(Amended as of 07/17/2026)

CHICKASAW NATION CODE

TITLE 5

"5. COURTS AND PROCEDURES"

CHAPTER 1
CHICKASAW NATION SUPREME COURT

ARTICLE A
COURT ADMINISTRATIVE PROVISIONS

Section 5-101.1 Title.
Section 5-101.2 Membership.
Section 5-101.3 Regular Meetings.
Section 5-101.4 Clerk of Court.
Section 5-101.5 Chickasaw Bar Association.
Section 5-101.6 Rules of Professional Conduct for Attorneys; Canons of Judicial Ethics.
Section 5-101.7 Licensed Legal Intern.

ARTICLE B
RULES OF PROCEDURE

Section 5-102.1 Rule 1: Filing of Cases and Motions.
Section 5-102.2 Rule 2: Hearing Date.
Section 5-102.3 Rule 3: Opinions.
Section 5-102.4 Rule 4: Rehearing of Action.
Section 5-102.5 Rule 5: Rejection of Action.
Section 5-102.6 Rule 6: Accelerated Procedure for Summary Judgments and Certain Dismissals.
Section 5-102.7 Rule 7: Law to be Applied.
Appendix “A” Notice of Intent to Appeal.
Appendix “B” Designation of Record on Appeal.
Appendix “C” Affidavit of Service.
Appendix “D” Petition for Appeal.

Appendix “E” Response to Petition for Appeal.
Appendix “F” (Cross or Counter) Petition for Appeal.

ARTICLE C
GENERAL PROVISIONS

Section 5-103.1 General Provisions.
Section 5-103.2 Composition of the Supreme Court in Appeals from District Court.
Section 5-103.3 Minimum Qualifications of Justices.
Section 5-103.4 Selection of Justices.
Section 5-103.5 Term of Office.
Section 5-103.6 Oath of Office.
Section 5-103.7 Duties and Powers of Justices.
Section 5-103.8 Reserved.
Section 5-103.9 Compensation of Justices.
Section 5-103.10 Reserved.
Section 5-103.11 Reserved.
Section 5-103.12 Decisions.
Section 5-103.13 Rules of the Court.
Section 5-103.14 Reserved.
Section 5-103.15 Supreme Court's Action on Appeals.
Section 5-103.16 Terms of the Court.
Section 5-103.17 Court Fund.
Section 5-103.18 Fees.
Section 5-103.19 Penalty for Improper Charges.
Section 5-103.20 Failure of Officer to Make Reports.
Section 5-103.21 Fees not Collected During Term.

ARTICLE D
GROUNDS FOR DISQUALIFICATION OF JUSTICE

Section 5-104.1 Purpose and Authority.
Section 5-104.2 Definitions.
Section 5-104.3 Application.
Section 5-104.4 Disqualification Required.
Section 5-104.5 Appearance of Partiality or Impropriety.

ARTICLE E
PROCEDURES FOR DISQUALIFICATION OF JUSTICE

Section 5-105.1 Definitions.
Section 5-105.2 Application.
Section 5-105.3 Methods for Disqualification of Justice.
Section 5-105.4 When Order for Disqualification Shall Issue.
Section 5-105.5 Motion Alleging Bias or Prejudice; Hearing; Decision.

Section 5-105.6 Effect of Disqualification.
Section 5-105.7 When More than One Justice is Disqualified; Special Justices.

CHAPTER 2
CHICKASAW NATION DISTRICT COURT

ARTICLE A
GENERAL PROVISIONS

Section 5-201.1 Authorization.
Section 5-201.2 Definitions.
Section 5-201.3 Territorial Jurisdiction.
Section 5-201.4 Subject Matter Jurisdiction.
Section 5-201.5 Personal Jurisdiction.
Section 5-201.6 Law to be Applied.
Section 5-201.7 Amendments.

ARTICLE B
DISTRICT COURT RULES OF PROCEDURE

Section 5-202.1 Judges of the District Court.
Section 5-202.2 Minimum Qualifications of Judge of the District Court.
Section 5-202.3 Manner of Selection of Judges.
Section 5-202.4 Term of Office.
Section 5-202.5 Oath of Office.
Section 5-202.6 Duties and Powers of Judges.
Section 5-202.7 Reserved.
Section 5-202.8 Special Appointments.

Section 5-202.9 Compensation of Judges.
Section 5-202.10 Removal of Judges.
Section 5-202.11 Disqualifications, Conflict of Interest.
Section 5-202.12 Decisions.
Section 5-202.13 Records.
Section 5-202.14 Files.
Section 5-202.15 Motion Day.
Section 5-202.16 Service of Process; Proof of Service; Responsive Pleadings.
Section 5-202.17 Objections to Service and Venue.
Section 5-202.18 Motions.
Section 5-202.19 Summary Judgment or Summary Disposition of Issues.
Section 5-202.20 Practice Before the District Court.

Section 5-202.21 Standards for Recognizing Records and Proceedings of State, Federal and Tribal Courts; Full Faith and Credit.
Section 5-202.22 Pretrial Proceedings.
Section 5-202.23 Diligence in Prosecution.
Section 5-202.24 Notice of Taking Default Judgment.
Section 5-202.25 Judges; Uniformity of Rulings.
Section 5-202.26 Disqualification of Judges in Civil and Criminal Cases.
Section 5-202.27 Default Judgment Against Defendant Served Solely by Publication.
Section 5-202.28 Motion for New Trial.
Section 5-202.29 Parole Revocation; Juveniles.
Section 5-202.30 Vacation of Final Judgments.
Section 5-202.31 Direct Contempt.
Section 5-202.32 Matters Taken Under Advisement.
Section 5-202.33 Instructing as to Issues of Fact.
Section 5-202.34 Office of the Chickasaw Nation Prosecutor.
Section 5-202.35 Chickasaw Nation Public Defender Board.
Section 5-202.36 Office of the Chickasaw Nation Public Defender.
Section 5-202.37 Civil Actions Involving Children; Court-appointed Counsel; Attorney Fees.
Section 5-202.38 District Court Address; Telephone Number.

ARTICLE C
COURT CLERK

Section 5-203.1 Establishment.
Section 5-203.2 Clerk to Serve Supreme and District Courts.
Section 5-203.3 Clerk as Department Director.

Section 5-203.4 Powers and Duties.
Section 5-203.5 Seal.
Section 5-203.6 Certification of True Copies.
Section 5-203.7 Courts Always Open.
Section 5-203.8 Trials and Hearings - Orders in Chambers.
Section 5-203.9 Clerk's Office and Orders by the Clerk.
Section 5-203.10 Notice of Orders or Judgments.
Section 5-203.11 Books and Records Kept by the Clerk and Entries Therein.
Section 5-203.12 Stenographic Report or Transcript as Evidence.
Section 5-203.13 Judgment Docket.
Section 5-203.14 Execution Docket.
Section 5-203.15 Clerk may Collect Judgment and Costs.
Section 5-203.16 Clerks to Issue Writs and Orders.
Section 5-203.17 Clerk to File and Preserve Papers.
Section 5-203.18 Each Case to be Kept Separate.
Section 5-203.19 Indorsements.

Section 5-203.20 Entry on Return of Summons.
Section 5-203.21 Material for Record.
Section 5-203.22 Memorializing Record.
Section 5-203.23 Clerk to Keep Court Records, Books and Papers; Statistical and Other Information.
Section 5-203.24 Applicable to District and Supreme Court.
Section 5-203.25 Bonds.

ARTICLE D
SUMMONS, PROCESS

Section 5-204.1 Definitions; Style of Process.
Section 5-204.2 Appointment of Substitute for Service of Process.
Section 5-204.3 Server to Endorse Time of Receipt on Service of Process.
Section 5-204.4 Process Server to Execute and Return Process.
Section 5-204.5 Issuance of Summons.
Section 5-204.6 Form of Summons.
Section 5-204.7 Service by Personal Delivery.
Section 5-204.8 Service of Process by Mail.
Section 5-204.9 Service by Publication.
Section 5-204.10 Publication Service upon Parties and the Unknown Successors of Named Parties.
Section 5-204.11 Completion of Publication Service.

Section 5-204.12 Entry of Default on Party Served by Publication.
Section 5-204.13 Vacating Default Judgments Where Service is by Publication.
Section 5-204.14 Certain Technical Errors not Grounds for Vacating Judgment.
Section 5-204.15 Consent is Effective Substitute for Service.
Section 5-204.16 Service Pursuant to Court Order.
Section 5-204.17 Summons and Complaint to be Served Together.
Section 5-204.18 Alternative Provisions for Service in a Foreign Jurisdiction.
Section 5-204.19 Subpoenas.

ARTICLE E
BONDS AND SURETIES

Section 5-205.1 Justification of Surety.
Section 5-205.2 Qualifications of Surety.
Section 5-205.3 Real Estate Mortgage as Bond.
Section 5-205.4 Valuation of Real Estate.
Section 5-205.5 False Valuation; Penalty.
Section 5-205.6 Action by Chickasaw Nation or Tribal Department; No Bond Required.

Section 5-205.7 Appearance Bond; Enforcement.

ARTICLE F
MISCELLANEOUS

Section 5-206.1 Deputy may Perform Official Duties.
Section 5-206.2 Affirmation.
Section 5-206.3 Publications in "Patent Insides".
Section 5-206.4 Action on Official Bond.
Section 5-206.5 May be Several Actions on Same Securities.
Section 5-206.6 Immaterial Errors to be Disregarded.
Section 5-206.7 Payments into Court for Minors and Incompetents.
Section 5-206.8 Conserving Moneys Obtained for Minors or Incompetent Persons.
Section 5-206.9 Sharing of Judicial Officers.
Section 5-206.10 Sharing of Other Judicial Personnel.
Section 5-206.11 Sharing of Material Resources.
Section 5-206.12 Sharing of Financial Resources.
Section 5-206.13 Effect of Prior Decisions of the Court.
Section 5-206.14 Action When No Procedure Provided.

ARTICLE G
APPEAL PROCEDURE FOR FINAL DECISION OF A CHICKASAW NATION COMMISSION OTHER THAN THE ELECTION COMMISSION

Section 5-207.1 Petition for Appeal from Final Decision of a Chickasaw Nation Commission.
Section 5-207.2 Hearing.
Section 5-207.3 Attorney’s Fees, Costs; Punitive Damages.
Section 5-207.4 Appeals from District Court.

ARTICLE H
CHICKASAW NATION DISTRICT COURT RULES OF CIVIL PROCEDURE GENERAL PROVISIONS

Section 5-208.1 Title of this Act.
Section 5-208.2 Scope of this Act.
Section 5-208.3 Jurisdiction in Civil Actions.
Section 5-208.4 Force of the Chickasaw Common Law.
Section 5-208.5 Definitions.
Section 5-208.6 No Effect upon Sovereign Immunity.

Section 5-208.7 Declaratory Judgment.
Section 5-208.8 Court Costs Not Charged to Chickasaw Nation.
Section 5-208.9 Effect of Previous Court Decisions.
Section 5-208.10 CFR Not Applicable.
Section 5-208.11 Laws Applicable to Civil Actions.
Section 5-208.12 Procedural Rules.
Section 5-208.13 Reserved.
Section 5-208.14 Repeal of Previously Granted Authorities.
Section 5-208.15 Savings Clause.

ARTICLE I
CHICKASAW NATION DISTRICT COURT
RULES OF CIVIL PROCEDURE
COMMENCEMENT OF ACTION: PLEADINGS, MOTIONS AND ORDERS

Section 5-209.1 Commencement of Action.

Section 5-209.2 One Form of Action.
Section 5-209.3 Notice of Pendency of Action.
Section 5-209.4 Notice of Pendency Contingent upon Service.
Section 5-209.5 Special Notice for Actions Pending in Other Courts.
Section 5-209.6 Pleadings Allowed; Form of Motions.
Section 5-209.7 General Rules of Pleading.
Section 5-209.8 Pleading Special Matters.
Section 5-209.9 Form of Pleadings; Motions; and Briefs.
Section 5-209.10 Signing of Pleadings.
Section 5-209.11 Defense and Objections; When and How Presented; by Pleadings or Motions; Motion for Judgment on the Pleadings.
Section 5-209.12 Final Dismissal on Failure to Amend.
Section 5-209.13 Counter-claim and Cross-claim.
Section 5-209.14 Counter-claim: Effect of the Statutes of Limitation.
Section 5-209.15 Counterclaim Against Assigned Claims.
Section 5-209.16 Third Party Practice.
Section 5-209.17 Amended and Supplemental pleadings.
Section 5-209.18 Pre-trial Procedure; Formulating Issues.
Section 5-209.19 Lost Pleadings.
Section 5-209.20 Tenders of Money or Property.
Section 5-209.21 Dismissal of Actions.

ARTICLE J
CHICKASAW NATION DISTRICT COURT
RULES OF CIVIL PROCEDURE
PARTIES

Section 5-210.1 Parties, Plaintiff and Defendant; Capacity.
Section 5-210.2 Joinder of Claims, Remedies, and Actions.
Section 5-210.3 Joinder of Persons Needed for Just Adjudication.
Section 5-210.4 Permissive Joinder of Parties.
Section 5-210.5 Misjoinder and Non-joinder of Parties.
Section 5-210.6 Interpleader.
Section 5-210.7 Class Actions.
Section 5-210.8 Intervention.
Section 5-210.9 Substitution of Parties.

ARTICLE K
CHICKASAW NATION DISTRICT COURT
RULES OF CIVIL PROCEDURE
DEPOSITIONS AND DISCOVERY

Section 5-211.1 General Provisions Governing Discovery.
Section 5-211.2 Depositions Before Action or Pending Appeal.
Section 5-211.3 Persons Before Whom Depositions May Be Taken.
Section 5-211.4 Stipulations Regarding Discovery Procedure.
Section 5-211.5 Depositions Upon Oral Examination.
Section 5-211.6 Depositions Upon Written Questions.
Section 5-211.7 Use of Depositions in Court Proceedings.
Section 5-211.8 Interrogatories to Parties.
Section 5-211.9 Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes.
Section 5-211.10 Physical and Mental Examination of Persons.
Section 5-211.11 Requests for Admission.
Section 5-211.12 Failure to Make Discovery; Sanctions.

ARTICLE L
CHICKASAW NATION DISTRICT COURT
RULES OF CIVIL PROCEDURE
JURORS

Section 5-212.1 Jury Pool.
Section 5-212.2 Selection Drum.
Section 5-212.3 Drawing Jury Panels.
Section 5-212.4 Certifying and Sealing Lists.

Section 5-212.5 Delivery of Envelopes.
Section 5-212.6 Sealing and Retaining Juror Name Cards.
Section 5-212.7 Refilling Drum.
Section 5-212.8 Summoning Jurors.
Section 5-212.9 On-call Systems Jurors.
Section 5-212.10 Drawing Trial Jurors From Panel.
Section 5-212.11 Qualifications and Exemptions of Jurors.
Section 5-212.12 Substantial Compliance.
Section 5-212.13 Oath to Jury.
Section 5-212.14 Discharge of Employee for Jury Service.
Section 5-212.15 Fees and Mileage for Jurors.

Section 5-212.16 Use and Management of Electronic Jury Management System.
Section 5-212.17 Disclosure of Personal Information About Jurors.

ARTICLE M
CHICKASAW NATION DISTRICT COURT
RULES OF CIVIL PROCEDURE
TRIALS

Section 5-213.1 Trial Defined.
Section 5-213.2 Trial of Issues.
Section 5-213.3 Jury Trial of Right.
Section 5-213.4 Trial by Jury or by the Court.
Section 5-213.5 Assignment of Cases for Trial.
Section 5-213.6 Consolidation; Separate Trials.
Section 5-213.7 Summoning Jury.
Section 5-213.8 Causes for Challenging Jurors.
Section 5-213.9 Examination of Jurors.
Section 5-213.10 Alternate Jurors.
Section 5-213.11 Order of Challenges.
Section 5-213.12 Challenges to Jurors; Filling Vacancies.
Section 5-213.13 Alternate Method of Selecting Jury.
Section 5-213.14 Oath of Jury.
Section 5-213.15 Juries of Less Than Six (6); Majority Verdict.
Section 5-213.16 Order of Trial.
Section 5-213.17 Taking of Testimony.
Section 5-213.18 Exceptions Unnecessary.
Section 5-213.19 Instruction to Jury; Objection.
Section 5-213.20 Uniform Jury Instruction.
Section 5-213.21 Objections to Instructions; Copies to Parties.
Section 5-213.22 View by Jury.
Section 5-213.23 Deliberations of the Jury.

Section 5-213.24 Admonition of Jury on Separation.
Section 5-213.25 Information after Retirement.
Section 5-213.26 When the Jury May Be Discharged.
Section 5-213.27 Retrial.
Section 5-213.28 Proof of Official Record.
Section 5-213.29 Determination of Foreign Law.
Section 5-213.30 Appointment and Duties of Masters.
Section 5-213.31 Findings by the Court.

Section 5-213.32 Delivery of Verdict.
Section 5-213.33 Requisites of Verdicts.
Section 5-213.34 General and Special Verdict.
Section 5-213.35 Special Verdict and Interrogatories.
Section 5-213.36 Jury Must Assess Amount of Recovery.
Section 5-213.37 Motion for a Directed Verdict and for Judgment Notwithstanding the Verdict.
Section 5-213.38 Provisions Applicable to Trials by Court.
Section 5-213.39 Trial Docket.
Section 5-213.40 Trial Docket Posted.
Section 5-213.41 Order of Trial of Cases Docketed.
Section 5-213.42 Time of Trial.
Section 5-213.43 Continuance.
Section 5-213.44 Trial by Judicial Panel.
Section 5-213.45 Bifurcated Jury Trials.

ARTICLE N
PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

Section 5-214.1 Seizure of Person or Property.
Section 5-214.2 Receivers Appointed by the Courts.
Section 5-214.3 Deposit in Court.
Section 5-214.4 Process on Behalf of and Against Persons not Parties.
Section 5-214.5 Security; Proceedings against Sureties.
Section 5-214.6 Execution.
Section 5-214.7 Injunction Defined.
Section 5-214.8 Cause for Injunction; Temporary Restraining Order.
Section 5-214.9 Temporary Restraining Order; Notice; Hearing; Duration.
Section 5-214.10 Temporary Restraining Order; Service.
Section 5-214.11 Preliminary Injunction.
Section 5-214.12 Preliminary Injunction; Criteria.
Section 5-214.13 Form and Scope of Injunction or Restraining Order.
Section 5-214.14 Employer and Employee; Interpleader; Constitutional Cases.
Section 5-214.15 Security.
Section 5-214.16 Use of Affidavits.

Section 5-214.17 Injunction by Defendant.
Section 5-214.18 Injunction is Equitable.
Section 5-214.19 Modification of Preliminary Injunction.
Section 5-214.20 Modification of Permanent Injunction; Separate Action.

Section 5-214.21 Injunctions Tried to the Court.
Section 5-214.22 Enforcement of Restraining Orders and Injunctions.
Section 5-214.23 Order of Delivery; Procedure.
Section 5-214.24 Penalty for Damage of Property Subject to Order of Delivery.
Section 5-214.25 Undertaking in Replevin.
Section 5-214.26 Replevin Bond; Value.
Section 5-214.27 Order of Delivery.
Section 5-214.28 Order Returnable.
Section 5-214.29 Execution of Order.
Section 5-214.30 Re-delivery on Bond.
Section 5-214.31 Exception to Sureties.
Section 5-214.32 Proceedings on Failure to Prosecute Action.
Section 5-214.33 Judgment; Damages; Attorney Fees.
Section 5-214.34 Officer May Break into Buildings.
Section 5-214.35 Compelling Delivery by Attachment.
Section 5-214.36 Improper Issue of Order of Delivery.
Section 5-214.37 Joinder of Cause of Action for Debt; Stay of Judgment.
Section 5-214.38 Grounds for Attachment.
Section 5-214.39 Attachment Affidavit.
Section 5-214.40 Attachment Bonds.
Section 5-214.41 Order of Attachment.
Section 5-214.42 When Returnable.
Section 5-214.43 Order of Execution.
Section 5-214.44 Execution of Attachment Order.
Section 5-214.45 Service of Order.
Section 5-214.46 Re-delivery on Bond.
Section 5-214.47 Nature of Garnishment.
Section 5-214.48 When Garnishment Available After Judgment; Written Directions Relating to Order of Garnishment.
Section 5-214.49 Answer of Garnishee; Form; Instructions.
Section 5-214.50 Effects of Offsets Claimed by Garnishee.
Section 5-214.51 Trial.
Section 5-214.52 Judgment in Garnishment Proceedings.
Section 5-214.53 Bond of Defendant for Payment of Judgment.
Section 5-214.54 Forms to be Used.
Section 5-214.55 Child Support Payment; Income Assignment or Garnishment Proceedings.
Section 5-214.56 Income Assignment Proceedings.
Section 5-214.57 Payments Pursuant to Income Assignment.
Section 5-214.58 Appointment of Receiver.

Section 5-214.59 Persons Ineligible.

Section 5-214.60 Oath and Bond.
Section 5-214.61 Powers of Receiver.
Section 5-214.62 Investment of Funds.
Section 5-214.63 Disposition of Property Litigated.
Section 5-214.64 Punishment for Disobedience of Court.
Section 5-214.65 Vacation of Appointment by Supreme Court.
Section 5-214.66 Definitions of Direct Contempt of Court and Indirect Contempt of Court.
Section 5-214.67 Judge's Power to Cite Contempt; Impose Censure; Notice and Opportunity; Sanction.
Section 5-214.68 Punishment for Contempt; Failure to Comply Child Support and Other Orders.
Section 5-214.69 Indirect Contempts; Notice; Appearance Bond.
Section 5-214.70 Violation of Child Custody Court Order; Defense; Emergency or Protective Custody.
Section 5-214.71 Failure to Appear for Jury Service; Good Cause; Sanctions; Penalties.
Section 5-214.72 Substance of Offense Made Part of Record.

ARTICLE O
JUDGMENTS

Section 5-215.1 Judgments; Costs.
Section 5-215.2 Default.
Section 5-215.3 Offer of Judgment.
Section 5-215.4 Judgment for Specific Acts; Vesting Title.
Section 5-215.5 Summary Judgment.
Section 5-215.6 Declaratory Judgments.
Section 5-215.7 Entry of Judgment.
Section 5-215.8 New Trials; Amendments of Judgments.
Section 5-215.9 Relief from Judgment or Order.
Section 5-215.10 Harmless Error.
Section 5-215.11 Stay of Proceedings to Enforce a Judgment.
Section 5-215.12 Disability of a Judge.
Section 5-215.13 Judgment Against Infant.
Section 5-215.14 Judgments as Liens.
Section 5-215.15 Discharge of Money Judgment Liens.
Section 5-215.16 Additional Cash Deposits.
Section 5-215.17 Reversal by Supreme Court.
Section 5-215.18 Interest on Money Judgments.
Section 5-215.19 Exempt Property; Homestead; Area and Value; Indian Allottees; Temporary Renting.

Temporary Renting.
Section 5-215.20 Payment of Judgments from Individual Indian Moneys.
Section 5-215.21 Contents of Filed Judgments, Decrees and Appealable Orders; Court Clerk's Endorsement; Mailing.
Section 5-215.22 Power to Vacate or Modify its Judgments; When.
Section 5-215.23 Motions to Correct, Open, Modify or Vacate.
Section 5-215.24 Mistakes or Omissions of the Court Clerk.
Section 5-215.25 Motions After Thirty (30) Days.
Section 5-215.26 Liens and Securities Preserved.
Section 5-215.27 Order Suspending Proceedings.
Section 5-215.28 Judgment Before Trial.
Section 5-215.29 Time Limitations.

CHAPTER 3

ARTICLE A
COURT RULES AND PROCEDURES

Section 5-301.1 Authority Granted to Courts of the Chickasaw Nation.
Section 5-301.2 Jurisdiction.
Section 5-301.3 Law to be Applied.
Section 5-301.4 Indian Civil Rights Act.
Section 5-301.5 Procedural Rules.
Section 5-301.6 Savings Clause.
Section 5-301.7 Scope, Purpose and Construction.
Section 5-301.8 Prosecution of Offenses.
Section 5-301.9 Rights of Defendant.
Section 5-301.10 Statute of Limitations.
Section 5-301.11 No Common Law Offenses.
Section 5-301.12 Court Appointed Attorneys.
Section 5-301.13 Victim Rights.
Section 5-301.14 Confidentiality.

ARTICLE B
CHICKASAW NATION HEALING TO WELLNESS COURT

Section 5-302.1 Creation and Purpose.
Section 5-302.2 Definitions.

Section 5-302.3 Jurisdiction.

ARTICLE C
TRUANCY COURT

Section 5-303.1 Chickasaw Nation Truancy Court.
Section 5-303.2 Definitions.
Section 5-303.3 School Attendance.
Section 5-303.4 Exception to School Attendance.
Section 5-303.5 Participation in the Chickasaw Nation Truancy Court.
Section 5-303.6 Chickasaw Nation Truancy Court Programs.
Section 5-303.7 Cooperative Agreements.

CHAPTER 4
SPECIAL TRIBAL CRIMINAL JURISDICTION OVER COVERED OFFENSES

Section 5-401.1 Definitions.
Section 5-401.2 Exercise of Special Tribal Criminal Jurisdiction.
Section 5-401.3 Special Tribal Criminal Jurisdiction.
Section 5-401.4 Nature of Special Tribal Criminal Jurisdiction
Section 5-401.5 Covered Offenses.
Section 5-401.6 Procedures under Special Tribal Criminal Jurisdiction.
Section 5-401.7 Defendant's Right to Habeas Corpus Relief.
Section 5-401.8 Juries under the Exercise of Special Tribal Criminal Jurisdiction of the Chickasaw Nation.
Section 5-401.9 Fees, Costs and Expenses.

CHAPTER 5
RULES OF CRIMINAL PROCEDURE PROCEEDINGS BEFORE TRIAL

ARTICLE A

Section 5-501.1 The Complaint.
Section 5-501.2 Arrest Warrant or Summons to Appear.
Section 5-501.3 Criminal Citations.

Section 5-501.4 Initial Appearance.
Section 5-501.5 Commitments.
Section 5-501.6 Joinder.
Section 5-501.7 Pleas.
Section 5-501.8 Withdrawing Guilty Plea.
Section 5-501.9 Plea Bargaining.
Section 5-501.10 Pleading and Motions Before Trial: Defenses and Objections.

Section 5-501.11 Concurrent Trial of Defendants or Charges.
Section 5-501.12 Discovery and Inspection.
Section 5-501.13 Subpoena.

ARTICLE B
COMPETENCY

Section 5-502.1 Definitions.
Section 5-502.2 Application for Determination of Competency; Service; Notice; Suspension of Criminal Proceedings.
Section 5-502.3 Hearing; Date; Evidence; Orders; Examination of Accused; Instructions to Physician.
Section 5-502.4 Post-Examination Competency Hearing; Evidence; Presumptions; Witness; Instructions.
Section 5-502.5 Questions to be Answered in Determining Competency.
Section 5-502.6 Disposition Orders.
Section 5-502.7 Person Capable of Achieving Competence within a Reasonable Time; Suspension of Criminal Proceedings; Civil Commitment.
Section 5-502.8 Incompetent and Dangerous; Placement.
Section 5-502.9 Person Incompetent due to Intellectual Disability; Not Dangerous; Suspension of Criminal Proceedings.
Section 5-502.10 Conditional Release; Requirements.
Section 5-502.11 Resumption of Competency.

