

FILED

IN THE SUPREME COURT OF THE CHEROKEE NATION

IN RE: the Amendment and Adoption)
of Supreme Court Rules and Procedures)

2013 MAR 27 AM 9:49

SC-AD-2013-01 CHEROKEE NATION
SUPREME COURT
KENDALL BIRD, COURT CLERK

ORDER

The Supreme Court of the Cherokee Nation hereby amends and adopts new provisions to the Appendix: Supreme Court Procedures. The new and amended provisions shall be known as the Supreme Court Rules and Procedures and are to be codified in the Cherokee Nation Code Annotated as 20 CNCA App. Rule 1, et seq.

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I. IN GENERAL

Cross References
Courts, see Title 20 C.N.C.A. § 1, et seq.

Rule 1. Rules to be liberally construed

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

Rule 2. Amendment or rescission of rules

Any rule or regulation may be amended or rescinded by the Supreme Court at any time; provided, however, any amendment or rescission of rules by the Supreme Court must meet the requirements of 20 C.N.C.A. § 57 (b) and (c). All prior Court Rules are hereby rescinded or incorporated herein.

II. PETITION

Cross References
Answer, see Rules 30-33.
Hearings, see Rules 100-108. Motions, see Rules 40-47.
Notice of institution of proceedings, see Rules 11-15.
Service and filing of papers, see Rules 20-24.

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Prior to the time an answer is filed, any petition may be withdrawn and dismissed without court approval.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.

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.

Rule 5. Filing

Any petition requesting judicial review shall meet the requirements of 20 C.N.C.A. § 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.

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 Paupers Affidavit can be completed and submitted to the Court Administrator for approval.

Rule 7. Use of Fax/Email**1. Fax**

- a. Parties may file affidavits, pleadings, motions and other documents by use of fax transmission for documents of 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 Supreme 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. Email

- a. 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 email address: 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.
 - b. The email must reflect the sending party's name, address, bar number, phone number, email address, case name and case number.
 - c. A document permitted to be filed by email 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 a "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 Supreme 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/email 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/email must also be served concurrently by fax, email, hand-delivery or mail on all other parties to the appeal, and the faxed/emailed document must contain a certificate of service attesting to such service and that the document was initially filed with the Court via fax/email. The time for filing a response to a document filed by fax/email runs from the date the document was received by the Court pursuant to subsection 3 above.

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

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.

Rule 9. Contents

Such petition, or charge, shall contain the following:

- A. The full name, address, telephone number, email and fax number, if any, of the person filing the petition.
- B. If the petition is filed on behalf of another person or organization, the full name, address, telephone number, email and fax number, if any, of the party or organization represented.
- C. 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).
- D. 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.
- E. A clear and concise statement of the legal authority and jurisdiction under which the cause of action is being predicated.

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.

III. NOTICE

Cross References

Answer, see Rules 30-33.
Hearings, see Rules 100-108.
Motions, see Rules 40-47.
Petitions, see Rules 3- 10.
Service and filing of papers, see Rules 20-24.

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/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.

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.

IV. SERVICE AND FILING OF PAPERS

Cross References

Answer, see Rules 30-33.
Hearings, see Rules 100-108.
Motions, see Rules 40-47.
Notice of institution of proceedings, see Rules 11-15.
Petition, see Rules 3-10.
Service and filing of papers, see Rules 20-24.
Witnesses, see Rules 80- 81.

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 email and shall be certified by the Clerk of the Supreme Court.

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.

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.

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.

V. ANSWER**Cross References**

Hearings, see Rules 100-108.

Motions see Rules 40-47.

Notice of institution of proceedings, see Rules 11-15.

Petition, see Rules 3-10. Service and filing of papers, see Rules 20-23

[Rules 24-29 reserved]

Rule 30. When and by whom filed-Contents

Unless otherwise directed in the notice or scheduling order, the respondent shall, within 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.

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/email 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, email 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, email 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 has 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.

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.

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 may be amended without permission from the Chief Justice or Justice.

VI. MOTIONS

Cross References

Answer, see Rules 30-33.

Hearings, see Rules 100-108.

Notice of institution of proceedings, see Rules 11-15.

Service and filing of papers, see Rules 20-24.

Rule 40. Place of filing-Consents- 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 email 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 email 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 is favored in all filings in the Supreme Court.

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.

