme Court, were derived from:

LA 12-85, §§ 101 to 110, 201, 202, 208.

LA 07-95.

LA 24-01.

LA 39-03.

LA 40-03.

Subsequent to repeal, LA 24-09 purported to amend the section, but was without effect.

## § 43. Salaries

### D. Salaries for Future Terms of Elected Officials

For all duly elected officials serving on August 2011, and thereafter the annual salaries for the Principal Chief, Deputy Principal Chief, and Council Members of the Cherokee Nation shall be based on the report submitted by a citizen committee.

Annual salaries and any additional benefit, including non-monetary compensation, for the Principal Chief, Deputy Principal Chief, and members of the Council of the Cherokee Nation shall be determined by the Citizen Committee on Compensation.

1. The Citizens Committee on Compensation shall be comprised of five (5) total Cherokee citizens eighteen years of age (18) or older. Two (2) citizens shall be appointed by the Principal Chief, two (2) appointees by the Council of the Cherokee Nation, and a single fifth member selected by the four appointees.

2. Appointments of the Principal Chief shall be made through an official letter to the Speaker of the Council, appointments by the Council of the Cherokee Nation shall be made through a Council Resolution, and the appointment of the fifth (5) member shall be made through an official letter to both the Principal Chief and Speaker of the Council of the Cherokee Nation.

3. The Citizen Committee on Compensation shall be paid five hundred dollars (\$500.00) per committee member to cover all expenses they incur to attend up to three meetings per calendar year, subject to the meeting limitations set forth herein.

4. The Citizen Committee on Compensation shall reconvene prior to the filing period for elected offices in the election year of the Principal Chief to make its findings and report and meet every four years (4) years thereafter. The committee shall submit their report prior to July 1st. its initial meeting no later than sixty (60) days following enactment of this Act. in order to establish the compensation for all present and future terms of office through completion of the 2025 General Election. and shall complete its findings and report within sixty (60) days thereafter. The Committee and shall notify the Office of the Principal Chief and the Council of the Cherokee Nation of its findings upon submission of a written memorandum. This memorandum shall be signed by all members of the Committee to affirm consensus.

5. Beginning in November of 2023 the Principal Chief and the Council of the Cherokee Nation shall appoint citizens to the committee in staggered terms. In order to stagger terms initial appointments shall be made as follows:

Seat One (1), Chief Appointment, shall be appointed for one (1) year

Seat Two (2), Council Appointment, shall be appointed for two (2) years

Seat Three (3), Chief Appointment, shall be appointed for three (3) years

Seat Four (4), Council Appointment, shall be appointed for four (4) years

Seat Five (5), Committee Appointment, shall be appointed for five (5) years.

All subsequent appointments will be for a term of five (5) years.

The Citizen Committee on Compensation is shall be authorized to select a Chair and such other officers as it deems warranted among its members to aid in the conduct of its meetings.

6. The Citizens Committee on Compensation shall reconvene subsequent to the candidate filing period for the 2025 Cherokee Nation General Election and in January of 2024 and biennially in Cherokee Nation general election years in evenly numbered years thereafter. The Committee shall issue any reports and findings on compensation by memorandum no later than March 31st July 30th of said election years. The Committee shall notify the Office of the Principal Chief and the Council of the Cherokee Nation of its findings by written memorandum upon completion. This memorandum shall be signed by all members of the Committee to affirm consensus.

7. The Citizen Committee shall consider relevant comparative salary levels including, but not limited to, salary information from other Tribal Governments, state and local governments, and the private sector. The Citizens Committee may use the Cherokee Nation's Human Resources, the Treasurer's Office and the Council of the Cherokee Nation's Financial officer among its sources of information and said report shall state clear and specific determinations as to increasing, otherwise enhancing or maintaining the status quo of compensation.

8. The final report of the Citizens Committee shall exclusively, by operation of law under this Act, set the salaries for all elected officials of the Cherokee Nation, and shall be effective upon issuance and commensurate with the following bi-weekly Cherokee Nation payroll cycle.

**a. Reaffirmation as to Reports:** To the extent not otherwise established by law, the Council and the Principal Chief hereby reaffirm Final Reports of the Citizens Committee on Compensation of January 27, 2022 and of March 30, 2024 as valid and effective law by operation of Section 5.D.8 of this Act and otherwise ratify said reports as valid and effective delegations of the Council's authority, and affirm the same as to any future reports of the Citizens Committee on Compensation issued pursuant to this Act and affirm all matters relating to compensation in all aforementioned reports as "salaries" within the meaning of Section 5.D.8 of this Act.

**b. Implementation Authority:** The Executive Director of Cherokee Nation Human Resources is authorized to implement the purposes, policies and provisions of this Act and, any Citizen Committee on Compensation Final Reports issued under authority of this Act, through practices, policies or procedures consistent with this Act.

**9. Supreme Court:** Consistent with the recommendation of Citizens Committee on Compensation Report of March 30, 2024, compensation for Justices of the Cherokee Nation Supreme Court is hereby aligned with that of the Council of the Cherokee Nation and any adjustments made thereto pursuant to future actions of the Citizens Compensation Committee to Council compensation, as

follows:

- a. **Salary:** Salaries of Justices of the Cherokee Nation Supreme Court shall be no less than members of the Council of the Cherokee Nation, with the salary of the Chief Justice no less than salary of the Speaker of the Council of the Cherokee Nation.
- b. **Fringe Benefits:** Fringe benefits available to members of the Supreme Court shall be consistent with fringe benefits available to members of the Council of the Cherokee Nation.
- c. **Post Service Benefits:** Post-service benefits available to former members of the Supreme Court, serving as of and after the date of this Act, shall be consistent with post service benefits made available to members of the Council of the Cherokee Nation.

Source LA 18-24, eff. May 30, 2024.

#### § 44. Reimbursement of expenses incurred by members of Supreme Court-Annual disclosure

The Justices of the Supreme Court shall be reimbursed for actual and necessary expenses incurred for secretarial assistance, law clerk assistance and/or research, travel, training, postage, telephone, photocopies, facsimiles, judicial conferences, lodging and meals. Such expenses shall be paid from the Supreme Court budget, and must be documented and submitted to the Accounting Department of Cherokee Nation. The nature and amount of all reimbursable expenses shall be reported annually to the citizens of Cherokee Nation, and such report shall be available for publication in any newspaper or newspapers requesting such information.

LA 07-95, eff. November 13, 1995.

#### § 45. Establishment of a law library-Maintenance and expenditures-Use by Cherokee citizens-Annual disclosure

The Supreme Court shall establish, maintain, oversee and control a law library in the Cherokee Nation Courthouse. The law library shall contain such books, publications and research aids as deemed necessary by the Justices of the Supreme Court, the District Court Judges and Associate District Judges, including but not limited to electronic research aids. The cost of such law library shall be paid from the budget of the Supreme Court and District Court. When such books and publications are not being used by the Justices of the Supreme Court, District Court Judges, Associate District Judges and other officials of Cherokee Nation, and their assistants, such items may be used by the citizens of Cherokee Nation, on such conditions and rules are adopted by the Supreme Court.

The expenses incurred in maintaining such library shall be reported annually to the citizens of Cherokee Nation, and such report shall be made available for publication in any newspaper or newspapers requesting such information.

LA 07-95, eff. November 13, 1995.

§ 46. Supplies, material, postage, office equipment, telephone and facsimile expense-Annual disclosure

The Justices of the Supreme Court shall purchase and pay for such supplies, material, postage, office equipment, telephone and facsimile expense from the budget of the Supreme Court as is reasonable and necessary. The amount of such purchases and expenditures shall be reported annually to the citizens of Cherokee Nation, and such report shall be available for publication in any newspaper or newspapers requesting such information.

LA 07-95, eff. November 13, 1995.

§ 47. Filing fees and court costs

The Supreme Court shall have the authority to establish filing fees and court costs for actions or proceedings filed in the Supreme Court and Courts over which it exercises general superintendence and Courts of inferior jurisdiction. Provided that the Court upon the filing of a verified Pauper's Affidavit may waive these fees and costs. The Supreme Court shall establish rules to carry out the provisions of this section.

LA 09-05, eff. February 17, 2005.

## CHAPTER 4

### SUPREME COURT-POWERS AND DUTIES GENERALLY

#### Section

#### 51. Jurisdiction of Supreme Court generally

51.1. Codification of term "Supreme Court"

52. Superintendence over courts of inferior jurisdiction

53. Supreme Court may prescribe rules of procedure for courts of inferior jurisdiction

54. Supreme Court decisions to have the force of law

55. Publication of decisions of Supreme Court

56. Decisions to be rendered for the true interpretation of the law

57. Adoption of rules governing pleading, practice and procedure

58. Administration of oaths and affirmations-Taking of acknowledgments

59. Disqualification of Justices

60. Temporary appointment on disqualification or recusal of Justice

§ 51. Jurisdiction of Supreme Court generally

A. The Supreme Court shall have original jurisdiction over all matters set forth in Article VIII, Section 4 of the Cherokee Constitution and:

1. Any dispute between the branches of the Government of Cherokee Nation.

2. Any case or controversy involving Cherokee Nation elections that has first been addressed by the Cherokee Nation Election Commission, and/or which is specifically provided for by statute.

B. The Supreme Court shall have appellate jurisdiction over all other cases.

LA 12-85, eff. August 12, 1985. Amended LA 29-07, eff. October 1, 2007.

§ 51.1. Codification of term "Supreme Court"

All statutes and official documents of Cherokee Nation which contain the term "**Judicial Appeals Tribunal**" shall be changed to "**Cherokee Nation Supreme Court**" or "**Supreme Court**" where applicable.

LA 29-07, eff. October 1, 2007.

§ 52. Superintendence over courts of inferior jurisdiction

The Supreme Court shall have authority within the limits of its judicial action as prescribed by law, to exercise a general superintendence over courts of inferior jurisdiction, through and by means of decisions made and declared by the Supreme Court upon questions of law, evidence, and practice, submitted to them in the course of the trial or examination of all causes of which they shall be allowed cognizance by law.

§ 53. Supreme Court may prescribe rules of procedure for courts of inferior jurisdiction

The Supreme Court shall also have power to prescribe from time to time, such rules of practice for regulating the procedure in the trial of cases in the lower courts, as they may deem necessary, expedient or serviceable, and which shall not conflict with the rules prescribed by law. The object of the Court in prescribing such rules shall be the more speedy and accurate presentation of the issue or point of difference between the parties, the exclusions of unnecessary and irrelevant testimony, and the more certain administration of justice.

§ 54. Supreme Court decisions to have the force of law

All decisions made by the Supreme Court shall have the force of law, as to the construction and application thereof, in all the Courts of this Nation, until such construction or application shall be limited, altered, or in any manner amended, by the subsequent decision of a subsequent case by the Supreme Court.

§ 55. Publication of decisions of Supreme Court

All decisions of the Supreme Court shall be preserved and open to inspection. The court shall forward

copies of each decision to the Secretary-Treasurer of Cherokee Nation.

LA 12-85, eff. August 12, 1985.

§ 56. Decisions to be rendered for the true interpretation of the law

All decisions of the Supreme Court (intermediate and final) shall be made and rendered, as well for the government and guidance of the lower Courts and the citizens of this Nation in general, as for the just and true interpretation of the law, and the settlement of the dispute and administration of justice between the parties. Accordingly, each decision shall be accompanied with a statement, as far and as full as may be practicable, or necessary for the purpose, of the grounds in law or evidence upon and by reason of which, such decision has been made. Each decision shall be attended or preceded by a distinct statement of the issue between the parties, the situation of the case as set forth by the evidence before the Court, the law or laws governing the case, and the interpretation and application of the same by the Court, with the reasons therefor, and the principles of law or evidence involved in the suit and affecting the decision thereof; and of such other matters and considerations, having relation to the decision, which the Court may deem essential to give value and force to a law precedent for the government and guidance of the Courts and citizens of the Nation in similar cases arising thereafter.

§ 57. Adoption of rules governing pleading, practice and procedure

A. The Justices shall have authority to adopt rules of pleading, practice and procedure applicable to any or all proceedings in the Supreme Court of Cherokee Nation. In addition, they may adopt uniform rules for the admission of evidence and may require the use of standard forms for pleadings, motions and other papers filed in the Supreme Court by litigants, as well as for judgments, writs, and court orders.

B. Any rule adopted by the Justices shall be transmitted to the Council, directing the codification of such rule.

C. No rule adopted by the Justices shall be effective until approved under procedures adopted by the Justices and transmitted to the Council.

LA 12-85, eff. August 12, 1985. Amended LA 29-07, eff. October 1, 2007.

§ 58. Administration of oaths and affirmations-Taking of acknowledgments

Each Justice of Cherokee Nation may administer oaths and affirmations and take acknowledgements.

LA 12-85, eff. August 12, 1985.

#### § 59. Disqualification of Justices

Any Justice of Cherokee Nation shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit during any proceeding therein.

LA 12-85, eff. August 12, 1985.

#### § 60. Temporary appointment on disqualification or recusal of Justice

Upon the disqualification or recusal of a Justice of the Supreme Court, the remaining members shall appoint a Judge of the District Court of Cherokee Nation to temporarily serve as a Justice of the Supreme Court for the specific case only.

LA 14-04, eff. April 12, 2004.

## CHAPTER 5

### COURT ON THE JUDICIARY

#### Section

61. Application and purpose

62. Authority

63. Definitions

64. Establishment and Appointment

65. Terms

66. Qualifications and Oath

67. Authority

68. Duties

69. Complaints

70. Compensation

71. Removal from the Court on the Judiciary

§ 61. Application and purpose

This Title is adopted for the purpose of implementing the constitutional mandate of creating a body and process for review of judicial conduct.

Source LA 15-24, eff. May 13, 2024.

§ 62. Authority

This Title is enacted pursuant to Article VIII, Section 5, of the Constitution of the Cherokee Nation ruled effective by the Cherokee Nation Supreme Court on July 26, 2003:

“There is hereby created a Court on the Judiciary. Each branch of the government shall select two members of the Court; one of whom shall be a member of the Cherokee Nation Bar Association and the other shall be a non-lawyer. The six members shall

appoint a seventh member. The members of the Court on the Judiciary shall promulgate its own rules of procedure, assuring due process, to be submitted to the Council for review and approval. The authority of the Court shall include suspension, sanction, discipline or recommendation of removal. The members shall not be employees of the Cherokee Nation or any entities thereof. The Council shall pass such laws as are necessary for carrying into effect the provisions of this section. All members of the Court shall be citizens of the Cherokee Nation.”

Source LA 15-24, eff. May 13, 2024.

### § 63. Definitions

For purposes of this Title, the following terms shall be defined as follows:

1. **Attorney.** “Attorney” means any law-trained Cherokee Citizen who is licensed to practice law in the Courts of the Cherokee Nation.
2. **Discipline.** “Discipline” means corrective actions used to address misconduct or to ensure that such misconduct will not be repeated.
3. **Misconduct.** “Misconduct” means willful, wanton, extreme, and/or egregious conduct that is prejudicial to the effective and expeditious administration of the business of the courts, or a failure or inability to discharge all the duties of office, or conduct that is contrary to the high responsibility of judicial office, whether improper or with an appearance of impropriety, or conduct contrary to the current ABA Model Code of Judicial Conduct, unless superseded by the adoption of a Cherokee Nation Code of Judicial Conduct.
4. **Non-Attorney.** “Non-Attorney” means a citizen of the Cherokee Nation and excludes persons who hold a license to practice law in any jurisdiction.
5. **Witnesses.** “Witnesses” means any party involved in, with knowledge of, or a reason to have knowledge of information relating to an investigation. This may include, but is not limited to, the members of the judiciary including the subject of the investigation.

Source LA 15-24, eff. May 13, 2024.