ARTICLE C
PRELIMINARY HEARINGS

Section 5-503.1 Preliminary Hearing Conference.
Section 5-503.2 Right to Preliminary Hearing.
Section 5-503.3 Burden of Proof at Preliminary Hearing.
Section 5-503.4 Rules of Evidence at Preliminary Hearing.

Section 5-503.5 Admissible Evidence at Preliminary Hearing.
Section 5-503.6 Subpoenaing of Witnesses for Preliminary Hearing.
Section 5-503.7 Rights of Defendant at Preliminary Hearing.
Section 5-503.8 Preliminary Hearing Record.
Section 5-503.9 Termination of Preliminary Hearings.
Section 5-503.10 Order of Witnesses.
Section 5-503.11 Defendant Held to Answer.
Section 5-503.12 Discharge of Defendant, When.
Section 5-503.13 Appeal by the Chickasaw Nation at Preliminary Hearing.
Section 5-503.14 Time for Filing Appeal by the Chickasaw Nation.
Section 5-503.15 Preliminary Hearing – Review of Record in Light Most Favorable to Chickasaw Nation.

Section 5-503.16 Erroneous Ruling or Order – Remand.

CHAPTER 6
RULES OF CRIMINAL PROCEDURE
TRIAL

Section 5-601.1 Trial by Jury or by the Court.
Section 5-601.2 Trial Jurors.
Section 5-601.3 Order of Trial.
Section 5-601.4 Judge's Disability.
Section 5-601.5 Recordings.
Section 5-601.6 Expert Witnesses and Interpreters.
Section 5-601.7 Motion for Judgment of Acquittal.
Section 5-601.8 Jury Instructions.
Section 5-601.9 Verdict.

CHAPTER 7
RULES OF CRIMINAL PROCEDURE
JUDGMENT AND SENTENCE

Section 5-701.1 Judgment.
Section 5-701.2 Sentence.
Section 5-701.3 General Sentencing Provisions.
Section 5-701.4 Probation; Violations of the Rules, Restrictions and Conditions of Probation; Dismissal and Expungement after Deferred Sentence.
Section 5-701.5 Reserved.
Section 5-701.6 Reserved.

Section 5-701.7 New Trial.
Section 5-701.8 Clerical Mistakes.
Section 5-701.9 Commutation.
Section 5-701.10 Conditional Pardons.
Section 5-701.11 Revocation of Pardons or Commutations.
Section 5-701.12 Modification of Sentence.

CHAPTER 8
RULES OF CRIMINAL PROCEDURE
APPEAL

Section 5-801.1 Right of Appeal.
Section 5-801.2 Stay of Judgment and Relief Pending Review.

CHAPTER 9
RULES OF CRIMINAL PROCEDURE
SEARCH, SEIZURE, AND ARREST

Section 5-901.1 Search and Seizure.
Section 5-901.2 Arrest.
Section 5-901.3 Arrest in Hot Pursuit.
Section 5-901.4 Limitation on Arrests in the Home.
Section 5-901.5 Notification of Rights.

CHAPTER 10
RULES OF CRIMINAL PROCEDURE
BAIL

Section 5-1001.1 Definitions.
Section 5-1001.2 Establishment.
Section 5-1001.3 Persons Authorized to Accept Bail.
Section 5-1001.4 Form of Payment.
Section 5-1001.5 Sureties.
Section 5-1001.6 Bail Amount.
Section 5-1001.7 Procedures.
Section 5-1001.8 Release in Cases Prior to Trial.
Section 5-1001.9 Penalties for Failure to Appear.
Section 5-1001.10 Persons or Classes Prohibited as Bail Bondsmen.

Section 5-1001.11 Authority to Act as Bail Bondsmen.
Section 5-1001.12 Disbursement of Bail Amounts.

CHAPTER 11
RULES OF CRIMINAL PROCEDURE
EXTRADITION

Section 5-1101.1 Extradition from the Chickasaw Nation.
Section 5-1101.2 Demands for Extradition to the Chickasaw Nation.

CHAPTER 12
RULES OF CRIMINAL PROCEDURE
PROTECTION FROM DOMESTIC ABUSE

Section 5-1201.1 Definitions.

Section 5-1201.2 Protective Order - Petition.
Section 5-1201.3 Emergency Ex Parte Order.
Section 5-1201.4 Hearing; Issuance of Protective Orders; Period of Relief.
Section 5-1201.5 Copies of Ex Parte or Final Protective Orders to be Sent to Appropriate Law Enforcement Agencies.
Section 5-1201.6 Violation of Ex Parte or Final Protective Order - Penalty.
Section 5-1201.7 Nationwide Validity of Orders.
Section 5-1201.8 Foreign Protective Orders.
Section 5-1201.9 Duties of Police Officer; Emergency Temporary order of Protection.
Section 5-1201.11 Violation of Order; Warrantless Arrest; Presumption of Validity of Orders.
Section 5-1201.12 Presentation of an Altered or False Protective Order.

CHAPTER 13
RULES OF EVIDENCE

ARTICLE A
GENERAL PROVISIONS

Section 5-1301.1 Scope.
Section 5-1301.2 Purpose and Construction.
Section 5-1301.3 Rulings on Evidence.
Section 5-1301.4 Preliminary Questions.
Section 5-1301.5 Limited Admissibility.
Section 5-1301.6 Remainder or Related Writings or Recorded Statements.

ARTICLE B
JUDICIAL NOTICE

Section 5-1302.1 Judicial Notice of Adjudicative Facts.

ARTICLE C
PRESUMPTIONS

Section 5-1303.1 Presumptions in General in Civil and Criminal Actions and Proceedings.

ARTICLE D
RELEVANCY AND ITS LIMITS

Section 5-1304.1 Definition of "Relevant Evidence."
Section 5-1304.2 Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible.
Section 5-1304.3 Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time.
Section 5-1304.4 Character Evidence not Admissible to Prove Conduct; Exceptions; Other Crimes.
Section 5-1304.5 Methods of Proving Character.
Section 5-1304.6 Habit; Routine Practice.
Section 5-1304.7 Subsequent Remedial Measures.
Section 5-1304.8 Compromise and Offers to Compromise.
Section 5-1304.9 Payment of Medical and Similar Expenses.
Section 5-1304.10 Inadmissibility of Pleas, Offers of Pleas and Related Statements.
Section 5-1304.11 Liability Insurance.
Section 5-1304.12 Sexual Offense Against Another Person; Evidence of Complaining Witness's Previous Sexual Conduct Inadmissible; Exception.
Section 5-1304.13 Evidence of Commission of Other Sexual Assault Offense; Admissibility; Disclosures by Prosecutor.
Section 5-1304.14 Evidence of Commission of Other Child Molestation Offense – Admissibility – Disclosures by Prosecutor.

ARTICLE E

PRIVILEGES

Section 5-1305.1 Privileges Recognized Only as Provided.
Section 5-1305.2 Lawyer-Client Privilege.
Section 5-1305.3 Physician and Psychotherapist; Patient Privilege.
Section 5-1305.4 Spousal Privilege.
Section 5-1305.5 Religious Privilege.
Section 5-1305.6 Political Vote.
Section 5-1305.7 Trade Secrets.
Section 5-1305.8 Secrets of the Chickasaw Government and Other Official Information; Governmental Privileges.
Section 5-1305.9 Identity of Informer.
Section 5-1305.10 Waiver of Privilege by Voluntary Disclosure.
Section 5-1305.11 Privileged Matter Disclosed under Compulsion or Without Opportunity to Claim Privilege.
Section 5-1305.12 Comment Upon and Inference From Claim of Privilege; Instruction.

ARTICLE F
WITNESSES

Section 5-1306.1 General Rules of Competency.
Section 5-1306.2 Lack of Personal Knowledge.
Section 5-1306.3 Oath or Affirmation.
Section 5-1306.4 Interpreters.
Section 5-1306.5 Competency of Judge as Witness.
Section 5-1306.6 Competency of Juror as Witness.
Section 5-1306.7 Who may Impeach.
Section 5-1306.8 Evidence of Character and Conduct of Witness.
Section 5-1306.9 Impeachment by Evidence of Conviction of Crime.
Section 5-1306.10 Religious Beliefs or Opinions.
Section 5-1306.11 Mode and Order of Interrogation and Presentation.
Section 5-1306.12 Writing Used to Refresh Memory.
Section 5-1306.13 Prior Statements of Witnesses.
Section 5-1306.14 Calling and Interrogation of Witnesses by Court.
Section 5-1306.15 Exclusion of Witnesses.
Section 5-1306.16 Procedures to Protect the Rights of Witnesses.

ARTICLE G
OPINIONS AND EXPERT TESTIMONY

Section 5-1307.1 Opinion Testimony by Lay Witnesses.
Section 5-1307.2 Testimony by Experts.
Section 5-1307.3 Basis of Opinion Testimony by Experts.
Section 5-1307.4 Opinion on Ultimate Issue.
Section 5-1307.5 Disclosure of Facts or Data Underlying Expert Opinion.
Section 5-1307.6 Court appointed Experts.
Section 5-1307.7 Expert Testimony; Admissibility.

ARTICLE H
HEARSAY

Section 5-1308.1 Definitions.
Section 5-1308.2 Hearsay Rule.
Section 5-1308.3 Hearsay Exceptions; Availability of Declarant Immaterial.
Section 5-1308.4 Hearsay Exceptions; Declarant Unavailable.
Section 5-1308.5 Hearsay Within Hearsay.
Section 5-1308.6 Attacking and Supporting Credibility of Declarant.
Section 5-1308.7 Hearsay Exception; Statement of Child Victim.

ARTICLE I
AUTHENTICATION AND IDENTIFICATION

Section 5-1309.1 Requirement of Authentication or Identification.
Section 5-1309.2 Self-authentication.
Section 5-1309.3 Subscribing Witness' Testimony Unnecessary.

ARTICLE J
CONTENTS OF WRITING, RECORDINGS, AND PHOTOGRAPHS

Section 5-1310.1 Definitions.
Section 5-1310.2 Requirement of Original.
Section 5-1310.3 Admissibility of Duplicates.
Section 5-1310.4 Admissibility of Other Evidence of Contents.
Section 5-1310.5 Public Records.
Section 5-1310.6 Summaries.
Section 5-1310.7 Testimony or Written Admission of Party.
Section 5-1310.8 Functions of Court and Jury.

ARTICLE K
MISCELLANEOUS RULES

Section 5-1311.1 Applicability of Rules.
Section 5-1311.2 Amendments.

ARTICLE L
CHILD WITNESS TESTIMONY BY ALTERNATIVE METHODS

Section 5-1312.1 Definitions.
Section 5-1312.2 Applicability.
Section 5-1312.3 Hearing Whether to Allow Testimony by Alternative Method.
Section 5-1312.4 Standards for Determining Whether a Child Witness's Testimony may be Presented by Alternative Method.
Section 5-1312.5 Factors for Determining Whether to Permit Alternative Method.
Section 5-1312.6 Order Regarding Testimony by Alternative Method.
Section 5-1312.7 Right of Parties to Examine a Child Witness.
Section 5-1312.8 Use of Testimony by Alternative Methods in Depositions.
Section 5-1312.9 Support of a Child Witness.

CHAPTER 14
CHICKASAW NATION PEACEMAKING COURT
(Nanna alphi'sa ishtaa-asha ikbi)

Section 5-1401.1 Short Title.
Section 5-1401.2 Creation and Purpose.
Section 5-1401.3 Peacemaker of the Court.
Section 5-1401.4 Jurisdiction of the Peacemaking Court.
Section 5-1401.5 Use of Tribal Traditions and Customary Law.
Section 5-1401.6 Limitations of Peacemaker Authority.
Section 5-1401.7 Use of Tribal Traditions and Customary Law.
Section 5-1401.8 Procedures for Requesting to Transfer as an Existing Action to the Peacemaking Court.
Section 5-1401.9 General Provisions.
Section 5-1401.10 Procedure in Peacemaking Court.
Section 5-1401.11 Form of Agreements and Proposed Orders.
Section 5-1401.12 Enforcement of Orders.
Section 5-1401.13 Admissibility of Statements Made in Peacemaking Court.

Section 5-1401.14 Conduct of a Peacemaker.
Section 5-1401.15 Protective Orders.
Section 5-1401.16 Method; Basic Rights.
Section 5-1401.17 Miscellaneous.

CHAPTER 1
CHICKASAW NATION SUPREME COURT

ARTICLE A
COURT ADMINISTRATIVE PROVISIONS

Section 5-101.1 Title.
Section 5-101.2 Membership.
Section 5-101.3 Regular Meetings.
Section 5-101.4 Clerk of Court.
Section 5-101.5 Chickasaw Bar Association.
Section 5-101.6 Rules of Professional Conduct for Attorneys; Canons of Judicial Ethics.
Section 5-101.7 Licensed Legal Intern.
Appendix "A" Rules of Professional Conduct for Attorneys.
Appendix "B" Canons of Judicial Ethics.

SECTION 5-101.1 TITLE.

This Act shall be known as the Rules of Procedure for the Supreme Court of the Chickasaw Nation. (PR18-042, 9/27/01.)

Constitutional Reference: Amendment V, Section 1.

SECTION 5-101.2 MEMBERSHIP.

A. The Judicial Department of the Chickasaw Nation was originally defined by Article XII of the Constitution of the Chickasaw Nation 1983, and restructured by Amendment V to the Constitution of the Chickasaw Nation on November 21, 1994. Amendment V created the Supreme Court hereinafter called "Court" for the purpose of reference.

B. The Justices of the Court shall select one of their members to act as Chief Justice.

1. A Chief Justice shall be selected during the regular meeting following election or reelection of a Justice of the Court and installation of the same.

2. The Chief Justice shall have the following duties:

a. Report to the Governor who shall prepare and submit an annual budget to the Tribal Legislature concerning budget requests of the Court.

b. Perform or delegate performance of all duties of administration of the Court System.

(PR20-012, 6/20/03)

SECTION 5-101.3 REGULAR MEETINGS.

The Court shall hold regular meetings at the discretion of the Justices. The time and location of such meetings shall be provided by the Court. (PR20-012, 6/20/03)

SECTION 5-101.4 CLERK OF COURT.

A. The Clerk of Court shall have the duty to keep a Court Docket Book in which all pleadings shall be entered along with any designated hearing dates by the Court and such other books as required by the Court or by law.

B. The Clerk of Court shall also file and preserve all papers delivered for that purpose and perform all other duties as may be required by the Court. (PR18-042, 9/27/01)

SECTION 5-101.5 CHICKASAW BAR ASSOCIATION.

A. Any person shall be authorized to practice as an attorney and counselor at law in any Court of the Chickasaw Nation who has been admitted to the Bar of the Chickasaw Nation. The Bar of the Chickasaw Nation shall be open to any person who is an attorney at law and is admitted to practice before any state or federal court within the United States of America and is a member in good standing of the bar of such court. (PR38-014, 02/22/2021; PR43-008, 07/17/2026)

B. All persons authorized under this Section shall become members of the Chickasaw Bar Association and their names shall be added to the roll of attorneys for the Chickasaw Supreme Court upon paying an annual fifty dollar ($50) membership fee, and such other additional fees as the Supreme Court may assess, to the Clerk of the Court and taking and signing the following oath before the Clerk of the Court:

> "You do solemnly swear that you will support, protect and defend the Constitution of the United States and the Constitution of the Chickasaw Nation; that you will do no falsehood or consent that any be done in court, and if you know of any you will give knowledge thereof to the Judges of the Court, or some one of them, that it may be reformed; you will not wittingly, willingly or knowingly promote, sue or procure to be sued, any false or unlawful suit, or give aid or consent to the same; you will delay no man for lucre or malice, but will act in the office of attorney in this Court according to your best learning and discretion, with all good fidelity as well to the Court as to your client, so help you God."

C. All fees collected from Chickasaw Bar Association members shall be held by the Supreme Court and managed and expended for the membership of the Chickasaw Bar Association."
(PR19-020, 6/21/02; PR20-002, 12/20/02; PR22-002, 11/19/04)

SECTION 5-101.6 RULES OF PROFESSIONAL CONDUCT FOR ATTORNEYS; CANONS OF JUDICIAL ETHICS.

The Chickasaw Nation Supreme Court shall, within ninety (90) days of the passage of this Section, promulgate rules for the professional conduct of attorneys practicing law before the courts of the Chickasaw Nation and canons of judicial ethics which shall apply to all Judges and Justices of the Chickasaw Nation and other court personnel as designated by the Supreme Court. The Rules of Professional Conduct for Attorneys and Canons of Judicial Ethics shall be codified as Appendixes "A" and "B" respectively at the end of this Title 5, Chapter 1, Article A. (PR20-017, 6/20/03)

SECTION 5-101.7 LICENSED LEGAL INTERN.

A "Licensed Legal Intern" is an individual who is a qualified law school student or law school graduate, who holds a limited license granted by the Oklahoma Supreme Court to practice law, and who operates under a supervising attorney. Any person who is a duly Licensed Legal Intern with the State of Oklahoma shall be authorized to practice law in any Court of the Chickasaw Nation, provided that the Licensed Legal Intern abides by the limitations, rules, and regulations established by the Oklahoma Supreme Court and Oklahoma Bar Association for a Licensed Legal Intern and the rules set forth herein. In order to appear before the Chickasaw Nation Courts, a Licensed Legal Intern must comply with the following:

1. Abide by the Oklahoma Supreme Court and Oklahoma Bar Association Rules and Regulations for licensed legal interns;

2. Work under the supervision of an attorney who is a member of the Chickasaw Bar Association and duly qualified and authorized to serve as a supervising attorney under the rules and regulations of the Oklahoma Supreme Court and Oklahoma Bar Association for licensed legal interns; and

3. File a copy of the following documents with the Chickasaw Nation Supreme Court Clerk prior to any court appearance:

    a. A true and correct copy of the Licensed Legal Intern's limited license which was duly and lawfully issued by the Oklahoma Supreme Court;

    b. A true and correct copy of the affidavit submitted to the Oklahoma Bar Association by the supervising attorney on behalf of the Licensed Legal Intern; and

c. A true and correct copy of the "Welcome Letter" from the Oklahoma Bar Association to the supervising attorney, acknowledging that the attorney has been approved to serve as a supervising attorney for the Licensed Legal Intern.

4. Prior to appearing before the Chickasaw Nation Courts, the Licensed Legal Intern must take and sign the oath set forth in Section 5-101.5(B) before a Justice of the Supreme Court or a Judge of the District Court. Any person authorized as a Licensed Legal Intern under this Section is not considered a member of the Chickasaw Bar Association but must abide by the Chickasaw Nation's Rules of Professional Conduct for Attorneys set out in Title 5, Appendix A.

5. When a Licensed Legal Intern's limited license is terminated by the State of Oklahoma, that person is no longer eligible to appear before the Chickasaw Nation Courts as a Licensed Legal Intern. It shall be the responsibility of the Licensed Legal Intern to inform the Supreme Court Clerk, in writing, when his or her limited license to practice as a licensed legal intern is terminated by the State of Oklahoma.

6. The Supreme Court Clerk shall notify the District Court Judges of the admission or termination of a Licensed Legal Intern requesting to appear before the Chickasaw Nation Courts.

7. The Chickasaw Nation Supreme Court or inferior courts are hereby authorized to adopt additional rules and regulations regarding the practice of licensed legal interns before the Chickasaw Nation Courts.

(PR43-008, 07/17/2026)

"APPENDIX "A"
RULES OF PROFESSIONAL CONDUCT FOR ATTORNEYS

SCOPE

A. These Rules of Professional Conduct for Attorneys shall be rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the rules shall are imperatives, cast in the terms "shall" or "shall not." Such Rules define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has professional discretion. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role.

B. The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure and laws defining specific obligations of lawyers and substantive and procedural law in general. Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

C. Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that may attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

D. Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Also, government lawyers may be authorized to represent several government agencies in intra governmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. They also may have authority to represent the "public interest" in circumstances where a private lawyer would not be authorized to do so. These Rules do not abrogate any such authority.

E. Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

F. Violation of a Rule should not give rise to a cause of action nor should it create presumption that a legal duty has been breached. The Rules are designed to provide guidance

to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Accordingly, nothing in the Rules should be deemed to augment any substantive legal duty of lawyers or the extra- disciplinary consequences of violating such a duty.

G. Moreover, these Rules are not intended to govern or affect judicial application of either the attorney-client or work product privilege. Those privileges were developed to promote compliance with law and fairness in litigation. In reliance on the attorney-client privilege, clients are entitled to expect that communications within the scope of the privilege will be protected against compelled disclosure. The attorney-client privilege is that of the client and not of the lawyer. The fact that in exceptional situations the lawyer under the Rules has limited discretion to disclose a client confidence does not vitiate the proposition that, as a general matter, the client has a Reasonable expectation that information relating to the client will not be voluntarily disclosed and that disclosure of such information may be judicially compelled only in accordance with recognized exceptions to the attorney-client and work product privileges.

H. The lawyer's exercise of discretion not to disclose information under Rule 1.6 should not be subject to reexamination. Permitting such reexamination would be incompatible with the general policy of promoting compliance with law through assurances that communications will be protected against disclosure.

I. This Section on Scope provides general orientation to the Rules, but the text of each Rule is authoritative.

DEFINITIONS

A. In the construction of this Act, the following rules of construction and definitions shall be observed unless inconsistent with the manifest intent of the Legislature or the context clearly requires otherwise:

1. "Belief" or "Believes" denotes that the person involved actually supposed the fact in question to be true. A person's Belief may be inferred from circumstances.

2. "Consult" or "Consultation" denotes communication of information Reasonably sufficient to permit the client to appreciate the significance of the matter in question.

3. "Firm" or "Law Firm" denotes a lawyer or lawyers in a private Firm, lawyers employed in the legal department of a corporation or other organization and lawyers employed in a legal services organization.

4. "Fraud" or "Fraudulent" denotes conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information.

5. "Knowingly," "Known," or "Knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

6. "Office of Tribal Justice Administration" is the Chickasaw Nation Executive Department office charged with enforcement, application, and supervision of the Chickasaw Nation criminal laws and houses the Office of the Chickasaw Nation Prosecutor created in Section 5-202.34 of the Chickasaw Nation Code.

7. "Office of the Chickasaw Nation Public Defender" is the office created by Section 5-202.36 of the Chickasaw Nation Code.

8. "Partner" denotes a member of a partnership and a shareholder in a Law Firm organized as a professional corporation.

9. "Reasonable" or "Reasonably," when used in relation to conduct by a lawyer, denotes the conduct of a Reasonably prudent and competent lawyer.

10. "Reasonable Belief" or "Reasonably Believes," when used in reference to a lawyer, denotes that the lawyer Believes the matter in question and that the circumstances are such that the Belief is Reasonable.

11. "Reasonably Should Know," when used in reference to a lawyer, denotes that a lawyer of Reasonable prudence and competence would ascertain the matter in question.

12. "Substantial," when used in reference to degree or extent, denotes a material matter of clear and weighty importance.

B. Words and phrases are construed according to the common and approved usage of the language, but technical words and phrases and others that have acquired a peculiar and appropriate meaning in the law are construed and understood according to such meaning. (PR43-004, 04/20/2026)

RULES

The following Rules of Professional Conduct regard general provisions:

Rule 1.1 Competence.

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation Reasonably necessary for the representation.

Rule 1.2 Scope of Representation.

A. A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to Subsections B, C and D below and shall Consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after Consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

B. A lawyer may limit the objectives of the representation if the client consents after Consultation.

C. A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer Knows is criminal or Fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

D. When a lawyer Knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall Consult with the client regarding the relevant limitations on the lawyer's conduct.

Rule 1.3 Diligence.

A lawyer shall act with Reasonable diligence and promptness in representing a client.

Rule 1.4 Communication.

A. A lawyer shall keep a client Reasonably informed about the status of a matter and promptly comply with Reasonable requests for information.

B. A lawyer shall explain a matter to the extent Reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 1.5 Fees.

A. A lawyer's fee shall be Reasonable. The factors to be considered in determining the Reasonableness of a fee include the following:

1. the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

2. the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

3. the fee customarily charged in the locality for similar legal services;

4. the amount involved and the results obtained;

5. the time limitations imposed by the client or by the circumstances;

6. the nature and length of the professional relationship with the clients;

7. the experience, reputation, and ability of the lawyer or lawyers performing the services; and

8. whether the fee is fixed or contingent.

B. When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a Reasonable time after commencing the representation.

C. A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by Subsection D below or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, whether the client is to be liable for

reimbursement of litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter, and, if there is a recovery showing the remittance to the client and the method of determination.

D. A lawyer shall not enter into an arrangement for, charge, or collect:

1. any fee in a domestic relations matter, the payment or amount of which is contingent upon the result obtained, other than actions to collect past due alimony or child support; or

2. a contingent fee for representing a defendant in a criminal case.

E. A division of fee between lawyers who are not in the same Firm may be made only if:

1. the division is in proportion to the services performed by each lawyer or, by written agreement with the client, each lawyer assumes joint responsibility for the representation;

2. the client is advised of and does not object to the participation of all of the lawyers involved; and

3. the total fee is Reasonable.

F. The salaries, benefits, and other forms of employment compensation, of lawyers who are employees of the Chickasaw Nation including but not limited to the Office of Tribal Justice Administration and the Office of the Chickasaw Nation Public Defender, shall not constitute fees for purposes of this Appendix A and Appendix B.

Rule 1.6 Confidentiality of Information.

A. A lawyer shall not reveal information relating to representation of a client unless the client consents after Consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in Subsections B and C below.

B. A lawyer may reveal, to the extent the lawyer Reasonably Believes necessary, information relating to representation of a client:

1. to disclose the intention of the client to commit a crime and the information necessary to prevent the crime;

2. to rectify the consequences of what the lawyer Knows to be a client's criminal or Fraudulent act in the commission of which the lawyer's services had been used, provided that the lawyer has first made Reasonable efforts to contact the client but has been unable to do so, or that the lawyer has contacted and called upon the client to rectify such criminal or Fraudulent act but the client has refused or is unable to do so;

3. to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

4. or as otherwise permitted under these Rules.

C. A lawyer shall reveal such information when required by law or court order.

Rule 1.7 Conflict of Interest; General Rule.

A. A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

1. the lawyer Reasonably Believes the representation will not adversely affect the relationship with the other client; and

2. each client consents after Consultation.

B. A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

1. the lawyer Reasonably Believes the representation will not be adversely affected; and

2. the client consents after Consultation. When representation of multiple clients in a single matter is undertaken, the Consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

Rule 1.8 Conflict of Interest; Prohibited Transactions.

A. A lawyer shall not enter into a business transaction with a client or Knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

1. the transaction and terms on which the lawyer acquires the interest are fair and Reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be Reasonably understood by the client;

2. the client is given a Reasonable opportunity to seek the advice of independent counsel in the transaction; and

3. the client consents in writing thereto.

B. A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client consents after Consultation, except as permitted or required by Rule 1.6 or Rule 3.3.

C. A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling, or spouse any Substantial gift from a client, including a testamentary gift, except where the client is related to the donee.

D. Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in Substantial part on information relating to the representation.

