



## Legislation Text

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### **AN ACT IMPLEMENTING THE COURT ON THE JUDICIARY AS MANDATED UNDER ARTICLE 8 SECTION 5 OF THE CONSTITUTION OF THE CHEROKEE NATION**

**BE IT ENACTED BY THE CHEROKEE NATION:**

#### **Section 1. Title and Codification**

This Act shall be known and may be cited as the "Enabling Act for the Court on the Judiciary of 2024."

#### **COURT ON THE JUDICIARY**

#### **CHAPTER 1**

#### **General Provisions**

#### **Section 2. Purpose**

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

#### **Section 3. 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.”

#### Section 4. 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.

Section 5. Substantive Provisions

## CHAPTER 2

### BODY

#### § 1. Court on the Judiciary - 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.

## § 2. 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.

## § 3. Qualifications & 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.

## § 4. 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.

## § 5. 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.

## § 6. 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.

## § 7. 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.

## § 9. 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.

## Section 6. Provisions as Cumulative

The provisions of this act shall be cumulative to existing law.

## Section 7. Severability

The provisions of this act are severable and if any part or provision hereof shall be held void the decision of the Court so holding shall not affect or impair any of the remaining parts or provisions of this act.

**Section 8.        Effective Date/Emergency Declared**

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this act shall take effect and be in full force after its passage and approval.

**Section 9.        Self-Help Contributions**

To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.