### § 64. Establishment and Appointment

There is hereby created a Court on the Judiciary, standing independent and autonomous of the Executive, Legislative, and Judicial branches of the Cherokee Nation. Each branch of the government shall select two members of the Court on the Judiciary; one of whom shall be a member

of the Cherokee Nation Bar Association and the other shall be a non-lawyer. The six members shall appoint the seventh member. The Court on the Judiciary shall select from its membership a chair, vice-chair, secretary, and any other officer that the group shall deem necessary.

Source LA 15-24, eff. May 13, 2024.

## § 65. Terms

1. **Staggered Terms**. Members of the Court on the Judiciary shall regularly serve for a period of five (5) years on staggered terms. To effectuate staggering of terms, the Executive Branch and Legislative Branch shall appoint one attorney-member each for a period of three (3) years and one non-attorney each for a period of five (5) years. The Cherokee Nation Judicial Branch shall appoint one attorney-member for a period of five (5) years and one non-attorney for a period of three (3) years. The seventh member, selected by the first six appointees, shall be a member in good-standing of the Cherokee Nation Bar Association and serve for a period of five (5) years. All subsequent regular appointments shall be for a period of five (5) years.
2. **Vacancies**. In the case of death, removal, or resignation of a Member, the body which made the appointment shall select a replacement, who shall serve the remainder of the term.
3. **Holdover Clause**. Each member shall serve until their successor is duly appointed.

Source LA 15-24, eff. May 13, 2024.

## § 66. Qualifications and Oath

Members of the Court on the Judiciary shall be citizens of the Cherokee Nation and shall not be employees of the Cherokee Nation or any entities thereof. No person who has ever been convicted of a felony or convicted of a crime in any tribal court of any federally recognized Indian tribe that would be considered a felony in state or federal court shall serve on the Court on the Judiciary.

Source LA 15-24, eff. May 13, 2024.

## § 67. Authority

1. **Rulemaking.**

a. **Procedure and Administration.** The Court on the Judiciary shall promulgate their own rules of procedure and administration, to be submitted to the Tribal Council for review and approval, provided that such rules of procedure assure due process and ensure confidentiality to protect the professional reputations of those within the Cherokee Nation Judicial Branch from frivolous claims.

b. **Judicial Conduct.** The Court on the Judiciary shall not promulgate rules on the substance of judicial conduct. The current edition of the American Bar Association's Model Rules of Judicial Conduct shall govern judicial conduct until such time as it is superseded by adoption of a Cherokee Nation Code of Judicial Conduct.

2. **Threshold Determination:** Upon receipt of a complaint alleging judicial misconduct, the Court on the Judiciary shall make a threshold determination whether the complaint, if proven based solely on the information provided in the complaint, may constitute misconduct within the meaning of this Act. Any complaint that fails to meet the threshold review shall be dismissed.

3. **Mandatory Deferral:** If the Court on the Judiciary determines, upon its threshold review of the complaint, that the complaint, if proven and based solely on the information provided in the complaint, may demonstrate misconduct within the meaning of the Act, the matter shall be deferred to the relevant bar association with jurisdiction over the alleged misconduct for a deferral period not to exceed one year. The Court on the Judiciary shall defer to the disposition of the alleged misconduct by the bar association to which the matter was deferred, unless the Court on the Judiciary, by unanimous vote, determines that further proceedings by the Court on the Judiciary is warranted.

4. **Investigation After Deferral.** The Court on the Judiciary shall, following the expiration of the deferral period and in the absence of a deferral-based disposition provided for herein have the authority and responsibility to investigate complaints alleging judicial misconduct. Such authority shall include the ability to conduct hearings related to such investigations. Failure by a Judge or Justice of the Cherokee Nation Judicial Branch to comply with the authority of the Court on the Judiciary shall result in a timely recommendation of removal

from office, following a finding by the Court on the Judiciary of a violation of the Act.

5. **Power to Recommend Removal.** The Court on the Judiciary shall have the power to recommend that a Judge or Justice of the Cherokee Nation Judicial Branch be removed from the office by the Tribal Council pursuant to Article XI, Section 2 of the Constitution of the Cherokee Nation. Such a recommendation shall be based upon a finding of conduct or behavior as proscribed by Article XIII, Section 8 of the Constitution by a Judge or Justice.
  
6. **Staffing.** The Court on the Judiciary shall employ such staff as may be necessary to perform the duties required by the Act, subject to the budget appropriation process of the Cherokee Nation.

Source LA 15-24, eff. May 13, 2024.

## § 68. Duties

1. **Duty to Record.** The Secretary of State shall make findings deemed to be public by the Court on the Judiciary available to the public.
  
2. **Duty to Report.**
  - a. **Annual Meeting.** The Court on the Judiciary shall provide an annual written report to the Tribal Council certifying that they have met at least once during the calendar year. Such report shall not identify the business, members, or complaints discussed but shall be submitted to ensure compliance with meeting mandates contained below.
  
  - b. **Upon Recommendation of Removal.** The Court on the Judiciary shall, upon recommendation of removal from judicial office, provide a written report informing the Council of the Cherokee Nation of the action(s) giving rise to the recommendation. Such report is not limited to the misconduct leading to recommendation of removal but shall include a cumulative report of all current and previous misconduct allegations found to be meritorious and related disciplinary actions.

3. **Duty to Meet.** The Court on the Judiciary shall meet to conduct business not less than once per calendar year. Meetings of the Court on the Judiciary shall be closed to the public. The Court on the Judiciary shall determine the dates and the neutral locations of its meetings and proceedings. Upon request of the chairperson of the Court on the Judiciary, the Executive Branch shall accommodate the Court on the Judiciary in locating a neutral meeting facility.

Source LA 15-24, eff. May 13, 2024.

### § 69. Complaints

Formal complaints under this act, alleging inappropriate judicial conduct, shall be filed with the office of the Secretary of State of the Cherokee Nation in accordance with the rules of procedure promulgated by the Court on the Judiciary. The Secretary of State or their designee shall timely forward all complaints to the chair of the Court on the Judiciary. The Secretary of State shall provide support for the implementation of the process for accepting formal complaints.

Source LA 15-24, eff. May 13, 2024.

### § 70. Compensation

Members of the Court on the Judiciary shall receive compensation for their service not to exceed two hundred fifty dollars (\$250) per month and reasonable travel expenses, in accordance with the appropriation process of the Cherokee Nation.

Source LA 15-24, eff. May 13, 2024.

### § 71. Removal from the Court on the Judiciary

A Court on the Judiciary member may be removed from office by a two-thirds (2/3) vote of the Tribal Council for:

1. Willful neglect of the duties prescribed in this act;
2. Corruption in office;

3. Incompetency, misfeasance, or malfeasance of office;
4. Any conviction involving moral turpitude committed while in office;
5. Improperly interfering or attempting to improperly interfere with the review or investigation of any complaint launched on a member of the judiciary; or
6. A felony conviction or no contest plea or a conviction or plea that if entered into within a tribal jurisdiction, would be considered a felony in state or federal jurisdiction.

Source LA 15-24, eff. May 13, 2024.

## APPENDIX I TO TITLE 20

### SUPREME COURT RULES AND PROCEDURES

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### I. IN GENERAL

Rule 1. Rules to be liberally construed

The rules and procedures in this Appendix shall be liberally construed to effectuate the purposes and provisions of the Appendix.

SC-AD-13-01, adopted March 27, 2013.

Rule 2. Amendment or rescission of rules

Any rule or procedure may be amended or rescinded by the Supreme Court at anytime; provided, however, any amendment or rescission of rules by the Supreme Court must meet the requirements of 20 CNCA § 57(B) and (C). All prior Court Rules are hereby rescinded or incorporated herein.

SC-AD-13-01, adopted March 27, 2013.

### II. PETITION

### Rule 3. Withdrawal and dismissal

Prior to the time an answer is filed, any petition may be withdrawn and dismissed without Court approval. After an answer has been filed, a petition may be dismissed only with the consent of the Court.

SC-AD-13-01, adopted March 27, 2013.

### Rule 4. Assignment and disposition of cases, effectiveness of orders, appeal-Motions for reconsideration-Cases retained for en banc determination

The Chief Justice shall have the power to retain any case, or assign any case to one of the Justices for all such preliminary proceedings as ordered. Any final adjudication or dismissal in a case shall be made by a majority of the Justices and shall be effective immediately when filed with the Court Clerk.

The Chief Justice shall retain the power to assign any case to the entire court for decision. In that case, the words "the Justice," used herein, shall apply to a majority of the Supreme Court.

SC-AD-13-01, adopted March 27, 2013.

### Rule 5. Filing

Any petition requesting judicial review shall meet the requirements of 20 CNCA § 51(A), (B), (C), or (D). The petition shall be filed in the Office of the Cherokee Nation Supreme Court, P.O. Box 1097, Tahlequah, Oklahoma 74465. The offices of the Supreme Court are at the Cherokee Nation Courthouse, Cherokee Capitol Square, 101 S. Muskogee Ave., Tahlequah, Oklahoma.

SC-AD-13-01, adopted March 27, 2013.

### Rule 6. Requirement of filing fees

All petitions must be filed in person. The petitioner must pay the required filing fee of Seventy-Five Dollars (\$75.00), or Fifty Dollars (\$50.00) for an appeal. Payments can be made in the form of cash, check, or money order payable to the Court. An application for waiver of fee pauper's affidavit can be

completed and submitted to the Court Administrator for approval.

SC-AD-13-01, adopted March 27, 2013.

## Rule 7. Use of fax/e-mail

### A. Fax

1. Parties may file affidavits, pleadings, motions and other documents by use of fax transmission for documents of ten (10) pages or less;
2. The fax must include a transmittal/cover sheet reflecting the sending party's name, address, bar number, phone number, fax number, case name and case number. The fax number for the Cherokee Nation Supreme Court is (918) 458-9572.
3. The faxed document, which must bear a facsimile of the required signature, will be accepted as an "original" document.

### B. E-mail

1. A document permitted to be filed by e-mail pursuant to these rules shall be sent to the Court Clerk of the Supreme Court using the following e-mail address: [kendall-bird@cherokee.org](mailto:kendall-bird@cherokee.org). Documents sent to any other e-mail address of the Supreme Court shall not be considered for filing under any circumstances.
2. The e-mail must reflect the sending party's name, address, bar number, phone number, e-mail address, case name and case number.
3. A document permitted to be filed by e-mail shall be submitted as a PDF file (Portable Document Format).
4. A document that may be filed by e-mail pursuant to these rules shall include a scanned version of the person's original signature or a signature line with a backslash followed by an "s" followed by the person's name in print (e.g., /s/ "John T. Smith").

C. Documents transmitted by fax or e-mail pursuant to these rules and received on a Saturday, Sunday, or other day on which the Clerk's Office is closed to the public, or after 4:30 p.m. on a business day, shall be considered for filing on the next business day. The time of receipt of a document is the timestamp provided by the Supreme Court's e-mail/fax system, the timestamp provided by any other computer/fax system shall not alter the time of receipt and affect this rule.

D. All risks associated with fax/e-mail filing are borne by the sender (e.g., court's phone/computer system being out of order, the receiving fax machine running out of paper, etc.)

E. Any document filed by fax/e-mail must also be served concurrently by fax, e-mail, hand-delivery or mail on all other parties to the appeal, and the faxed/e-mailed document must contain a certificate of service attesting to such service and that the document was initially file with the Court via fax/e-mail. The time for filing a response to a document filed by fax/e-mail runs from the date the document was received by the Court pursuant to subsection (C) above.

F. The Clerk may reject documents that are not clearly legible or that fail to comply with these requirements.

SC-AD-13-01, adopted March 27, 2013.

#### Rule 8. Form-Jurat or declaration-Number of copies

Such petition shall be in writing with pages sequentially numbered at the bottom center of each page and signed, and either shall be sworn to before a notary public, Justice, or other person authorized by law to administer oaths and take acknowledgements or shall contain a declaration by the person signing it, under the penalties of the Criminal Code, that its contents are true and correct to the best of the declarant's knowledge and belief. An unstapled original of such petition shall be filed.

SC-AD-13-01, adopted March 27, 2013.

#### Rule 9. Contents

Such petition, or charge, shall contain the following:

1. the full name, address, telephone number, e-mail and fax number, if any, of the person filing the petition.

2. if the petition is filed on behalf of another person or organization, the full name, address, telephone number, e-mail and fax number, if any, of the party or organization represented.

3. the full name, address, telephone number, e-mail and fax number, if any, of the person against whom the charge is made (herein referred to as respondent).

4. a clear and concise statement of the facts, constituting the alleged claim, including the date, place and names of those parties involved in the alleged claim.

5. a clear and concise statement of the legal authority and jurisdiction under which the cause of action is being predicated.

SC-AD-13-01, adopted March 27, 2013.

#### Rule 10. Use of Bar Identification number

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his or her name, with Cherokee Nation Bar Association number and State Bar Association number.

SC-AD-13-01, adopted March 27, 2013.

### III. NOTICE

#### Rule 11. Service of the petition and return

A copy of the petition and a copy of the summons issued by the Clerk of the Supreme Court shall be served by the Petitioner or his or her representative by certified mail-return receipt requested or by personal service by a process server licensed by the State of Oklahoma. Return of service shall be verified by the individual accomplishing such service and shall be filed with the Clerk of the Supreme Court.

SC-AD-13-01, adopted March 27, 2013.

#### Rule 12. Rejection of petition

If at any time it appears to a majority of the Court that a formal proceeding is not warranted, the Court shall cause to be served on the parties a formal notice of rejection of the petition.

SC-AD-13-01, adopted March 27, 2013.

Rules 13 to 19. Reserved

#### IV. SERVICE AND FILING OF PAPERS

Rule 20. Service of pleadings, orders and notices

A. Service of pleadings to parties or their representatives who have entered their appearances by the parties shall be by personal delivery or regular mail with certificates of mailing/delivery attached.

B. Service of notices, notice of hearings, final order, orders and decisions of the Supreme Court shall be made by the Clerk of the Supreme Court by mail, fax or e-mail and shall be certified by the Clerk of the Supreme Court.

SC-AD-13-01, adopted March 27, 2013.

Rule 21. Date of service-Filing of proof of service

A. The date of service shall be the day when the matter served is deposited in the United States mail or is actually delivered, as the case may be.

B. The person or party serving the papers or process on other parties shall submit a written statement of service thereof to the Supreme Court, stating the names of the parties served and the date and manner of service. Failure to make proof of service does not affect the validity of the service.

SC-AD-13-01, adopted March 27, 2013.

Rule 22. Certification of papers and documents

The Court Clerk or Deputy Court Clerk of the Supreme Court or, in the event of their absence or disability, whosoever may be designated by the Chief Justice shall be authorized to certify copies of all papers and documents which are a part of any of the files or records of the Supreme Court as may be necessary or desirable from time to time.

SC-AD-13-01, adopted March 27, 2013.

#### Rule 23. Signature of orders

The Court Clerk or Deputy Court Clerk of the Supreme Court or, in the event of their absence or disability, whosoever may be designated by the Supreme Court in their place and stead is hereby authorized to sign all orders of the Supreme Court.

SC-AD-13-01, adopted March 27, 2013.

#### Rules 24 to 29. Reserved

#### V. ANSWER

#### Rule 30. When and by whom filed-Contents

Unless otherwise directed in the notice or scheduling order, the respondent shall, within twenty (20) days from the service of the petition, file a response thereto. The response may be in the form of a motion to dismiss or other such motion. The respondent's answer shall specifically admit, deny or explain each of the facts alleged in the petition unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial.

SC-AD-13-01, adopted March 27, 2013.