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

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

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:

- A. Lack of jurisdiction over subject matter.
- B. Lack of jurisdiction over persons.
- C. Insufficiency of process or service thereof.
- D. Failure of petitioner to state a claim upon which relief can be granted.

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.

Rule 45. Granting of motions to dismiss entire petition

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

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.

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 upon 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.

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.

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 a Cross-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 negligence.

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.

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 party's 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.

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.

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.

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 of Record form or Court Docket sheet. Pleadings and other documents filed with 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 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.

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 months from the date of the judgment appealed.

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 the 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 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.

VIII. BRIEFS

Rule 60. Filing and Service of Briefs

A. The appellant shall file and serve an appellate brief-in-chief within sixty days after the date on which the appellee has filed his/her response to the Petition In Error. The appellee shall file and serve the appellee's brief within forty days after service of the brief of the appellant. The appellant may file and serve a reply brief within twenty days after service of the brief of the appellee.

B. One 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 days.

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 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.

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.

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.

X. WITNESSES

Cross References
Hearings, see Rules 100-108.

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 7 days (when the deposition is to be taken within the continental United States) and 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 had 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, death, 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 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.

Rule 81. Payment of witnesses' 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.

Rule 82. Pre-trial 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 paragraph D and shall furnish 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 the 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 participating 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.

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:

- A. Response or amended response of defendant;
- B. Reply, if any, of plaintiff;
- C. Mutual exchange of names of proposed witnesses and expected testimony; mutual exchange of proposed exhibits and description of such exhibits;
- D. Filing of motions to join additional parties or to dismiss;
- E. Status conference report due;
- F. Status and simplification conference;
- G. Cut-off for amendments to pleadings;
- H. Settlement conference;
- I. Mutual exchange of authorities to be relied upon at trial and mutual exchange of trial briefs, if any; final exchange of list of witnesses and exhibits; cut-off for filing additional motions or responses to amended pleadings, if any;
- J. Discovery cut-off; cut-off for filing responses to motions, if any;
- K. Pretrial conference report due;
- L. Pretrial conference; disposition of pending motions; and,
- M. Trial.

Rule 91. Time for hearing - Certain

Each individual hearing shall be set at a time certain.

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 plaintiffs 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 the Cherokee Nation is a party, the 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 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.

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 sub-section D of this rule. Settlement Judges shall be paid from the Court Fund or by the parties as determined by the Chief Justice.

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 petitioners 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 that the Cherokee Nation is party, then the Cherokee Nation's counsel shall have the duty of tendering the proposed pretrial order.

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 to be unprofessional conduct by the court.

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 14 days in advance of trial, unless a shorter time is allowed pursuant to the scheduling order.

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 paragraph A.

XII. HEARINGS

Cross References

Answer, see Rule 30-33. Motions, see Rules 40-47.

Notice of institution of proceedings, see Rules 11-15.

Petition, see Rules 3- 10.

Service and filing of papers, see Rules 20-24.

Witnesses, see Rules 80- 81.

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:

A. To administer oaths and affirmations.
B. To rule upon offers of proof and receive relevant evidence.
C. To take or cause depositions to be taken whenever the ends of justice would be served thereby.

D. 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.

E. To hold conferences for the settlement or simplification of the issues.

F. 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.

G. 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.

H. To make and file decisions in conformity with section 55 of this title.

I. To call, examine and cross-examine witnesses and to introduce into the record documentary or other evidence.

J. 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.

K. To take any other action necessary under the foregoing and authorized by the published rules and procedures of the Supreme Court.

L. 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.

Rule 101. Disqualification of Justices

See Rule 161.

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.

Rule 103. Applicability of Federal Rules of Evidence and 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/or Civil Procedure for guidance.

Rule 104. Admissibility of stipulations of fact

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

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.

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 35 days from the close of the proceeding.

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.

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.

XIII. JUDGMENTS

Cross References

Judgments of tribal courts, see Title 12OkI. St. Ann. § 728.

Standards for recognition of judicial proceedings in Tribal courts-full faith and credit, see Title 12, Chapter 2, Appendix 1, Rule 30- Rules for District Courts.

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 the Cherokee Nation.

Rule 111. Full faith and credit

The Courts of the 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 the Cherokee Nation.

Rule 112. Recognition of Other Sovereign Judgments- Full Faith and Credit

The Supreme Court of the 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 the Cherokee Nation.