E. A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter.

F. A lawyer shall not accept compensation for representing a client from one other than the client unless:

1. the client consents after Consultation;

2. there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

3. information relating to representation of a client is protected as required by Rule 1.6.

G. A lawyer who represents two (2) or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or *nolo contendere* pleas, unless each client consents after

Consultation, including disclosure of the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

H. A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for the lawyer's personal malpractice, or settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.

I. A lawyer related to another lawyer as parent, child, sibling or spouse shall not represent a client in a representation directly adverse to a person who the lawyer Knows is represented by the other lawyer except upon consent by the client after Consultation regarding the relationship.

J. A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

1. acquire a lien granted by law or contract to secure the lawyer's fee or expenses; and

2. contract with a client for a Reasonable contingent fee in a civil case.

Rule 1.9 Conflict of Interest: Former Client.

A. A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a Substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after Consultation.

B. A lawyer shall not Knowingly represent a person in the same or a Substantially related matter in which a Firm with which the lawyer formerly was associated had previously represented a client:

1. whose interests are materially adverse to that person; and

2. about whom the lawyer had acquired information protected by Rules 1.6 and Subsection C below that is material to the matter; unless the former client consents after Consultation.

C. A lawyer who has formerly represented a client in a matter or whose present or former Firm has formerly represented a client in a matter shall not thereafter:

1. use information relating to the representation to the disadvantage of the former client except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client, or when the information has been generally Known; or

2. reveal information relating to the representation except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client.

Rule 1.10 Imputed Disqualification: General Rule.

A. While lawyers are associated in a Firm, none of them shall Knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8, 1.9, 1.12 or 2.2, unless:

1. The prohibition is based on the personal interest of the disqualified lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the Firm; or

2. The prohibition is based upon Rule 1.9(a) or (b) and arises out of the disqualified lawyer's association with a prior Firm; and

i. The disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom;

ii. Written notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this Rule, which shall include a description of the screening procedures employed; a statement of the Firm's and of the screened lawyer's compliance with these Rules; and an agreement by the Firm to respond promptly to any written inquiries or objections by the former client about the screening procedures; and

iii. Certifications of compliance with these Rules and with the screening procedures are provided to the former client by the screened lawyer and by a Supervisory Lawyer or Partner of the Firm at reasonable intervals upon the former client's written request and upon termination of the screening procedures.

3. Exception. For purposes of this Rule 1.10A, an in-house legal department of a government agency, a government agency providing indigent defense services, including a public defender's office or similar appointed-counsel's office, or a prosecutor's office, shall not be considered a "Firm" for purposes of imputed disqualification. A conflict of interest arising with respect to one lawyer in such an office shall not automatically be imputed to all other lawyers in that office, provided that adequate procedures are in place to ensure that the conflicted lawyer is adequately screened, confidential information is not shared, and that representation of client(s) remains free from material limitation. The conflict of interest of a

lawyer performing services as an independent contractor for an in-house legal department of a government agency, a government agency providing indigent defense services, or a prosecutor's office shall not be automatically imputed to the legal department for which the conflicted lawyer is performing work. The lawyer performing contract services shall be subject to the same screening procedures set forth in this Rule 1.10, as appropriate, when a conflict of interest exists between the lawyer performing contract services and a client of the in-house legal department of a government agency, a government agency providing indigent defense services, or a prosecutor's office for which the lawyer is performing services. (PR43-004, 04/20/2026)

B. When a lawyer has terminated an association with a Firm, the Firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the former associated lawyer and not currently represented by the Firm, unless:

1. the matter is the same or Substantially related to that in which the formerly associated lawyer represented the client; and

2. any lawyer remaining in the Firm has information protected by Rules 1.6 and 1.9.C that is material to the matter.

C. A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.

Rule 1.11 Successive Government and Private Employment.

A. Except as Chickasaw law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and Substantially as a public officer or employee, unless the appropriate government agency consents after Consultation. No lawyer in a Firm with which that lawyer is associated may Knowingly undertake or continue representation in such a matter unless:

1. the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

2. written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

B. Except as Chickasaw law may otherwise expressly permit, a lawyer having information that the lawyer Knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. A Firm with which that lawyer is associated may

undertake or continue representation in the matter only if the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom.

C. Except as law may otherwise expressly permit, a lawyer serving as a public officer or employee shall not:

1. participate in a matter in which the lawyer participated personally and Substantially while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter; or

2. negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and Substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12.B and subject to the conditions stated in Rule 1.12.B.

D. As used in this Rule, the term "matter" includes:

1. any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and

2. any other matter covered by the conflict of interest rules of the appropriate government agency.

E. As used in this Rule, the term "confidential government information" means information which has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose, and which is not otherwise available to the public.

Rule 1.12 Former Judge or Arbitrator.

A. Except as stated in Subsection D below, a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and Substantially as a judge or other adjudicative officer, arbitrator or law clerk to such a person, unless all parties to the proceeding consent after Consultation.

B. A lawyer shall not negotiate for employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and Substantially as a judge or other adjudicative officer, or arbitrator. A lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for employment with a

party or attorney involved in a matter in which the clerk is participating personally and Substantially, but only after prior notice to the judge, other adjudicative officer or arbitrator, and opposing counsel.

C. If a lawyer is disqualified by Subsection A above, no lawyer in a Firm with which that lawyer is associated may Knowingly undertake or continue representation in the matter unless:

1. the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

2. written notice is promptly given to the appropriate tribunal to enable it to ascertain compliance with the provisions of this rule.

D. An arbitrator selected as a partisan of a party in a multi-member arbitration panel is not prohibited from subsequently representing that party.

Rule 1.13 Organization as Client.

A. A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

B. If a lawyer for an organization Knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which Reasonably might be imputed to the organization, and is likely to result in Substantial injury to the organization, the lawyer shall proceed as is Reasonably necessary in the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization. Such measures may include among others:

1. asking reconsideration of the matter;

2. advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and

3. referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.

C. If, despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon action, or a refusal to act, that is clearly a violation of law and is likely to result in Substantial injury to the organization, the lawyer may resign in accordance with Rule 1.16.

D. In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when it is apparent that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

E. A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

Rule 1.14 Client Under a Disability.

A. When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or for some other reason, the lawyer shall, as far as Reasonably possible, maintain a normal client-lawyer relationship with the client.

B. A lawyer may seek the appointment of a guardian or take other protective action with respect to a client, only when the lawyer Reasonably Believes that the client cannot adequately act in the client's own interest.

Rule 1.15 Safekeeping Property.

A. A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the written consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five (5) years after termination of the representation.

B. Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule

or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

C. When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

D. Trust Accounts. A lawyer or Law Firm may create and maintain an interest- bearing demand trust account and may deposit therein all funds of clients to the extent permitted by applicable banking laws, that are nominal in amount or are on deposit for a short period of time. Maintenance of such trust account balances in noninterest-bearing trust accounts will still be permitted. The attorney electing to utilize interest bearing trust accounts shall comply with the following provisions:

1. the Interest-Bearing Demand Trust Account may be established with any bank or savings and loan association authorized by federal or state law to do business in Oklahoma and insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation;

2. the rate of interest payable on any interest-bearing demand trust account shall not be less than the rate paid by the depository institution to regular, nonattorney depositors. Higher rates offered by the institution to customers whose deposits exceed certain time or quantity minimums, such as those offered in the form of certificates of deposit, may be obtained by a lawyer or Law Firm so long as there is no impairment of the right to withdraw or transfer principal immediately (except as accounts generally may be subject to statutory notification requirements), even though interest may be sacrificed thereby;

3. the depository institution shall be directed:

a. to remit interest or dividends, as the case may be, on the average monthly balance in the account, at least quarterly, to the Oklahoma Bar Foundation, Inc.; and

b. to transmit with each remittance to the Foundation a statement showing the name of the lawyer or the Law Firm for whom the remittance is sent and rate of interest applied; and

4. in the event that any client asserts a claim against an attorney based upon such attorney's determination to place client advances in the interest- bearing demand trust account because such balance is nominal in amount or held for a short period of time, the Foundation shall, upon written request by such attorney, review such claim and either:

a. approve such claim (if such balances are found not to be nominal in amount or short in duration) and remit directly to the claimant any sum of interest remitted to the Foundation on account of such funds; or

b. reject such a claim (if such balances are found to be nominal in amount or short in duration) and advise the claimant in writing of the grounds therefor. In the event of any subsequent litigation involving such a claim, the Foundation shall interplead any such sum of interest and shall assume the defense of the action.

Rule 1.16 Declining or Terminating Representation.

A. Except as stated in Subsection C below, a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

1. the representation will result in violation of these Rules of Professional Conduct or other law;

2. the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client;

3. the client persists in a course of action involving the lawyer's services that the lawyer Reasonably Believes is criminal or Fraudulent;

4. the client has used the lawyer's services to perpetrate a crime or Fraud; or

5. the lawyer is discharged.

B. Except as stated in Subsection C below, a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

1. a client insists upon pursuing an objective that the lawyer considers repugnant or imprudent to the extent that it is likely to impair the client- lawyer relationship or the lawyer's ability to represent the client.

2. the client fails Substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given Reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

3. the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

4. other good cause for withdrawal exists.

C. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

D. Upon termination of representation, a lawyer shall take steps to the extent Reasonably practicable to protect a client's interests, such as giving Reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

Rule 1.17 Sale of Law Practice.

A. A lawyer (or the authorized representative of a lawyer) who ceases to engage in the private practice of law in Oklahoma may sell the law practice of such a lawyer to a lawyer or Law Firm, and a lawyer or Law Firm may purchase that law practice, if the following conditions are satisfied:

1. The practice is sold in its entirety, except that

a. the representation of any client who does not affirmatively consent as provided in Subsection C below shall not be transferred;

b. matters shall not be transferred to a purchaser unless the seller has a Reasonable basis to believe that the purchaser has the requisite knowledge and skill to handle such matters, or Reasonable assurances are obtained that such purchaser will either acquire such knowledge and skill or associate with another lawyer having such competence;

c. matters shall not be transferred to a purchaser who would not be permitted to assume such representation by reason of restrictions contained in Rules 1.7 through 1.12 or other Rules; and

d. where matters in litigation are involved, any necessary judicial approvals of the transfer of representation must be obtained.

B. The seller or the seller's representative shall give written notice to each client whose representation is proposed to be transferred, stating:

1. The lawyer is ceasing to engage in the private practice of law in Oklahoma;

2. the practice of the lawyer is to be sold;

3. a transfer of the representation of such client to a specified lawyer or Law Firm is proposed;

4. the client has the right to take possession of the file and retain other counsel;

5. the existence and status of any funds or property held for the client, including but not limited to retainers or other prepayments; and

6. the terms of any proposed change in the fee arrangement within the limits authorized by Subsection E below.

C. The signed consent of each client whose representation is proposed to be transferred to a purchaser must be obtained on a copy of the written notice provided for in Subsection B above and such form of written notice shall also provide a space for the client to direct another disposition of the file.

D. No attorney-client communications or other confidential information protected by Rule 1.6 shall be revealed to a purchaser or prospective purchaser unless the client's consent to the transfer of representation has first been obtained as provided in Subsections B and C above.

E. The fees charged clients shall not be increased by reason of the sale. The purchaser may, however, refuse to undertake the representation unless the client consents to pay the purchaser fees at a rate not exceeding the fees charged by the purchaser for rendering Substantially similar services prior to the initiation of the purchase negotiations.

F. A Reasonable effort shall be made to locate each client whose representation is proposed to be transferred, but if such client cannot be located, then the seller of the practice must make appropriate arrangements with another lawyer or Law Firm who would be qualified to assume such representation, who need not be the purchaser of the practice. Any such files shall be segregated by the receiving lawyer or Law Firm for safekeeping and held for disposition as the client may direct when located.

G. The custody of inactive files representing matters which have been concluded, or with respect to which no current activities are occurring or contemplated, shall only be transferred in accordance with the applicable provisions of Subsections B and C or F above, as the case may be.

The following rules regard a lawyer as counselor:

Rule 2.1 Advisor.

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Rule 2.2 Intermediary.

A. A lawyer may act as intermediary between clients if:

1. the lawyer Consults with each client concerning the implications of the common representation, including the advantages and risks involved, and the effect on the attorney-client privileges, and obtains each client's consent to the common representation;

2. the lawyer Reasonably Believes that the matter can be resolved on terms compatible with the clients' best interests, that each client will be able to make adequately informed decisions in the matter and that there is little risk of material prejudice to the interests of any of the clients if the contemplated resolution is unsuccessful; and

3. the lawyer Reasonably Believes that the common representation can be undertaken impartially and without improper effect on other responsibilities the lawyer has to any of the clients.

B. While acting as intermediary, the lawyer shall Consult with each client concerning the decisions to be made and the considerations relevant in making them, so that each client can make adequately informed decisions.

C. A lawyer shall withdraw as intermediary if any of the clients so request, or if any of the conditions stated in Subsection A above is no longer satisfied. Upon withdrawal, the lawyer shall not continue to represent any of the clients in the matter that was the subject of the intermediation.

Rule 2.3 Evaluation for Use by Third Persons.

A. A lawyer may undertake an evaluation of a matter affecting a client for the use of someone other than the client if:

1. the lawyer Reasonably Believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client; and

2. the client consents after Consultation.

B. Except as disclosure is required in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.

The following Rules regard a lawyer as an advocate:

Rule 3.1 Meritorious Claims and Contentions.

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Rule 3.2 Expediting Litigation.

A lawyer shall make Reasonable efforts to expedite litigation consistent with the interests of the client.

Rule 3.3 Candor Toward the Tribunal.

A. A lawyer shall not Knowingly:

1. make a false statement of fact or law to a tribunal;

2. fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or Fraudulent act by the client;

3. fail to disclose to the tribunal legal authority in the controlling jurisdiction Known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

4. offer evidence that the lawyer Knows to be false. If a lawyer has offered material evidence and comes to Know of its falsity, the lawyer shall take the following remedial measures:

a. when a client has offered false evidence, the lawyer shall promptly call upon the client to rectify the same; if the client refuses or is unable to do so, the lawyer shall promptly reveal its false character to the tribunal; or

b. when a person other than a client has offered false evidence, the lawyer shall promptly reveal its false character to the tribunal.

B. The duties stated in Subsection A above are continuing, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

C. A lawyer may refuse to offer evidence that the lawyer Reasonably Believes is false.

D. In an *ex parte* proceeding, a lawyer shall inform the tribunal of all material facts Known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Rule 3.4 Fairness to Opposing Party and Counsel.

A lawyer shall not:

1. unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

2. falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

3. knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

4. in pretrial procedure, make a frivolous discovery request or fail to make Reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

5. in trial, allude to any matter that the lawyer does not Reasonably believe is relevant or that will not be supported by admissible evidence, assert personal

knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

6. request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

a. the person is a relative or an employee or other agent of a client; and

b. the lawyer Reasonably Believes that the person's interests will not be adversely affected by refraining from giving such information.

Rule 3.5 Impartiality and Decorum of the Tribunal.

A lawyer shall not:

1. seek to influence a judge, juror, prospective juror or other decision maker except as permitted by law or the rules of a tribunal;

2. in an adversary proceeding, communicate or cause another to communicate as to the merits of the cause, with a judge or an official before whom the proceeding is pending except:

a. in the course of the official proceeding in the cause;

b. in writing if the lawyer promptly delivers a copy of the writing to the opposing counsel or to the adverse party if not represented by a lawyer;

c. orally upon notice to opposing counsel or to the adverse party if not represented by a lawyer; and

d. as otherwise authorized by law; or

3. communicate directly or through another with a juror or prospective juror except as permitted by law or the rules of court; or

4. engage in conduct intended to disrupt a tribunal.

Rule 3.6 Trial Publicity.

A. A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that a Reasonable lawyer would expect to be disseminated by means of public communication if the lawyer Knows or Reasonably Should Know that it will have an imminent and materially prejudicial effect on the fact-finding process in an adjudicatory proceeding relating to the matter and involving lay fact-finders or the possibility of incarceration.

B. Notwithstanding Subsection A above, a lawyer may make a statement that a Reasonable lawyer would believe is required to protect a client from the Substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to Subsection A shall be limited to such information as is necessary to mitigate the recent adverse publicity.

C. No lawyer associated in a Firm or government agency with a lawyer subject to Subsection A above shall make a statement prohibited by Subsection A.

Rule 3.7 Lawyer as Witness.

A. A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where:

1. the testimony relates to an uncontested issue;

2. the testimony relates to the nature and value of legal services rendered in the case; or

3. disqualification of the lawyer would work Substantial hardship on the client.

B. A lawyer may act as advocate in a trial in which another lawyer in the lawyer's Firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

Rule 3.8 Special Responsibilities of a Prosecutor.

A. The prosecutor in a criminal case shall:

1. refrain from prosecuting a charge that the prosecutor Knows is not supported by probable cause;

2. make Reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining counsel and has been given Reasonable opportunity to obtain counsel;

3. not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

4. make timely disclosure to the defense of all evidence or information Known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information Known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

5. exercise Reasonable efforts to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6;

6. except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a Substantial likelihood of heightening public condemnation of the accused; and

7. not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor Reasonably Believes:

a. the information sought is not protected from disclosure by an applicable privilege; and

b. the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and

c. there is no other feasible alternative to obtain the information.

B. The lawyer upon whom a subpoena is served shall be afforded a Reasonable time to file a motion to quash compulsory process of his attendance. Whenever a subpoena is issued for a lawyer who then moves to quash it by invoking attorney/client privilege, the prosecutor may not press further in any proceeding for the subpoenaed lawyer's appearance as a witness until an adversary *in camera* hearing has resulted in a judicial ruling which resolves all the challenges advanced in the lawyer's motion to quash.

Rule 3.9 Advocate in Nonadjudicative Proceedings.

A lawyer representing a client before a legislative or administrative body or tribunal in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3.A through C, 3.4.A through C and 3.5.

The following Rules regard transactions with persons other than clients:

Rule 4.1 Truthfulness in Statements to Others.

In the course of representing a client a lawyer shall not Knowingly:

1. make a false statement of material fact or law to a third person; or

2. fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or Fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Rule 4.2 Communication with Person Represented by Counsel.

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer Knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

Rule 4.3 Dealing with Unrepresented Person.

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. A lawyer shall not give advice to such a person other than the advice to secure counsel, if the interests of such person are, or have a Reasonable possibility of being, in conflict with the interests of the client.

Rule 4.4 Respect for Rights of Third Person.

In representing a client, a lawyer shall not use means that have no Substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

The following Rules regard Law Firms and professional associations:

Rule 5.1 Responsibilities of a Partner or Supervisory Lawyer.

A. A Partner in a Law Firm shall make Reasonable efforts to ensure that the Firm has in effect measures giving Reasonable assurance that all lawyers in the Firm conform to these Rules of Professional Conduct.

B. A lawyer having direct supervisory authority over another lawyer shall make

Reasonable efforts to ensure that the other lawyer conforms to the rules of professional conduct.

C. A lawyer shall be responsible for another lawyer's violation of the rules of professional conduct if:

1. the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

2. the lawyer is a Partner in the Law Firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and Knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take Reasonable remedial action.

Rule 5.2 Responsibilities of a Subordinate Lawyer.

A. A lawyer is bound by these Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

B. A subordinate lawyer does not violate these Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's Reasonable resolution of an arguable question of professional duty.

Rule 5.3 Responsibilities Regarding Nonlawyer Assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

1. a Partner in a Law Firm shall make Reasonable efforts to ensure that the Firm has in effect measures giving Reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

2. a lawyer having direct supervisory authority over the nonlawyer shall make Reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

3. a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

a. the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

b. the lawyer is a Partner in the Law Firm in which the person is employed, or has direct supervisory authority over the person, and Knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take Reasonable remedial action.

Rule 5.4 Professional Independence of a Lawyer.

A. A lawyer or Law Firm shall not share legal fees with a nonlawyer, except that:

1. an agreement by a lawyer with the lawyer's Firm, Partner, or associate may provide for the payment of money, over a Reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

2. a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer;

3. a lawyer or Law Firm which purchases the practice of a lawyer pursuant to the provisions of Rule 1.17, may pay to the lawyer or representative of that lawyer the agreed-upon purchase price; and

4. a lawyer or Law Firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

B. A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

C. A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

D. A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

1. a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a Reasonable time during administration;

2. a nonlawyer, except the corporate secretary, is a corporate director or officer thereof; or

3. a nonlawyer has the right to direct or control the professional judgment of a lawyer.

Rule 5.5 Unauthorized Practice of Law.

A lawyer shall not:

1. practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

2. assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

Rule 5.6 Restrictions on Right to Practice.

A lawyer shall not participate in offering or making:

1. a partnership or employment agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

2. an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties.

Rule 5.7 Responsibilities Regarding Law-Related Services.

A. A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in Subsection B below, if the law-related services are provided:

1. By the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or

2. In other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take Reasonable measures to assure that a person obtaining the law-related services Knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.

B. The term "law-related services" denotes services that might Reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a non-lawyer.

The following Rules regard public service:

Rule 6.1 Pro Bono Public Service.

A lawyer should render public interest legal service. A lawyer may discharge this responsibility by:

1. providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations;

2. serving without compensation in public interest activities that improve the law, the legal system, or the legal profession; or

3. financial support for organizations that provide legal services to persons of limited means.

Rule 6.2 Accepting Appointments.

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

1. representing the client is likely to result in violation of the Rules of Professional Conduct or other law;

2. representing the client is likely to result in an unreasonable financial burden on the lawyer; or

3. the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

Rule 6.3 Membership in Legal Services Organization.

A lawyer may serve as a director, officer or member of a legal services organization, apart from the Law Firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not Knowingly participate in a decision or action of the organization:

1. if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rule 1.7; or

2. where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

Rule 6.4 Law Reform Activities Affecting Client Interests.

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer Knows that the interests of a client may be materially affected by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

The following Rules regard information about legal service:

Rule 7.1 Communications Concerning a Lawyer's Services.

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it is:

1. a communication which contains a material misrepresentation of fact or law, or omits information necessary to make the communication, considered as a whole, not materially misleading;

2. a communication which is likely to create an unjustified expectation about the results the lawyer can achieve;

3. a communication which states or implies the lawyer can achieve results by means that violate a law, rule, regulation or judicial, executive or administrative order or these Rules of Professional Conduct; or

4. a communication which compares the lawyer's services with other lawyer's services when the comparison cannot be factually substantiated.

Rule 7.2 Advertising.

A. Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor advertising, radio or television or through written or recorded communication.

B. A copy or recording of an advertisement or communication shall be kept for three (3) years after its dissemination along with a record of where and when it was used.

C. If an advertisement is mailed, the lawyer shall maintain those records necessary to determine the names of those persons to whom the advertisement is mailed for a period of three
(3) years.

D. Any communication made pursuant to this rule shall include the name and office address of at least one lawyer responsible for its content.

E. Direct mail solicitations sent to targeted recipients (i.e., written or recorded communications from a lawyer soliciting professional employment from a prospective client Known to be in need of legal services in a particular matter) are permitted, subject to the conditions set forth in this Rule and in Rules 7.1 and 7.3, provided that:

1. If such lawyer is a member of the Oklahoma Bar Association, each such communication shall contain at the end thereof the statement: "If you find anything in this communication to be inaccurate or misleading, you may report the same by writing to the General Counsel of the Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, Oklahoma 73152, or by calling 1- 800-522-8065." In the case of a written communication, such statement shall be in a type size as large as the largest print contained in the communication.

2. The conditions of Paragraph E.1 above shall not be applicable if the written communication is directed to a person with whom direct contact would be permitted by Rule 7.3.B.

3. Every written or recorded communication from a lawyer soliciting professional employment from a prospective client shall include the words: "This is an advertisement." These words shall appear on the front of each envelope in which an advertisement of a lawyer is mailed or on the front of each post card, and at the top of any written communication contained in an envelope, printed in a type size as large as the largest print appearing on the face of the envelope, post card or container, and, in case of a recorded communication, the words "This is an advertisement" shall appear both on the container (and label, if any), as well as at the beginning and end of the communication. No such written or recorded communication shall be sent by registered or certified mail or by other forms of restricted delivery.

G. Advertisements containing fee information shall state whether the client remains responsible for the expenses of litigation and describe whether any contingent fee advertised is determined before or after the deduction of costs and expenses.

H. If a lawyer renders legal services for which a fee has been advertised, the lawyer must render that service for no more than the advertised fee plus expenses incurred. The lawyer is bound by the advertised fees for the time limits provided for in Subsections I and J below, unless a different time period for the availability of such fees is provided in the advertisement itself.

I. If a lawyer publishes fee information by means of a radio or television, or other electronic media advertisement, the lawyer shall be bound by any representation made therein for a period from the date of first broadcast to thirty (30) days after the last broadcast.

J. If a lawyer publishes any fee information in a print media publication that is published more frequently than one time per month, the lawyer shall be bound by any representation made therein for a period of not less than thirty (30) days after such publication.
If a lawyer publishes any fee information in a print media publication that is published once a month or less frequently, such lawyer shall be bound by any representation made therein until the publication of the succeeding issue. If a lawyer publishes any fee information in a print media publication which has no fixed date for publication of a succeeding issue, or if a lawyer mails an advertisement containing fee information, the lawyer shall be bound by any representation made therein for a Reasonable period of time after publication or mailing but in no event less than one
(1) year in the case of a print media publication, or six (6) months in the case of a mailed advertisement. If a lawyer disseminates fee information by outdoor advertising, such lawyer shall be bound by any representation made therein until the replacement or removal of such advertisement.

K. A lawyer shall not give anything of value, either directly or indirectly, to a person for recommending the lawyer's services, except that a lawyer may

1. pay the Reasonable costs of advertising or written communication permitted by this Rule;

2. pay the usual charges of a not-for-profit lawyer referral service or legal service organization; and

3. pay for a law practice in accordance with Rule 1.17.

L. A lawyer shall not compensate or give anything of value to representatives of the press, radio, television, or other communication medium in anticipation of or in return for

professional publicity in a news item.

Rule 7.3 Direct Contact With Prospective Clients.

A. A lawyer shall not by in-person or telephone contact solicit professional employment from a prospective client under circumstances not described in Rule 7.3.B, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain.

B. Except under the circumstances described in Subsection C below, a lawyer may solicit professional employment if the prospective client is a close friend, relative, former client if the contact pertains to the former employment, or one whom the lawyer Reasonably Believes to be a client.

C. A lawyer shall not contact or cause to be contacted or send a written or recorded communication to a prospective client for the purpose of obtaining professional employment, even when not otherwise prohibited by these Rules, if:

1. the prospective client has made Known to the lawyer a desire not to receive communications from the lawyer; or

2. the communication involves coercion, duress or harassment.

D. Notwithstanding the prohibitions in Subsection A above, a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer which uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not Known to need legal services in a particular matter covered by the plan.

Rule 7.4 Communication of Fields of Practice and Certification.

A. A lawyer may, by advertisement or otherwise, communicate the fact that the lawyer does or does not practice in particular fields of law or limits his practice to or concentrates in particular fields of law.