#### Rule 31. Place of filing-Service upon other parties-Form

An unstapled original of the response or answer shall be filed with the office of the Supreme Court, Cherokee Nation, P.O. Box 1097, Tahlequah, Oklahoma, 74465 by mail to or in person at the Cherokee Nation Courthouse, Cherokee Capitol Square, 101 S. Muskogee Ave., Tahlequah, Oklahoma. Filing by fax/e-mail is appropriate pursuant to Rule 7. Immediately upon the filing of a response, the respondent shall serve a copy thereof on the other parties. The pleadings of a party represented by counsel shall be signed by at least one attorney of record whose address, phone

number, e-mail and fax number shall be stated, in their individual name. A party who is not represented by an attorney shall sign the pleadings and state an address, phone, e-mail and fax number, if any. Except when otherwise specifically provided by rule or statute, an answer need not be verified or accompanied by affidavit. The signature of the person filing an answer constitutes a certificate that the signer has read the answer; that to the best of the signer's knowledge, information and belief there is good ground to support it; and that it is not interposed for delay. If an answer is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the answer had not been filed. For willful violation of this rule, the signing party may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

SC-AD-13-01, adopted March 27, 2013.

### Rule 32. Extension of time for filing

The Chief Justice, or the Justice who is assigned to the case, upon own motion or upon proper cause shown through motion by any other party, may by written order extend the time within which a response or pleading shall be filed.

SC-AD-13-01, adopted March 27, 2013.

### Rule 33. Amendment

Petitioner may amend the petition and the respondent may amend the answer at any time prior to the time allowing amendments as set forth in the scheduling order by the Chief Justice. When the time set in the scheduling order to amend has passed, amendments may only be allowed through good cause shown by motion to the Chief Justice or the Justice assigned to the case. If amendment is allowed, the Chief Justice or Justice shall fix such terms and periods providing so. If there is no scheduling order then the petition or answer maybe amended without permission from the Chief Justice or Justice.

SC-AD-13-01, adopted March 27, 2013.

### Rules 34 to 39. Reserved

## VI. MOTIONS

### Rule 40. Place of filing-Contents-Service on other parties-Time for filing of motions and responses

thereto

All motions shall be filed in writing in the office of the Supreme Court either in person, by mail, fax or e-mail as provided in Rule 7. All motions for summary judgment shall also be filed in writing in the office of the Supreme Court either in person, by mail, fax or e-mail as provided in Rule 7. Unless otherwise provided in these rules or by order of the Supreme Court, motions and responses thereto shall be filed promptly and within such time as not to delay the proceedings. Promptness and diligence are favored in all filings in the Supreme Court.

SC-AD-13-01, adopted March 27, 2013.

#### Rule 41. Rulings on motions generally

The Chief Justice's rulings as provided in Rule 11 and all other judicial rulings and orders shall be issued in writing and a copy served on each of the parties. The Justice designated to conduct the hearing shall rule on all motions after the opening of the hearing, and any orders in connection therewith, if announced at the hearing, shall be stated orally on the record; in all other cases, the Justice shall issue such rulings and orders in writing and shall cause a copy of the same to be served on each of the parties, or shall rule on the matter in the decision.

SC-AD-13-01, adopted March 27, 2013.

#### Rule 42. Motions, rulings and orders to be part of the record

All motions, rulings, and orders shall become a part of the record.

SC-AD-13-01, adopted March 27, 2013.

#### Rule 43. Motion to dismiss

The respondent may file a motion to dismiss at any time prior to the scheduling order or as permitted in the scheduling order, or move for dismissal at any hearing for:

1. lack of jurisdiction over subject matter.

2. lack of jurisdiction over persons.

3. insufficiency of process or service thereof.

4. failure of petitioner to state a claim upon which relief can be granted.

SC-AD-13-01, adopted March 27, 2013.

#### Rule 44. Motion for summary judgment

Either party may move for summary judgment by alleging that there is no genuine issue as to any material fact and by alleging that the moving party is entitled to judgment as a matter of law.

SC-AD-13-01, adopted March 27, 2013.

#### Rule 45. Granting of motion to dismiss entire petition

All dispositive motions must be considered by the Court en banc except as set forth in Rule 11.

SC-AD-13-01, adopted March 27, 2013.

#### Rule 46. Filing of answer or other participation in proceedings not deemed a waiver of rights

The right to make motions or to make objections to rulings upon motions shall not be deemed waived by the filing of an answer or by other participation in the proceedings before the Supreme Court.

SC-AD-13-01, adopted March 27, 2013.

#### Rule 47. Intervention

Any person desiring to intervene in any proceeding shall file a motion in writing or, if made at the hearing, may move orally on the record, stating the grounds upon which such person claims an interest. An unstapled original of written motions shall be filed. Immediately upon filing such motion,

the moving party shall serve a copy thereof on the other parties. The Court shall rule upon all such motions filed and shall cause a copy of said rulings to be served on the other parties. The Court may by order permit intervention in person or by counsel or other representative to such extent and upon such terms as deemed proper.

SC-AD-13-01, adopted March 27, 2013.

Rules 48, 49. Reserved

## VII. APPELLATE PROCEDURE

### Rule 50. Who may appeal

A. Any party significantly and adversely affected by a decision of the District Court of the Cherokee Nation in a civil case may appeal.

B. Any party in a criminal case may appeal a judgment or sentence. The prosecution may only appeal a decision to the extent it raises a question of law, rather than a question of fact.

SC-AD-13-01, adopted March 27, 2013.

### Rule 51. Procedure for appeal-Time period to appeal

A. An appeal to the Supreme Court in civil cases shall be by petition in error filed no later than thirty (30) days after the entry of the written judgment or order of the District Court.

B. An appeal to the Supreme Court in criminal cases shall be made no later than thirty (30) days after entry of the written judgment or order of the District Court.

C. If one party has filed an appeal within the time period provided, the other party shall file a response and may take a Cross-Appeal by filing across-petition in error within thirty (30) days of filing of the initial appeal.

D. Late appeals shall be denied filing by the Clerk of the Supreme Court unless leave for late filing has been granted by the Court.

E. The Court may, at their discretion, grant leave to appeal from any order or judgment upon the showing by appellant, supported by affidavit, that there is merit in the reasons for appeal and that late filing was not due to appellant or appellant's attorney/advocate's negligence.

SC-AD-13-01, adopted March 27, 2013.

#### Rule 52. Appeal

A. An appeal is made by the filing of a petition in error with the Clerk of the Supreme Court.

B. The petition in error must specify the party or parties taking the appeal by naming each one in the caption or body of the petition in error; designating and attaching a certified copy of the judgment, order, or part thereof being appealed; state whether oral arguments are requested, and the decision on the appeal desired from the Supreme Court.

C. No appeal shall be dismissed for deficiency of form or title of the petition in error, or for failure to name a party whose intent to appeal is otherwise clear from the Petition In Error.

D. Upon receipt of the petition in error and full payment of the filing fee, the Clerk of the Supreme Court shall docket the appeal and notify the Chief Justice of the pending appeal.

SC-AD-13-01, adopted March 27, 2013.

#### Rule 53. Service of notice of appeal

A. A copy of the petition in error shall be served by the party filing the appeal on all parties' counsel of record and on the Clerk of the District Court or Administrative Court.

B. Upon filing a petition in error, the appellant must pay a filing fee of Fifty Dollars (\$50.00). A filing will only be accepted without payment when an appellant's pauper's affidavit is approved.

SC-AD-13-01, adopted March 27, 2013.

#### Rule 54. Bond or supersedeas bond

Upon the filing of the petition in error of a civil money judgment, the District Court may order the filing of a bond or other security in an amount sufficient to satisfy the judgment including costs in the event that the judgment is affirmed on appeal. The Supreme Court may waive the bond if the party demonstrates by petition or affidavit that he/she is unable to post the bond.

SC-AD-13-01, adopted March 27, 2013.

#### Rule 55. Stay or injunction

Application for a stay of the judgment or order of the District Court pending appeal, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal must be made first in the District Court. A motion for such relief may be made to the Supreme Court, but the motion shall show that application to the District Court for the relief sought is not practicable, or that the District Court has denied an application, or has failed to afford the relief which the applicant requested with the reasons given by the District Court for its action. Reasonable notice of the motion shall be given to all parties.

A stay shall be granted if the purposes of justice require it, and irreversible harm may occur if the stay is not granted.

SC-AD-13-01, adopted March 27, 2013.

#### Rule 56. Designation of record

All parties to an appeal shall file either a designation of record or counter designation of record. Concurrently with filing a petition in the Supreme Court, the party desiring the appeal shall mail to the other parties and file in both the District Court and Supreme Court a designation of any pertinent pleadings or documents filed in the case, transcript of proceedings, and evidence adduced which are sought to be included in the record of appeal. The Supreme Court reserves the right to order any additional parts of the entire District Court record to be transmitted to the Supreme Court at any stage of the appeal.

The designation of record shall be made using the designation record form or court docket sheet. Pleadings and other documents filed with the District Court Clerk in the case can be designated by circling the document on a copy of the court docket sheet or by listing the specific pleadings and other documents on the designation of record form.

The record on appeal shall not include unless ordered by the Supreme Court the following: subpoenas, summonses, certificate of service, and procedural motions or orders (e.g., extensions, continuances, etc.)

All appellees shall file a counter designation of record in the District Court and Supreme Court within thirty (30) days after appellant's designation of record is filed. The counter designation of record shall be made by using the counter designation of record form or court docket sheet.

Each appellant must advance the costs for transcripts ordered by any party relating to the appeal of the appellant. Failure to pay costs shall not be a good cause for an extension of time to complete the record and shall be grounds for dismissal of the appeal.

SC-AD-13-01, adopted March 27, 2013.

#### Rule 57. Record of appeal

A. Upon receiving the designation of record, the Clerk of the District Court shall compile the record for transmittal to the Supreme Court. The Clerk of the District Court shall certify the contents of the record as true, correct, and complete.

B. If no report of the evidence or proceeding at a trial or hearing was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence. The appellant must file a copy of the statement with the Supreme Court and the appellee shall have twenty (20) days to raise objections and make amendments. The Supreme Court shall rule on the objections and amendments and approve the statement for inclusion in the record of appeal.

C. In place of the record on appeal, the parties may prepare, sign, and submit to the District Court a statement of the case showing how the issues presented by the appeal arose and were decided in the District Court. The statement must set forth only those facts certain and proved or sought to be proved that are essential to the Court's resolution of the issues. If the statement is truthful, the statement, together with any additions that the District Court may consider necessary to a full presentation of the issues on appeal must be approved by the District Court and must then be certified to the Supreme Court as the record on appeal.

D. The record on appeal shall be ready for transmission to the Supreme Court no later than six (6) months from the date of the judgment appealed.

SC-AD-13-01, adopted March 27, 2013.

Rule 58. Certification of the record

A. The accuracy of the record on appeal shall be certified by the Clerk of the District Court of Cherokee Nation.

B. The Clerk of the District Court shall transmit by certified mail or its equivalent the complete record and all duly numbered copies of original documents to the Clerk of the Supreme Court within six (6) months of the designation of record.

C. The Clerk of the District Court shall mail a copy of the certification of the record to the parties.

SC-AD-13-01, adopted March 27, 2013.

Rule 59. Reserved

VIII. BRIEFS

Rule 60. Filing and service of briefs

A. The appellant shall file and serve an appellate brief-in-chief within sixty (60) days after the date on which the appellee has filed his or her response to the petition in error. The appellee shall file and serve the appellee's brief within forty (40) days after service of the brief of the appellant. The appellant may file and serve a reply brief within twenty (20) days after service of the brief of the appellee.

B. One (1) original unstapled/unbound copy of each brief shall be filed with the Court Clerk, and one copy shall be served on counsel for each party separately represented.

C. If an appellant fails to file the appellant's brief-in-chief within the time provided by this rule, or within the time as extended, the Court may dismiss the appeal. If an appellee fails to file the appellee's brief within the time provided by this rule, or within the time as extended, the appellee will not be heard at oral argument except by permission of the Court upon a showing of good cause submitted in writing prior to argument; and in determining the appeal, the Court may rule on the appellant's statement of the facts and issues.

D. The appellant or appellee may file an extension of time to file a brief or response to a brief for extraordinary circumstances and the Court may grant it for good cause shown. An extension shall be granted for no more than fourteen (14) days.

SC-AD-13-01, adopted March 27, 2013.

## Rule 61. Briefs

A. Briefs filed by both the appellant and appellee shall contain the following:

1. a table of contents, with page references.

2. a table of cases alphabetically arranged, statutes, and other authorities cited, with references to the pages of the brief where cited.

3. a statement of the assignments of error presented for review, with reference to the place in the record where each error is reflected.

4. a statement of the issues presented for review, with references to the assignments of error to which each issue relates.

5. a statement of the case briefly describing the nature of the case, the course of proceedings, and the disposition in the District Court.

6. a statement of facts relevant to the assignments of error presented for review, with appropriate reference to the record. (References in the briefs to parts of the record shall be to the pages of the parts of the record involved; e.g., Answer p. 2, Transcript p. 47.)

7. a conclusion briefly stating the relief sought by the party.

B. Briefs shall not exceed thirty (30) pages in length excluding cover page, table of contents, table of authorities, appendix, attorney signature line and information, and certificate of service.

C. An appellee's answer brief shall be combined with the brief-in-chief on any counter or cross-appeal

filed by the appellee. The combined brief shall be filed within forty (40) days after the filing of the brief-in-chief of the appellant. The brief-in-chief on any other counter or cross-appeal shall be filed within forty (40) days after the filing of the brief-in-chief of the appellant.

An appellant shall combine a reply brief, if any is filed, with an answer brief to a brief-in-chief on a counter or cross-appeal against the appellant. The combined brief shall be filed within thirty (30) days after the filing of the brief-in-chief on the counter or cross-appeal. Any other party against whom a counter or cross-appeal has been filed shall file an answer brief within thirty (30) days after the filing of the brief-in-chief on such counter or cross-appeal.

A counter or cross-appellant may file a reply brief to the answer brief on the counter or cross-appeal within twenty (20) days after the filing of the answer brief on the counter or cross-appeal.

D. A combined brief by a party to a counter or cross appeal shall not exceed forty (40) pages excluding the cover page, table of contents, table of authorities, appendix, attorney signature line and information, and certificate of service.

SC-AD-13-01, adopted March 27, 2013.

#### Rule 62. Amicus curiae brief

An amicus curiae brief may be filed if accompanied by the written consent of all parties, or by leave of Court pursuant to a properly filed motion, or at the request of the Court. The amicus curiae brief shall specify whether consent was granted or if granted by leave of Court, and its cover shall identify the party supported. The brief shall be confined to the issues raised by the parties and shall be submitted within the time allowed for filing the brief for the party supported, or if in support of neither party, within the time allowed for filing the petitioner's or appellant's brief.

SC-AD-13-01, adopted March 27, 2013.

Rules 63 to 69. Reserved

## IX. EX-PARTE COMMUNICATIONS

Rule 70. Communication between Justices or employees of Supreme Court and persons involved in proceedings-Communication between Justices and assistants

Unless required for the disposition of ex parte matters authorized by law, Justices of the Supreme Court or their employees involved in a proceeding shall not communicate, directly or indirectly, in connection with any issue of fact, with any party, nor, in connection with any issue of law, with any party, except upon notice and opportunity for all parties to participate. A Justice may communicate with other Justices and may have the advice of one or more persons.

SC-AD-13-01, adopted March 27, 2013.

Rules 71 to 79. Reserved

## X. WITNESSES

### Rule 80. Examination of witnesses generally-Depositions

A. Witnesses shall be examined orally under oath, except that for good cause shown after the issuance of a notice, testimony may be taken by deposition.

B. Applications to take depositions shall be in writing, setting forth the reasons why such depositions should be taken, the name and address of the witness, the matters concerning which it is expected the witness will testify, and the time and place proposed for the taking of the deposition, together with the name and address of the person before whom it is desired that the deposition be taken (for the purposes of this section hereinafter referred to as the officer). Such application shall be made to the office of the Supreme Court prior to the hearing, and to the Presiding Justice during the hearing. Such application shall be served by the Justice on all other parties, not less than seven (7) days (when the deposition is to be taken within the continental United States) and fifteen (15) days (if the deposition is to be taken elsewhere) prior to the time when it is desired that the deposition be taken. The Justice shall have the discretion upon receipt of the application, if good cause has been shown, to make and serve on the parties an order which will specify the name of the witness whose deposition is to be taken, the time and the place, and designation of the officer before whom the witness is to testify, who may or may not be the same officer as the one specified in the application. Such order shall be served on all the other parties by the Justice.

