

IN THE SUPREME COURT OF THE CHEROKEE NATION

CHEROKEE NATION BUSINESSES, LLC., )  
)  
Appellant, )  
v. )  
CECIL SWINNEY, )  
)  
Appellee. )

SC 2017-06

2017 JUN 15 AM 10:33  
CHEROKEE NATION  
SUPREME COURT  
HENDALL BIRD, COURT CLERK

FILED

MOTION TO DISMISS APPEAL

Comes now Appellee Cecil Swinney (“Swinney”) and moves the Court to dismiss the above styled and caption appeal for Cherokee Nation Businesses, LLC’s (“CNB”) failure to timely comply with Supreme Court Rule 6, SC-AD- 2013-1 ( March 27, 2013). CNB wholly failed to pay the required filing fee within the thirty day (30) time period required to file an appeal. See SC Rule 51 (B).

SC Rule 6 in pertinent part provides;

The petitioner must pay the required filing fee of seventh-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.

The timely filing of a Petition in Error is jurisdictional. The Court Clerk may not file an appeal without payment of the appeal fee; payment of the appeal fee is mandatory and not permissive. There is no exception for CNB from payment of the filing fee by rule, statute or court decision. CNB did not pay the filing fee.

SC Rule 52 (D) provides:

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.

The Supreme Court Clerk has no authority to accept an appeal for filing without the Petition in Error and "full payment of the filing fee." Because CNB did not make full payment of the filing within the jurisdictional thirty (30) days of the final judgement of the District, it failed to timely file its appeal and it should be dismissed. There is no exception in the Cherokee Nation law or Court Rules that allows CNB to file an appeal without of payment of fees. If common Cherokee citizens are required to pay filing fees for this Court to hear their complaints then CNB as multi-million corporation is required to do so.

This Court has demanded strict adherence to its rules. See *Pennington v Cherokee Nation*, SC 2013-16 (March 11, 2014) (Appellant filed her Opening Brief one hour late).

Therefore, the Court must dismiss the above appeal for failure to adhere to its rules.

Submitted this 16th of June, 2017.



Chadwick Smith  
CNBA # 08  
22902 S. 494 Road  
Tahlequah, OK 74464  
[chad@chadsmith.com](mailto:chad@chadsmith.com)

#### Certificate of Delivery

I, Chadwick Smith, do hereby certify that on the 16<sup>th</sup> day of June, 2017, I emailed a true and complete copy of the foregoing document to the persons listed below:



Chadwick Smith

Drew Wilcoxon  
Wilcoxon & Wilcoxon  
P.O. Box 357  
Muskogee, OK 74402-0357  
[seadog@wilcoxenlaw.net](mailto:seadog@wilcoxenlaw.net)

Tralynna Scott  
Cherokee Nation Businesses, LLC.

777 West Cherokee Street  
Catoosa, OK 74015  
tralynna.scott@cn-bus.com