B. A lawyer shall not state or imply that the lawyer is certified as a specialist in a particular field of law, except as follows:

1. a lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a Substantially similar designation;

2. a lawyer engaged in admiralty practice may use the designation " Admiralty," "Proctor in Admiralty" or a Substantially similar designation;

3. a lawyer who is certified as a specialist in a particular field of law or law practice by the Supreme Court of the State of Oklahoma may communicate that fact, but only in accordance with the rules prescribed by that Court; and

4. a lawyer who is certified as a specialist in a particular field of law or law practice by the official licensing authority of a state in which the lawyer is licensed may communicate that fact, but only in accordance with all rules and requirements of such state's licensing authority, and provided that the lawyer also communicates that such certification is not recognized by the Supreme Court of the Chickasaw Nation.

Rule 7.5 Firm Names and Letterheads.

A. A lawyer shall not use a Firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

B. A Law Firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the Firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

C. The name of a lawyer holding a public office shall not be used in the name of a Law Firm, or in communications on its behalf, during any Substantial period in which the lawyer is not actively and regularly practicing with the Firm.

D. Lawyers shall not state or imply that they practice in a partnership or other organization unless that is the fact.

The following Rules regarding maintaining the integrity of the profession:

Rule 8.1 Bar Admission and Disciplinary Matters.

An applicant for admission to the Chickasaw Bar Association, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

1. Knowingly make a false statement of material fact; or

2. Fail to disclose a fact necessary to correct a misapprehension Known by the person to have arisen in the matter, or Knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6; or

3. Fail to disclose to the Chickasaw Bar Association any event which has caused the lawyer to no longer be a member of a Bar that provides appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys.

(PR38-014, 02/22/21)

Rule 8.2 Judicial and Legal Officials.

A. A lawyer shall not make a statement that the lawyer Knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

B. A lawyer who is a candidate for judicial office shall comply with the applicable provisions of Chickasaw law regarding judicial conduct.

Rule 8.3 Reporting Professional Misconduct.

A. A lawyer having Knowledge that another lawyer has committed a violation of these Rules of Professional Conduct that raises a Substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the Chickasaw Nation Supreme Court.

B. A lawyer having Knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a Substantial question as to the judge's fitness for office shall inform the Chickasaw Nation Supreme Court.

C. This Rule does not require disclosure of information otherwise protected by Rule 1.6.

D. The provisions of Rule 8.3.A shall not apply to lawyers who obtain such knowledge while acting as a member, investigator, agent, employee, or as a designee of any "lawyers helping lawyers" program or a "management assistance program" in the course of assisting another lawyer. Any such knowledge received by a lawyer acting in such capacity shall enjoy the same confidence as information protected by the attorney-client privilege under applicable law.

Rule 8.4 Misconduct.

It is professional misconduct for a lawyer to:

1. violate or attempt to violate these Rules of Professional Conduct, Knowingly assist or induce another to do so, or do so through the acts of another;

2. commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

3. engage in conduct involving dishonesty, Fraud, deceit or misrepresentation;

4. engage in conduct that is prejudicial to the administration of justice;

5. state or imply an ability to influence improperly a government agency or official; or

6. Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

Rule 8.5 Jurisdiction.

A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction although engaged in practice elsewhere.

APPENDIX "B"
CODE OF JUDICIAL CONDUCT

Canon 1 A Judge should uphold the integrity and independence of the judiciary.

A. Our Legal System:

1. Fundamental principle that courts are independent branches of government in which fair and competent judges interpret and apply the laws that govern us.

2. Built into the Judicial Code are the principles:

a. that judges must treat their judicial offices as public trusts;

b. that judges must strive to maintain and enhance the public's confidence in our legal system; and

c. that as an adjudicator of facts and the law, a judge resolves disputes and is a highly visible symbol of government under the rule of law.

B. The Code of Judicial Conduct contains:

1. standards of ethical conduct for judges;

2. broad statements called canons; and

3. rules under each canon.

4. The Canons are designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating judges' conduct through disciplinary action.

C. Misconduct: The Judicial Canons regulate:

1. the activities of judges on and off the bench;

2. improper courtroom behavior;

3. improper/illegal influence;

4. impropriety off the bench;
5. other improper activities; and

6. physical or mental disability.

D. An independent and honorable judiciary is indispensable to justice within the Chickasaw Nation. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Canon 2 A judge should avoid impropriety and the appearance of impropriety in all his activities.

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should avoid at all times discussions, other talk or communications concerning on-going or pending cases with litigants or other interested persons unless both parties or their counselors are present or have been accorded and waived equal opportunity to meet and engage in the discussions. He shall not accept gifts, money, or gratuities under circumstances in which said gift, money or gratuity are or may be intended to influence his conduct.

C. A judge should not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin.

Canon 3 A judge should perform the duties of his office impartially and diligently.

A. Adjudicative Responsibilities: The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties; the following standards apply:

1. A judge should be faithful to the law and maintain professional to the law

and maintain professions competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

2. A judge should maintain order and decorum in proceedings before him.

3. A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and other with whom he deals in his official capacity, and should require similar conduct of lawyers, and his staff, court officials, and others subject to his direction and control.

4. A judge shall be committed to self-improvement and to participating in training made available to him.

5. A judge should accord very person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider *ex parte* communications on the merits, or procedures affecting the merits, of pending or impending proceeding. A judge may,

however obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. A judge may, with consent of the parties, confer separately with the parties and their counsel in an effort to mediate or settle pending matters.

6. A judge should dispose promptly of the business of the court.

7. A judge should avoid public comment on the merits of a pending or impending action, requiring similar restraint by court personnel subject to the judge's direction and control. This proscription does not extend to public statements made in the course of the judge's official duties, to the explanation or court procedures or to a scholarly presentation made for purposes of legal education.

B. Administrative Responsibilities:

1. A judge should diligently discharge the judge's administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

2. A judge should require court official, staff, and others subject to the judge's direct and control to observe the same standards of fidelity and diligence applicable to the judge.

3. A judge should initiate appropriate action when the judge becomes aware of reliable evidence indicating the likelihood of unprofessional conduct by a judge or lawyer.

4. A judge should not make unnecessary appointments and should exercise that power only on the basis of merit, avoiding nepotism and favoritism.

5. A judge with supervisory authority over other judges should take reasonable measures to assure the timely and effective performance of their duties.

C. Disqualification:

1. A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, or where disqualification is required due to a requirement under applicable law, including but not limited to instances in which:

(PR38-014, 02/22/2021)

a. the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

b. the judge served as lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been material witness;

c. the judge knows that, individually or as fiduciary, the judge or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be affected substantially by the outcome of the proceeding;

d. the judge or the judge's spouse, or a person related to either within the third degree of relationship, or the spouse of such person:

I. is a party to the proceeding, or an officer, director or trustee of a party;

ii. is acting as a lawyer in the proceeding;

iii. is to the judge's knowledge likely to be a material witness in the proceeding;

iv. is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or

e. the judge has served in governmental employment and in such capacity participated as counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.

2. A judge should keep informed about his personal and fiduciary financial interests and make reasonable effort to keep informed about the personal financial interests of the his spouse and minor children residing in his household.

3. For the purposes of this Canon:

a. a degree of relationship is calculated according to the civil law system wherein the following relatives are within the third degree of relationship:

parent, child, grandparents, grandchild, great grandparent, great grandchild, sister, brother, aunt, uncle, niece, and nephew. The listed relatives include whole and half blood relatives and most step relatives;

b. "Fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

c. "Financial Interest" means ownership of legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party except that:

I. ownership in a mutual or common investment fund that holds securities is not a Financial Interest in such securities unless the judge participates in the management of the fund;

ii. an office in an educational, religious, charitable, fraternal, or civic organization is not a Financial Interest in securities held by the organization;

iii. the proprietary interest of a policy holder in a mutual insurance company, or a depositor in a mutual savings association or similar proprietary interest, is a Financial Interest in the organization only if the outcome of the proceeding could substantially affect the values of the interest; and

iv. ownership of government securities is a Financial Interest in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

d. "Proceeding" includes pretrial, trial, appellate review, or other stages of litigation.

4. Notwithstanding the preceding provisions of this Canon, if a judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter because of the appearance or discovery after the matter was assigned to him, that he individually or as a fiduciary, or his spouse or minor child residing in his household, has a Financial Interest in a party other than an interest that could be substantially affected by the outcome, disqualification is not required if the judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

5. Remittal of Disqualification: A judge disqualified by the terms of Paragraph C.1 above, except in the circumstances specifically set out in Subparagraphs a through e, may, instead of drawing from the proceeding, disclose on the record the basis

of disqualification. If the parties and their lawyers, after such disclosure and opportunity to confer outside of the presence of the judge, all agree in writing or on the record that the judge should not be disqualified and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

Canon 4 A judge may engage in activities to improve law, the legal system and the administration of justice.

A. A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

1. he may speak, write, lecture, teach and participate in other activities concerning the law, the legal system and the administration of justice;

2. he may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system and the administration of justice to the extent that it would generally be perceived that a judge's judicial experience provides special expertise in the area. A judge acting *pro se* may also appear before or consult with such officials or bodies in matters involving the judge or judge's interest and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice; and

3. he may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice. He may make recommendations to public, tribal and private fund-granting agencies on projects and programs concerning the law, the legal system and the administration of justice.

B. A judge should not use to any substantial degree judicial chambers, resources or staff to engage in activities permitted by this Canon 4.

Canon 5 A judge should regulate his extra-judicial activities to minimize the risk of conflict with his judicial duties.

A. A judge should conduct-extra judicial activities so they do not cast reasonable doubt on the judge's capacity to act impartially as a judge, demean the judicial office or interfere with proper performance of judicial duties.

1. Avocational Activities. A judge may write, lecture, teach and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational

activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

2. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere

with the performance of judicial duties.

3. Financial Activities:

a. A judge should refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judicial position or involve the judge in frequent transactions with lawyers or other persons likely to come before the court on which the judge serves.

b. Subject to the requirements of Subparagraph 1 above, a judge may hold and manage investments, including real estate and engage in other remunerative activity, but should not serve as an officer, director, active partner, manager, advisor or employee of any business other than a business closely held and controlled by members of the judge's family. For this purpose, "members of the judge's family" means persons related to the judge or the judge's spouse within the degree of relationship calculated according to the civil law system and any other relatives with whom the judge or the judge's spouse maintains a close familial relationship and the spouse of any of the foregoing.

c. A judge should manage investments and other financial interests to minimize the numbers of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge should divest himself of investments and other serious financial detriment and the judge should divest himself of investments and other financial interests that might require frequent disqualification.

d. A judge should not solicit or accept anything of value from anyone seeking official action from or doing business with the court or other entity served by the judge, or from anyone whose interests may be substantially affected by the performance or nonperformance of official duties; except that a judge may accept a gift as permitted by the Judicial Conference gift regulations. A judge should endeavor to prevent a member of a judge's family residing in the household from soliciting or accepting a gift except to the extent that a judge would be permitted to do so by the Judicial Conference regulations.

e. For the purposes of this section "members of the judge's family residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who

resides in the judge's household.

f. A judge should report the value of any gift, bequest, favor, or loan as required by statue of the Chickasaw Nation.

g. A judge is not required by this Code to disclose his income, debts, or investments.

h. Information acquired by a judge in the judge's judicial capacity should not be used or disclosed by the judge in financial dealings or for any other purpose not related to the judge's judicial duties.

I. Part time Judges and judicial officers may appear as counsel in civil and criminal actions in any court or before any governmental agency, except the courts or governmental agencies of the Chickasaw Nation.

j. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice unless appointment of a judge is required by an Act of Congress. A judge should not, in any event, accept such an appointment if the judge's governmental duties would interfere with the performance of judicial duties or tend to undermine the public confidence in the integrity, impartiality or independence of the judiciary. A judge may represent the judge's country, state or locality on ceremonial occasions or in connection with historical, educational and cultural activities.

k. A judge should not use judicial chambers, resources, or staff to engage in activities permitted by this Canon 5, except for uses that are *de minimis*.

Canon 6 A judge should refrain from political activity inappropriate to his judicial office.

A. A judge should not:

1. act as a leader or hold any office in a political organization within the Chickasaw Nation; or

2. make speeches for a political organization within the Chickasaw Nation or candidate or publicly endorse a candidate for public office; or

3. solicit funds for a Chickasaw Nation political organization or candidate, with the exception of his own campaign; however,

4. a judge should resign his office if and when he is elected to any other political office in the Chickasaw Nation.

B. Not withstanding the above, the judge shall be free to exercise his duties as a citizen and shall be able to participate by voting in any and all state, local and tribal elections.

Canon 7 Ideal judge.

A judge should be assured without being offensive; firm, but fair; not yielding to every entreaty, but yielding to some; calm under pressure; moving the case or calendar, but not shoving people; listening, inquisitive without being obnoxious; firm, but not abusive; and diligent and intelligent without being arrogant.

ARTICLE B
RULES OF PROCEDURE

Section 5-102.1	Rule 1: Filing of Cases and Motions.
Section 5-102.2	Rule 2: Hearing Date.
Section 5-102.3	Rule 3: Opinions.
Section 5-102.4	Rule 4: Rehearing of Action.
Section 5-102.5	Rule 5: Rejection of Action.
Section 5-102.6	Rule 6: Accelerated Procedure for Summary Judgments and Certain Dismissals.
Section 5-102.7	Rule 7: Law to be Applied.
Appendix "A"	Notice of Intent to Appeal.
Appendix "B"	Designation of Record on Appeal.
Appendix "C"	Affidavit of Service.
Appendix "D"	Petition for Appeal.
Appendix "E"	Response to Petition for Appeal.
Appendix "F"	(Cross or Counter) Petition for Appeal.

SECTION 5-102.1 RULE 1: FILING OF CASES AND MOTIONS.

A. An action for appeal from a final judgment, decree or order of the District Court shall be commenced by filing an original Notice of Intent to Appeal and Designation of Record

on Appeal with the District Court within thirty (30) days from the date a final order is entered by the District Court and served upon all parties. The District Court shall then file copies of all relevant materials compiled in the case with the Supreme Court. The Petitioner shall have thirty (30) days following the filing of the Notice of Intent to Appeal to file an original Petition for Appeal and four (4) copies with the Supreme Court. The form for the Notice of Intent to Appeal is attached to this Article B as Appendix "A"; the form for the Designation of Record on Appeal is attached as Appendix "B"; the form for the Affidavit of Service is attached as Appendix "C"; the form for the Petition for Appeal is attached as Appendix "D". (PR36-007, 8/16/2019).

B. The Petition for Appeal must be typed on 8 ½ inch by 11 inch paper with one (1) inch margins on all sides and shall be double spaced and prepared in no less than twelve (12) point type and shall contain the information identified in Appendix "D."

C. Service of documents regarding appeals must be made by personal delivery or by mailing on all parties to the original action or by personal delivery. If such service is accomplished by mailing, then the person making the mailing shall file an Affidavit of Service per Appendix "C". If service is made by certified mail, the appealing party shall file a return of service with the return attached thereto. If such service is accomplished by personal delivery, the person making such a delivery shall file a statement which includes the details of delivery including the date, time and location of delivery. (PR36-007, 8/16/2019).

D. At the time of filing a Notice of Intent to Appeal and a Designation of Record with the District Court, the Petitioner shall advance the costs of two hundred fifty dollars ($250) to be applied toward the cost of preparing the transcript and record and any and all additional costs incurred therefor. Upon Motion for Waiver, the costs for preparing the transcript and record may be waived by the Supreme Court of the Chickasaw Nation upon a showing of undue hardship by Petitioner. The cost advancement shall be suspended while said motion is pending. If the waiver is denied the cost of two hundred fifty dollars ($250) shall be paid by Petitioner within 10 days of service of the denial by personal service or within 13 days of service of the denial by mailing as evidenced by the Affidavit of Mailing. Upon completion of the transcript and record by the Court Clerk, any costs exceeding the two hundred fifty dollars ($250) shall be paid by the Petitioner upon receipt of a bill from the Court Clerk. If the costs are less than two hundred fifty dollars ($250), all remaining funds shall be refunded to the Petitioner. The transcript shall be prepared and sent to all parties to the appeal as soon as possible. (PR36-007, 8/16/2019).

E. Within twenty (20) days after the Petition for Appeal is duly served, any Respondent may file a Response to the Petition for Appeal by filing the original and six (6) copies in the office of the Court Clerk of the Supreme Court. A copy of the Response to Petition for Appeal shall be served on all parties in accordance with subsection C above. The form for the Response to Petition for Appeal is attached to this Article B as Appendix "E."

F. Cross and Counter Petitions for Appeals: If a cross or counter appeal is taken, the prescribed form is attached to this Article B as Appendix "F."

G. In all appeals, except those filed pursuant to Section 5-102.6 of this Article B and as otherwise provided by law, the Petitioner shall file an Appeal Brief with the Supreme Court within sixty (60) days from the date the case is filed with the Supreme Court. A copy of the Appeal Brief must be mailed by the Petitioner to all parties when it is filed with the Supreme Court. Respondents may file an Answer Brief within forty (40) days after the filing of the Appeal Brief. The Petitioner may then file a Reply Brief within twenty (20) days after the Answer Brief is filed by the Respondent.

1. Briefs and arguments shall contain a brief statement of the facts as introduced at trial in the District Court and made a part of the record, the final ruling of the District Court and any legal authority being persuasive together with citation to that

authority and a logical discussion of the issues and requesting decision in a manner consistent with said legal authority and logic.

2. The Petitioner's Appeal Brief and Respondents' Answer Brief shall not exceed fifteen (15) pages in length. The Petitioner's Reply Brief shall not exceed five
(5) pages in length. The briefs shall be submitted on 8 ½ inch by 11 inch paper with one (1)

inch margins and shall be doubled spaced and prepared in no less than twelve (12) point type. No appendixes or other documents shall be attached to the briefs.

H. The decision of the Supreme Court on any appeal shall be final and binding on all parties. Any issue not directly appealed to the Supreme Court remains under the jurisdiction of the District Court. A copy of said decision shall be served upon all parties and the District Court by the Supreme Court by regular U.S. Mail.

I. The address and telephone number of the Chickasaw Supreme Court, are as follows:

Chickasaw Nation Supreme Court
P.O. Box 69
Ada, Oklahoma 74821-0069
(580) 235-0281

(PR21-002, 11/21/03; PR21-007, 12/19/03)

SECTION 5-102.2 RULE 2: HEARING DATE

A. A case is at issue after all pleadings are filed or after the time limit for filing has lapsed.

B. The Court Clerk shall, within five (5) working days after the case becomes at issue, mail one copy to each of the Justices. Upon receipt, the Chief Justice shall consult with the Member Justices and shall issue an Order of Hearing determining the date for hearing of the dispute or cause of action.

C. A hearing date shall be selected by the Court without undue delay, following notice by the Court Clerk that the case is at issue.

D. The Court shall have authority to continue the matter for good cause shown which shall be noted by order of the Court.

SECTION 5-102.3 RULE 3: OPINIONS

A. Opinions or decisions of the Supreme Court shall be prepared either by the Court or by any party as directed by the Court.

B. An opinion or decision of the Court shall not be final until ten (10) days after the filing of an opinion or decision and mailing by regular mail a copy of the opinion or decision to

all parties or their attorney(s) of record. The Court Clerk shall mail a copy to all Interested Parties or their attorney(s) of record and file a proof of mailing thereof.

SECTION 5-102.4 RULE 4: REHEARING OF ACTION

A. During the ten (10) day period following the filing of said opinion or decision, any party may request a rehearing of the matter.

B. Any opinion or decision which has a request for rehearing denied shall be final at the filing of said opinion or decision or ten (10) days, whichever is later.

C. All opinions or decisions rendered as a result of rehearing shall be final when filed.

D. All rehearings shall result in a written opinion or decision.

SECTION 5-102.5 RULE 5: REJECTION OF ACTION

The Court, on motion by any party or its own motion, may issue an order declining to hear the action.

SECTION 5-102.6 RULE 6: ACCELERATED PROCEDURE FOR SUMMARY JUDGMENTS AND CERTAIN DISMISSALS.

A. **Cases Applied.**

This Section shall govern appeals from:

1. summary judgments in cases in which the motions were filed pursuant to Sections 5-202.19 and 5-205.2; and

2. final orders in cases in which motions to dismiss for failure to state a claim or lack of jurisdiction (of a person or subject matter) pursuant to Section 5-202.18 were filed after October 1, 1993.

In multi-party or multi-claim cases the summary judgment or dismissal order must either 1) dispose of all claims and all parties, or 2) entirely dispose of at least one (1) claim or one (1) party and contain the express determination that there is no just reason for delay with the express direction by the trial Judge that judgment be filed. (See Subsection 215.1.A.)

B. **Commencement of Appeal.**

Appeals in these cases will be commenced by filing a Petition for Appeal with the certified copy of dismissal order or of summary judgment and, where applicable, a certified copy of the order denying new trial, with payment of costs or an affidavit *in forma pauperis*. The Petition for Appeal must comply with all Rules to the extent they are consistent with Section 5-
102.1. The record shall be filed at the same time as the Petition for Appeal.

C. Record on Appeal.

The record on appeal will stand limited to:

1. in appeals from summary judgment:

a. the memorialized order by which summary judgment was entered;

b. pleadings proper as defined by Subsection 5-209.6.A (Petition, Answer, etc.);

c. applicable instruments on file, including the motion and response with supporting briefs and attached materials filed by the parties as required by Subsections 5-
202.19.A and C;

d. any other item on file which, according to some recitation in the trial Court's journal entry or in some other order, was considered in the decisional process;

e. any other order dismissing some but not all parties or claims;

f. any transcripts of proceedings on the motion(s);

g. any motions, along with supporting and responsive briefs, for new trial (re-examination) of the summary judgment process;

h. the appearance docket; and

I. a cover page and index of the record prepared by the party.

2. in appeals from final orders on motions to dismiss:

a. the memorialized order of dismissal;
b. pleadings proper as defined by Subsection 5-209.6.A, (Petition, Answer, etc.);

c. the instruments upon which the dismissal is rested;

d. the motion(s) to dismiss and any supporting brief(s);

e. any responsive brief by the party asserting the claim;

f. any other item on file which, according to some recitation in the trial Court's dismissal order or in some other order, was considered in its decision;

g. any other order dismissing some but not all parties or claims;

h. any transcripts of proceedings on the motion;

I. any motions, along with supporting and responsive briefs, for a new trial (re-examination) of the dismissal order;

j. the appearance docket; and

k. a cover page and index of the record prepared by the party.

D. **Record, Filing, Index, Copies, Transcripts, Costs, Supplement to Record, and Additional Copies on *Certiorari*.**

1. The record shall be filed by petitioner/appellant as a separate document, not attached to the Petition for Appeal. The record shall be titled "Record on Accelerated Appeal," and shall be preceded by a separate page containing signature of counsel (or *pro se* parties) and a certificate of service. The record shall consist of copies of instruments authorized by Subsection C above selected for inclusion by the petitioner/appellant. To the front of the original and each of the copies of the record there shall be appended the Court Clerk's certificate identifying each of the included instruments as a true and correct copy of the original on file in the Court Clerk's office.

2. An original and three (3) copies of the record and certificate of the Court Clerk shall be filed. One (1) copy shall be served on every other party to the appeal unless waived, and any such waiver must be reflected on the certificate of service.

3. It shall be the petitioner/appellant's duty to advance the costs for preparing the transcripts from the court reporter as provided in Subsection 5-102.1.D and to insure that the transcripts are prepared within the time prescribed herein. If the transcripts are not filed with the Petition for Appeal because of delay in transcription, no more than one
(1) 30-day extension of time to complete transcripts will be granted by the Court for good cause shown.

4. If the respondent/appellee desires to include documents or transcripts not included by the petitioner/appellant in the record on appeal, the respondent/appellee shall order any such transcript and file a separate document titled "Supplement to Record on Accelerated Appeal," attaching any instruments or transcripts in the same form and manner as required for a petitioner/appellant under this Section. Any such supplement to the record shall be filed concurrently with the Response to the Petition for Appeal. The cost of transcribing a respondent/appellee-ordered portion of the record will be borne by the respondent/appellant as prescribed by Subsection 5-102.1.D unless 1) the trial Judge finds that the portion supports a counter- or cross-appeal, or 2) The trial Judge directs otherwise for good cause shown. In the latter event, the respondent/appellee shall pay the transcription fee.

E. **Response to Petition for Appeal.**

Response(s) to the Petition for Appeal shall be filed within twenty (20) days of the Petition for Appeal. If the respondent/appellee desires to include documents or transcripts not included by the petitioner/appellant, the respondent/appellee shall comply with Subsection D above.

F. **Supreme Court Review and Briefs.**

The Supreme Court shall confine its review to the record actually presented to the trial Court. Unless otherwise ordered by the Supreme Court, no briefs will be allowed on review. If briefs are ordered, the Supreme Court will prescribe a briefing schedule. Motions for leave to submit appellate briefs shall be deemed denied unless affirmatively granted by the Court. No briefs shall be tendered by attachment to a motion for leave to brief, and the Court Clerk shall not accept or file an appellate brief without prior leave of the Court. A motion for appeal related to attorney's fees must be made by motion prior to mandate.

G. **Oral Argument.**

Appeals may be decided pursuant to this Rule with or without argument. If argument is granted and the Supreme Court should orally announce its decision from the bench, it shall also, as in other cases, hand down a memorandum opinion or order.

H. **Appeals From Same Trial Court Case.**

An appeal governed by this Section is prosecuted separately from another appeal from the same trial court case when the appeals challenge different appealable decisions. An appeal subject to this Section must be filed separately and accompanied by payment of costs in all cases except when it is a cross-, counter-, or co-appeal to an appeal governed by this Rule, or when filed as an amended Petition for Appeal as authorized by Subsection I below. The Petition for Appeal, for a cross-, counter-, or co-appeal shall have the accompanying record as required for a Petition for Appeal by this Section.

The party filing a subsequent appeal shall clearly notify the Court that prior or related appeals have been brought pursuant to this Section. An appeal governed by this Rule may be considered for consolidation or as a companion appeal by the Supreme Court within its discretion.

I. **Amended Petition in for Appeal on Post- Judgment Order Granting or Denying Attorney's Fees, Interest, or Costs.**

An amended petition for appeal challenging a post-judgment order granting or denying costs, interest, or attorney's fees may be filed in an appeal governed by this Section when the order granting or denying costs, interest, or attorney's fees relates to the order previously appealed pursuant to this Section. The amended Petition for Appeal may be filed without payment of costs. The amended Petition for Appeal must be filed with the Court within thirty (30) days of the date of the order granting or denying the interest, costs, or attorney's fees. The record for the amended Petition for Appeal shall comply with this Section. The response to the amended Petition for Appeal shall comply with Subsection E above. All provisions of this Section apply to proceedings on the amended Petition for Appeal; provided, the Supreme Court may, on application of a party or *sua sponte*, call for briefs on the amended Petition for Appeal. (PR21-002, 11/21/03)

SECTION 5-102.7 RULE 7: LAW TO BE APPLIED.