C. Such deposition may be taken before any officer authorized by law to administer oaths.

D. At the time and place specified in said order, the officer designated to take such deposition shall permit the witness to be examined and cross-examined under oath by all the parties appearing, and the testimony shall be reduced to typewriting by the officer or under the officer's direction. All objections to questions or evidence shall be deemed waived unless made at the examination. The officer shall not have the power to rule upon any objections but shall note them upon the deposition. The testimony shall be subscribed by the witness in the presence of the officer, who shall attach a

certificate stating that the witness was duly sworn by the officer, that the deposition is a true record of the testimony and exhibits given by the witness, and that said officer is not of counsel or attorney to any of the parties nor interested in the event of the proceeding. If the deposition is not signed by the witness because of illness or death, because the witness cannot be found or refuses to sign it, such fact shall be included in the certificate of the officer and the deposition may then be used as fully as though signed. The officer shall immediately deliver an original and two (2) copies of said transcript, together with the certificate, in person or by certified mail with return receipt requested, to the office of the Supreme Court.

E. The Justice shall rule upon the admissibility of the deposition or any part thereof.

F. All errors or irregularities in compliance with the provisions of this rule shall be deemed 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.

G. If the parties so stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used like other depositions.

SC-AD-13-01, adopted March 27, 2013.

#### Rule 81. Payment of witness fees and mileage

Witnesses requested to appear before the Supreme Court shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witnesses' fees and mileage shall be taxed against the party at whose instance the witness appears and the fees of persons taking the deposition shall be taxed against the party at whose instance the deposition is taken.

SC-AD-13-01, adopted March 27, 2013.

#### Rule 82. Pretrial discovery depositions

A. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of Court is required only if a party seeks to take the deposition prior to the expiration of thirty (30) days after service of the petition upon the respondent.

B. The parties shall enter into a written stipulation to take the oral deposition of a witness or witnesses. In the event such written stipulation cannot be accomplished, the party desiring to take a witness' oral deposition shall give written notice of examination to all parties setting forth the date, time, and place and identification of any documents to be presented, not less than five (5) days prior to the date of the deposition.

C. The witnesses may be compelled to appear for deposition by subpoena, or, subpoena duces tecum if documents are required to be produced at the deposition.

D. The deposition shall be taken before a certified shorthand reporter (CSR) or a licensed shorthand reporter (LSR) licensed by the State of Oklahoma or as ordered by the Court.

E. The requesting party shall schedule the reporter identified in subsection (D) and shall all parties participating in the deposition a copy of the testimony.

F. A deposition upon oral examination shall not last more than six (6) hours and shall be taken only between the hours of 8:00 a.m. and 5:00 p.m. on a day other than Saturday, Sunday, or National Holiday recognized by Cherokee Nation unless ordered by the Court or by agreement.

G. A deposition may be recorded by non-stenographic means by persons licensed by the State of Oklahoma in addition to the stenographic recording, by agreement of the parties or by Court order. The requesting party shall furnish copies of all recordings to all other parties.

H. Any witness or party during the deposition determined to be testifying in bad faith by the Court shall be subject to sanctions by the Court including attorney fees and cost incurred by any of the parties as a result thereof.

I. The deposition recording may be reviewed by the witness before certification by the recording officer and within five (5) days of receiving a copy of such recording from the recording officer the witness may note requested changes to be accompanied with the certified recordings.

SC-AD-13-01, adopted March 27, 2013.

Rules 83 to 89. Reserved

## XI. PRETRIAL PROCESS

## Rule 90. Scheduling order

A scheduling order may be issued at the discretion of the Chief Justice. The Chief Justice of the Supreme Court may enter a scheduling order for a time and date certain for the performance of the following duties and any other duties the Chief Justice deems appropriate:

1. response or amended response of defendant;
2. reply, if any, of plaintiff;
3. mutual exchange of names of proposed witnesses and expected testimony;
4. mutual exchange of proposed exhibits and description of such exhibits;
4. filing of motions to join additional parties or to dismiss;
5. status conference report due;
6. status and simplification conference;
7. cut-off for amendments to pleadings;
8. settlement conference;
9. mutual exchange of authorities to be relied upon at trial and mutual exchange of trial briefs, if any;
10. final exchange of list of witnesses and exhibits;
11. cut-off for filing additional motions or responses to amended pleadings, if any;
12. discovery cut-off;

13. cut-off for filing responses to motions, if any;

14. pretrial conference report due;

15. pretrial conference;

16. disposition of pending motions; and

17. trial.

SC-AD-13-01, adopted March 27, 2013.

#### Rule 91. Time for hearing-Certain

Each individual hearing shall be set at a time certain.

SC-AD-13-01, adopted March 27, 2013.

#### Rule 92. Status and simplification conference

A. Prior to the first status and simplification conference scheduled by the Supreme Court as set forth in the scheduling order, counsel for each of the parties shall confer and prepare a status report. The plaintiff's counsel shall tender the report to the Supreme Court, unless plaintiff is a pro se litigant, then the defendant's counsel shall tender the report. In all cases where Cherokee Nation is a party, Cherokee Nation's counsel shall be responsible to tender the report to the Supreme Court. The jointly prepared status report shall be a single document signed by counsel or any pro se litigant, whatever the case may be. The report shall be filed at least ten (10) days before the status conference unless otherwise directed in the scheduling order.

B. All parties either through counsel or themselves if pro se shall be in attendance and be represented at the status conference. Those in attendance must have authority to commit their client for all purposes. The status conference may be conducted by phone if the assigned Justice decides circumstances warrant such.

SC-AD-13-01, adopted March 27, 2013.

### Rule 93. Settlement conference

A. Settlement conference. Unless the Court otherwise directs, each case shall be scheduled for a mandatory settlement conference at the earliest practicable time. This will normally be a date certain set forth in the scheduling order.

B. Settlement Judge disinterested. A disinterested District Judge or past Supreme Court Justice designated by the Chief Justice will normally preside at the settlement conference.

C. Fully-authorized representative required. At least one attorney for each of the parties who is fully familiar with the case shall appear, along with all parties involved. In the event one or more of the parties is a trust, partnership, corporation and/or government entity, a representative of such party shall appear in addition to the attorney, with authority to enter into a binding settlement. If a party is pro se then such party shall personally appear at the settlement conference, prepared to discuss the matter, and to enter into a binding settlement of the dispute. Unless approved in advance by the Chief Justice, settlement conferences shall be conducted in person and not by telephone. However, a settlement conference, which is a continuance of an earlier settlement conference, may be conducted by telephone. The Settlement Judge presiding over the settlement conference may make such other and additional requirements of the parties as shall be deemed proper in order to expedite an amicable resolution of the case.

D. Confidences kept. It is expected that the parties, their representatives and attorneys be completely candid with the Settlement Judge so that settlement discussions may be properly and productively guided. To encourage candor, the confidential nature of settlement discussions conducted under the auspices of a Court-sponsored settlement conference will be absolutely respected by all participants, and strictly enforced by the Court. The Settlement Judge may meet jointly or individually with any participant(s). Statements made in any sub-conference will not be shared with participants not party to the sub-conference, unless specific permission of the declarant is obtained. Any statement made in the context of the settlement conference will not constitute an admission and will not be used in any form in the litigation or trial of the case. The Settlement Judge will not discuss the substance of the conference with the Justices of the Supreme Court.

E. Report of Settlement Judge. At the conclusion of the settlement conference, the Judge presiding over the settlement conference shall provide the Chief Justice with a brief one-page report on the happenings of the settlement conference subject to subsection (D) of this rule. Settlement Judges shall be paid from the Court Fund or by the parties as determined by the Chief Justice.

SC-AD-13-01, adopted March 27, 2013.

## Rule 94. Pretrial order

On or before a date certain as set forth in the scheduling order, or if there is no scheduling order then at least ten (10) days prior to the pretrial conference, the petitioner's counsel shall tender a jointly prepared proposed pretrial conference order unless petitioner is acting pro se, then the respondent's counsel shall have the duty of tendering the proposed pretrial order. In all cases to which Cherokee Nation is party, Cherokee Nation's counsel shall have the duty of tendering the proposed pretrial order.

SC-AD-13-01, adopted March 27, 2013.

## Rule 95. Purpose of the agreed pretrial order-Expectations and directions for parties

A. Purpose of the agreed pretrial order. The purpose of the agreed pretrial order is to condense all material information into one working document that will control the trial of the case.

B. Prior rulings. The agreed pretrial order must reflect the current status of the case and accurately reflect all prior rulings by the court.

C. Unprofessional conduct. Failure of the plaintiff's attorney to timely initiate and/or failure of any attorney in the case to cooperate in timely preparation of the agreed pretrial order shall be deemed by the Court to be unprofessional conduct.

D. Good faith disputes. While all reasonable efforts should be made by counsel and litigants to timely agree on a pretrial order, if, following good faith effort, disputes still remain regarding factual and/or legal issues, such should be noted in the single pretrial order submitted, for ultimate resolution by the Court.

E. No adoption of pleadings by reference. Counsel may not adopt pleadings and incorporate them into the pretrial order by reference.

F. Reservation of rights not allowed. No reservation of an asserted right to add additional witnesses or exhibits or to take additional discovery will be allowed in the agreed pretrial order.

G. Late exhibits. Late exhibits are those not listed in the agreed pretrial order. If late exhibits are discovered, the party desiring to offer them shall immediately mark them for identification and furnish copies to opposing counsel with a statement explaining their late production. If objected to, the

sponsoring party must file a written motion requesting permission to supplement the exhibit list.

H. Late witnesses. Additional witnesses, listed after the witness exchange date, will be permitted to testify only if ordered to prevent manifest injustice and only then, if proper notice is given, under the facts and circumstances of the case, to the other party, and a written motion is immediately filed requesting permission to supplement the witness list.

I. Pro se litigants. Pro se litigants and opposing counsel should confer before a pretrial conference and be prepared to discuss at the conference significant disputes relative to issues of fact and law, exhibits, witnesses, evidence, in limine matters and all matters bearing on an expeditious settlement or trial of the case.

J. Pretrial conference. At the pretrial conference, the Court may take any appropriate action to insure a fair trial to all parties.

K. Demonstrative aids, exhibits and summaries. All demonstrative aids, exhibits and summaries intended to be used for any purpose at trial shall be displayed to opposing counsel at least fourteen (14) days in advance of trial, unless a shorter time is allowed pursuant to the scheduling order.

SC-AD-13-01, adopted March 27, 2013.

#### Rule 96. Informal conference to settle discovery dispute

A. Conference required. Regarding all motions relative to discovery the Supreme Court will refuse to hear any such motion, unless counsel for movant first advises the Supreme Court in writing that the lawyers, lay representative and/or pro se litigants have personally met and conferred in good faith, but that, after a sincere attempt to resolve differences has been made, they have been unable to reach an accord. However, no personal conference shall be required where the movant's counsel represents to the Court in writing that counsel has conferred by telephone and the distance between counsels' offices renders a personal conference not feasible. An exchange of correspondence alone does not satisfy this requirement.

B. Unprofessional conduct exception. An opposing counsel's repeated failure to communicate in connection with discovery disputes will be viewed as unprofessional conduct on the part of that attorney. A demonstration of such unprofessional conduct, deemed sufficient by the Court and contained in a motion to compel, will satisfy the requirements of subsection (A).

SC-AD-13-01, adopted March 27, 2013.

Rules 97 to 99. Reserved

## XII. HEARINGS

Rule 100. Duties and powers of Supreme Court Justices generally

It shall be the duty of the Justice assigned to the case to inquire fully into the facts alleged in the petition or notice. The Justice shall have authority, with respect to cases assigned:

1. to administer oaths and affirmations;
2. to rule upon offers of proof and receive relevant evidence;
3. to take or cause depositions to be taken whenever the ends of justice would be served thereby;
4. to regulate the course of the hearing and, if appropriate or necessary to exclude persons or counsel from the hearing for contemptuous conduct and to strike all related testimony of witnesses refusing to answer any proper question;
5. to hold conferences for the settlement or simplification of the issues;
6. to dispose of procedural requests, motions or similar matter or to amend pleadings; to order hearings reopened; and upon motion to order proceedings consolidated or severed prior to the issuance of the Justices' decisions;
7. to approve stipulations voluntarily entered into by all parties to the case which will dispense with a verbatim written transcript of record of the oral testimony adduced at the hearing and which will also provide for the waiver by the respective parties of their right to file exceptions to the findings of fact (but not to conclusions of law or recommended orders) which the Justice shall make in the decision;
8. to make and file decisions in conformity with 20 CNCA § 55;
9. to call, examine and cross-examine witnesses and to introduce into the record documentary or

other evidence;

10. to request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

11. to take any other action necessary under the foregoing and authorized by the published rules and procedures of the Supreme Court; and

12. to, under appropriate circumstances, give credit and honor to any individual or entity committed to, by acts and deeds, the cause of justice and fairness.

SC-AD-13-01, adopted March 27, 2013.

Rule 101. Disqualification of Justices

See Rule 161.

SC-AD-13-01, adopted March 27, 2013.

Rule 102. Rights of parties generally-Copies submitted

Any party shall have the right to appear at hearings and/or trials in person, by counsel, or by other representative, to call, examine and cross-examine witnesses, and to introduce into the record documentary or other evidence, except that the participation of any party shall be limited to the extent permitted by the Justice; and provided further, that documentary evidence shall be submitted in triplicate if the matter is a hearing and quintuplicate if the matter is a trial. An unrepresented party shall have the right to have an unpaid lay person assist such party in any proceeding before the Supreme Court on such terms and conditions as may be deemed appropriate.

SC-AD-13-01, adopted March 27, 2013.

Rule 103. Applicability of Federal Rules of Evidence and Federal Rules of Civil Procedure

All proceedings hereunder shall be conducted in accordance with the Court's rules herein. In the event these rules are incomplete in evidentiary and/or civil procedure issues then the Court may look

to the Federal Rules of Evidence and Federal Rules of Civil Procedure for guidance.

SC-AD-13-01, adopted March 27, 2013.

Rule 104. Admissibility of stipulations of fact

In any proceeding, stipulations of fact may be introduced in evidence with respect to any issue.

SC-AD-13-01, adopted March 27, 2013.

Rule 105. Objections to conduct of hearing and/or trial

Any objection with respect to the conduct of a hearing and/or trial, including any objection to the introduction of evidence, may be stated orally or in writing, accompanied by a short statement of the grounds of such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing and/or trial.

SC-AD-13-01, adopted March 27, 2013.

Rule 106. Opportunity for oral argument-Filings of briefs and proposed findings

Any party may be entitled, upon request, to a reasonable period at the close of the proceeding for oral argument, which shall be included upon request in the stenographic report of the proceeding. Any party may be entitled, upon request made before the close of the proceeding, to file a brief or proposed findings and conclusions, or both, with the Court who may fix a reasonable time for such filing, but not to exceed thirty-five (35) days from the close of the proceeding.

SC-AD-13-01, adopted March 27, 2013.

Rule 107. Continuances and adjournments

In the discretion of the Chief Justice or the presiding Justice, the proceeding may be continued from day to day, or adjourned to a later date, by announcement thereof at the proceeding, or by other appropriate notice.

SC-AD-13-01, adopted March 27, 2013.

Rule 108. Penalties for misconduct at any proceeding before a Justice

A. Misconduct at any proceeding before a Justice of the Supreme Court shall be grounds for summary exclusion from the proceeding.

B. Such misconduct of an aggravated character, when engaged in by an attorney or other representative of a party, shall be grounds for suspension or disbarment by the Supreme Court from further practice before it after due notice and hearing.

C. The refusal of a witness at any such proceeding to answer any question which has been ruled proper shall, in the discretion of the Justice, be grounds for striking all testimony previously given by such witness on related matters and such witness shall be in direct contempt of Court.

SC-AD-13-01, adopted March 27, 2013.