(a) Listing of Sovereigns Granting Reciprocity - A list of the sovereigns that grant full faith and credit to the courts of the 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

(b) 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.

(c) 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 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.

Rule 113. Declaratory Judgments

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

(b) Action for declaratory judgment shall not be invoked to try disputed question of fact as determinative issue.

(c) Action for declaratory judgment shall not be invoked to determine political policy.

History

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.

XIV. ELECTION RECOUNT PROCEDURE

Cross References

Election contests generally, see 26 CNCA '§§ 93-95.

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.

XV. ATTORNEYS

Rule 130. Eligibility

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

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 his or her Cherokee Nation Bar Association number, and his or her state association number.

Rule 131. Temporary admission

Any attorney who is eligible for admission to the bar of the 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 the Cherokee Nation, and the applicability of these rules, during the pendency of such case or proceeding for which it is granted.

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 the 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 the Cherokee Nation Courts and subjecting themselves to the contempt powers of the Cherokee Nation Courts. Annual dues may be charged for membership in the Cherokee Nation Bar. CNCA 5§1

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 the Cherokee Nation and subject myself to the contempt powers of the Cherokee Nation Courts. So help me God." CNCA 5§2

Rule 134. Removal of attorney

Any attorney practicing before the 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. CNCA 5§3.

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 the Cherokee Nation courts, each specially admitted attorney must take the oath prescribed in Section 2 of this Title 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 Section 3 of this Title. CNCA 5§4

Rule 136. Choice of counsel

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

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. CNCA 5§6

Rule 138. Discipline by the Court

(a) Any member of the bar of the 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 the 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 courts of the 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.

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 herein above may be reviewed by the Supreme Court upon a verified request of an aggrieved party.

XVI. LAY ADVOCATES

Rule 140. Lay Advocates

Any lay person demonstrating experience or education in Indian Law and the laws of the 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.

Rule 141. Roll of Lay Advocates.

Subject to all of the requirements set forth in these Rules and Procedures, the Lay Advocate Registry of the Cherokee Nation shall consist of those Lay Advocates admitted to practice before the Courts of the Cherokee Nation who have take the oath prescribed in 5 CNCA § 2 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.

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 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.

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.

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.

Rule 145. Discipline by the Court

(a) Any Lay Advocate registered with the 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 the Cherokee Nation, shall be subject to reprimand, suspension, losing privilege as 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 the Cherokee Nation or who during suspension or loss of privilege exercises any of the privileges bestowed upon members of 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.

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.

[Rules 147 -149 hare hereby reserved for future use.]

XVII. ABRITRATORS**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 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 Section 22.

(e) Arbitration will be binding in workers' compensation disputes unless a motion made pursuant to section 23 or section 25 of the arbitration act has been filed in the District Court.

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.

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.

Rule 162. Superintendence over all Courts

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

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 even no Justice qualifies hereunder then the Justice that has four (4) remaining years left in the/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.

Rule 164. Judicial Conference

(a) The Chief Justice of the Cherokee Nation shall summon annually the Courts of the Cherokee Nation to conference.

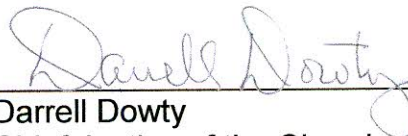
(b) The Chief Justice shall submit to the Council and Principal Chief an annual report of the proceedings of the Judicial Conference and recommendations for legislation at the annual Judicial Conference.

Rule 165. Judicial Promulgation of Rules and Procedures

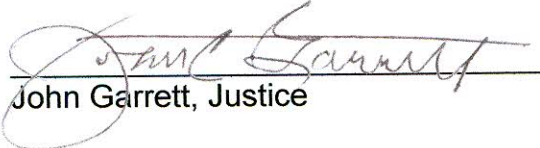
The Supreme Court shall promulgate additional rules and procedures to provide any remedy guaranteed by the Cherokee Nation Constitution in the event the Council has failed to prescribe procedures for such remedy and such rules and procedures shall remain in effect until the Council prescribes such procedures.

These Supreme Court Rules and Procedures are adopted this _____ day of March, 2013.

IT IS SO ORDERED.




Darrell Dowty
Chief Justice of the Cherokee Nation




John Garrett, Justice



James G. Wilcoxon, Justice



Angela Jones, Justice



Troy Wayne Poteete, Justice