The Court shall apply the Chickasaw Nation Constitution, and the provisions of all statutory law heretofore or hereafter adopted by the Chickasaw Nation. In matters not covered by Tribal Statute, the Court shall apply traditional tribal customs and usages, which shall be called the Common Law. When in doubt as to the Tribal Common Law, the Court may request the advice of counselors and tribal elders familiar with them. In any dispute not covered by the Chickasaw Nation Constitution, Tribal Statute, or Tribal Common Law, the Court may apply any laws of the United States or any state which would be cognizable in the courts of general jurisdiction therein, and any regulation of the Department of Interior which may be of general or specific applicability. Upon this Code becoming effective, neither Part 11 of Title 25 of the Code of Federal Regulations, except those Sections thereof which are effective when the Chickasaw Nation receives certain funding from the Bureau of Indian Affairs, nor state law shall be binding upon the Court unless specifically incorporated into tribal law by Tribal Statute or by a decision of the Tribal Courts adopting some federal or state law as Tribal Common Law. (PR21-006, 12/19/03; PR21-013, 1/16/04)

APPENDIX "A"

IN THE DISTRICT COURT
OF THE CHICKASAW NATION

_____	)	
Petitioner,	)	
	)	**Case No.**_____
vs.	)	
	)	
_____	)	

Respondent.)

NOTICE OF INTENT TO APPEAL

COMES NOW, the ___Petitioner ___Respondent _____

and gives notice of their intent to appeal the decision rendered by this Court on the _____day

of _____, 20___.

_____
Printed Name

CERTIFICATE

Received this _____day of _____, 20___.

_____
Court Clerk

APPENDIX "B"

IN THE DISTRICT COURT
OF THE CHICKASAW NATION

	)	
_____	)	
Petitioner,	)	
	)	**Case No._____**
vs.	)	
	)	
_____	)	
Respondent.	)	

DESIGNATION OF RECORD ON APPEAL

COMES NOW, the ___Petitioner ___Respondent _____
and designates the record on appeal in the above styled cause of action, the following instruments:

1. all papers of every kind and description filed of record in this action;

2. all exhibits introduced as evidence by the parties in the action; and

3. the transcripts of all hearings and proceedings had in this matter.

Dated this _____day of _____, 20___.

_____

Signature

CERTIFICATE

Received this _____day of _____, 20___.

Court Clerk

APPENDIX "C"

IN THE SUPREME COURT
OF THE CHICKASAW NATION

_____	)	
Petitioner,	)	
	)	**Case No._____**
vs.	)	
	)	
_____	)	
Respondent.	)	

AFFIDAVIT OF SERVICE

I, _____, Petitioner, hereby state that I served a file stamped copy of the Notice of Intent to Appeal and Designation of Record herein upon the following person(s):

(List Names and Addresses of parties served)

I further state that service was made according to the Chickasaw Nation Code, as follows:

_____Mail: by certified U.S. mail, return receipt requested and restricted delivery, to said parties. The return receipt is attached hereto.

_____Personal Delivery: a true and complete copy of the foregoing Petition and Summons was delivered to said parties at the following location(s) by a person duly authorized by the Court.

_____ Publication: An Affidavit of Petitioner or Petitioner's Attorney and an Affidavit of Publication from the newspaper making such publication is attached hereto and filed herewith.

Dated this the _____day of _____, 20_____.

_____
Printed Name
Address
Telephone

APPENDIX "D"

IN THE SUPREME COURT
OF THE CHICKASAW NATION

_____	)	
Petitioner,	)	
	)	**Case No._____**
vs.	)	
	)	
_____	)	
Respondent.	)	

PETITION FOR APPEAL

COMES NOW, the Petitioner and for cause of action against the Respondent, alleges and states:

1. Here set out a jurisdictional statement showing that all parties are subject to personal jurisdiction or consent to personal jurisdiction of the Chickasaw Nation District Court and the basis for subject matter jurisdiction of the Chickasaw Nation District Court.

2. Set forth facts of cause of action.

3. Here set out a statement of the facts constituting the cause of action in ordinary and concise language without repetition and concisely relating the existence of the dispute by describing with exactness the issues to be presented, or a statement of need indicating how a decision has present and future importance.

WHEREFORE, Petitioner prays judgment for (here set forth the relief deemed entitled).

_____
Printed Name
Address
Telephone

CERTIFICATE OF SERVICE TO ALL PARTIES

I hereby certify that a true and correct copy of the Response to Petition for Appeal was ___mailed by regular U.S. Mail ___served by personal delivery this the _____day of _____, 20____, to the following persons, to-wit:

List name and address of all parties served a copy of the Petition for Appeal.

_____
Printed Name
Address
Telephone

APPENDIX "E"

IN THE SUPREME COURT
OF THE CHICKASAW NATION

_____	**)**	
Petitioner,	**)**	
	)	**Case No._____**
vs.	**)**	
	)	
_____	**)**	
Respondent.	**)**	

RESPONSE TO PETITION FOR APPEAL

COMES NOW, _____the Respondent in the above styled cause and, in response to the Petition for Appeal, alleges and states:

Here set out a statement of the issues that are controverted in ordinary and concise language without repetition and relating the existence of the dispute by describing with exactness such controverted issues.

WHEREFORE, Respondent prays judgment for (here set forth the relief deemed entitled).

_____

Printed Name
Address
Telephone

CERTIFICATE OF SERVICE TO ALL PARTIES

I hereby certify that a true and correct copy of the Response to Petition for Appeal was ___mailed by regular U.S. Mail ___served by personal delivery this the _____day of _____, 20____, to the following persons, to-wit:

List name and address of all parties served a copy of the Response to Petition for Appeal.

_____

Printed Name

Address
Telephone

APPENDIX "F"

IN THE SUPREME COURT OF THE CHICKASAW NATION

_____	)	
Petitioner,	)	
	)	**Case No.**_____
vs.	)	
	)	

_____)
Respondent.)

(CROSS or COUNTER) PETITION FOR APPEAL

COMES NOW, _____, ___Respondent ___a third party in the above styled cause and, in response to the Petition for Appeal, alleges and states:

1. A brief statement of the case history if the history as shown in the Petition for Appeal is controverted.

2. If a third party, a statement explaining why the party has standing to present a cross-counter petition in the cause.

3. A statement of the issues that are controverted in ordinary and concise language without repetition and relating the existence of the dispute by describing with exactness such controverted issues.

WHEREFORE, _____, ___Respondent ___a third party prays judgment for (here set forth the relief deemed entitled).

_____

Printed Name
Address
Telephone

CERTIFICATE OF SERVICE TO ALL PARTIES

I hereby certify that a true and correct copy of the Response to Petition for Appeal was ___mailed by regular U.S. Mail ___served by personal delivery this the _____day of _____, 20____, to the following persons, to-wit:

List name and address of all parties served a copy of the Response to Petition for Appeal.

_____

Printed Name
Address
Telephone

ARTICLE C
GENERAL PROVISIONS

Section 5-103.1 General Provisions.
Section 5-103.2 Composition of the Supreme Court in Appeals from District Court.
Section 5-103.3 Minimum Qualifications of Justices.
Section 5-103.4 Selection of Justices.
Section 5-103.5 Term of Office.
Section 5-103.6 Oath of Office.
Section 5-103.7 Duties and Powers of Justices.
Section 5-103.8 Reserved.
Section 5-103.9 Compensation of Justices.
Section 5-103.10 Reserved.
Section 5-103.11 Reserved.
Section 5-103.12 Decisions.
Section 5-103.13 Rules of the Court.
Section 5-103.14 Reserved.
Section 5-103.15 Supreme Court's Action on Appeals.
Section 5-103.16 Terms of the Court.
Section 5-103.17 Court Fund.
Section 5-103.18 Fees.
Section 5-103.19 Penalty for Improper Charges.
Section 5-103.20 Failure of Officer to Make Reports.
Section 5-103.21 Fees not Collected During Term.

SECTION 5-103.1 GENERAL PROVISIONS.

The decision of the Supreme Court shall be final and binding upon the parties except as may be otherwise provided for by law. The appellate jurisdiction of the Supreme Court shall be coextensive with the Chickasaw Nation and shall extend to all cases of law and in equity. The Supreme Court, by appropriate order, shall have the power to hear appeals, shall have the power to compel inferior Courts or their officials, and officers of the Nation to appropriate actions under law, any may exercise such other jurisdiction as may be conferred by statute. (PR18-044, 10/19/01)

SECTION 5-103.2 COMPOSITION OF THE SUPREME COURT IN APPEALS FROM DISTRICT COURT.

The Supreme Court shall be composed of members as provided for under the

Constitution of the Chickasaw Nation. (PR18-044, 10/19/01)

SECTION 5-103.3 MINIMUM QUALIFICATIONS OF JUSTICES.

The Supreme Court Qualifications shall be as provided for under the Constitution of the Chickasaw Nation. (PR18-044, 10/19/01)

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SECTION 5-103.4 SELECTION OF JUSTICES.

Justices shall be selected in accordance with the Constitution of the Chickasaw Nation. (PR18-044, 10/19/01)

SECTION 5-103.5 TERM OF OFFICE.

All Justices of the Supreme Court shall serve terms of office in accordance with the Constitution of the Chickasaw Nation. (PR18-044, 10/19/01)

SECTION 5-103.6 OATH OF OFFICE.

Before assuming office each Justice shall take an oath to support and protect the Constitution of the Chickasaw Nation. (PR18-044, 10/19/01)

SECTION 5-103.7 DUTIES AND POWERS OF JUSTICES.

All Justices of the Supreme Courts, unless disqualified for conflict of interest or other cause, shall participate in the deliberations of that body and shall have the duty and power to conduct all Court proceedings, and issue all orders and papers incident thereto, in order to administer justice in all matters within the jurisdiction of the Supreme Court. In doing so the Supreme Court shall:

1. Be responsible for creating and maintaining rules of the Court, not contrary to the Tribal Constitution or Code, regulating conduct in the Supreme and District Courts to provide for the orderly and efficient administration of justice and the administration of the Courts. Such rules shall determine, where not otherwise provided by law, what actions may be taken by a single Justice of the Court, and shall be filed with the Clerk of the Court.

2. Hear appeals from the District Court at a designated time and place.

3. Enter all appropriate orders and judgments.

4. Keep all appropriate records as may be required.

5. Perform any and all other duties as may be required for the operation of the Supreme Court and the District Court.

6. Supervise the actions of the District Court and all Clerks, Reporters, Bailiffs, and other officers of the Courts.

7. Perform any of the duties and powers of a District Judge in appropriate cases.

(PR18-044, 10/19/01)

SECTION 5-103.8 RESERVED.

(PR18-044, 10/19/01)

SECTION 5-103.9 COMPENSATION OF JUSTICES.

The compensation of all Justices of the Supreme Court shall be set by legislation in accordance with the Constitution and laws of the Tribe. (PR18-044, 10/19/01)

SECTION 5-103.10 RESERVED.

(PR18-044, 10/19/01)

SECTION 5-103.11 RESERVED.

(PR18-044, 10/19/01)

SECTION 5-103.12 DECISIONS.

A. All decisions and opinions of the Supreme Court shall be in accordance with the rules of the Court in Section 5-103.13 hereof.

B. Each Justice shall record in writing his decision, or the fact of his not participating on each case decided by the Supreme Court as part of the permanent record.

C. The decision form or Court opinion shall be placed in the file of the case on appeal as an official document of the case. (PR18-044, 10/19/01; PR21-023, 7/16/04)

SECTION 5-103.13 RULES OF THE COURT.

A. The Supreme Court shall establish rules concerning the administration of the Courts and conduct in the Supreme and District Courts not inconsistent with Tribal law or the Chickasaw Nation Constitution. Such rules shall govern the conduct, demeanor and decorum of those in the Court as well as the form and filing of appeals, briefs, pleadings, and other matters which will make the Court function more efficiently.

B. The Rules shall be filed in the Court Clerk's office, the office of the Chief Executive and the Legislative Office.

C. The Court may require the observance of its Rules as a prerequisite before taking any action in a matter.
(PR18-044, 10/19/01)

SECTION 5-103.14 RESERVED.

(PR18-044, 10/19/01)

SECTION 5-103.15 SUPREME COURT'S ACTION ON APPEALS.

In any appeal from the District Court properly before it, the Supreme Court shall have full authority to affirm, reverse, modify, or vacate any action of the District Court or other entity from whom the appeal is taken as authorized by law, and may enter such order as is just or remand the case for the entry of a specified judgment, for a new trial, or for such further action in accordance with the Supreme Court's opinion or instructions as shall be just. (PR18-044, 10/19/01)

SECTION 5-103.16 TERMS OF THE COURT.

The term of the Supreme Court shall be in accordance with the Chickasaw Supreme Court Rules. (PR18-044, 10/19/01)

SECTION 5-103.17 COURT FUND.

There is hereby authorized to be maintained by the Clerk under the supervision of the

Court, a fund to be known as the “Court Fund” into which shall be deposited all fines, fees, penalties, costs, and other monies authorized or required by law to be paid to the Courts which are not to be distributed to any party to a case and for which no requirement is imposed by law for the deposit of such funds into a particular account. These funds shall be maintained by the Court and used exclusively for the purchase of supplies, materials, and personal property for

the use of the Courts, or for maintenance of the Court law library, and such other applications as shall be specifically authorized by law. The Court Fund shall not be used for the payment of salaries of regular Judges or Justices of the District or Supreme Courts. (PR18-044, 10/19/01)

SECTION 5-103.18 FEES.

A. Notwithstanding any other provisions of law, the Court Clerk of the District Court, or the Clerk of any other Court shall charge and collect the following fees:

2. For furnishing photographic copies of photographic records, or of typewritten script or printed records, per page $1.00
3. Approving bond or undertaking, including certificate and seal.....$1.00
4. Making copy of an instrument of record or on file, first page .....$ .50 Subsequent pages (each) .....$ .50
5. Certifying and Seal .....$ .50
6. Authentication of court records.....$5.00
7. Mailing any documents.....$5.00
8. Issuance of Divorce Petition.....$35.00
9. Service of Process Per Attempt (in Pontotoc County).....$40.00
   Service of Process Per Attempt (outside Pontotoc County).....$60.00
   Service of Process Per Attempt (outside Chickasaw Nation). $100.00

10. Issuance of Domestic Relations Petition.....$35.00
11. Copy of Chickasaw Nation Code regarding Domestic Relations.....$40.00
11. Other applications.....$30.00

(PR22-020, 10/21/05; PR24-002, 12/15/07; PR37-002, 01/17/2020)

B. Number 11 above includes all post trial applications except applications for correction of court records (*nunc pro tunc*). (PR19-021, 5/17/02; PR37-002, 01/17/2020)

C. Tribal Elected Officials and agents of the tribe shall be exempt from copying and certification fees.
(PR19-021, 5/17/02)

D. Number 8 above establishes the following fees for service of process, said amount to be paid by money order (or if a member of the Chickasaw Bar Association, by check): forty dollars ($40) per service of process attempt and/or prisoner transport made anywhere within Pontotoc County; sixty dollars ($60) per service of process attempt and/or prisoner transport made within the Chickasaw Nation other than Pontotoc County, and one hundred dollars ($100) outside the Chickasaw Nation, plus mileage at the prevailing federal

mileage rate. Notwithstanding the foregoing, the Prosecutor, the Division of Youth and Family and its departments therein, and indigent defense counsel shall not be charged any cost associated with service of process or prisoner transport. The Chickasaw Nation District Court is authorized to collect said fees for service of process and prisoner transports on behalf of the Chickasaw Lighthorse Police Department. Said fees, however, shall be detailed and transferred to the Chickasaw Lighthorse Police Department on a monthly basis to be used for the benefit of and to defray the costs for services performed by the Chickasaw Lighthorse Police Department. The Court is authorized to pay any such transport fees, mileage and per diem costs from the Court Fund. (PR22-020, 10/21/05; PR23-007, 7/21/06; PR37-002, 01/17/2020)

SECTION 5-103.19 PENALTY FOR IMPROPER CHARGES.

Any public officer who shall knowingly charge, demand or receive any fees not provided by law, or who shall charge, demand or receive any greater fees than are provided in Section 5-
103.18 shall be discharged from office. (PR19-021, 5/17/02)

SECTION 5-103.20 FAILURE OF OFFICER TO MAKE REPORTS.

A. The District Court Clerk is required to make monthly reports to the Chickasaw Nation Supreme Court for all funds received. Any officer who neglects or refuses to make such accounts shall forfeit his office.

B. Each officer herein named shall cause a list of fees allowed by law to be charged by him, to be posted in his office in some conspicuous place. Every officer charging fees shall give a receipt therefor. (PR19-021, 5/17/02)

SECTION 5-103.21 FEES NOT COLLECTED DURING TERM.

Any and all fees of any officer earned, but not collected, during his term of office, shall be collected by his successor in office and paid into the court fund, and all fees so collected shall be included in the report of the officer collecting the same. The fees collected by any officer shall be deposited in accordance with Section 5-103.17. (PR19-021, 5/17/02)

ARTICLE D
GROUNDS FOR DISQUALIFICATION OF JUSTICE

Section 5-104.1 Purpose and Authority.
Section 5-104.2 Definitions.
Section 5-104.3 Application.
Section 5-104.4 Disqualification Required.

Section 5-104.5 Appearance of Partiality or Impropriety.

SECTION 5-104.1 PURPOSE AND AUTHORITY.

The purpose of this article is to establish and define grounds for the disqualification of a judge as necessary for the appropriate administration of law and justice. This Article D is a matter that affects the public trust of the Nation.
(TL7-003, 10/23/89; Renumbered by PR18-044, 10/19/01)

SECTION 5-104.2 DEFINITIONS.

For the purpose of this Article, the following terms shall have the meanings respectively ascribed to them in this section unless the context clearly requires otherwise:

1. "Bias" means mental attitude or disposition of a Justice toward a party to a litigation;

2. "Disqualify" means rendering ineligible or unfit to perform, by reason of an interest in a case or for any other reason as may be contained in this article;

3. "Fiduciary" means a person holding the character of a trustee in respect to the trust and confidence involved in it and a person having that duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking;

4. "Prejudice" means a condition of mind which sways judgment and renders a judge unable to exercise his functions impartially in any particular case, referring to mental attitude or disposition of a judge toward a party to a litigation.

(PR20-012, 6/20/03.)

SECTION 5-104.3 APPLICATION.

This Article D shall apply to all persons elected to serve as a Justice for the Nation and to any others to whom the Legislature may, by specific legislative action, cause this Article to apply.

SECTION 5-104.4 DISQUALIFICATION REQUIRED.

A. A Justice shall recuse himself and inform the parties or be subject to a motion for disqualification, if any of the following applies:
(PR38-014, 02/22/2021)

1. The Justice is interested in the case or the results thereof;

2. The Justice is related to any party;

3. The Justice has been counsel for either party;

4. The case calls into question:

a. The validity of any judgment of the Justice;

b. A proceeding in which the Justice was counsel or was interested; or

c. The validity of any instrument or paper prepared or signed by a Justice as counsel or attorney;

5. The Justice has personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

6. The Justice, individually or as a fiduciary, or spouse or minor child residing in a Justice's household, has a financial or other interest that could be substantially affected by the outcome;

7. The Justice has publicly stated an opinion about the outcome of the facts of a case prior to hearing; or

8. If the case is an appeal from the Domestic Violence Court or a criminal appeal from a felony conviction before the District Court and the Justice does not meet the qualifications required for the Judge of District Court.

B. Paragraphs 1 through 8 of this Section shall be prima facie and conclusive evidence of bias and prejudice; however, nothing in this Section shall prevent the Court from recognizing other grounds as a proper basis for recusal or disqualification if the same represents a challenge to confidence in the legal system.
(PR20-012, 6/20/03; PR20-023, 8/15/03; PR38-014, 02/22/2021)

SECTION 5-104.5 APPEARANCE OF PARTIALITY OR IMPROPRIETY.

A Justice shall prevent even the appearance of partiality or impropriety.

ARTICLE E
PROCEDURES FOR DISQUALIFICATION OF JUSTICE

Section 5-105.1 Definitions.
Section 5-105.2 Application.
Section 5-105.3 Methods for Disqualification of Justice.
Section 5-105.4 When Order for Disqualification Shall Issue.
Section 5-105.5 Motion Alleging Bias or Prejudice; Hearing; Decision.
Section 5-105.6 Effect of Disqualification.
Section 5-105.7 When More than One Justice is Disqualified; Special Justices.

SECTION 5-105.1 DEFINITIONS.

The definitions set out in Section 5-104.2 of this Code shall apply in this Article E. (PR18-044, 10/19/01; PR21-023, 7/16/04)

SECTION 5-105.2 APPLICATION.

This Article applies to all persons elected to serve as a Justice for the Nation and to any others to whom the Legislature may, by specific legislative action, cause this Article E to apply. (PR20-012, 6/20/03)

SECTION 5-105.3 METHODS FOR DISQUALIFICATION OF JUSTICE.

A Justice may be disqualified by any of the following methods:

1. The Justice's own order;

2. An order of another of the remaining Justices. (PR20-012, 6/20/03)

SECTION 5-105.4 WHEN ORDER FOR DISQUALIFICATION SHALL ISSUE.

If a Justice determines that he has a bias, prejudice or should otherwise be disqualified as required by Section 5-104.4 concerning a matter pending in the Court, the Justice shall:

1. By his own order, disqualify himself from further hearing in the case if he feels such bias, prejudice or other reason for disqualification prevents him from exercising impartial judgment in the case;

2. If the Justice does not disqualify himself by his own order, because he feels he can set aside the potential bias or prejudice and is not otherwise subject to

disqualification, the Justice shall disclose his potential bias or prejudice to all parties. If the parties agree in writing to waive the potential bias or prejudice, the Justice may hear the case. If the parties do not agree in writing, the Justice shall by his own order disqualify himself from further hearing. However, the parties cannot agree in writing to waive the grounds for disqualification provided in Section 5-104.4(A)(8).
(PR20-012, 6/20/03; PR38-014, 02/22/2021)

SECTION 5-105.5 MOTION ALLEGING BIAS OR PREJUDICE; HEARING; DECISION.

A. Any party may file a motion alleging bias, prejudice or other grounds for disqualification. Such motion shall specifically address the alleged bias, prejudice, or other grounds for disqualification in the hearing.

B. A motion alleging bias, prejudice, or other grounds for disqualification shall take precedence over all other motions filed and be heard instanter if the Court is in session. Otherwise, it shall be promptly set for hearing.

C. Any Justice alleged to have bias, prejudice, or be subject to disqualification on other grounds may not rule or communicate with other Justices concerning the motion in a setting other than open court. A Justice under oath may rebut an allegation, however, such Justice shall be subject to cross examination by of all parties to the action.

D. Any Justice alleged to have bias, prejudice, or to be subject to disqualification on other grounds, may not rule or be a part of the Court's decisions regarding a determination of whether such bias, prejudice, or other grounds for disqualification exists. Unchallenged Justices shall make the ruling and shall enter an order disqualifying the challenged Justice, unless the unchallenged Justices unanimously rule that there is no such bias, prejudice or other grounds for disqualification. A Justice shall be disqualified if evidence indicates the appearance of bias, or prejudice.
(PR20-012, 6/20/03; PR38-014, 02/22/2021)

SECTION 5-105.6 EFFECT OF DISQUALIFICATION.

In the event of disqualification of one Justice, the remaining two Justices shall hear the case. (PR20-012, 6/20/03)

SECTION 5-105.7 WHEN MORE THAN ONE JUSTICE IS DISQUALIFIED; SPECIAL JUSTICES.

A. If more than one (1) Justice is disqualified from hearing a case, the Chief Justice of the Supreme Court shall designate by court order, pursuant to rules promulgated by the Supreme Court, persons who are licensed to practice law before the Court, and who would

not otherwise be subject to disqualification, and who are also not employees of, or under contract with, the Chickasaw Nation in any capacity to act as Special Justices in the case.

B. Special Justices shall be subject to disqualification in the same manner as other Justices.
(PR20-012, 6/20/03; PR20-023, 8/15/03; PR21-009, 2/20/04.)

CHAPTER 2
CHICKASAW NATION DISTRICT COURT

ARTICLE A
GENERAL PROVISIONS

Section 5-201.1 Authorization.
Section 5-201.2 Definitions.
Section 5-201.3 Territorial Jurisdiction.
Section 5-201.4 Subject Matter Jurisdiction.
Section 5-201.5 Personal Jurisdiction.
Section 5-201.6 Law to be Applied.
Section 5-201.7 Amendments.

SECTION 5-201.1 AUTHORIZATION.

There is hereby established, ordained, and activated pursuant to Amendment V of the Chickasaw Nation Constitution, a lower Court known as the Tribal District Court of the Chickasaw Nation, herein referred to as the "District Court." (PR18-044, 10/19/01)

SECTION 5-201.2 DEFINITIONS.

The following words have the meanings given below when used in this Title:

1. "Chickasaw Nation or Nation" shall mean the Tribe of Indians located within the boundaries set forth in the Constitution of the Chickasaw Nation, being duly recognized by the Secretary of the United States Department of the Interior as a self governing, sovereign government. "Chickasaw Nation" shall be used to describe the lands and people of the Chickasaw Tribe.

2. "Chickasaw Tribal Legislature," "Tribal Legislature" or "Legislature" means the legislative body of the Chickasaw Nation.

3. "Claim" means any right of action which may be asserted in a civil action or proceeding and includes, but is not limited to, a right of action created by statute.

4. “Clerk” shall mean the Clerk of either the Supreme or the District Court, or both, as is appropriate for the context in which it appears.

5. “Code” shall mean the statutory laws of the Chickasaw Nation.

6. “Constitution” shall mean the Constitution of the Chickasaw Nation.

7. “ Court” shall mean either the District Court or the Supreme Court of the Chickasaw Nation, or both, as is appropriate for the context in which it appears.

8. “Defendant” shall mean a party against whom relief or recovery is sought in a civil case or the party alleged to have committed a violation of the Nation’s criminal Code in a criminal case.

9. “Deputy Clerk” shall mean the Deputy Clerk of either the Supreme Court or the District Court, or both, as is appropriate for the context in which it appears. He shall be a person named or empowered to act for the Clerk of either the Supreme Court or the District Court.

10. “Executive Department” shall mean the Executive Department of the Chickasaw Nation.

11. "Governor" means the Governor of the Chickasaw Nation and includes any person performing the functions of Governor by authority of Chickasaw law.

12. “He”, “him”, and “his” shall mean the masculine, feminine and neuter forms as appropriate unless a particular masculine, feminine or neuter form is necessary for the phrase to have meaning.

13. “Indian” shall mean a citizen of a federally recognized Indian Tribe or a person who is eligible for citizenship in a federally recognized Indian Tribe.

14. “Indian Country” shall mean the land within the Chickasaw Nation boundaries described in the Chickasaw Nation Constitution, as amended, and as defined in 18 U.S.C.

15. “Indian Tribe” or “Indian Nation” shall mean a federally recognized Indian tribe as defined by 25 U.S.C. § 450(b), *et seq.*

16. “Judge” shall mean the judge presiding over the Chickasaw Nation District Court.

17. "Judgment" shall mean a final determination of the rights of the parties in an action, including those determined by a decree and any order from which an appeal lies. It is not required that a Judgment contain a recital of pleadings, report of a Master or record of prior proceedings.

18. "Justice" shall mean the judge presiding over the Chickasaw Nation Supreme Court.

19. "Law Enforcement Agency" or "Agency" shall mean the Chickasaw Nation Lighthorse Police Department, a federal law enforcement agency, or a tribal or state law enforcement agency with which the Nation has entered into cross-deputation agreements, including, but not limited to, a police department in incorporated municipalities or the office of the county sheriff, or law enforcement officers of the State of Oklahoma.

20. "Law Enforcement Officer" or "Officer" shall mean an officer of a Law Enforcement Agency.