Rule 109. Reserved

### XIII. JUDGMENTS

Rule 110. Procedure for obtaining, entering, enforcement and collection of judgments

The procedure for obtaining, entering, enforcement and collection of judgments set forth in the Federal Rules of Civil Procedure and in the rules and statutes of the State of Oklahoma shall apply to the obtaining, entering, enforcement and collection of judgments of the District Court and Supreme Court of Cherokee Nation.

SC-AD-13-01, adopted March 27, 2013.

Rule 111. Full faith and credit

The Courts of Cherokee Nation shall give full faith and credit to judgments entered by the State of Oklahoma. Likewise, the State of Oklahoma gives full faith and credit to judgments entered by the

Courts of Cherokee Nation.

SC-AD-13-01, adopted March 27, 2013.

Rule 112. Recognition of other sovereign judgments-Full faith and credit

The Supreme Court of Cherokee Nation shall grant full faith and credit and cause to be enforced to any sovereign judgment, where the sovereign that issued the judgment grants reciprocity to judgments of the Supreme Court of Cherokee Nation.

1. Listing of sovereigns granting reciprocity-A list of the sovereigns that grant full faith and credit to the Courts of Cherokee Nation of Oklahoma shall be maintained by the Court Clerk of the Supreme Court. Any sovereign may provide the Court Clerk a copy of the ordinance, statute, court rule or other evidence that demonstrates that the sovereign grants reciprocity to the Supreme Court.

2. Filing of judgments-A copy of any judgment may be filed in the office of the Court Clerk. The Court Clerk shall treat the judgment in the same manner as a judgment of the Supreme Court which may be enforced or satisfied as deemed proper.

3. Notice of filing-At the time of filing of the judgment with the Court Clerk, the sovereign filing the judgment or the sovereign's attorney shall make and file with the Court Clerk an affidavit setting forth the name and last-known address of all parties in the action, including the name and last-known address of any party's attorney.

Promptly upon the filing of the judgment and the affidavit, the Court Clerk shall mail notice of the filing of the judgment to the party against whom the judgment was rendered at the address given and shall make a note of the mailing in the docket. The notice shall include the name and address of the party filing the judgment, and that party's attorney, if any. In addition, the party filing the judgment shall mail a notice of the filing of the judgment to the party against whom judgment was rendered and shall file an affidavit proving the mailing of the notice with the Court Clerk within ten (10) days of the date that the tribal judgment was filed with the Court Clerk. Failure of the Court Clerk to mail the notice of filing of the judgment shall not affect the enforcement proceedings if an affidavit proving the mailing of the notice has been filed by the party filing the judgment.

No execution or other process for enforcement of a tribal court judgment filed hereunder shall issue until the affidavit proving the mailing of the notice has been filed with the Court Clerk, and twenty (20) days have expired from the date the judgment was filed with the Court Clerk.

SC-AD-13-01, adopted March 27, 2013.

#### Rule 113. Declaratory judgments

A. Standing in a declaratory judgment action must be predicated on an interest that is direct, immediate and substantial.

B. An action for declaratory judgment shall not be invoked to try a disputed question of fact as a determinative issue.

C. An action for declaratory judgment shall not be invoked to determine political policy.

SC-AD-13-01, adopted March 27, 2013.

*See, Supreme Court order adopting standards for recognition of judicial proceedings of other sovereigns in the courts of the Cherokee Nation, full faith and credit (JAT AD-95-01), filed May 26, 1995.*

Rules 114 to 119. Reserved

#### XIV. ELECTION RECOUNT PROCEDURE

##### Rule 120. Supervision of recounts by Supreme Court

All recount elections shall be conducted under the supervision of the Supreme Court. Such supervision shall be to ensure that regulations developed by the Election Committee and approved by the Council are adhered to during the recount process.

SC-AD-13-01, adopted March 27, 2013.

Rules 121 to 129. Reserved

#### XV. ATTORNEYS

### Rule 130. Eligibility

Any member in good standing of the bar of any state is eligible for admission to the bar of Cherokee Nation.

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one (1) attorney of record in his or her name, with his or her Cherokee Nation Bar Association number, and his or her state bar association number.

SC-AD-13-01, adopted March 27, 2013.

### Rule 131. Temporary admission

Any attorney who is eligible for admission to the bar of Cherokee Nation may, in the discretion of a Justice or District Court Judge, including an Associate District Court Judge, be granted temporary admission to practice in a pending case or proceeding before each judicial official. The judicial official presiding in such pending case or proceeding may, in his or her discretion, require presentment of a current certificate of good standing from the attorney's resident bar association prior to granting temporary admission. Any lawyer who seeks, and is granted, temporary admission thereby submits himself or herself to the jurisdiction of the Courts of Cherokee Nation, and the applicability of these rules, during the pendency of such case or proceeding for which it is granted.

SC-AD-13-01, adopted March 27, 2013.

### Rule 132. Membership in Cherokee Nation Bar required to practice before Cherokee Nation Courts- Qualifications for membership

No person shall practice as an attorney and counselor-at-law in any Court of Cherokee Nation unless said person first obtains membership in the Cherokee Nation Bar Association. An attorney shall submit a certificate certifying the attorney's good standing from a state bar in which the attorney has been admitted. This Court may take into consideration the suspension or disbarment from practice in any other court of law. All members in good standing may be admitted upon making application and submitting themselves to the jurisdiction of Cherokee Nation Courts and subjecting themselves to the contempt powers of Cherokee Nation Courts. Annual dues may be charged for membership in the Cherokee Nation Bar. *5 CNCA § 1*

SC-AD-13-01, adopted March 27, 2013.

### Rule 133. Oath required

Any person admitted to the Cherokee Nation Bar shall, before he is allowed to appear as an attorney in any court, agency or commission take the following oath:

"I do solemnly swear, that I will, to the best of my knowledge and ability, support and defend all causes that may be entrusted to my care, and that in so doing, I will be true to the Court and to the Constitution and laws of Cherokee Nation and subject myself to the contempt powers of Cherokee Nation Courts. So help me God." 5 CNCA § 2

SC-AD-13-01, adopted March 27, 2013.

### Rule 134. Removal of attorney

Any attorney practicing before Cherokee Nation Courts may be removed by the Supreme Court for any deceit, malpractice, or other gross misconduct, willful neglect of the interests of his client, or collusion with the opposite party, upon complaint and showing made to the Supreme Court by the aggrieved party, and upon due notification given to the accused of such charge; and the expenses of any inquiry, instituted by the Supreme Court in reference to the removal of any attorney shall be borne by the party at whose instance the expense shall be incurred. 5 CNCA § 3.

SC-AD-13-01, adopted March 27, 2013.

### Rule 135. Granting special permission to appear before the Court

A. Any attorney, recognized as such under the laws of any other Indian nation or tribe, eligible for membership in the Cherokee Nation Bar, and in good standing where so recognized and admitted to practice law, may, on special occasions, be allowed, by permission of the Presiding Judge, to appear before any Courts of this Nation.

B. Any regularly-admitted practicing attorney in the courts of record of a state other than Oklahoma who has business in the Courts of this Nation may, on motion and at the discretion of the Judge presiding over the case, be admitted to practice before the Cherokee Nation Court for the purpose of said business only. Before practicing law in Cherokee Nation Courts, each specially admitted attorney must take the oath proscribed in Rule 133 of these Rules and must appear in the court with an attorney who is a resident of or who maintains a law office within the State of Oklahoma, duly and regularly admitted to the Oklahoma Bar Association upon whom service may be had in all matters

connected with said action, with the same effect as if personally made on such foreign attorney. Specially admitted attorneys will be subject to the removal power provided in Rule 134 of these Rules. *5 CNCA § 4*

SC-AD-13-01, adopted March 27, 2013.

Rule 136. Choice of counsel

Parties may manage, prosecute, or defend their own suits, and by such counsel as they see fit to engage. *5 CNCA § 5*

SC-AD-13-01, adopted March 27, 2013.

Rule 137. Judge shall not appear as counsel

No Judge appointed under the authority of this Nation shall be allowed to appear as counsel or attorney and to practice law in the Courts of this Nation. *5 CNCA § 6*

SC-AD-13-01, adopted March 27, 2013.

Rule 138. Discipline by the Court

A. Any member of the bar of Cherokee Nation guilty of a violation of the prescribed oath of office, or of a violation of the Supreme Court Rules of Professional Conduct, or of any conduct unbecoming a member of the bar of Cherokee Nation, shall be subject to reprimand, suspension, disbarment or such other disciplinary action as the Supreme Court deems appropriate.

B. Discipline by Other Courts; Criminal Convictions. Whenever it appears to the Supreme Court that any member admitted to practice in the Courts of Cherokee Nation, including a lawyer granted temporary admission or admission for limited practice, has been suspended or disbarred from the practice of law by any other court of competent jurisdiction or has been convicted of a felony or any crime involving moral turpitude in any court, such disbarment, suspension, or conviction shall operate as an automatic disbarment of the attorney's right to practice in the courts of Cherokee Nation, and an order of disbarment shall be issued by the Supreme Court. The order of disbarment shall remain in effect unless, within thirty (30) days from the date of the order of disbarment, the attorney has by motion to the Supreme Court shown good cause as to why disbarment should not be imposed.

SC-AD-13-01, adopted March 27, 2013.

### Rule 139. Filing and processing of grievances

A. A grievance or request for investigation involving a lawyer or lay advocate shall be in writing and signed by the person filing the same. All proceedings concerning processing of grievances shall be confidential.

B. A grievance or request for investigation involving a lawyer or lay advocate shall be filed with the Office of the Attorney General for a preliminary investigation and determination of the validity of the grievance. The lawyer or lay advocate who is the subject of the grievance or request for investigation will be immediately notified of the receipt of a grievance and furnished a copy thereof.

C. In a matter involving lesser misconduct, which is defined as conduct not involving misappropriation of funds, dishonesty, deceit, fraud, misrepresentation, or serious crimes involving dishonesty or fitness, the Attorney General may resolve the grievance without publication.

D. If the Attorney General determines that a formal hearing is required to address the grievance, the Attorney General shall submit the evidence produced by the Attorney General's investigation to the District Court for certification of a formal complaint to the Supreme Court for adjudication. The District Court shall have the sole discretion, after review of the Attorney General's offer of evidence, to forward the grievance as a formal complaint before the Supreme Court.

E. The Attorney General shall prosecute the grievances submitted to the Supreme Court. The verified complaint shall set forth with specificity all facts alleging the misconduct. A copy of the complaint shall be personally served on the respondent from which the respondent shall have thirty (30) days to file a written response. In the event the respondent fails to answer, the charges shall be deemed admitted upon the submission of evidence for the purpose of discipline to be imposed. The disciplinary proceedings and evidentiary reception shall be governed by the Federal Rules of Civil Procedure so far as practicable. The charge or charges must be established by clear and convincing evidence and at least three (3) Justices must concur in the findings. The respondent may be represented by counsel.

F. All proceedings mentioned hereinabove may be reviewed by the Supreme Court upon a verified request of an aggrieved party.

SC-AD-13-01, adopted March 27, 2013.

## XVI. LAY ADVOCATES

### Rule 140. Lay advocates

Any lay person demonstrating experience or education in Indian Law and the laws of Cherokee Nation may be registered to practice before this Court upon filing with the Court Clerk of the Cherokee Nation, on a form prescribed by the Supreme Court, a written application for admission, signed by the applicant.

SC-AD-13-01, adopted March 27, 2013.

### Rule 141. Registry of lay advocates

Subject to all of the requirements set forth in these Rules and Procedures, the Lay Advocate Registry of Cherokee Nation shall consist of those lay advocates admitted to practice before the Courts of Cherokee Nation who have take the oath prescribed in Rule 133 of these Rules and who have completed and signed the prescribed application for lay advocates.

Every pleading, motion and other paper of a party represented by a lay advocate shall be signed by the lay advocate of record in his or her name.

SC-AD-13-01, adopted March 27, 2013.

### Rule 142. Procedure for admission

Every applicant to the Lay Advocate Registry shall file with the Court Clerk of the Cherokee Nation, on a lay advocate form prescribed by the Supreme Court, a written application for admission, signed by the applicant, which shall be referred immediately to the Chief Justice of the Supreme Court for investigation into the applicant's qualifications and fitness (per standards established in 5 CNCA § 1 et seq., and these Rules) to be registered to the Lay Advocate Registry of this Court. The Chief Justice shall report his recommendations in writing to all Justices. Upon a favorable report of the full Supreme Court, the applicant may be admitted.

SC-AD-13-01, adopted March 27, 2013.

### Rule 143. Fees and dues

Every applicant shall pay to the Court Clerk of the Cherokee Nation a non-refundable fee of Ten Dollars (\$10.00). Annual dues shall be charged for membership to the Lay Advocate Registry.

SC-AD-13-01, adopted March 27, 2013.

#### Rule 144. Lay advocate withdrawal from case

In civil cases, lay advocates of record shall not withdraw from the case except by leave of the Justice or Judge to whom the case is assigned, upon reasonable notice to the client and all other parties who have appeared in the case. Withdrawal may be granted subject to the conditions stated by the presiding Justice or Judge, including the condition that subsequent papers may continue to be served upon the lay advocate for forwarding purposes or upon the Court Clerk of the Cherokee Nation, as the presiding Justice, or Judge, may direct, unless and until the client appears by another lay advocate, by counsel or pro se, and any notice to the client shall so state and any filed consent of the client shall so acknowledge.

SC-AD-13-01, adopted March 27, 2013.

#### Rule 145. Discipline by the Court

A. Any lay advocate registered with Cherokee Nation guilty of a violation of the prescribed oath of office, or of a violation of the Supreme Court Rules of Professional Conduct, or of any conduct unbecoming as a court advocate of Cherokee Nation, shall be subject to reprimand, suspension, losing privilege as a court advocate, or such other disciplinary action as the Supreme Court deems appropriate.

B. Sanctions. Discipline by the Supreme Court may include fine, loss of privilege as lay advocate, suspension from practice for a definite time, reprimand, or other discipline which the Supreme Court deems proper.

C. Unauthorized practice. Any person who before admission to practice as a lay advocate of Cherokee Nation or who during suspension or loss of privilege exercises any of the privileges bestowed upon members of the Lay Advocate Registry or who pretends to be entitled to such privileges shall be guilty of contempt of court and shall be subject to punishment and shall be subject to any other discipline which the Supreme Court may impose. Lay advocates shall not charge for their services.

SC-AD-13-01, adopted March 27, 2013.

#### Rule 146. Statement by litigant

Prior to a lay advocate accepting the obligation to represent a litigant before any Cherokee Nation Court, the litigant must submit a verified statement that he/she understands that the lay advocate is not a trained lawyer licensed to practice law as defined in these Rules, and, that the lay advocate cannot accept payment for his representation, and, that the litigant understands a lay advocate is held to the same standards of expertise as a trained, licensed lawyer and further can be subject to malpractice claims.

SC-AD-13-01, adopted March 27, 2013.

Rules 147 to 149. Reserved

### XVII. ARBITRATORS

#### Rule 150. Workers' compensation disputes

A. Arbitration will be mandatory to all workers' compensation claims and will be conducted according to the provisions of this act. The Supreme Court shall be responsible for certifying those persons who are eligible and qualified to serve as arbitrators. An individual may be certified as an arbitrator by application to the Court. Qualified individuals will be a member of the Cherokee Nation bar, be trained in arbitration and the Cherokee Nation Uniform Arbitration Act, and practice or have practiced in workers' compensation law.

B. The Court Clerk of the Supreme Court shall maintain a list of potential arbitrators. The parties in the dispute shall select an arbitrator from this list. If the parties cannot agree to an arbitrator, the arbitrator will be determined by the Court Clerk by selecting the first arbitrator on the list. The list will be rotated when an arbitrator has been selected for arbitration by moving his or her name to the bottom of the list. The next arbitrator on the list will be moved to the top of the list to be selected for the next arbitration.

C. Arbitrators shall be required to complete at least six (6) hours of continuing education per two- (2) year period in the areas of arbitration or workers' compensation. Proof of compliance with this requirement shall be submitted to the Court Clerk of the Supreme Court.

D. If the dispute is agreed to by both parties and resolved, any final settlement of the action shall be

completed upon the filing of a joint petition or an agreement between the employer and employee as to relation to injury and payment of compensation and pursuant to 12 CNCA § 1322.

E. Arbitration will be binding in workers' compensation disputes unless a motion made pursuant to 12 CNCA § 1323 or 12 CNCA § 1325 has been filed in the District Court.

SC-AD-13-01, adopted March 27, 2013.

Rules 151 to 159. Reserved

## XVIII. MISCELLANEOUS JUDICIAL RULES

### Rule 160. Judicial office

If a judicial office term expires prior to a successor being approved to take that office then the incumbent Justice shall hold over until a successor is duly qualified and takes the oath of office.

SC-AD-13-01, adopted March 27, 2013.

### Rule 161. Disqualification of Justices

A. A Justice may be deemed disqualified in any case in which he or she has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his or her opinion, for him or her to sit during any proceeding therein.

B. Any party to a proceeding may request a Justice to withdraw on the grounds of personal bias or disqualification prior to any hearings in the proceedings. Before filing any motion to disqualify a Justice, an "in camera" request shall first be made to the Justice by the moving party seeking to disqualify the Justice. If such request is not satisfactorily resolved within a reasonable time from the time the oral request is made, the moving party may file a written motion with the Supreme Court containing an affidavit, which sets forth in detail the matters alleged to constitute grounds for disqualification. If the Justice does not withdraw from the proceedings, the Justice shall so rule and state the grounds for the ruling on the record and then proceed with the case. A majority of the Justices may review the request for recusal.

SC-AD-13-01, adopted March 27, 2013.

Rule 162. Superintendence over all Courts

The Supreme Court shall exercise a general superintendence over all Courts.

SC-AD-13-01, adopted March 27, 2013.

Rule 163. Chief Justice

The Chief Justice of the Supreme Court shall be a Justice who has two (2) remaining years left in his/her term of office and who has served on the Court for two (2) years prior to his/her taking office as Chief Justice. In the event no Justice qualifies hereunder then the Justice that has four (4) remaining years left in his/her term of office shall serve as Chief Justice. The Chief Justice term of office shall expire upon the expiration of his term of office as Justice.

SC-AD-13-01, adopted March 27, 2013.

Rule 164. Judicial Conference

A. The Chief Justice of Cherokee Nation shall summon annually the Courts of Cherokee Nation to conference.

B. The Chief Justice shall submit to the Council and Principal Chief an annual report of the proceedings of the Judicial Conference and recommendations for legislation at the annual Judicial Conference.

SC-AD-13-01, adopted March 27, 2013.

Rule 165. Judicial promulgation of rules and procedures

The Supreme Court shall promulgate additional rules and procedures to provide any remedy guaranteed by the Cherokee Nation Constitution in the event the Council has failed to prescribe procedures for such remedy and such rules and procedures shall remain in effect until the Council prescribes such procedures.

SC-AD-13-01, adopted March 27, 2013.

## APPENDIX II TO TITLE 20

### COURT RULES FOR THE DISTRICT COURT OF CHEROKEE NATION

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### I. PLEADINGS

#### Rule 1. Initial pleadings

All initial pleadings must include a certification by the attorney which demonstrates the subject matter jurisdiction of the Court. All pleadings shall be filed with the Court Clerk of the District Court, P.O. Box 1097, Tahlequah, Oklahoma 74465. The offices of the District Court of Cherokee Nation are at the Cherokee Nation Courthouse, Cherokee Capitol Square, 101 South Muskogee Avenue, Tahlequah, Oklahoma.

SC-AD-13-02, adopted September 3, 2013.

#### Rule 2. Requirement of filing fees

The petitioner must pay the required filing fee of Seventy-Five Dollars (\$75.00) for the Civil Petition Filing, or Fifty Dollars (\$50.00) for a Landlord/Tenant Petition, Guardian Petition, Adoption Petition, Name Change Petition, Garnishment, or Foreign Judgment. Payments can be made in the form of cash, check, or money order payable to the Court. An Application for Waiver of Fee-Pauper's Affidavit can be completed and submitted to the Court Administrator for approval.

SC-AD-13-02, adopted September 3, 2013.

#### Rule 3. Use of fax/e-mail

## 1. Fax

- a. Parties may file affidavits, pleadings, motions and other documents by use of fax transmission for documents of ten (10) pages or less.
- b. The fax must include a transmittal/cover sheet reflecting the sending party's name, address, bar number, phone number, fax number, case name and case number. The fax number for the Cherokee Nation District Court is (918) 458-9572.
- c. The faxed document, which must bear a facsimile of the required signature, will be accepted as an "original" document.

## 2. E-mail

- a. A document permitted to be filed by e-mail pursuant to these rules shall be sent to the Court Clerk of the District Court using the following e-mail address: [kristi-moncooyea@cherokee.org](mailto:kristi-moncooyea@cherokee.org). Documents sent to any other e-mail address of the District Court shall not be considered for filing under any circumstances.
- b. The e-mail must reflect the sending party's name, address, bar number, phone number, e-mail address, case name and case number.
- c. A document permitted to be filed by e-mail shall be submitted as a PDF file (Portable Document Format).
- d. A document that may be filed by e-mail pursuant to these rules shall include a scanned version of the person's original signature or a signature line with a backslash followed by an "s" followed by the person's name in print (e.g., /s/ "John T. Smith").

3. Documents transmitted by fax or e-mail pursuant to these rules and received on a Saturday, Sunday, or other day on which the Clerk's Office is closed to the public, or after 4:30 p.m. on a business day, shall be considered for filing on the next business day. The time of receipt of a document is the timestamp provided by the District Court's e-mail/fax system, the timestamp provided by any other computer/fax system shall not alter the time of receipt and effect this rule.

4. All risks associated with fax/e-mail filing are borne by the sender (e.g., Court's phone/computer

system being out of order, the receiving fax machine running out of paper, etc.).

5. Any document filed by fax/e-mail must also be served concurrently by fax, e-mail, hand-delivery or mail on all other parties to the appeal, and the faxed/e-mailed document must contain a certificate of service attesting to such service and that the document was initially filed with the Court via fax/e-mail. The time for filing a response to a document filed by fax/e-mail runs from the date the document was received by the Court pursuant to subdivision 3 of this rule.

6. The Clerk may reject documents that are not clearly legible or that fail to comply with these requirements.

SC-AD-13-02, adopted September 3, 2013.

#### Rule 4. Court files not to be removed

Original papers on file in the Court Clerk's office shall not be removed from the Clerk's office without a written order signed by a Judge, except the Clerk or the Clerk's deputies may bring them to the courtrooms to be used by the Court officials, the parties and their attorneys, for the purposes of trial, and they shall then be returned to the Clerk's office. An attorney of record in the case or Official Reporter may take the Court files from the Clerk's office or from the Clerk or Deputy Clerk for official use, but must give the Clerk a written receipt for them and return them to the Clerk's office within forty-eight (48) hours, excluding days when Court is not in session. Criminal case files should not be removed from the custody of the Court Clerk except upon order of the Court.

SC-AD-13-02, adopted September 3, 2013.

#### Rule 5. Exhibits

No exhibit offered or admitted in evidence shall be removed from the courtroom or from the custody of the Court Clerk or Court Reporter, as the case may be, without permission of the Judge and a written receipt shall be taken from the person receiving it.

SC-AD-13-02, adopted September 3, 2013.

#### Rules 6 to 9. Reserved

## II. COURTROOM DECORUM

### Rule 10. Use of courtrooms

The use of tobacco, beverages, food or candy, pagers and/or cell phones, by anyone, at any time, in any of the District courtrooms, is forbidden. All persons are forbidden to scratch, alter, spit on or deface in any manner, by any means, any of the furniture, equipment, floors, walls, or ceilings of the courtrooms.

SC-AD-13-02, adopted September 3, 2013.

### Rule 11. Photographs, broadcasting and televising of judicial proceedings

The following rules governing the taking of photographs, the broadcasting and televising of judicial proceedings in the Courthouse are hereby promulgated:

Except as expressly permitted by the individual Judge the use of cameras, television and other broadcasting equipment is prohibited:

1. inside a courtroom;
2. in the immediate vicinity of a courtroom, including the hallways.

The use of cameras, television and broadcasting equipment is not prohibited in other areas of the Courthouse, provided, that media representatives exercise diligence to insure that such equipment, and the use thereof, does not interfere with the session of any proceeding being covered or with any proceeding in a courtroom adjacent to the proceeding being covered.

Notwithstanding the above and foregoing rules, the Presiding Judge or an individual Judge, may promulgate special rules governing the use of cameras, television and broadcasting equipment to remain in force and effect for any specific proceeding or event.

The purpose of this directive is to insure that Courtroom proceedings be conducted at all time with dignity and in a manner calculated to avoid the disruption of order and decorum which the judicial process demands.

It should be emphasized that the representatives of the news media are expected to conduct themselves at all times in a professional manner consistent with the spirit and intent of this directive. In order to insure such conduct, in the event conduct of the news media is brought to the attention of any Judge which is violative of the foregoing rules, the offending person shall be immediately notified to cease and desist such activity. If the offending party refuses to comply with such order, then the Judge may immediately command official personnel to take affirmative action causing cessation of such activity, including the seizure of the equipment of such person. Any offender may be dealt with for contempt of court.

This directive does not tend to prohibit any Judge from giving photographic or broadcasting interviews with any television or radio station or to be photographed in any manner in chambers, and any Judge may permit broadcasting, televising, recording or photographing of investigative, ceremonial proceedings or any moot court trial use for education or scientific purpose.

SC-AD-13-02, adopted September 3, 2013.

#### Rule 12. Courtroom conduct

The following is requested of counsel for proper courtroom conduct:

1. Arguments shall be addressed to the Court and not to opposing counsel.
2. Stand when talking to the Court or when addressed by the Court.
3. When examining a witness, stand or sit where the Court, witness, jury and reporter can hear you.
4. Do not sit on counsel table.
5. Cell phones and pagers are to be turned off while in the courtroom.
6. Do not read newspapers in the courtroom.
7. Do not take files, pleadings, or papers away from the Court Clerk's desk or exhibits from the Court Reporter unless you obtain permission to do so.

8. When your business in Court is finished, depart from the courtroom quietly if you wish to retire. Do not hold conferences in the courtroom with your client when Court is in session.

9. Advise your clients as to the impropriety of discussing pending matters in the courtroom.

10. Your conduct in the courtroom as a member of the Bar demonstrates your respect for the administration of justice.

SC-AD-13-02, adopted September 3, 2013.

Rules 13 to 19. Reserved

### III. COURT PROCEDURE-CRIMINAL CASES

#### Rule 20. Initial appearances and bond setting-Telephone

The District Court may conduct initial appearances and bond settings by telephone hearing. The hearing may consist of the Court Clerk, the District Court Judge, the defendant, and the prosecutor in attendance by conference call or speakerphone at two or more telephones. Each person shall be able to speak and hear the conversations of each of the others.

SC-AD-13-02, adopted September 3, 2013.

#### Rule 21. District Court arraignments: Continuances

Trial arraignments shall be held only on the day, and at the time designated by each Judge. Counsel shall be prepared at the time of the trial arraignment to assist the Court in setting the trial date to avoid conflicts with prior commitments of counsel.

SC-AD-13-02, adopted September 3, 2013.

#### Rule 22. Notification of entry of appearance of private counsel in criminal cases

In criminal cases in which private counsel accepts employment to represent a client who is represented by the Public Defender's Office, written notice of such entry or appearance shall be given immediately to the Court and to the Public Defender's Office.

SC-AD-13-02, adopted September 3, 2013.

#### Rule 23. Withdrawal of counsel in criminal cases

In any case, regularly set for trial, any application for permission to withdraw as counsel for a defendant or to seek continuance of the trial date, must be presented to the Trial Judge at least ten (10) days before the date on which the case is set for trial.

SC-AD-13-02, adopted September 3, 2013.

#### Rule 24. Expunge order

The following procedure shall be followed by the Court Clerk upon receipt of an Expunge Order in criminal cases wherein a defendant has received a deferred sentence and the prior pleas of guilty (or nolo contendere) are being ordered expunged from the records:

The order of probation and the Expunge Order on pleas of guilty (or nolo contendere) shall be removed from the case file and retained together with a copy of the docket sheet in a separate confidential file.

All reference to the defendant's plea of guilty (or nolo contendere) shall then be deleted from the docket sheet, leaving only the references to the dismissal of the case.

No information concerning the confidential files shall be revealed except upon a written order of a District or Associate District Judge.

SC-AD-13-02, adopted September 3, 2013.

#### Rule 25. Transcripts in criminal cases

The delivery of transcripts in criminal cases where the fee for making the transcript is paid in the first

instance by Cherokee Nation or by a defendant shall be as follows: A transcript of the Court Reporter's notes, upon request and for the use of an indigent defendant or a prosecuting attorney, may not be charged to the court fund unless, before its preparation, the cost to be incurred was authorized by written judicial order.

When a Judge authorizes or orders a transcript of the Court Reporter's notes of any proceeding to be prepared at the expense of the Court Fund, or where a Prosecuting Attorney orders such a transcript at public or Court Fund expense and the accused as an indigent is constitutionally entitled to a free copy of the transcript, a Reporter shall prepare an original and two (2) copies of the transcript so ordered and file it with the Clerk of the Trial Court. The Court Reporter shall immediately notify the Prosecuting Attorney and the defendant of the date the transcript was filed. The Prosecuting Attorney and the defendant shall have access to the copies of the transcript on such terms as the Trial Court may impose. The Chief Judge may prescribe rules for access to or disposition of the copies of the transcript. In addition to the copies which are required to be filed as set forth above, a party who desires a copy shall be furnished a copy by the Court Reporter upon payment of the costs for that copy by said party.

SC-AD-13-02, adopted September 3, 2013.

#### Rule 26. Public Defender-Duties

Each month the Public Defender shall examine into the causes for confinement of any and all persons detained in the Penal Institution, and report, briefly, the facts of such examination to the Judge and Prosecutor, in writing, on or before the fifteenth (15th) day of each month. An original of said report shall be filed in the Office of the Court Clerk for reference by any properly authorized person as an official record.

SC-AD-13-02, adopted September 3, 2013.

Rules 27 to 29. Reserved

#### IV. COURT PROCEDURE-GENERAL

##### Rule 30. Voir dire examination

The Judge shall initiate the voir dire examination of jurors by identifying the parties and their respective counsel. The Judge may outline the nature of the case, the issues of fact and law to be tried, and may then put to the jurors any questions regarding their qualifications to serve as jurors in the cause on trial. The parties or their attorneys shall be allowed a reasonable opportunity to

supplement such examination. Counsel shall scrupulously guard against injecting any argument in their voir dire examination and shall refrain from asking a juror how he or she would decide hypothetical questions involving law or facts. Counsel shall avoid repetition, shall not call jurors by their first names or indulge in other familiarities with individual jurors, and shall be fair to the Court and opposing counsel.

SC-AD-13-02, adopted September 3, 2013.

#### Rule 31. Uniformity of rulings

When a question of law, fact or procedure has been presented to a Judge, the same question, so far as it relates to the same case, shall not thereafter knowingly be presented to another Judge sitting in the District without apprising the subsequent Judge of the former Judge's ruling or, if no ruling has been made, that such question has already been presented to the first Judge. When this rule has been violated, an order that is issued by the second Judge may be vacated at any time before the entry of a final judgment.

SC-AD-13-02, adopted September 3, 2013.

#### Rule 32. Vacation of final judgments

A. In any proceeding to vacate, modify or reopen a final judgment that is commenced more than thirty (30) days after its rendition, (1) proceeding by motion instead of by petition or by petition instead of by motion, or (2) failure to verify the petition, or (3) incorrect service of process or the required notice is waived if the opposing party appears in the proceeding but does not immediately object thereto; and such defects are waived by any party in default who had actual notice of the proceeding.