21. "Legislative" shall mean action of or by the Chickasaw Tribal Legislature.

22. "Personal Property" shall mean property that is not Real Property.

23. "Petitioner" shall mean a party who presents a petition to a Court, officer or legislative body.

24. "Process Server" shall mean the Process Server of either the Supreme Court or the District Court, as is appropriate for the context in which it appears. He shall be a person named or appointed by the Supreme Court or the District Court.

25. "Property" shall mean anything of value and includes Personal Property and Real Property.

26. "Prosecutor" shall mean the attorney designated by the Executive Department to carry out the prosecutorial functions defined under Title 5 of the Chickasaw Nation Code.

27. "Respondent" shall mean a party against whom relief or recovery is sought in a civil case.

28. "Supreme Court" shall mean the Court of last resort to which appeals may be taken from the District Court. The judicial decisions of the Supreme Court are final

and are not subject to further appeal.

29. "Tribal Statute" shall mean Chickasaw Nation Code.

30. "Tribal Common Law" or "Common Law" shall mean the traditional tribal customs and usages of the Chickasaw Nation.

(PR38-014, 02/22/2021)

SECTION 5-201.3 TERRITORIAL JURISDICTION.

The territorial jurisdiction of the Court shall extend to all territory described as Indian Country within the meaning of Section 1151 of Title 18 of the United States Code over which the Chickasaw Nation has authority.

(PR38-005, 12/18/2020)

SECTION 5-201.4 SUBJECT MATTER JURISDICTION.

The Court shall have jurisdiction over all civil and criminal actions arising under the Constitution, laws, or treaties of the Chickasaw Nation, including the Tribal Common Law or by virtue of Executive or Legislative Order and enactment, or declaration or regulation of State or Federal Law, or a declaration or order of any Court of competent jurisdiction.

(PR38-014, 02/22/2021)

SECTION 5-201.5 PERSONAL JURISDICTION.

Personal jurisdiction shall exist over all defendants served within the territorial jurisdiction of the Court, or served anywhere in cases arising within the territorial jurisdiction of the Chickasaw Nation, and over all persons consenting to such jurisdiction. The act of entry within the territorial jurisdiction of the Court shall be considered consent to the jurisdiction of the Court.

SECTION 5-201.6 LAW TO BE APPLIED.

A. In all cases, the Court shall apply law from the following sources, in descending order of priority:

1. the Constitution of the Chickasaw Nation; and if not applicable, then

2. the statutes of the Chickasaw Nation not prohibited by applicable federal law; and if not applicable, then

3. the judicial precedent of the Supreme Court of the Chickasaw Nation; and if not applicable, then

4. the traditional tribal customs and usages if not prohibited by applicable federal law, which shall be called the Common Law. When in doubt as to the Common Law, the Court may request the advice of counselors and tribal elders familiar with them; and if no Common Law, then

5. federal law including federal common law; and, if not applicable, then

6. the laws of any state or other jurisdiction which the Court finds to be compatible with the public policy and needs of the Chickasaw Nation.

B. The Court and the Law Enforcement Agency as designated by the Executive Department shall be bound by the provisions of the Indian Civil Rights Act of 1968, as amended from time to time.

C. No federal or state law shall be applied to a civil action pursuant to subsections (A)(2) and (A)(3), above, if such law is inconsistent with Chickasaw law or the public policy of the Chickasaw Nation.
(PR38-014, 02/22/2021)

SECTION 5-201.7 AMENDMENTS.

The Tribal Legislature shall have the authority to alter, amend, or repeal any provision of this Title 5 or to add new sections to this Title 5 in its discretion.

ARTICLE B
DISTRICT COURT RULES OF PROCEDURE

Section 5-202.1 Judges of the District Court.
Section 5-202.2 Minimum Qualifications of Judge of the District Court.
Section 5-202.3 Manner of Selection of Judges.
Section 5-202.4 Term of Office.
Section 5-202.5 Oath of Office.
Section 5-202.6 Duties and Powers of Judges.
Section 5-202.7 Reserved.
Section 5-202.8 Special Appointments.
Section 5-202.9 Compensation of Judges.
Section 5-202.10 Removal of Judges.
Section 5-202.11 Disqualifications, Conflict of Interest.
Section 5-202.12 Decisions.
Section 5-202.13 Records.

Section 5-202.14 Files.
Section 5-202.15 Motion Day.
Section 5-202.16 Service of Process; Proof of Service; Responsive Pleadings.
Section 5-202.17 Objections to Service and Venue.
Section 5-202.18 Motions.
Section 5-202.19 Summary Judgment or Summary Disposition of Issues.
Section 5-202.20 Practice Before the District Court.
Section 5-202.21 Standards for Recognizing Records and Proceedings of State, Federal and Tribal Courts; Full Faith and Credit.
Section 5-202.22 Pretrial Proceedings.
Section 5-202.23 Diligence in Prosecution.
Section 5-202.24 Notice of Taking Default Judgment.
Section 5-202.25 Judges; Uniformity of Rulings.
Section 5-202.26 Disqualification of Judges in Civil and Criminal Cases.
Section 5-202.27 Default Judgment Against Defendant Served Solely by Publication.
Section 5-202.28 Motion for New Trial.
Section 5-202.29 Parole Revocation; Juveniles.
Section 5-202.30 Vacation of Final Judgments.
Section 5-202.31 Direct Contempt.
Section 5-202.32 Matters Taken Under Advisement.
Section 5-202.33 Instructing as to Issues of Fact.
Section 5-202.34 Office of the Chickasaw Nation Prosecutor.

Section 5-202.35 Chickasaw Nation Public Defender Board.
Section 5-202.36 Office of the Chickasaw Nation Public Defender.
Section 5-202.37 Civil Actions Involving Children; Court-appointed Counsel; Attorney Fees.
Section 5-202.38 District Court Address; Telephone Number.

SECTION 5-202.1 JUDGES OF THE DISTRICT COURT.

The District Court shall consist of the Judges and special appointment magistrates designated by the Supreme Court in accord with this chapter. (PR20-012, 6/20/03; PR21-009, 2/20/04; PR38-014, 02/22/2021)

SECTION 5-202.2 MINIMUM QUALIFICATIONS OF JUDGE OF THE DISTRICT COURT.

A Judge shall be:

1. a citizen of the Chickasaw Nation,

2. actually domiciled within the territorial jurisdiction of the Chickasaw Nation,

3. an attorney, or

4. have demonstrated moral integrity and fairness in his business, public and private life,

5. have never been convicted of a felony, whether or not actually imprisoned, and

6. be not less than twenty-five (25) years of

age. (PR18-044, 10/19/01; PR38-014, 02/22/2021)

SECTION 5-202.3 MANNER OF SELECTION OF JUDGES.

Judges shall be appointed by the Supreme Court of the Chickasaw Nation and upon a vacancy occurring in a judicial office in the following manner:

1. Within thirty (30) days after a vacancy occurs the Supreme Court Clerk shall cause a notice of the vacancy stating the minimum qualifications, the date the application period will close, and any other pertinent information to be published once in the Chickasaw Times. Copies of the notice may be posted at the office of the Clerk of the Supreme Court, and such other places as directed by the Supreme Court. The notice shall direct that all inquiries, nominations and applications be directed to the Supreme Court Clerk's office who shall keep a permanent record of responses to such notices. The Supreme Court Clerk may, at the request of the Supreme Court, publish the notice of vacancy in electronic or paper format in any publication or forum deemed appropriate by the Supreme Court including but not limited to bar or judicial journals, employment seeking forums or websites, social media, the Chickasaw Nation's website, or any other publication deemed appropriate by the Supreme Court.

2. The Supreme Court Clerk shall deliver the names and files of all persons nominated or applying for the judicial office to all members of the Supreme Court within five (5) business days of the closing date stated in the notice of vacancy.

3. The Supreme Court shall review the qualifications of the applicants or nominees, and may interview them at the Court's discretion. In making a selection, the Supreme Court shall give preference to those candidates who:

a. have more formal education and experience in the legal field.

b. by written or oral examination conducted by the Supreme Court or by interview have shown that they are familiar with the Constitution, Code and Common laws of the Chickasaw Nation.

c. have demonstrated decision making ability.

4. If the nominee for the judicial office is appointed, the nominee shall be sworn into office by the Chief Justice, or the next ranking available Justice of the Supreme Court.

5. If the applicant or nominee is not appointed, the Supreme Court shall either republish the notice and establish a new list of eligible candidates, or reconsider the candidates on the list gathered from the previous notice. The Supreme Court nomination process shall continue until an applicant or nominee is confirmed.

6. Upon the expiration of a judicial term of office, the judicial officer is entitled, upon request filed with the Supreme Court Clerk not less than sixty (60) days prior to the expiration of his term, to be considered for confirmation to a new term. (PR43-002, 02/20/2026)

SECTION 5-202.4 TERM OF OFFICE.

All Judges of the Tribal District Court shall serve three (3) year terms of office beginning from the date of their confirmation and until their successors take office, unless removed for cause, or by death or resignation. (PR18-044, 10/19/01)

SECTION 5-202.5 OATH OF OFFICE.

Before assuming office each Judge, special appointment magistrate and Special Judge shall take an oath to support and protect the Constitution of the Chickasaw Nation and to administer justice in all causes coming before him with integrity and fairness, without regard to the persons before him to be administered by the Chief Justice or the next ranking available Justice of the Supreme Court. (PR18-044, 10/19/01; PR38-014, 02/21/2021)

SECTION 5-202.6 DUTIES AND POWERS OF JUDGES.

All Judges of the District Court, and special appointment magistrates and Special Judges in cases within their authority, shall have the duty and power to conduct all court proceedings, and issue all orders and papers incident thereto, in order to administer justice in all matters within the jurisdiction of the Court. In doing so the Court shall:

1. Be responsible for creating and maintaining rules of the Court, not in conflict with the Chickasaw Nation Code or the Rules of the Supreme Court regulating conduct in the District Court, for the orderly and efficient administration of

justice. Such rules must be filed in the office of the District Court Clerk before becoming effective.

2. Hold Court regularly at a designated time and place.

3. Have the power to administer oaths, conduct hearings, and otherwise undertake all duties and exercise all authority of a judicial officer under the law.

4. Hear and decide all cases properly brought before the Court.

5. Enter all appropriate orders and judgments.

6. Issue all appropriate warrants and subpoenas.

7. Keep all Court and other records as may be required.

8. Perform the duties of the Clerk in his absence. (PR18-044, 10/19/01; PR38-014, 02/22/2021)

SECTION 5-202.7 RESERVED.

(PR18-044, 10/19/01)

SECTION 5-202.8 SPECIAL APPOINTMENTS.

A. In the event of vacancies in office, disqualification of Judges, or other cause, the Supreme Court may designate by Court Order one or more special appointment magistrates. The Court shall make such special appointments from among the members of the Bar of the Court or the members of the Supreme Court. Upon special appointment, the magistrate shall preside as Judge over specific named cases or court dockets until such time as a regular Judge can be convened or the vacancy is filled in accord with this chapter. Whenever a Justice of the Supreme Court sits as special appointment magistrate, that Justice may not participate in any appeal to the Supreme Court of any matter over which he or she presided.

B. No special procedure need be followed in making such appointments, but the Supreme Court's special appointments of magistrates under this section shall be subject to Chickasaw Nation Code, Title 5, Chapter 1, Articles A and C. Once made, an appointment shall establish an at will employment relationship between the Judicial Department and the magistrate for all purposes relating to the appointment.

C. Special appointment magistrates may be compensated from the Court fund in such reasonable amounts as the Supreme Court shall order.

D. Any judge in office acting upon an appointment ordered by the Court prior to the enactment of this section shall continue to act under the terms and conditions of their appointment.
(PR18-044, 10/19/01; PR38-014, 02/22/2021)

SECTION 5-202.9 COMPENSATION OF JUDGES.

A. The compensation of all Judges of the Court shall be set by the Supreme Court. No Judge shall have his compensation reduced during his term of office.

B. Nothing in this Section shall prohibit the Chickasaw Nation from contracting or agreeing with the Bureau of Indian Affairs or any other government, agency, or organization that such government, agency, or organization shall provide all or part of the compensation of a Judge of the District Court, and shall in return have control over the compensation of such Judges. In such situations the appropriate body of the Chickasaw Nation shall recommend to the funding party the compensation of District Judges.
(PR18-044, 10/19/01; PR31-006, 7/15/14)

SECTION 5-202.10 REMOVAL OF JUDGES.

A Judge of the District Court shall be removed only for cause by the Supreme Court. The term "cause" shall include any reason sufficient for disbarment of an Attorney from any Bar that licenses such Judge as an Attorney, or a violation of the Code of Judicial Conduct found in Appendix “B” of Article A of Title 5 of the Chickasaw Code. (PR18-044, 10/19/01; PR38-014, 02/22/2021)

SECTION 5-202.11 DISQUALIFICATIONS, CONFLICT OF INTEREST.

A. No District Court Judge shall hear any case when he has a direct financial, personal or other interest in the outcome of such case. Judges should attempt to prevent even the appearance of partiality or impropriety.

B. Either party of interest in such case or the Judge may raise the question of conflict of interest. Upon decision by the Judge concerned or the Supreme Court that disqualification is appropriate, another Judge shall be assigned to hear the matter before the Court.

C. Any Judge otherwise disqualified because he is related within the third (3^{rd}) degree to one or more of the parties of this Section, may hear a case if all parties are informed of the blood or marriage relationship on the record in open Court and of their right to have a different Judge hear the case, and consent to further action by that Judge in the case in open

Court upon the record, or in a writing filed in the record, in spite of the conflict of interest. (PR18-044, 10/19/01)

SECTION 5-202.12 DECISIONS.

A. Each final decision of the District Court at trial shall be recorded in writing. The written final decision shall include the date of the decision, the case number, the names of all parties, the substance of the complaint, the relevant facts found by the Court to be true, the Court's decision, and the conclusions of law supporting the Court's decision.

B. The written final shall be placed in the case file as an official document of the case.
(PR18-044, 10/19/01; PR38-014, 02/22/2021)

SECTION 5-202.13 RECORDS.

The District Court shall be a court of record. To preserve such records:

A. Generally

1. In all Court proceedings, the court shall cause a record to be made which memorializes the nature of the proceeding by either Court Minute, Court Order, Journal Entry or by other record approved by the District Court. A verbatim record of any proceeding may be made by either digital, electronic, or stenographic means, as approved by the District Court. The District Court Clerk shall maintain all records and recordings in conformity with all rules promulgated by the District Court and all provisions set forth herein.

2. The District Court Clerk shall keep and maintain all records by establishing a file for each case which bears the case name and number. Such file shall include every written document filed in the case and all evidence properly admitted into the record. Any evidence not able to be kept in such file shall be properly identified and stored in conformity with the District Court Rules.

3. The District Court Clerk shall keep and maintain all verbatim digital and electronic recordings of each proceeding in accordance with the District Court Rules.

4. All stenographic recordings shall be kept and maintained by the Court Reporter in compliance with the District Court Rules.

5. All Court records shall be public records except as otherwise provided by law.

6. All Court records shall be maintained in a safe and secure manner in any District Court facility or storage facility, as approved by the District Court.

7. All Court records shall be maintained in accordance with the File Preservation and Destruction Policy promulgated by the Chickasaw Nation Supreme Court.

B. Civil Proceedings:

1. The Court shall cause a verbatim record to be made of all proceedings in Juvenile Deprived, Juvenile Delinquent, and Adoption matters by digital, electronic, or stenographic means.

2. In all other civil proceedings, a verbatim record made by digital, electronic, or stenographic means may be made upon the request of any party or at the Court's discretion. Such request shall be made in compliance with the District Court Rules. If a request for a verbatim record is not made by any party, it is deemed waived.

C. Criminal Proceedings:

1. All proceedings concerning felony offense(s) shall be conducted in conformity with the laws of the Chickasaw Nation, including the Chickasaw Nation's incorporation of the Indian Civil Rights Act of 1968, as amended, and all other applicable federal law.

2. The Court shall cause a verbatim record to be made by digital, electronic, or stenographic means for all trials, both Jury and Non-Jury, for any misdemeanor or felony offense(s).

3. In all other criminal proceedings, a verbatim record made by digital, electronic, or stenographic means may be made upon the request of any party or at the Court's discretion. Such request shall be made in compliance with the District Court Rules. If a request for a verbatim record is not made by any party, it is deemed waived.

(PR18-044, 10/19/01; PR38-014, 02/22/2021; PR41-010, 05/17/2024)

SECTION 5-202.14 FILES.

A. Except as otherwise provided by law, such as in juvenile cases, Court files on a particular case are generally open to the public. Any person may inspect the records of a case and obtain copies of documents contained therein during normal business hours.

B. Any persons desiring to inspect the records of a case or obtain copies thereof may inspect such files only during the ordinary working hours of the Clerk, or a Judge and in their presence to insure the integrity of Court records. Under no circumstances shall anyone, except a Judge or a licensed advocate, attorney or the Clerk taking a file to a Judge in his chambers or a courtroom, take a file from the Clerk's office.

C. A copy of any document contained in such a file may be obtained from the Clerk by any person for a reasonable copy fee, to be set by rule of the Supreme Court. The Clerk is hereby authorized to certify under the seal of his office that such copies are accurate reproductions of those documents on file in his office. The Supreme Court by rule may provide for such certification.
(PR18-044, 10/19/01)

SECTION 5-202.15 MOTION DAY.

Unless conditions make it impractical, the District Court shall establish regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but the Judge at any time or place, and on such notice, if any, as he considers reasonable, may make orders for the advancement, conduct, and hearing of actions, or, the Court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition. (PR18-044, 10/19/01)

SECTION 5-202.16 SERVICE OF PROCESS; PROOF OF SERVICE; RESPONSIVE PLEADINGS.

A. **Service of Process and Proof of Service of Process.**

Service of process and proof of service of process shall be made in accordance with Chapter 2, Article D of this Title 5.

B. **Responsive Pleadings; Service; Time.**

1. Defendants, third-party defendants and persons who are joined as parties to an action shall file their responsive pleadings with the Court Clerk and serve copies on

all opposing parties within twenty (20) days after being served with process unless the time is extended by the service and filing of a motion or by the entry of an appearance,

and they shall serve copies of their responsive pleading promptly thereafter on all other parties to the action. When a summons and petition are served by mail, a defendant shall

serve his responsive pleadings within twenty (20) days after the date of receipt or, if service has been refused, then within twenty (20) days after the date acceptance was refused.

2. Except as otherwise provided by statute or an order of the Court, subsequent pleadings and all motions and other instruments shall be served on the opposing party within the prescribed time, and either before or promptly thereafter copies of the pleading shall be filed with the Court Clerk and served on all other parties to the action. This provision applies to amended pleadings except that an amendment that is made because a pleading failed to show a right to relief shall be filed with the Court Clerk within the time prescribed by the Court, and either before or promptly thereafter copies of the amended pleading shall be served on all parties to the action.

3. Except where a pleading is served with a summons, service of a pleading, motion or other instrument on a party shall be made by service on his attorney of record where there is one or on the party himself should the party be representing himself (*pro se)*.

(PR21-002, 11/21/03)

SECTION 5-202.17 OBJECTIONS TO SERVICE AND VENUE.

Objections to the jurisdiction of the Court over the person, to the issuance or service of the summons or to the venue of the action are waived and a party submits himself to the jurisdiction of the Court if he asks for affirmative relief on a claim which is asserted in a permissive counter-claim, in a cross-claim, or in a third-party Petition. The assertion of a compulsory counter-claim against a plaintiff does not waive any of the above objections.
(PR21-002, 11/21/03)

SECTION 5-202.18 MOTIONS.

A. Where various objections and defenses have been consolidated pursuant to Subsection 5-209.11.G, the Court should hear jurisdictional objections and defenses first. If the Court grants a motion on one of the grounds stated therein, the Court may pass over other

grounds. If an amendment is filed, the adverse party may renew any ground that was passed over and may object to defects in the amended pleading which did not exist in the initial pleading.

B. In a motion a party must specifically state the grounds therefor and the relief or order sought even where the party relies on defects or deficiencies apparent on the face of the pleading, motion or other instrument.

C. Motions raising fact issues shall be verified by a person having knowledge of the facts, if possible; otherwise, a verified statement by counsel of what the proof will show will suffice until a hearing or stipulation can be provided. Every motion shall be accompanied by a concise brief or a list of authorities upon which movant relies. Unless the Court directs otherwise, neither a brief nor a list of authorities shall be required with respect to any of the following:

1. motions for extensions of time, if the request is made before expiration of the time period originally prescribed, or as extended by previous orders;

2. motions to continue a hearing, pretrial conference or trial;

3. motions to amend pleadings or file supplemental pleadings;

4. motions to appoint a guardian *ad litem*;

5. motions for physical or mental examinations;

6. motions to add or substitute parties;

7. motions to enter or vacate default judgments;

8. motions to confirm sales;

9. motions to stay proceedings to enforce judgments;

10. motions to shorten a prescribed time period; and

11. motions for scheduling conferences and other settings.

D. If the motion does not comply with the requirements of Subsections B and C above, the motion may be denied without a hearing, and if a responsive pleading is required, the moving party shall serve such responsive pleading as provided in Subsection 5-202.16.B. Motions not requiring briefs shall state whether opposing parties agree or object to the request and shall be accompanied by a proposed order granting the relief requested. If there are no opposing parties, or if they cannot be reached, the movant shall so state with particularity. The proposed order shall be served together with the motion upon all parties in the matter.

Objections to motions not requiring briefs shall be served and filed within fifteen (15) days after service of the motion or the motion may be deemed confessed.

E. Any party opposing a motion, except those enumerated in Subsection C above, shall serve and file a brief or a list of authorities in opposition within fifteen (15) days after service of the motion, or the motion may be deemed confessed.

F. If the grounds supporting a motion are not presented for hearing when called, the Court, in its discretion, may continue the hearing, rule on the motion or declare the motion as having been withdrawn or abandoned. Where a party consents to the denial of his motion, the motion shall be deemed to have been withdrawn. Motions that are not contested may be disposed of by the announcement of one party without the necessity of all counsel appearing.

Where a motion is denied for failure to present or is declared to have been withdrawn or abandoned, the party asserting the motion waives the objection, and if a responsive pleading is required, the moving party shall be required to serve it within twenty (20) days after notice of the Court's action. The ruling of the Court on a motion shall be memorialized by an order prepared by the moving party, or as directed by the Court, and shall be filed in the case.

G. Except with the permission of the Court after good cause has been shown, a party cannot present any defect or deficiency at the hearing on his motion which was not specifically stated therein, but if the Court permits other grounds to be presented, the motion shall be amended in writing, by interlineation if possible, to include the new grounds. This Subsection G is not applicable to hearings on new trial motions which are subject to Section 5-202.28.

H. Motions may be decided by the Court without a hearing, and where there is none, the Court shall notify the parties of its ruling by mail.

I. The denial of a motion to dismiss for failure to state a claim upon which relief can be granted, or of a motion to strike a defense because it is insufficient, or of a motion for a summary judgment, or of a motion for a summary disposition of issues will not be reviewed on appeal after the action has been tried on its merits.

J. Joint motions shall be deemed to be joint and several as to all counts in the prior pleading and as to all parties joining in the motion, and where proper grounds are presented to the Court, the Court must rule on the sufficiency of each claim or defense as to each party.

K. A negative pregnant or a conjunctive denial is not a ground for objecting to the sufficiency of a defense, but the issues raised shall be determined at the pretrial conference.

L. Motions for judgment on the pleadings, motions for a more definite statement, motions to strike redundant, immaterial, impertinent, scandalous or similar matter from a pleading, and objections to the introduction of evidence that are made at the commencement of a trial to test the sufficiency of the pleadings shall not be made. If such motions or objections are made, the Court shall summarily deny them without a hearing, and the making of such motions or objections shall not extend the time to serve or file a responsive pleading or take other required action.

M. Appeals from orders granting judgment on motion for summary judgment or summary disposition or dismissal on motion to dismiss for failure to state a claim or for lack of jurisdiction will be subject to accelerated appellate review pursuant to Section 5-102.6. The record on appeal will be limited to:

1. the memorialized entry of dismissal order. In multi-party or multi-claim cases the judgment or dismissal order must either 1) dispose of all claims and all parties, or 2) entirely dispose of at least one (1) claim or one party and contain the express determination that there is no just reason for delay with the express direction by the trial Judge that judgment be filed (see Subsection 5-215.1.A);

2. pleadings proper as defined by Subsection 5-209.6.A;

3. the instrument(s) upon which the dismissal is rested;

4. the motion(s) to dismiss and any supporting brief(s);

5. any responsive brief by the party asserting the claim;

6. any other item on file which, according to some recitation in the trial Court's dismissal order or in some other order, was considered in its decision;

7. any other order dismissing the claim or determining the issues as to some but not all parties or claims;

8. any transcripts of the hearing on the motion; and

9. any motions, along with supporting and responsive briefs, for new trial (re-examination) of the dismissal order.

(PR21-002, 11/21/03)

SECTION 5-202.19 SUMMARY JUDGMENT OR SUMMARY DISPOSITION OF ISSUES.

A. A party may move for either summary judgment or summary disposition of any issue on the merits on the ground that the evidentiary material filed with the motion or subsequently filed with leave of court show that there is no substantial controversy as to any material fact. The motion shall be accompanied by a concise written statement of the material facts as to which the movant contends no genuine issue exists and a statement of argument and authority demonstrating that summary judgment or summary disposition of any issues should be granted. Reference shall be made in the statement to the pages and paragraphs or lines of the evidentiary materials that are pertinent to the motion. Unless otherwise ordered by the Court, a copy of the material relied on shall be attached to the statement. (See Section 5-215.5.)

The motion may be served at any time after the filing of the action, except that, if the action has been set for trial, the motion shall be served at least twenty (20) days before the trial date unless an applicable scheduling order establishes an earlier deadline. The motion shall be served on all parties and filed with the Court Clerk.

B. Any party opposing summary judgment or summary disposition of issues shall file with the Court Clerk within fifteen (15) days after service of the motion a concise written statement of the material facts as to which a genuine issue exists and the reasons for denying the motion; provided, however, that a responsive statement shall not be due from a party earlier than forty five (45) days after service of the first summons by, or upon, that party. Unless otherwise ordered by the Court, the adverse party shall attach to the statement evidentiary material justifying the opposition to the motion, but may incorporate by reference material attached to the papers of another party. In the statement, the adverse party or parties shall set forth and number each specific material fact which is claimed to be in controversy and reference shall be made to the pages and paragraphs or lines of the evidentiary materials. All material facts set forth in the statement of the movant which are supported by acceptable evidentiary material shall be deemed admitted for the purpose of summary judgment or summary disposition

unless specifically controverted by the statement of the adverse party which is supported by acceptable evidentiary material. If the motion for summary judgment or summary disposition is granted, the party or parties opposing the motion cannot on appeal rely on any fact or material that is not referred to or included in the statement in order to show that a substantial controversy exists.