B. In any proceeding to vacate, modify or reopen a judgment, whether by a motion, petition or application, jurisdictional grounds are not waived by being joined with non-jurisdictional grounds in the motion, petition or application or by raising non-jurisdictional defenses in an accompanying pleading.

SC-AD-13-02, adopted September 3, 2013.

#### Rule 33. Matters taken under advisement

In any matter taken under advisement, a decision shall be rendered within sixty (60) days of the date on which the matter was taken under advisement or, if briefs are to be submitted, within sixty (60)

days of the date of the filing of the final brief.

When a Trial Court takes a matter under advisement, the Judge shall specify the date by which a decision shall be rendered. If briefs are to be submitted the dates for filing such shall also be specified.

The Chief Judge may extend the deadline for a decision upon sworn application for an extension of time of the Trial Judge setting forth with specificity the reasons therefor.

Upon entering and filing the decision with the Court Clerk, it shall be the duty of the Judge to see that copies of the minute order or judgment setting out such decision are delivered or mailed by the Court Clerk to counsel in the case and to any party appearing pro se. The time to appeal from a decision rendered in absentia runs from the day its copy is mailed or personally delivered to the parties.

SC-AD-13-02, adopted September 3, 2013.

#### Rule 34. Jury sessions-Motion and demurrer sessions-When and how held-Jury terms

Jury sessions of the District Court may be held at any time upon order of the Judge. A session for the hearing and disposition of at least once every thirty (30) days, and any motion or demurrer that has been on file for at least five (5) days shall be placed on the docket. The date or dates of regular sessions for the hearing of motions and demurrers shall be fixed by any of the Judges of the District Court unless the District Judges shall prescribe otherwise provided that a Judge may hear any matter in any case assigned to him more frequently than provided herein.

The Presiding Judge shall be in charge of the jury panel and shall excuse and discharge those jurors not engaged when their services are no longer required.

Jurors shall be summoned to appear for jury terms of one (1) week duration.

SC-AD-13-02, adopted September 3, 2013.

Rules 35 to 39. Reserved

## V. DOCKETS

#### Rule 40. Time of hearing-Set certain

Court dockets are held on the first Wednesday, first, second and third Friday of each month. On the first Wednesday and third Friday, adoptions and juvenile matters are held beginning at 9:00 a.m.; criminal and civil matters begin at 10:00 a.m. On the first and second Friday, adoptions and juvenile matters are held beginning at 10:00 a.m.; criminal and civil matters begin at 11:00 a.m. Judges at their discretion may alter the times of certain hearings in the economy of justice.

SC-AD-13-02, adopted September 3, 2013.

#### Rule 41. Citation docket

There shall be a Judge assigned to be responsible for the docket concerning all citations issued pursuant to the following procedures and rules:

The peace officer shall set all citations and promises to appear at the Cherokee Nation Courthouse, Cherokee Nation Capitol Square, 101 S. Muskogee Ave., Tahlequah, Oklahoma. Citations may be disposed of pursuant to 22 CNCA § 1115 et seq.

All cases in which the defendant enters a plea of not guilty at arraignment will be set on a monthly disposition docket. At the calling of the disposition docket, the defendant will have the following alternatives:

1. enter a plea of guilty or a plea of nolo contendere, subject to the approval of the Court, and be sentenced immediately;
2. waive right to trial and have the case set for sentencing on a date certain; or
3. have the case set for trial on a date certain.

No continuances will be granted except by the Court and for good cause shown.

Where a bench warrant has been issued for defendant because of non-appearance, that defendant must thereafter post bond before release, and no attorney's affidavit will be accepted in such events, except for good cause shown at the discretion of the Court. Bench warrants issued for failure to pay

costs, fees, fines, etc. may be satisfied by payment of the obligation to the Court Clerk. In that event, the bench warrant may be recalled without incarceration of the defendant or the defendant may be released from custody without the necessity of being brought personally before the Court.

Pleas of guilty to traffic tickets may be entered before the Court Clerk in person or by mail in accordance with 22 CNCA § 1115, in all cases except the following:

- a. driving while under the influence of intoxicating liquor or drugs;
- b. being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drugs;
- c. driving with a blood-breath alcohol concentrate of 0.08 or more;
- d. leaving the scene of an accident;
- e. driving without a license or while license is suspended or revoked;
- f. reckless driving;
- g. any other charge filed because of a motor vehicle accident in which personal injury or death occurred; or
- h. crimes which if committed under the laws of Oklahoma would be a felony.

The fines, including court costs, imposed upon a plea of guilty entered before the Court Clerk shall be as provided in by order of the District Court.

Any person violating the provisions of 47 CNCA § 10, 47 CNCA § 11, 47 CNCA § 12, 47 CNCA § 13, 47 CNCA § 14 or 47 CNCA § 16, where a jail sentence is not mandatory, may in the discretion of the Prosecutor and subject to the approval of the Court, be permitted to enter a plea of guilty by written statement by the person charged to be presented to the Court.

Except as provided in paragraphs (g) and (h) above, all pleas of guilty must be made orally by the defendant before the Court.

SC-AD-13-02, adopted September 3, 2013.

Rules 42 to 49. Reserved

## VI. ATTORNEY BOND PRIVILEGES

Rule 50. Procedures concerning release of defendants upon attorney's Affidavit of Responsibility for Court Appearance of Client (O.R. system)

The privilege of having defendants released upon their attorney's Affidavit of Responsibility for Court Appearance is hereby given to all attorneys who are members of the Cherokee Bar Association, under the following terms and conditions:

1. That said privilege shall apply only to defendants arrested for crimes which are misdemeanors;
2. That the defendant involved shall never have been convicted of a felony or convicted of an offense involving dishonesty;
3. That the defendant is a resident of Cherokee Nation;
4. That the attorney involved signs an affidavit that personally holds the attorney responsible to the Court for the appearance of said defendant at all proceedings until final disposition has been made of the case to the satisfaction of the Court;
5. That the Court Clerk shall have the duty of administering the procedures of the O.R. system;
6. That the Court Clerk shall maintain a list of eligible members having the O.R. privilege;
7. That no attorney shall be allowed O.R. privileges who has previously executed an attorney's Affidavit of Responsibility for Court Appearance of a client, and that said client did not appear at any proceedings required, the same which resulted in a Bench Warrant being issued for the said defendant and outstanding, unless the Court Clerk has, upon hearing, reinstated said attorney with O.R. privileges;

8. That the Clerk of said Court shall give written notice to attorneys of revocation of their O.R. privileges.

SC-AD-13-02, adopted September 3, 2013.

Rules 51 to 59. Reserved

## VII. DISQUALIFICATION OF JUDGES

### Rule 60. Disqualification of Judges in civil and criminal cases

Before filing any motion to disqualify a Judge, an "in camera" request shall first be made to the Judge to disqualify or to transfer the cause to another Judge. If such request is not satisfactorily resolved, not less than ten (10) days before the case is set for trial, a written motion to disqualify a Judge or to transfer a cause to another Judge may be filed and a copy delivered to the Judge.

Any interested party who deems himself aggrieved by the refusal of a Judge to grant a motion to disqualify or transfer a cause to another Judge may petition the Supreme Court within five (5) days from the date of said refusal by a written request for rehearing. A copy of the request shall be mailed or delivered to the Chief Justice of the Supreme Court, to the adverse party and to the Judge who entered the original order.

An original proceeding in mandamus to disqualify a Judge in a civil action or proceeding shall be brought before the Supreme Court.

SC-AD-13-02, adopted September 3, 2013.

### Rule 61. Disqualification of Trial Judge

No Judge of any Court shall sit in any cause or proceeding in which the Judge may be interested, or in the result of which the Judge may be interested, or when the Judge is related to any party to said cause within the fourth degree of consanguinity or affinity, or in which the Judge has been of counsel for either side, or in which is called in question the validity of any judgment or proceeding in which the Judge was of counsel or interested, or the validity of any instrument or paper prepared or signed by the Judge as counselor or attorney, without the consent of the parties to said action entered of record.

No Judge of any Court shall sit in any contested civil cause or proceeding that is related to any

attorney of record in such cause within the third degree of consanguinity or affinity without the consent of the parties in such cause or proceeding who have entered a formal appearance of record. This disqualification shall not apply when an appearance is made by a party for the purpose of disclaiming any interest in such action or proceeding or waiving the right to appear and contest such cause or proceeding.

No Judge of any Court shall sit in the trial or hearing of any criminal cause or proceeding if the Judge is related to any attorney of record in such cause within the third degree of consanguinity or affinity without the consent of the parties who have made an appearance in such cause or proceeding entered of record. This disqualification shall not apply to arraignments, the fixing of bail, or the acceptance of pleas.

**"Attorney of record"** as used in this rule shall include not only the attorney actually appearing in such action but any other attorney who is an associate or a member of a partnership or professional corporation with such appearing attorney. However, **"attorney of record"** as the term relates to the Prosecuting Attorney and Public Defender's Office shall mean only that attorney actually appearing in the cause or proceeding.

The disqualifications provided for in this rule shall not exclude the disqualifications at common law.

SC-AD-13-02, adopted September 3, 2013.

#### Rule 62. Disqualification of Judge, claim of mandamus

Any party to any cause pending in a court of record may in term time or in vacation file a written application with the Clerk of the Court, setting forth the grounds or facts upon which the claim is made that the Judge is disqualified, and request said Judge so to certify, after reasonable notice to the other side, same to be presented to such Judge, and upon failure so to do within three (3) days before said cause is set for trial, application may be made to the proper tribunal for mandamus requiring him so to do.

SC-AD-13-02, adopted September 3, 2013.

Rules 63 to 69. Reserved

## VIII. CONTEMPT

## Rule 70. Direct contempt

Power of the Court. The Court has the power to punish any contempt in order to protect the rights of the parties and the interests of the public by assuring that the administration of justice shall not be thwarted. The Trial Judge has the power to cite and if necessary punish summarily anyone who, in open court, willfully obstructs the court or judicial proceedings after an opportunity to be heard has been afforded.

Admonition and warning. No sanction other than censure should be imposed by the Trial Judge unless (i) it is clear from the identity of the offender and the character of the acts that disruptive conduct was willfully contemptuous, or (ii) the conduct warranting the sanction was preceded by a clear warning that the conduct is impermissible and that specified sanctions may be imposed for its repetition.

Notice of intent to use contempt power; postponement of adjudication. The Trial Judge should as soon as practicable after the Judge is satisfied that courtroom misconduct requires contempt proceedings, inform the alleged offender of the intention to institute such.

The Trial Judge should consider the advisability of deferring adjudication of contempt or courtroom misconduct of a defendant, an attorney or a witness until after the trial, and should defer such a proceeding unless prompt punishment is imperative.

Notice of charges and opportunity to be heard. Before imposing any punishment for contempt, the Judge should give the offender notice of the charges and at least a summary opportunity to adduce evidence or argument relevant to guilt or punishment.

Referral to another Judge. The Judge before whom courtroom misconduct occurs may impose appropriate sanctions, including punishment for contempt, but should refer the matter to another Judge, if his conduct was so integrated with the contempt that the Judge contributed to it or was otherwise involved, or objectivity can reasonably be questioned.

SC-AD-13-02, adopted September 3, 2013.

## Rule 71. Indigent defendant in civil contempt action-Right to counsel-Attorney fees

In a civil contempt action which may result in the incarceration of a defendant who appears without counsel, the Court must inform the defendant that he or she has a right to counsel and that if the defendant is financially unable to employ counsel and desires such, the Court must assign counsel to represent the defendant. Only after receiving notice of this right, can the defendant knowingly and

intelligently waive the right to counsel. A defendant who desires counsel and can establish indigence under the normal standards for appointment of counsel in a criminal case, shall have an attorney appointed to represent him or her. The attorney shall represent the defendant until final disposition of the civil contempt action and shall receive compensation, payable from the Court Fund, in an amount set by the Trial Court.

SC-AD-13-02, adopted September 3, 2013.

Rules 72 to 79. Reserved

## IX. COURT REPORTERS

### Rule 80. Persons qualified for appointment as Court Reporter

Only the following persons may act and are eligible for employment on a full-time or part-time basis as official Court Reporters for the Courts:

Persons now certified or hereafter certified by the State Board of Examiners of Official Shorthand Reporters.

SC-AD-13-02, adopted September 3, 2013.

### Rule 81. Duties of Reporter-Methods-Transcripts

The Court Reporter shall make a full reporting by means of stenographic hand, steno-mask or machine notes, or a combination thereof, of all proceedings, including the statements of counsel and the Court and the evidence, in trials and other judicial proceedings to which the Court Reporter is assigned by the appointing Judge unless excused by the Judge who is trying the case with the consent of the parties to the action. A refusal of the Court to permit or to require any statement to be taken down by the Court Reporter or transcribed after being taken down, upon the same being shown by affidavit or other direct and competent evidence, to the Supreme Court, shall constitute a denial of due process of law. The Court Reporter may use an electronic instrument as a supplementary device. In any trial, hearing or proceedings, the Judge before whom the matter is being heard may, unless objection is made by a party or counsel, order the proceedings electronically recorded. A trial or proceedings may proceed without the necessity of a Court Reporter being present, unless there is objection by a party or counsel. Provided that if an official transcript is ordered then it shall be prepared by the certified Court Reporter.

Upon request of either party in a civil or criminal case the Reporter shall transcribe the proceedings in a trial or other judicial proceeding, or so much thereof as may be requested by the party, certify to the correctness of the transcript, and deliver the same as the Court may prescribe. The fee for an original transcript shall be Five Dollars (\$5.00) per page. Two (2) copies of the original transcript shall be furnished without additional charge. A charge of Seventy-Five Dollars (\$75.00) per hour if not transcribed provided that this amount shall be deducted if transcription is requested at a later date. Mileage is set at the government rate. Each page shall be at least twenty-five (25) lines to the page and typed in ten-point pica type. Said page as mentioned herein shall be no more than double-spaced and the margin on the left side of the page shall be no more than one and one-half (1 1/2) inches and the margin on the right side of the page shall be no more than one-half (1/2) inch from the edge of the paper. The fees for making the transcript shall be paid in the first instance by the party requesting the transcript and shall be taxed as costs in the suit.

When the Judge's own motion orders a transcript of the Reporter's notes, the Judge may direct the payment of charges therefor and the taxation of the charges as costs in such manner as may seem just. In a criminal action, if the defendant shall present to the Judge an affidavit that defendant intends in good faith to take an appeal in the case and that a transcript of the Reporter's notes is necessary to enable defendant to prosecute the appeal, and that the defendant does not have the means to pay for the transcript, the Court, upon finding that there is reasonable basis for the averment, shall order the transcript made at the expense of the District Court Fund. The format preparation, delivery and filing of transcripts to be used in civil and criminal appeals may be regulated by the Supreme Court.

The Court Reporter shall file records of the evidence and the proceedings taken in any case with the Clerk of the Court in which the case was tried.

To the extent that it does not substantially interfere with the Court Reporter's other official duties, the Judge by whom a reporter is employed or to whom assigned may assign a Reporter to secretarial or clerical duties arising out of official Court operations.

SC-AD-13-02, adopted September 3, 2013.

## Rule 82. Transcripts-Access to copies-Costs

A transcript of the Court Reporter's notes, upon request and for the use of an indigent defendant or a Prosecutor, may not be charged to the Court Fund unless, before its preparation, the cost to be incurred was authorized by written judicial order.

When a Judge authorizes or orders a transcript of the Court Reporter's notes of any proceeding to be prepared at the expense of the Court Fund, or where a Prosecuting Attorney orders such a transcript at public or Court Fund expense and the accused as an indigent is constitutionally entitled to a free copy of the transcript, a Reporter shall prepare an original and two (2) copies of the transcript so

ordered and file it with the Clerk of the Trial Court. The Court Reporter shall immediately notify the Prosecuting Attorney and the defendant of the date the transcript was filed. The prosecuting attorney and the defendant shall have access to the copies of the transcript on such terms as the Trial Court may impose. The Chief Judge may prescribe rules for access to or disposition of the copies of the transcript.