C. The affidavits that are filed by either party shall be made on personal knowledge, shall show that the affiant is competent to testify as to the matters stated therein, and shall set forth matters that would be admissible in evidence at trial. The admissibility of other evidentiary material filed by either party shall be governed by the Rules of Evidence. If there is a dispute regarding the authenticity of a document or admissibility of any submitted evidentiary material, the Court may rule on the admissibility of the challenged material before disposing of the motion for summary judgment or summary disposition. A party challenging

the admissibility of any evidentiary material submitted by another party may raise the issue expressly by written objection or motion to strike such material. Evidentiary material that does not appear to be convertible to admissible evidence at trial shall be challenged by objection or motion to strike, or the objection shall be deemed waived for the purpose of the decision on the motion for summary judgment or summary disposition. If a trial of factual issues is required after proceedings on a motion for summary judgment or summary disposition, evidentiary rulings in the context of the summary procedure shall be treated as rulings *in limine*. (See Subsection 5-215.5.E.)

D. Should it appear from an affidavit of a party opposing the motion that for reasons stated the party cannot present evidentiary material sufficient to support the opposition, the Court may deny the motion for summary judgment or summary disposition without prejudice or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as the Court deems just. A motion filed pursuant to this Subsection D shall not be deemed a consent to the exercise by the Court of jurisdiction over the party, or a waiver of the right to file a motion to dismiss the action.

E. If it appears to the Court that there is no substantial controversy as to the material facts and that one of the parties is entitled to judgment as a matter of law, the Court shall render judgment for said party. If the Court finds that there is no substantial controversy as to certain facts or issues, the Court may enter an order specifying the facts or issues which are not in controversy and direct that the action proceed for a determination of the remaining fact or issues. An order denying either summary judgment or summary disposition is interlocutory and is not reviewable on appeal prior to final judgment.

F. The serving of a motion for either a summary judgment or summary disposition

of issues before a responsive pleading is served where a responsive pleading is permitted does not preclude the opposing party from amending the pleading without leave of court. If a motion for either a summary judgment or summary disposition is served after the case is at issue, the hearing on the motion and the pretrial conference may, in the discretion of the Court, be held at one time. The Court may decide a motion for either a summary judgment or summary disposition without a hearing, and where this is done, the Court shall notify the parties of its ruling by mail.

G. The pleadings or the pretrial conference order may be amended either before or during the hearing on a motion for either summary judgment or summary disposition under this Rule, and the Court may continue the hearing to a subsequent time. After the Court grants a judgment under this Rule, neither the pleadings nor the pretrial conference order may be amended by the addition of allegations in regard to any fact which was known to the party and which could have been presented at the hearing on the motion, and a motion for a rehearing or for a new trial on the ground of newly discovered evidence must comply with the provisions of Section 5-215.8.

H. Judgments entered on motion for summary judgment or appealable summary disposition are subject to accelerated appellate review under Section 5-102.6. The record on appeal will be limited to:

1. the memorialized entry of judgment; in multi-party or multi-claim cases the judgment or dismissal order must either 1) dispose of all claims and all parties, or 2) entirely dispose of at least one (1) claim or one party and contain the express determination that there is no just reason for delay with the express direction by the Court that judgment be filed;

2. pleadings proper;

3. applicable instruments on file, including the motion and response with supporting briefs and materials filed by the parties as prescribed by Paragraphs 1 and 2 above;

4. any other item on file which, according to some recitation in the Court's written journal entry or in some other order, was considered in its decision;

5. any other order dismissing the claim or determining the issues as to some but not all parties or claims;

6. any transcripts of the hearing on the motion; and

7. any motions, along with supporting and responsive briefs, for new trial (re-examination) of summary judgment or appealable summary disposition process.

(PR21-002, 11/21/03)

SECTION 5-202.20 PRACTICE BEFORE THE DISTRICT COURT.

A. No person shall be denied the right to have a member of the Bar of the Court represent him and present his case before the Courts.

B. The Supreme Court, after conferring with the District Court, shall make rules which shall govern who may practice before the District Court and the Supreme Court. Such rules shall be filed in the office of the Clerk of the Supreme and District Courts.
(PR18-044, 10/19/01)

SECTION 5-202.21 STANDARDS FOR RECOGNIZING RECORDS AND PROCEEDINGS OF STATE, FEDERAL AND TRIBAL COURTS; FULL FAITH AND CREDIT.

A. **Definitions.**

For the purposes of this Section:

1. "Foreign Court" means any court or constitutionally established tribunal of the United States, any State of the United States, or federally recognized Indian nation, tribe, pueblo, band, or Alaska Native village, duly established under federal law or tribal law, including Courts of Indian Offenses organized pursuant to Title 25, Part 11 of the Code of Federal Regulations.

2. "Foreign Judgment" means any final written judgment, decree or order of a Foreign Court duly signed by a Judicial Officer and filed in a Foreign Court.

3. "Judicial Officer" means any judge, justice, magistrate or other officer duly seated and authorized under state, federal or tribal law to resolve disputes and enter judgments in a Foreign Court.

B. **Recognition of Foreign Judgments; Full Faith and Credit.**

The District Court of the Chickasaw Nation shall grant full faith and credit and cause to be enforced any Foreign Judgment where the Foreign Court that issued the judgment grants reciprocity to judgments of the Courts of the Chickasaw Nation; provided, a Foreign Court judgment shall receive no greater effect or full faith and credit under this Rule than would a similar or comparable judgment of another Foreign Court.

C. **Listing of Foreign Courts Granting Reciprocity**.

A list of the Foreign Courts that grant full faith and credit to the courts of the Chickasaw Nation shall be maintained by the Chickasaw Nation District Court. Any Foreign Court may provide the office of the Clerk of the District Court a copy of the tribal ordinance, statute, court rule or other evidence that demonstrates that the tribal court grants reciprocity to the courts of the Chickasaw Nation.

D. **Filing of Foreign Judgments.**

A copy of any Foreign Judgment from a tribal court authenticated in accordance with the applicable act of Congress or of the statutes of the Chickasaw Nation or the law of the State of Oklahoma may be filed in the office of the Clerk of the District Court. The Clerk of the District Court shall treat the Foreign Judgment from the tribal court in the same manner as a judgment of the Chickasaw District Court which may be enforced or satisfied in like manner.

E. **Notice of Filing.**

1. At the time of the filing of the Foreign Judgment with the Clerk of the District Court, the party filing the judgment or that party'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.

2. Promptly upon the filing of the foreign judgment and the affidavit, the Clerk of the District Court shall mail notice of the filing of the Foreign Court 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 Clerk of the District Court within ten (10) days of the date that the tribal judgment was filed with the District Court. Failure of the Clerk of the District Court 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.

3. 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 Clerk of the District Court and twenty (20) days have expired from the date the judgment was so filed.

(PR21-002, 11/21/03)

SECTION 5-202.22 PRETRIAL PROCEEDINGS.

A. **Docket.**

A pretrial conference shall be held in all civil actions except:

1. where the defendant is in default; or

2. where the defendant has waived his right to appear or plead; or

3. in an action for the recovery of money or personal property where the amount or value in controversy is less than five thousand dollars ($5000); or

4. in actions for forcible entry and detainer where a jury has been waived.

The Judge, in his discretion, may or may not hold pretrial conference(s) in cases where trial before a jury has been waived. A judge may hold more than one (1) pretrial conference in any case, may excuse a case from the pretrial docket or assign the case to Peacemaking Court as described and defined in Chapter 14 of this Title 5.

B. **Notice.**

At least twenty (20) days' notice of the setting of a case for an initial pretrial conference shall be given to the parties and/or the attorneys of record by the Court Clerk.

C. **Scheduling.**

As soon as any civil case is at issue, the Court may schedule any conference it deems appropriate and enter a scheduling order which establishes, insofar as feasible, the time:

1. to join other parties and to amend the pleadings;

2. to file and hear motions;

3. to complete discovery;

4. to have a medical examination of a party;

5. for conferences before trial, a pretrial conference, and trial;

6. to file proposed findings of fact and conclusions of law (non-jury); and

7. for accomplishing any other matters appropriate in the circumstances of the case.

The scheduling order shall issue as soon as feasible after the case is at issue. A schedule shall not be modified except upon written application by counsel and by leave of the Court upon a showing of good cause.

D. **Pretrial Conferences; Judge, Court Advocate or Peacemaker Presiding.**

The pretrial conference shall be conducted by the Judge or, at the Judge's discretion, the Court Advocate or a Peacemaker. Unless waived by the parties, the Judge, Court Advocate or Peacemaker may take an active part in the conference and conduct it in an informal manner in chambers whenever possible.

E. **Pretrial Conferences; Objectives.** The scheduling and conduct of the conferences and the scheduling of matters to be accomplished should be designed to:

1. expedite the disposition of the action;

2. establish early and continuing control so that the case will not be protracted because of lack of management;

3. discourage wasteful pretrial activities;

4. improve the quality of the trial through more thorough preparation; and

5. facilitate the settlement of the case.

F. **General Guidelines for Conducting Pretrial Conference.**

The following guidelines should be followed by counsel and Judge, Court Advocate or Peacemaker in preparing and conducting a complete and adequate pretrial conference:

1. attorneys shall confer prior to the pretrial conference and prepare a single suggested pretrial order for use during the pretrial conference;

2. whenever feasible, all amendments to pleadings and stipulations should be filed in the case before the pretrial conference;

3. stipulate in writing to as many facts and issues as possible;

4. list in writing the facts and law that are disputed;

5. discuss the possibility of settlement; and

6. attorneys for the parties should be prepared to advise the Judge or the Court Advocate at the pretrial conference as to whether a Peacemaker is requested.

G. **Subjects to be Discussed at Pretrial Conferences.**

In accordance with the objectives of a pretrial conference, the participants under this rule should have taken action to:

1. the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;

2. the necessity or desirability of amendments to the pleadings;

3. the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding authenticity of documents, and advance rulings from the Court on the admissibility of evidence;

4. the avoidance of unnecessary proof and of cumulative evidence;

5. the identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;

6. the possibility of settlement or the use of extrajudicial procedures to resolve the dispute;

7. the form and substance of the pretrial order;

8. the disposition of pending motions;

9. the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems; and

10. such other matters as may aid in the disposition of the action.

H. **Final Pretrial Conference.**

Any final pretrial conference shall be held as close to the time of trial as is reasonable under the circumstances. The participants at any such conference shall formulate a plan that will streamline the trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties, unless a substitute attorney is authorized by the Judge, Court Advocate or Peacemaker and by any unrepresented parties.

I. **Pretrial Orders.**

After any conference held pursuant to this Rule, an order shall be entered reciting the action taken. Such order shall control subsequent course of the action unless modified by a

subsequent order. The order following a final pretrial conference shall be modified only to prevent manifest injustice.

The pretrial order shall include the results of the conference and advice to the Court regarding the factual and legal issues, including details of material questions of law in the case. All exhibits must be marked, listed and identified in the pretrial order. If there is objection to the admission of any exhibits, the grounds for the objection must be specifically stated. Absent proper objection, the listed exhibit is admitted when offered at trial or other proceeding. Attorneys for all parties will approve the order. The order shall be presented to the District Court for signature. The contents of the pretrial order shall supersede the pleadings and govern the trial of the case unless departure therefrom is permitted by the Court to prevent manifest injustice. Proposed pretrial order shall not be filed.

J. **Default.**

Failure to prepare and file a scheduling order or pretrial order, failure to appear at a conference, appearance at a conference substantially unprepared, or failure to participate in good faith may result in any of the following sanctions:

1. the striking of the pleading;

2. a preclusion order;

3. staying the proceeding;

4. default judgment;

5. assessment of expenses and fees (either against a party or the attorney individually); and/or

6. such other order as the Court may deem just and appropriate.

K. **After Pretrial.**

After pretrial, if additional exhibits or writings are discovered, the party intending to use them shall immediately mark them for identification and furnish copies to opposing counsel. These shall be deemed admitted unless written objection is served and filed within ten (10) days of receipt, stating the specified grounds for objection. If additional witnesses are discovered, opposing counsel shall be notified immediately in writing and furnished their names, addresses and the nature of the testimony. Copies of the additional documents, exhibits, writings, or list of witnesses shall also be mailed to the Clerk of the Court to be filed in the case. No exhibit or witness may be added to the final pretrial order once the same has been prepared and signed and

filed by the Court without a showing to the Court that manifest injustice would be created if the party requesting the addition of such evidence or testimony was not permitted to add such final pretrial order.

L. **Settlement Conferences.**

The Court, may upon its own motion or at the request of any of the parties, may order a settlement conference at a time and place to be fixed by the Court. At the discretion of the Court, the Judge, Court Advocate or a Peacemaker may preside at such settlement conference. At least one (1) attorney for each of the parties who is fully familiar with the case and who has complete authority to settle the case shall appear for each party. If no attorney has complete settlement authority, the party or person with full settlement authority shall also attend the settlement conference. The settlement conference Judge, Court Advocate or Peacemaker may allow the party having full settlement authority to be telephonically available, if justifiable cause is shown why attendance in person would constitute a hardship. The parties, their representatives and attorneys are required to be completely candid with the settlement conference Judge, Court Advocate or Peacemaker so that he may properly guide settlement discussions, and the failure to attend a settlement conference or the refusal to cooperate fully within the spirit of this Rule may result in the imposition of any of the sanctions mentioned in Subsection J above. The Judge, Court Advocate or Peacemaker presiding over the settlement conference may make such other and additional requirements of the parties which in his discretion shall seem proper in order to expedite an amicable resolution of the case. The Judge, Court Advocate or Peacemaker shall not discuss the substance of the conference with anyone, including the Judge should the Court Advocate or Peacemaker be presiding.

M. **Forms.**

The following forms shall be used for the scheduling order, order for pretrial conference and pretrial conference order:

IN THE DISTRICT COURT
OF THE CHICKASAW NATION

_____,)
)
Plaintiff(s),)
)
vs.) DC-
)
_____,)
)

Defendant(s).)

SCHEDULING ORDER

THIS ORDER is entered this the _____ day of _____, 20_____ . Counsel has discussed with this Court their respective need for adequate discovery time, complexity of legal issues to be addressed, an the caseload in arriving at this Scheduling Order.

IT IS ORDERED that the following must be completed within the time fixed herein:

1.	Neither Joinder of Additional Parties nor Amendment to the Pleadings may be filed after:	
2.	Discovery: Must be completed by:	
	Initial Witness & Exhibit List due by:	
	Final Witness & Exhibit List due by:	
3.	Trial Deposition Cut-Off:	
4.	All motions must be filed by:	
5.	Pre-Trial Conference Date & Time: (Proposed Pre-Trial Order must be filed 5 days prior to pre-trial)	
6.	Trial Date(s):	
7.	Estimated Time of Trial	

8.	Requested Jury Instructions due 5 days prior to trial	
9.	Proposed Findings of Fact and Conclusions of Law: (Non Jury Cases) Must be filed by:	
10.	Additionally Ordered:	

JURY COSTS MUST BE PAID PRIOR TO PRE-TRIAL, OTHERWISE JURY IS WAIVED.

IT IS FURTHER ORDERED that no date set by this Order can be changed except for good cause and upon written order of this Court, prior to the date scheduled.

IT IS FURTHER ORDERED that if any party has an objection to the schedule set forth above, a written Motion for Scheduling Conference shall be filed within fifteen (15) days of this Order, or the Written objection shall be waived.

IT IS FURTHER ORDERED that this Order be served upon all parties to this action, by the District Court Clerk, by mailing or delivering a copy of it to their respective counsel of record, or to a party appearing without counsel.

DATED this the _____ day of _____, 20___.

_____

Judge of the District Court of the Chickasaw Nation

IN THE DISTRICT COURT
OF THE CHICKASAW NATION

_____,	)	
	)	
Plaintiff(s),	)	
	)	
vs.	)	DC-
	)	
_____,	)	
	)	
Defendant(s).	)	

ORDER FOR PRE-TRIAL CONFERENCE

The Court had determined that this case is at issue, that a pre-trial conference is required. The pre-trial conference is to be attended by the parties or their attorneys, if represented by counsel. Counsel and parties, if *pro se*, must be prepared to admit and stipulate undisputed facts waive formal proof of documents, furnish names and addresses of witnesses and the nature of testimony, submit exhibits at pre-trial, discuss points of law and submit trial briefs thereon. The pre-trial conference will result in reduction of the number of witnesses in an effort to avoid cumulative testimony and other findings which might aid in the disposition of this case.

IT IS THEREFORE ORDERED that:

e. A Pre-Trial Conference is to be held in this case on the _____ day of _____

, 20_____, at _____ o'clock ___.m., before the (undersigned Judge) (Court Advocate) (Peacemaker _____(name). Attorneys or parties, if *pro se*, shall meet, in person, prior to the pre-trial conference and must prepare a single suggested pre-trial order for use during the pre-trial conference. **THE ORDER MUST BE SUBMITTED TO THE JUDGE NOT LESS THAN FIVE (5) DAYS PRIOR TO THE SCHEDULED CONFERENCE.**

f. Counsel or parties, if *pro se*, who will conduct the trial must be present at the pre-trial conference.

g. Failure of a party or his or her attorney to appear, be prepared or participate in good faith in the meeting for the preparation of the Pre-Trial Order or the pre-trial conference will

result in the striking of their pleadings; a preclusion order; staying the proceedings;

default judgment; assessment of expenses and fees; dismissal of the lawsuit; or such other order as the Court may deem just and appropriate.

h. Parties shall produce for identification, examination and discussion, ALL exhibits which they intend to offer into evidence at trial. Unless an exhibit has been so identified, it shall not be offered into evidence at the trial, except for good cause shown. At trial, each party shall provide the Court and reporter a list of all exhibits to be offered, together with a pre-numbered original exhibit. Each party should also have a copy to supply to the witness and to all other parties in the lawsuit. Copies shall be made prior to trial to prevent the original from being withdrawn.

i. Parties shall obtain the names, addresses and general nature of the testimony of all witnesses to be called for the trial and furnish the same in writing to opposing counsel and the Court. Unless a witness has been so identified, he or she shall not testify at trial over the objection of opposing counsel, except for good cause shown.

j. Parties shall prepare and submit in the Pre-Trial Order a brief written statement of the case, including all grounds for recovery, and /or all grounds for defense and all applicable statutes, ordinances or case law, and specification of all damages claimed.

k. The Pre-Trial Order must contain all Motions *in Limine* the parties wish to present for the Court's consideration. Unless your motion is contained in the Pre-Trial Order, it will not be considered at a later date.

l. Parties are to prepare and submit, in the Pre-Trial Order, a written statement of the stipulations which they reasonably expect opposing party to enter.

m. Counsel shall consult their clients, prior to the pre-trial conference, with reference to authority for settlement of this case, and discuss among themselves the possibilities of settlement. Counsel shall further discuss in advance of the pre-trial conference the facts, issues, documents and exhibits involved in the case, so that as many stipulations and agreements as possible may be made in advance between the parties.

n. If not previously set, upon conclusion of the pre-trial conference this case shall be set for trial at a time certain or such order entered as may be required.

o. In addition to the above pre-trial, all parties are to submit a complete set of Jury

Instructions to the Court five (5) days prior to trial.

p. The Proposed Pre-Trial Order shall be mailed to the Chickasaw Nation District Court, Attn: District Court Judge.

IT IS FURTHER ORDERED that this Order be served upon all parties to this action, by the District Court Clerk, by mailing or delivering a copy of it to their respective counsel of record, or to a party appearing without counsel.

DATED this the _____ day of _____, 20___.

_____

Judge of the District Court of the Chickasaw Nation

IN THE DISTRICT COURT
OF THE CHICKASAW NATION

_____,	)	
	)	
Plaintiff(s),	)	
	)	
vs.	)	DC-
	)	
_____,	)	
	)	
Defendant(s).	)	

PRETRIAL CONFERENCE ORDER

1. **Appearances:**

2. **General Statement of Facts:**

3. **Plaintiff's Contentions:**

A. List All Theories of Recovery and the Applicable Statutes, Ordinances, and Common Law Rules Relied Upon.

B. List Damages or Relief Sought.

4. **Defendant's Contentions:**

List All Theories of Defense and the Applicable Statutes, Ordinances, and Common Law Rules Relied Upon.

5. **Defendant's Claims for Relief:**

List Any Claims of Relief Sought (By Cross-Claim, Counter-claim, or Set-Off), and the Applicable Statutes, Ordinances, and Common Law Rules Relied Upon.

6. **Miscellaneous:**

A. Is Jury Waived?

B. Is Additional Discovery Requested?

C. A trial brief (is/is not) required by the Court.

Due by: _____.

D. Other Matters:

7. **Plaintiff's Exhibits:**

A. List by Number and Description.

B. As to Each Numbered Exhibit, State Any Objection and Its Basis.

8. **Defendant's Exhibits:**

A. List by Number and Description.

B. As to Each Numbered Exhibit, State Any Objection and Its Basis.

9. **Plaintiff's Witnesses:** List Names, Addresses, and Substance of Testimony.

10. **Defendant's Witnesses:** List Names, Addresses, and Substance of Testimony.

11. **Requested Jury Instructions Due By:** _____

12. **Estimated Trial Time:**

13. **Stipulations:**

14. **Settlement:** Has the Possibility of Settlement Been Explored?

15. **TRIAL DATE SET FOR**: _____, _____, 20__.
(month) (day)

DATED this the _____ day of _____, 20___.

_____
Judge of the District Court of the Chickasaw Nation

Approved:

_____
_____

Attorney for Plaintiff

_____
_____

Attorney for Defendant

_____
_____

Attorney for _____
(PR21-002, 11/21/03)

SECTION 5-202.23 DILIGENCE IN PROSECUTION.

A. In any case in which summons is not issued or waiver filed within ninety (90) days after the filing of the petition, or alias summons is not issued within thirty (30) days after return of the summons not served, the action may be dismissed by the Court without notice to the plaintiff.

B. If service of process is not made upon a defendant within one hundred twenty (120) days after the filing of the petition and the plaintiff cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the Court's own initiative with notice to the plaintiff or upon motion.

C. If service of process is not made upon a defendant within one hundred eighty (180) days after the filing of the petition, the action shall be deemed to have been dismissed without prejudice as to that defendant.

D. Where an action is not diligently prosecuted, the Court may require the plaintiff to show why the action should not be dismissed. If the plaintiff does not show good cause why the action should not be dismissed, the Court shall dismiss the action without prejudice.

E. Any action which is not at issue and in which no pleading has been filed or other

action taken for a year and in which no motion or demurrer has been pending during any part of said year shall be dismissed without prejudice by the Court on its own motion after notice to the parties or their attorneys of record; provided, the Court may upon written application and for good cause shown, by order in writing allow the action to remain upon its docket.
(PR21-002, 11/21/03)

SECTION 5-202.24 NOTICE OF TAKING DEFAULT JUDGMENT.

A. In matters in default in which an appearance, general or special, has been made or a motion or pleading has been filed, default shall not be taken until a motion therefore has been filed in the case and five (5) days notice of the date of the hearing is mailed or delivered to the attorney of record for the party in default or to the party in default if he is unrepresented or his attorney's address is unknown. If the addresses of both the party and his attorney are unknown, the motion for default judgment may be heard and a default judgment rendered after the motion has been regularly set on the motion and demurrer docket. It shall be noted on the motion whether notice was given to the attorney of the party in default, to the party in default, or because their addresses are unknown, to neither.

B. Notice of taking default is not required where the defaulting party has not made an appearance. Also, notice of taking default is not required in the following cases even if the defaulting party has made an appearance:

1. any case, whether a matrimonial action or otherwise, in which waiver of summons and entry of appearance has been filed;

2. any case prosecuted under the small claims procedure for money judgment or possession of personal property;

3. any forcible entry and detainer case, whether or not placed on the small claims docket;

4. any probate (if or when such jurisdiction is granted) or juvenile proceeding;

5. any case that is at issue and has been regularly set on the trial docket in which neither the other party nor his or her attorney appears at the trial;

6. any case as to any party who has filed a disclaimer;

7. any garnishment proceeding; and

8. any statutory proceeding following the rendition of final judgment in a case, including but not limited to, enforcement proceedings, or proceedings initiated by a motion or delayed petition for new trial, or by any motion, petition or application to correct, open, modify or vacate the judgment, whether filed in the same action or as a separate action.

(PR21-002, 11/21/03)

SECTION 5-202.25 JUDGES; 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 Court 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. Where this Rule has been violated, an order that is issued by the second Judge may be vacated by him at any time before the entry of a final judgment. (PR21-002, 11/21/03)

SECTION 5-202.26 DISQUALIFICATION OF JUDGES IN CIVIL AND CRIMINAL CASES.

A. 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 motion to disqualify a Judge or to transfer a cause to another Judge may be filed and a copy delivered to the Judge.

B. 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 file a proceeding in the Chickasaw Nation Supreme Court for a writ of *mandamus*, within five (5) days from the date of said refusal. An order favorable to the moving party may not be reviewed by appeal or other method.
(PR21-002, 11/21/03)

SECTION 5-202.27 DEFAULT JUDGMENT AGAINST DEFENDANT SERVED SOLELY BY PUBLICATION.

A. When a default judgment sought in any action against a party-defendant who was served solely by publication (i.e., upon whom no notice by mailing was effected), the Judge shall conduct an inquiry either in open court or in chambers to determine judicially whether plaintiff,

or someone acting in his behalf, did make a diligent and meaningful search of all reasonably available sources at hand and failed to ascertain from it the following data:

1. the whereabouts or mailing address of every person named as defendant who was so served in the action; or, if publication service was directed in the alternative to a named defendant if living, or if dead, to the "unknown heirs, executors, administrators, trustees, devisees and assigns, if any;"

2. the whereabouts or mailing address of every person named as defendant if living;

3. whether such person is living or dead;

4. and if dead, the individual identity and whereabouts of his "heirs, executors, devisees, trustees or assigns, if any;" or if publication service was directed to the unknown heirs, executors, administrators, devisees, trustees and assigns, immediate and remote, of a deceased person;

5. the individual identity and whereabouts or mailing address of persons who were so served; or if publication service was directed to the unknown successors, trustees or assigns, if any, of any dissolved corporation; or to the unknown successors of

any party designated in any record as a trustee; or to the unknown holders of special assessment or improvement bond, sewer warrant or tax bill; or to any corporation whose continued legal existence is alleged to be in doubt but the fact of its dissolution is not known;

6. the individual identity and whereabouts or mailing address of such unknown successors, trustees, etc. of any dissolved corporation;

7. the individual identity and whereabouts or mailing address of any successor of one designated in any record as trustee;

8. the individual identity and whereabouts or mailing address of any holders of special assessment or improvement bond, sewer warrant or tax bill;

9. whether the corporate defendant continues to have legal existence or not; whether it has officers or not, and the officers' individual identity and whereabouts or mailing address; or the identity and whereabouts or mailing address of successors, trustees or assigns, if any, if defendant corporation was in fact dissolved.

B. At the inquiry required by this Rule, plaintiff should show by competent evidence that all reasonably available sources, where applicable, were in fact searched and failed to yield the information necessary to establish;

1. the whereabouts or mailing address of the named defendant; or

2. the individual identity and whereabouts or mailing address of his heirs, successors, etc.; or

3. the status of a corporation and the whereabouts of its officers or successors.

C. In all cases affecting interest in or title to land, the following shall be searched as primary sources:

1. local assessor's records;

2. local county treasurer's records;

3. local deed records as to the property involved for return address on recorded instruments; and

4. local probate records if applicable.

D. An evidentiary affidavit by a bonded abstractor detailing the records and other sources searched by him and the information yielded by the search may be admitted as evidence at the inquiry conducted in compliance with this Rule.