SC-AD-13-02, adopted September 3, 2013.

#### Rule 83. Admissibility of transcripts as evidence

Any transcript of notes, duly certified as correct by the Reporter who took the evidence, and filed with the Clerk of the Court in which the cause was tried, shall be admissible as evidence in all cases, of like force and effect, as testimony taken in the cause by deposition, and subject to the same objection, a transcript of said notes may be incorporated into any appellate record. If any Reporter ceases to be the official Reporter of the Court, and thereafter makes a transcript of the notes while acting as official Reporter, the Court Reporter shall swear to the transcript as true and correct and when so verified, the transcript shall have the same force and effect as if certified while an official Reporter.

SC-AD-13-02, adopted September 3, 2013.

Rules 84 to 89. Reserved

## X. COURT FUND

#### Rule 90. Deposit of fees, fines and forfeitures in the Court Fund-Uses-Agent of Fund-Bond

All fees, fines and forfeitures shall, when collected by the Court Clerk, be designated as an account in the Cherokee Nation Treasury designated "The Court Fund", and shall be used, from year to year, in defraying the expenses of holding Court.

SC-AD-13-02, adopted September 3, 2013.

#### Rule 91. Claims allowable-Approval

Claims against the Court Fund shall include only such expenses as may be lawfully incurred for the operation of the Court. Payment of the expenses may be made after the claim therefor is approved by

the Court Administrator.

The term "**expenses**" shall include the following items and none other:

1. compensation of staff;
  
2. juror and witness fees and mileage, as well as overnight accommodations and food expense for jurors kept together as well as compensation to a witness for attendance as set out in legislation as created by the Cherokee Nation Tribal Council, except that expert witnesses who appear on behalf of Cherokee Nation shall be paid a reasonable fee for their services from the Court Fund;
  
3. office supplies, books for records, postage and printing;
  
4. furniture, fixtures and equipment;
  
5. renovating, remodeling and maintenance of courtrooms, Judges' chambers, Clerks' offices and other areas primarily used for judicial functions;
  
6. judicial robes;
  
7. attorney fees for indigents in the Trial Court and on appeal;
  
8. transcripts ordered by the Court;
  
9. necessary telephone expenses, gas, water and electrical utilities for the part of the courthouse occupied by the Court;
  
10. the cost of publication notice in juvenile proceedings as provided in 10 CNCA § 1105 and in termination of parental rights proceedings brought by the Nation as provided in 10 CNCA § 1131;
  
11. interpreter fees; and
  
12. any other expenses now or hereafter expressly authorized by court rule and/or statute.

SC-AD-13-02, adopted September 3, 2013.

Rules 92 to 99. Reserved

## XI. PETITION

### Rule 100. Contents

Such petition, or charge, shall contain the following:

1. The full name, address, telephone number and fax number, if any, of the person filing the petition;
2. If the petition is filed on behalf of another person or organization, the full name, address, telephone number and fax number, if any, of the party or organization represented;
3. The full name, address, telephone number and fax number, if any, of the person against whom the charge is made (herein referred to as respondent);
4. A clear and concise statement of the facts, constituting the alleged claim, including the date, place and names of those parties involved in the alleged claim;
5. A clear and concise statement of the legal authority and jurisdiction under which the cause of action is being predicated.

SC-AD-13-02, adopted September 3, 2013.

### Rule 101. Use of bar identification number

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his or her name, with a Cherokee Nation Bar Association number.

SC-AD-13-02, adopted September 3, 2013.

Rules 102 to 106. Reserved

## XII. SERVICE OF PLEADINGS-DISMISSAL-FRIVOLOUS PLEADINGS

[Rule 107. Service-Dismissal-Frivolous pleadings]

After summons is issued, the original shall be returned and filed in the case with the Court Clerk. In those cases where the Court has issued contempt or restraining orders, or granted injunctive relief or in other extraordinary proceedings requiring personal notice to the party affected, the original order shall be filed with the Court Clerk after its issuance, and certified copies thereof shall be used for service on the parties.

If the Court (Judge or Court Clerk) has examined the court file and docket sheet of a case and determines that more than one-hundred eighty (180) days have elapsed without service being made on a named defendant, the Court may notify the plaintiff or plaintiff's attorney with notice to all parties or counsel of record to file a pleading to show cause why the action should not be dismissed as to that defendant. If good cause is not shown or response is not made, the Court may dismiss the case without prejudice.

If a pleading is found to be frivolous, the Court may, on its own motion or on the oral or written motion of the opposing party, tax costs in the case or a portion of the costs up to and including the frivolous pleading, against the party filing it. The Court may make subsequent orders to insure compliance with the Court's findings.

SC-AD-13-02, adopted September 3, 2013.

## XIII. BRIEFS

[Rule 108. Briefs-Requirements]

Each brief shall be clearly styled to show whether it is in support of a motion, in opposition to a motion, or a reply brief, the particular application or proceeding to which it relates, and the party or parties on whose behalf it is presented.

All motions and applications and responses to them, including briefs if required, shall not exceed twenty (20) pages in length without prior permission of the Court. Reply briefs are permitted only by leave of Court by application stating the reason for filing a reply brief. No reply brief may exceed five

(5) pages in length. No further briefs shall be filed without prior permission of the Court.

SC-AD-13-02, adopted September 3, 2013.

#### XIV. RESPONSES TO INTERROGATORIES AND REQUESTS FOR ADMISSIONS AND REQUEST FOR PRODUCTION OF DOCUMENTS

[Rule 109. Answers or objections to be preceded by interrogatory or request]

Each answer or objection to an interrogatory, request for admission, or request for production of documents shall be immediately preceded by the interrogatory or request to which response is being made.

SC-AD-13-02, adopted September 3, 2013.

#### XV. PRETRIAL PROCESS

Rule 110. Scheduling order

A scheduling order may be issued at the discretion of the District Court Judge. The Judge may enter a scheduling order for a time and date certain for the performance of the following duties and any other duties the Judge deems appropriate:

1. response or amended response of defendant;
2. reply, if any, of plaintiff;
3. mutual exchange of names of proposed witnesses and expected testimony;
4. mutual exchange of proposed exhibits and description of such exhibits;
5. filing of motions to join additional parties or to dismiss;

6. status conference report due;
7. status and simplification conference;
8. cut-off for amendments to pleadings;
9. settlement conference;
10. mutual exchange of authorities to be relied upon at trial and mutual exchange of trial briefs, if any;
11. final exchange of list of witnesses and exhibits;
12. cut-off for filing additional motions or responses to amended pleadings, if any;
13. discovery cut-off;
14. cut-off for filing responses to motions, if any;
15. pretrial conference report due;
16. pretrial conference;
17. disposition of pending motions; and
18. trial.

SC-AD-13-02, adopted September 3, 2013.

#### Rule 111. Pretrial order

Plaintiff's counsel shall initiate the preparation of the pretrial order by submitting a proposed pretrial order to opposing counsel no later than fifteen (15) days before the pretrial conference hearing. If

plaintiff's counsel fails to do so, then at least ten (10) days before the pretrial conference hearing, defendant's counsel shall submit a proposed pretrial order to plaintiff's counsel. If plaintiff is pro se, the first named represented party shall initiate its preparation. Opposing counsel and pro se parties must cooperate with the preparing party in the completion of the pretrial order and shall return the completed pretrial order to opposing counsel no later than five (5) days before the pretrial hearing. In all cases in which Cherokee Nation is party, Cherokee Nation's counsel shall have the duty of tendering the proposed pretrial order.

SC-AD-13-02, adopted September 3, 2013.

#### Rule 112. Purpose of the agreed pretrial order-Expectations and directions for parties

Purpose of the agreed pretrial order. The purpose of the agreed pretrial order is to condense all material information into one working document that will control the trial of the case.

Prior rulings. The agreed pretrial order must reflect the current status of the case and accurately reflect all prior rulings by the Court.

Unprofessional conduct. Failure of the plaintiff's attorney to timely initiate and/or failure of any attorney in the case to cooperate in timely preparation of the agreed pretrial order shall be deemed by the Court to be unprofessional conduct.

Good faith disputes. While all reasonable efforts should be made by counsel and litigants to timely agree on a pretrial order, if, following good faith effort, disputes still remain regarding factual and/or legal issues, such should be noted in the single pretrial order submitted for ultimate resolution by the Court.

No adoption of pleadings by reference. Counsel may not adopt pleadings and incorporate them into the pretrial order by reference.

Reservation of rights not allowed. No reservation of an asserted right to add additional witnesses or exhibits or to take additional discovery will be allowed in the agreed pretrial order.

Late exhibits. Late exhibits are those not listed in the agreed pretrial order. If late exhibits are discovered, the party desiring to offer them shall immediately mark them for identification and furnish copies to opposing counsel with a statement explaining their late production. If objected to, the sponsoring party must file a written motion requesting permission to supplement the exhibit list.

Late witnesses. Additional witnesses, listed after the witness exchange date, will be permitted to testify only if ordered to prevent manifest injustice and only then, if proper notice is given, under the facts and circumstances of the case, to the other party, and a written motion is immediately filed requesting permission to supplement the witness list.

Pro se litigants. Pro se litigants and opposing counsel should confer before a pretrial conference and be prepared to discuss at the conference significant disputes relative to issues of fact and law, exhibits, witnesses, evidence, in limine matters and all matters bearing on an expeditious settlement or trial of the case.

Pretrial conference. At the pretrial conference, the Court may take any appropriate action to insure a fair trial to all parties.

Demonstrative aids, exhibits and summaries. All demonstrative aids, exhibits and summaries intended to be used for any purpose at trial shall be displayed to opposing counsel at least fourteen (14) days in advance of trial, unless a shorter time is allowed pursuant to the scheduling order.

SC-AD-13-02, adopted September 3, 2013.

### Rule 113. Application to Withdraw and Order for Withdrawal

Upon application, counsel may request an Order for Withdrawal as Counsel. The application must state the reason for requesting the withdrawal and the status of the case.

Every order allowing withdrawal must contain:

1. the case's current status, including when hearings, if any, have been scheduled;
2. a certificate of mailing to the client showing the last known mailing address and to all other attorneys of record in the case; and
3. Whether new or substitute counsel has been obtained by the client and entered an appearance.

An Application to Withdraw will only be considered if submitted to the Judge at least twenty (20) days prior to a scheduled hearing or trial.

SC-AD-13-02, adopted September 3, 2013.

Rules 114 to 119. Reserved

## XVI. MOTIONS

Rule 120. Place of Filing-Contents-Service on other parties-Time for filing of motions and responses thereto

All motions shall be filed in writing in the office of the District Court either in person, by mail or fax. All motions for summary judgment shall also be filed in writing in the office of the District Court either in person, by mail or fax. Unless otherwise provided in these rules or by order of the District Court, motions and responses thereto shall be filed promptly and within such time as not to delay the proceedings. Promptness and diligence are favored in all filings in the District Court.

SC-AD-13-02, adopted September 3, 2013.

Rule 121. Rulings on motions-Generally

The District Court Judge designated to conduct the hearing shall rule on all motions after the opening of the hearing, and any orders in connection therewith, if announced at the hearing, shall be stated orally on the record; in all other cases, the Judge shall issue such rulings and orders in writing and shall cause a copy of the same to be served on each of the parties, or shall rule on the matter in the decision.

SC-AD-13-02, adopted September 3, 2013.

Rule 122. Motions, rulings and orders to be part of the record

All motions, rulings and orders shall become a part of the record.

SC-AD-13-02, adopted September 3, 2013.

### Rule 123. Motion to dismiss

The respondent may file a motion to dismiss at any time prior to the scheduling order or as permitted in the scheduling order, or move for dismissal at any hearing for:

1. lack of jurisdiction over subject matter;
2. lack of jurisdiction over persons;
3. insufficiency of process or service thereof;
4. failure of petitioner to state a claim upon which relief can be granted.

SC-AD-13-02, adopted September 3, 2013.

### Rule 124. Motion for summary judgment

Either party may move for summary judgment by alleging that there is no genuine issue as to any material fact and by alleging that the moving party is entitled to judgment as a matter of law.

SC-AD-13-02, adopted September 3, 2013.

### Rule 125. Filing of answer or other participation in proceedings not deemed a waiver of rights

The right to make motions or to make objections to rulings upon motions shall not be deemed waived by the filing of an answer or by other participation in the proceedings before the District Court.

SC-AD-13-02, adopted September 3, 2013.

### Rule 126. Intervention

Any person desiring to intervene in any proceeding shall file a motion in writing or, if made at the hearing, may move orally on the record, stating the grounds upon which such person claims an

interest. An unstapled original of written motions shall be filed. Immediately upon filing such motion, the moving party shall serve a copy on the other parties. The assigned Judge may by order permit intervention in person or by counsel or other representative to such extent and upon such terms as deemed proper.

SC-AD-13-02, adopted September 3, 2013.

## XVII. WITNESSES' FEES AND MILEAGE

### Rule 127. Witness fees and mileage

Witnesses requested to appear before the District Court shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witnesses' fees and mileage shall be taxed against the party at whose instance the witness appears and the fees of persons taking the deposition shall be taxed against the party at whose instance the deposition is taken.

SC-AD-13-02, adopted September 3, 2013.

## XVIII. REQUEST FOR JURY TRIAL

### Rule 128. Request for jury trial

A request for a jury trial must be made with the pretrial order. No pretrial order will be filed without payment of the jury fees. Failure to post jury fees could result in the loss of a jury trial.

SC-AD-13-02, adopted September 3, 2013.

## XIX. ATTORNEYS

### Rule 129. Attorneys

Attorneys allowed to practice in the District Courts of Cherokee Nation are required to follow procedures codified by the Supreme Court of Cherokee Nation in Supreme Court Rules 130 to 138.

SC-AD-13-02, adopted September 3, 2013.

## XX. LAY ADVOCATES

Rule 129A. Lay advocates

Lay advocates are allowed to practice in the courts of Cherokee Nation and shall be required to follow procedures codified by the Supreme Court of Cherokee Nation in Supreme Court Rules 140 to 145.

SC-AD-13-02, adopted September 3, 2013.

## XXI. COURT PROCEDURE-GRIEVANCES

Rule 130. District Court shall review all requests for formal hearings

Pursuant to Supreme Court Rule 139, the District Court shall review all requests made by the Cherokee Nation Attorney General for certification for formal hearing of a grievance against an attorney or lay advocate before the Cherokee Nation Supreme Court.

SC-AD-13-02, adopted September 3, 2013.

Rule 131. District Court to determine jurisdiction for formal hearing

The District Court before certifying a grievance for formal hearing before the Cherokee Nation Supreme Court shall determine that the attorney or lay advocate is a member of the Cherokee Nation Bar Association and the subject matter of the grievance occurred within the jurisdiction of Cherokee Nation Courts.

SC-AD-13-02, adopted September 3, 2013.

Rule 132. Burden of proof-Clear and convincing evidence

The District Court before certifying a grievance for formal hearing before the Cherokee Nation

Supreme Court shall determine that there is clear and convincing evidence in support of the Attorney General's request for a formal hearing.

SC-AD-13-02, adopted September 3, 2013.

## XXII. RULES TO BE LIBERALLY CONSTRUED, AMENDMENT OR RESCISSION OF RULES

### Rule 140. Rules to be liberally construed

The rules and procedures in this appendix shall be liberally construed to effectuate the purposes and provisions of the appendix.

SC-AD-13-02, adopted September 3, 2013.

### Rule 141. Amendment or rescission of Rules

Any rule or procedure may be amended or rescinded by the Supreme Court of Cherokee Nation at any time; provided, however, any amendment or rescission of rules by the Supreme Court of Cherokee Nation must meet the requirements of 20 CNCA § 57(B) and (C).

SC-AD-13-02, adopted September 3, 2013.