E. If, after hearing the evidence the Judge finds that plaintiff did in fact exercise due diligence in conducting a meaningful search, the following recitation should be included in the journal entry of judgment:

> "The Court conducted a judicial inquiry into the sufficiency of plaintiff's search to determine the names and whereabouts of the defendants who were served herein by publication, and based on the evidence adduced, the Court finds that plaintiff has exercised due diligence and has conducted a meaningful search of all
>
> reasonably available sources at hand. The Court approves the publication service given herein as meeting both statutory requirements and the minimum standards of Chickasaw and federal due process."

(PR21-002, 11/21/03)

SECTION 5-202.28 MOTION FOR NEW TRIAL.

A. A motion for a new trial must contain every ground on which the moving party intends to rely. Each error, including error in the giving or refusal to give specified instructions irregularity, abuse of discretion, misconduct, accident, surprise and other ground on which the moving party is relying to obtain a new trial, must be separately stated with specificity except that errors in the admission and exclusion of evidence may be asserted under the statement of errors in the admission and exclusion of evidence without such errors being separately stated.

B. At the hearing on the motion or on appeal the movant may not rely on errors which are not fairly embraced in the specific grounds stated in the timely- filed motion for new trial. Lack of specificity in any ground of a timely-filed motion for a new trial will be regarded as effectively cured where the record shows that, at the hearing on that motion, without any objection by the opposite party the movant precisely identified each error or point of law which is fairly comprised in the defective general ground or grounds of the motion.

C. A motion seeking reconsideration, re-examination, rehearing or vacation of a judgment or final order which is filed within ten (10) days of the day such decision was rendered may be regarded as a motion for a new trial. After expiration of the statutory time for filing a motion for new trial, a timely-filed motion may be amended to clarify the grounds originally set out but not to set up new and independent grounds.

D. A motion, however styled, which is filed after the expiration of ten (10) days following the decision is ineffective as a motion for new trial and will not extend appeal time. It is not necessary for the moving party to except to the rulings of the Court either before, during, or after the trial, but he must have made known to the Court the action which the Court should take or the party's ground for objecting to the action of the Court.
(PR21-002, 11/21/03)

SECTION 5-202.29 PAROLE REVOCATION; JUVENILES.

A. In parole revocation proceedings involving juveniles, the District Court may aid the administrative process of the Indian Child Welfare Department or the Oklahoma Department of Human Services. In so acting, the Court shall:

1. advise the juvenile, his parents, custodians or guardians, of their rights in the premises;

2. determine eligibility for and amount of bail;

3. decide any intermediate custody issue; and

4. establish eligibility for appointment of counsel and fix the amount of his compensation to be paid by the court fund. The Court shall also timely issue such other orders as may be necessary to assure due process and fair treatment, including but not limited to issuance of compulsory process for the attendance of witnesses.

B. This Rule shall not preclude the District Court from acting concurrently with parole revocation proceedings in the exercise of its own jurisdiction nor shall it prevent a new

petition from being brought on allegations identical to those on which parole is sought to be revoked.
(PR21-002, 11/21/03)

SECTION 5-202.30 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. Such defects are also 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 nonjurisdictional grounds in the motion, petition or application or by raising nonjurisdictional defenses in an accompanying pleading.
(PR21-002, 11/21/03)

SECTION 5-202.31 DIRECT CONTEMPT.

A. **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 his presence in open court, willfully obstructs the Court or judicial proceedings after an opportunity to be heard has been afforded.

B. **Admonition and Warning.**

No sanction other than censure should be imposed by the trial Judge unless 1) it is clear from the identity of the offender and the character of his acts that disruptive conduct was willfully contemptuous, or 2) 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.

C. **Notice of Intent to Use Contempt Power; Postponement of Adjudication.**

1. The trial Judge should, as soon as practicable after he is satisfied that courtroom misconduct requires contempt proceedings, inform the alleged offender of his intention to institute such proceedings.

2. The trial Judge should consider the advisability of deferring adjudication of contempt for 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.

D. **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.

E. **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 he contributed to it or was otherwise involved, or his objectivity can reasonably be questioned.
(PR21-002, 11/21/03)

SECTION 5-202.32 MATTERS TAKEN UNDER ADVISEMENT.

A. 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.

B. When the District 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 Justice of the Supreme Court may extend the deadline for a decision upon sworn application for an extension of time of the District Court Judge setting forth with specificity the reasons therefor.

C. Upon entering and filing the decision with the Court Clerk in a matter taken under advisement, the Court Clerk shall mail file-stamped copies of the minute order or judgment setting out such decision to counsel in the case and to any party appearing *pro se*. The Court may direct a party to mail file-stamped copies of the judgment or order to the other parties. The copies of the order of judgment mailed under this rule shall bear the notation of the date of mailing, and the Clerk or party mailing shall file a certificate of mailing with the District Court Clerk. (PR21-002, 11/21/03)

SECTION 5-202.33 INSTRUCTING AS TO ISSUES OF FACT.

It is the duty of the trial Judge to determine the issues in a civil case and to inform the jury in clear and succinct language what the issues of fact are that are being submitted to them for their decision. The Judge should not require the jury to determine the issues of fact from the pleadings, and he should not set out the pleadings in the instructions in whole or in part. (PR21-002, 11/21/03)

SECTION 5-202.34 OFFICE OF THE CHICKASAW NATION PROSECUTOR.

A. There is hereby created the Office of the Chickasaw Nation Prosecutor within the Chickasaw Nation Executive Department. The office shall be directed by the Chickasaw Nation Prosecutor, who shall be an at-will employee of the Chickasaw Nation Executive Department. The Prosecutor, including all subordinate prosecuting attorneys assigned by the

Governor or his delegate to support the Prosecutor's work, must be licensed to practice in the courts of the Chickasaw Nation and be a member of the Chickasaw Bar Association throughout their employment. The Prosecutor, and all assigned subordinate attorneys and employees, shall be subject to all generally applicable employment policies and procedures of the Chickasaw Nation Executive Department.

B. The Prosecutor, and all assigned subordinate attorneys, are hereby empowered to: (1.) represent the Chickasaw Nation in the courts of the Chickasaw Nation with respect to the prosecution of any person accused of violating a criminal provision of the Chickasaw Nation Code or as otherwise may be necessary to carry out and enforce the Chickasaw Nation Deprived Children's Code and Delinquent Children's Code; and (2.) such other functions assigned to the role of "prosecutor" by the Chickasaw Nation Code or the policies and procedures of the Chickasaw Nation Executive Department.
((PR21-002, 11/21/03; PR38-025, 5/24/2021; PR21-018, 5/21/04; PR41-015, 7/19/2024)

SECTION 5-202.35 CHICKASAW NATION PUBLIC DEFENDER BOARD.

A. There is hereby created the Chickasaw Nation Public Defender Board within the Chickasaw Nation Executive Department. The Board shall have exclusive oversight of the Office of the Chickasaw Nation Public Defender. Decisions of the Board shall be made by majority vote.

B. The Board shall be comprised of three (3) persons: One (1) of whom will be selected by the Governor, who shall serve an initial five (5) year term, one (1) of whom will be selected by the Chief Justice of the Chickasaw Nation Supreme Court, who shall serve an initial three (3) year term, and one (1) of whom will be selected jointly by the Governor and the Chief Justice, who shall serve an initial one (1) year term. Thereafter, each Board member will serve a five (5) year term. A Board member may serve successive terms. Subject to the grounds and process provided at Sections 12-201.8 and 12-201.9, a Board member may be removed by the Board or by the decision of their appointing official(s).

C. The Board shall have the power to hire, fire, and discipline the Chickasaw Nation Public Defender and shall review and approve any proposed policies or procedures applicable to the work of the Public Defender. The Board shall review and approve any proposed office structure, including the Public Defender's hiring of subordinate attorneys and employees, each of whom will be at-will employees of the Chickasaw Nation Executive Department. The Board shall review and approve a proposed budget for the Chickasaw Nation Public Defender and submit the same to the Governor for preparation and presentation to the Chickasaw Nation Tribal Legislature in accordance with Title 10, Chapter 2, Section 10-202, Part A of the Chickasaw Nation Code.
(PR21-018, 5/21/04; PR38-025, 5/24/2021; PR41-015, 07/19/2024)

SECTION 5-202.36 OFFICE OF THE CHICKASAW NATION PUBLIC DEFENDER.

A. There is hereby created the Office of the Chickasaw Nation Public Defender. Such office shall be within the Chickasaw Nation Executive Department and subject to the exclusive supervision of the Chickasaw Nation Public Defender Board. The office shall be directed by the Chickasaw Nation Public Defender. The Chickasaw Nation Public Defender shall be an employee of the Chickasaw Nation Executive Department and shall serve at the sole discretion of the Chickasaw Nation Public Defender Board and be subject to the exclusive supervision of the Chickasaw Nation Public Defender Board. The Public Defender, including all subordinate defending attorneys employed to support the Public Defender's work, must be licensed to practice in the courts of the Chickasaw Nation and be a member of the Chickasaw Bar Association throughout their employment. The Public Defender, and all subordinate attorneys and employees, shall be subject to all generally applicable employment policies and procedures of the Chickasaw Nation Executive Department.

B. Upon appointment by the Court, the Public Defender, including all subordinate attorneys, are hereby empowered to serve as defense counsel for a defendant who is prosecuted in the courts of the Chickasaw Nation.

C. When a defendant in a civil contempt action may result in the defendant's incarceration or in any criminal or delinquency action wherein the defendant appears without counsel, the Court must inform the defendant of the right to counsel and that if the Court determines the defendant to be financially unable to employ counsel, then the Court will appoint counsel to represent the defendant at the Chickasaw Nation's expense. Only after receiving notice of this right, can the defendant knowingly and intelligently waive the right to counsel. If a defendant who desires counsel can establish, to the Court's satisfaction, the financial inability to employ an attorney, then the Court shall appoint the Public Defender to represent the defendant. If the Court determines in such an instance that the Public Defender cannot represent an accused due to a material conflict of interest, then the Court shall appoint other counsel to represent the defendant at the Chickasaw Nation's expense. Upon appointment, the Public Defender or other court-appointed counsel shall represent the defendant until final disposition of the civil contempt action or criminal action, unless granted approval by the Court to withdraw.
(PR41-015, 07/19/2024)

SECTION 5-202.37 CIVIL ACTIONS INVOLVING CHILDREN; COURT-APPOINTED COUNSEL; ATTORNEY FEES.

A. In civil actions involving children, including juvenile deprived actions, the court may appoint counsel, upon motion or *sua sponte*, in any capacity as determined by the court. The court-appointed attorney shall provide services as assigned by the court until he is discharged from that duty.

B. Court-appointed counsel in civil actions shall receive compensation, payable from a fund established expressly for the purpose of paying court-appointed counsel, in a reasonable amount set by the court for such court-appointed representation.
(PR21-018, 5/21/04; PR38-025, 5/24/2021; PR41-015, 07/19/2024)

SECTION 5-202.38 DISTRICT COURT ADDRESS; TELEPHONE NUMBER.

The address and telephone number of the Chickasaw District Court, are as follows:

Chickasaw Nation District Court
P.O. Box 129
Ada, Oklahoma 74821-0129
(580) 235-0279
(PR21-009, 2/20/04)

ARTICLE C
COURT CLERK

Section 5-203.1 Establishment.
Section 5-203.2 Clerk to Serve Supreme and District Courts.
Section 5-203.3 Clerk as Department Director.
Section 5-203.4 Powers and Duties.
Section 5-203.5 Seal.
Section 5-203.6 Certification of True Copies.
Section 5-203.7 Courts Always Open.
Section 5-203.8 Trials and Hearings - Orders in Chambers.
Section 5-203.9 Clerk's Office and Orders by the Clerk.
Section 5-203.10 Notice of Orders or Judgments.
Section 5-203.11 Books and Records Kept by the Clerk and Entries Therein.
Section 5-203.12 Stenographic Report or Transcript as Evidence.
Section 5-203.13 Judgment Docket.
Section 5-203.14 Execution Docket.
Section 5-203.15 Clerk may Collect Judgment and Costs.
Section 5-203.16 Clerks to Issue Writs and Orders.
Section 5-203.17 Clerk to File and Preserve Papers.
Section 5-203.18 Each Case to be Kept Separate.
Section 5-203.19 Indorsements.
Section 5-203.20 Entry on Return of Summons.
Section 5-203.21 Material for Record.
Section 5-203.22 Memorializing Record.

Section 5-203.23 Clerk to Keep Court Records, Books and Papers; Statistical and Other Information.
Section 5-203.24 Applicable to District and Supreme Court.
Section 5-203.25 Bonds.

SECTION 5-203.1 ESTABLISHMENT.

There is hereby established a Court Clerk's Office to be administered by one (1) Court Clerk and such Deputy Court Clerks as may be necessary. The Court Clerk shall be appointed by the Supreme Court, and Deputy Court Clerks shall be appointed by the Court Clerk subject to the approval of the Supreme Court. (PR18-044, 10/19/01)

SECTION 5-203.2 CLERK TO SERVE SUPREME AND DISTRICT COURTS.

Until such time as the Supreme Court determines that separate Clerks are necessary to efficiently administer the business of the Courts and funding is available, the Court Clerk shall serve as the Clerk of the Supreme Court and the Clerk of the District Court. When serving the Supreme Court, the Clerk's title shall be "Clerk of the Supreme Court". When serving the District Court, the Clerk's title shall be "Clerk of the District Court."

SECTION 5-203.3 CLERK AS DEPARTMENT DIRECTOR.

The Court Clerk is a supervisory administrative position of the Judicial Branch of the Government of the Chickasaw Nation. The Court Clerk shall serve as the Court Administrator and shall be charged with the preparation of Court budgets, the acquisition of necessary supplies, the maintenance and upkeep of the Court's law library, the custody upkeep and maintenance of the records, papers, effects, and property of the Court and such other matters as shall be assigned to the Clerk of the Court by law or Court rule.

SECTION 5-203.4 POWERS AND DUTIES.

The Court Clerk shall have the following powers and duties:

1. To undertake all duties and functions otherwise authorized by law, or necessary and proper to the exercise of a duty of function authorized by law.

2. Subject to the approval of the Supreme Court, to supervise and direct the hiring, firing, and work of all deputy court clerks and other employees in his office.

3. to collect all fines, fees, and costs authorized or required by law to be paid to the Courts, to give a receipt therefore, and deposit in the Court fund.

4. to accept, when ordered by the Court, monies for the payment of civil judgments and to pay same by check to the party entitled to them. For the purpose of taking such action, the Clerk is authorized to maintain a bank checking account subject to the oversight of the Supreme Court and to deposit and withdraw funds therefrom. This account shall be audited at least once each year by the Chickasaw Nation Accounting Department or an independent Certified Public Accountant. The Clerk shall give a fidelity or performance bond to guarantee the funds deposited therein in such amount as the Supreme Court shall direct.

5. to administer oaths, issue summons and subpoenas, certify a true copy of Court records, and to accurately keep each and every record of the Supreme and District

Courts.

6. to provide a record in the absence of a Court Reporter to accurately and completely record all proceedings and hearings of the Courts and to ensure that a record is kept of all Court proceedings. If a Court Reporter is available, the Court Reporter shall have the authority to administer oaths and undertake such other Court functions as shall be provided by law or Court Rule.

7. to provide stenographic and clerical services to the Court.

8. to act as librarian, and to keep and maintain the Court's law library.

9. to undertake all duties assigned or delegated to the Clerk's Office by Tribal law or Court Rule.

(PR38-014, 02/21/2022)

SECTION 5-203.5 SEAL.

The Court Clerk is authorized to have and use a seal which shall be circular in form and contain the words, "District Court Clerk", and the Chickasaw Nation around the edge thereof, and the words "Official Seal" or the official Tribal emblem in its center. When acting as the Clerk of the Supreme Court the Clerk's seal shall be circular in form and contain the words "Supreme Court Clerk" and the Chickasaw Nation around the edge thereof, and the words "Official Seal" or the Tribal emblem in the center. The seal shall be impressed upon all warrants, subpoenas, summons, certified copies of records, judgments, orders, decrees, and similar documents, as evidence of their authenticity.

SECTION 5-203.6 CERTIFICATION OF TRUE COPIES.

The Court Clerk is authorized to certify that a copy of any record in his office is a true and accurate copy of the record on file by signed stamp or writing placed on such copy, sealed with the seal of the Court Clerk's office, and in substantially the following form:

CERTIFICATE OF TRUE COPY

I hereby certify that the above and foregoing _____is a true, accurate and exact copy of the original of same as it remains of record on file in my office.

_____

Clerk of the [District Court] [Supreme Court]
THE CHICKASAW NATION

_____

Date

Certified copies of records shall be admissible as evidence without further authentication in all judicial and administrative proceedings of the Chickasaw Nation.

SECTION 5-203.7 COURTS ALWAYS OPEN.

The District and Supreme Courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

SECTION 5-203.8 TRIALS AND HEARINGS - ORDERS IN CHAMBERS.

All trials upon the merits, except as specifically provided by law and in juvenile cases shall be conducted in open Court and so far as convenient in a regular courtroom. All other acts or proceedings may be done or conducted by a Judge in chambers, without the attendance of the clerk or other court officials and in any place either within or without the tribal jurisdiction; but no hearing, other than one *ex parte*, shall be conducted outside the tribal jurisdiction without the consent of all parties affected thereby, except when determined by the Court to be necessary or expedient in children's cases arising under the Indian Child Welfare Act of 1978, or when the Chickasaw Nation has entered into an agreement with another government for the sharing of judicial officers and courtroom space in which case the Court may sit in any place authorized by such agreement.

SECTION 5-203.9 CLERK'S OFFICE AND ORDERS BY THE CLERK.

The Clerk's office with the Clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, but the Court may provide by rule or order that its Clerk's office shall be open for specified hours on Saturdays or particular legal holidays other than New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Piomingo Day, Veterans Day, Thanksgiving Day and Christmas Day. All motions and applications in the Clerk's office for issuing mesne process, for issuing final process, to enforce and execute judgments, for entering defaults or

judgments by default, and for other proceedings which do not require allowance or order of the Court may be issued or granted by the Clerk, unless the Rules of the Supreme Court, District Court or other tribal law require previous approval by the Court but his action may be suspended or altered or rescinded by the Court upon cause shown.

SECTION 5-203.10 NOTICE OF ORDERS OR JUDGMENTS.

Immediately upon the entry of an order or judgment, the Clerk shall serve a notice of the entry by mail upon each party or their attorney who is not in default for failure to appear, and shall make a note in the docket of the mailing. Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by law but any party may in addition serve a notice of such entry in the manner provided in the Supreme Court Rules or District Court Rules for the service of papers. Lack of notice of the entry by the Clerk does not affect the time to appeal or relieve or authorize the Court to relieve a party for failure to appeal within the time allowed, except as permitted in the Civil Procedure Act.

SECTION 5-203.11 BOOKS AND RECORDS KEPT BY THE CLERK AND ENTRIES THEREIN.

A. The Clerk shall keep a book known as the "District Court Docket" of such form and style as may be prescribed by the District Court, and shall enter therein each action. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereupon the first entry of the action is made. All papers filed with the Clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be entered chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These entire dockets shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the Court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made.

B. In like fashion, the Clerk shall keep suitable dockets, indices, calendars, and judgment records for any other dockets of the District Court, and the appeals and original

action docket of the Supreme Court. The appeals and original action dockets of the Supreme Court may be combined if the Supreme Court shall so direct.

C. The Clerk shall also keep such other books and records as may be required from time to time by law or the Supreme Court.

SECTION 5-203.12 STENOGRAPHIC REPORT OR TRANSCRIPT AS EVIDENCE.

A. Whenever the testimony of a witness at a trial or hearing which was stenographically reported is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who reported the testimony.

B. Whenever the testimony of a witness at a trial or hearing which was electronically taped is admissible in evidence at a later trial, it may be proved by the tape recording thereof maintained in the custody of the Court Clerk with the records of the trial, or by some other person duly certified as correct by the Court Clerk, or by some other person duly authorized to administer oaths, who has prepared or caused to be prepared under his direction a transcript of the recording.

SECTION 5-203.13 JUDGMENT DOCKET.

The judgment docket shall be kept in the form of an index in which the name of each person against whom judgment is rendered shall appear in alphabetical order, and it shall be the duty of the Clerk immediately after the rendition of a judgment to enter on said judgment docket a statement containing the names of the parties, the amount and nature of the judgment and costs, and the date of its rendition, and the date on which said judgment is entered on said judgment docket; and if the judgment be rendered against several persons, the entry shall be repeated under the name of each person against whom the judgment is rendered in alphabetical order.

SECTION 5-203.14 EXECUTION DOCKET.

In the execution docket the Clerk shall enter all executions as they are issued. The entry shall contain the names of the parties, the date and amount of the judgment and costs, and the date of the execution. The Clerk shall also record in full the return of the appropriate legal authority to each execution, and such record shall be evidence of such return, if the original be mislaid or lost.

SECTION 5-203.15 CLERK MAY COLLECT JUDGMENT AND COSTS.

Where there is no execution outstanding, the Clerk of the Court may receive the amount of the judgment and costs, and receipt therefore, with the same effect as if the same

had been paid to the appropriate legal authority on an execution, and the Clerk shall be liable to be amerced in the same manner and amount for refusing to pay the same to the party entitled there to, when requested, and shall also be liable on his official bond.

SECTION 5-203.16 CLERKS TO ISSUE WRITS AND ORDERS.

All writs and orders for provisional remedies, and process of every kind shall be prepared by the party or his attorney who is seeking the issuance of such writ, order, or process and shall be issued by the Clerk. Except for summons and subpoena, the Clerk shall not issue any such writ, order, or process except upon order or allowance of the Court unless specific authorization for his issuing such document is found in the Chickasaw Nation Code.

SECTION 5-203.17 CLERK TO FILE AND PRESERVE PAPERS.

It is the duty of the Clerk to file together and carefully preserve in his office, all papers delivered to him for that purpose in every action or proceeding.

SECTION 5-203.18 EACH CASE TO BE KEPT SEPARATE.

The papers in each case shall be kept in a separate file marked with the title and number of the case.

SECTION 5-203.19 INDORSEMENTS.

He shall indorse upon every paper filed with him, the day of filing it; and upon every order for a provisional remedy, and upon every undertaking given under the same, the day of its return to his office.

SECTION 5-203.20 ENTRY ON RETURN OF SUMMONS.

He shall, upon the return of every summons, enter upon the appearance docket whether or not service has been made; and if the summons has been served, the name of the defendant or defendants summoned and the day and manner of the service upon each one. The entry shall be evidence in case of the loss of the summons.

SECTION 5-203.21 MATERIAL FOR RECORD.

The record shall be made up from the complaint, the process, return, the pleadings subsequent thereto, reports, verdicts, orders, judgments, and all material acts and proceedings of the Court, but if the items of an account, or the copies of papers attached to the pleadings, be

voluminous, the Court may order the record to be made by abbreviating the same, or inserting a pertinent description thereof, or by omitting them entirely. Evidence must not be recorded in the file or appearance docket, provided that the transcript of testimony may be appended to the record when paid for by a party for the purpose of appeal.

SECTION 5-203.22 MEMORIALIZING RECORD.

It is the duty of the Court to write out, sign, and record its orders, judgments, and decrees within a reasonable time after their rendition. To aid in the performance of this duty, the Court may direct counsel or the Court Clerk to prepare the written memorialization for its signature and, after it is signed, to file it in the case record, or, the Court may direct the Clerk to prepare the written memorialization dictated by the Court and sign and file the same on the Court's behalf.

SECTION 5-203.23 CLERK TO KEEP COURT RECORDS, BOOKS AND PAPERS; STATISTICAL AND OTHER INFORMATION.

The Clerk shall keep the records and books and papers appertaining to the Court and record its proceedings, and exercise the powers and perform the duties imposed upon him by Tribal statute, order of the Court, or Court rule. The Clerk is directed to furnish annually, or at such times as shall be requested, without cost to the Supreme Court and to the Executive and Legislative Departments of the Chickasaw Nation, such statistical and other information as the Supreme Court or the Tribal Legislative Body may require, including, but without being limited to, the number and classification of cases:

1. Filed with the Court.

2. Disposed of by the Court, and the manner of such disposition.

3. The number of cases pending before the Court.

SECTION 5-203.24 APPLICABLE TO DISTRICT AND SUPREME COURT.

The provisions of this Chapter shall apply to the Clerk of the District Court and the Chickasaw Supreme Court insofar as they may be applicable.

SECTION 5-203.25 BONDS.

The Court Clerk and each deputy Clerk shall be bonded by a position fidelity bond to guarantee the proper performance of their duties and their fidelity in the handling of the money and other property coming into their hands in the performance of their duties. The amount of

such bond shall be set by the Tribal Legislature and the cost thereof shall be paid from Tribal funds. The amount of such bond is hereby set at ten thousand dollars ($10,000).

ARTICLE D
SUMMONS, SUBPOENA, OTHER PROCESS; SERVICE

Section 5-204.1 Definitions; Style of Process.
Section 5-204.2 Appointment of Substitute for Service of Process.
Section 5-204.3 Server to Endorse Time of Receipt on Service of Process.
Section 5-204.4 Process Server to Execute and Return Process.
Section 5-204.5 Issuance of Summons.
Section 5-204.6 Form of Summons.
Section 5-204.7 Service by Personal Delivery.
Section 5-204.8 Service of Process by Mail.
Section 5-204.9 Service by Publication.
Section 5-204.10 Publication Service upon Parties and the Unknown Successors of Named Parties.
Section 5-204.11 Completion of Publication Service.
Section 5-204.12 Entry of Default on Party Served by Publication.
Section 5-204.13 Vacating Default Judgments Where Service is by Publication.
Section 5-204.14 Certain Technical Errors not Grounds for Vacating Judgment.
Section 5-204.15 Consent is Effective Substitute for Service.
Section 5-204.16 Service Pursuant to Court Order.
Section 5-204.17 Summons and Complaint to be Served Together.
Section 5-204.18 Alternative Provisions for Service in a Foreign Jurisdiction.
Section 5-204.19 Subpoenas.

SECTION 5-204.1 DEFINITIONS; STYLE OF PROCESS.

A. For purposes of this Article D, “Process” shall mean any documents used by the Court to acquire or exercise its jurisdiction over a person or specific property including all means whereby the Court compels the appearance of a person or compliance with its demands. Service of Process as defined in this Article D includes Process in both civil and criminal matters.

B. For the purpose of this Article D, “Subpoena” and “Subpoena *Duces Tecum”* shall be collectively referred to as “Subpoena.”

C. The style of all Process shall be "The Chickasaw Nation to:" and all Process shall be under the seal of the Court Clerk and shall be signed by the Court Clerk, and dated the day it is issued. (PR21-008, 12/19/03)

SECTION 5-204.2 APPOINTMENT OF SUBSTITUTE FOR SERVICE OF PROCESS.

The Court or a Judge thereof, or any Clerk in the absence of the Judge and upon his oral or written order, for good cause, may appoint a person to serve a particular Process or order, who shall have the same power to execute it which other appropriate legal process authority may have. The person may be appointed on the application of the party obtaining the Process or order, and the return must be verified by affidavit. He shall be entitled to the same fees allowed to other appropriate legal process authority for similar services. (PR18-044, 10/19/01)

SECTION 5-204.3 SERVER TO ENDORSE TIME OF RECEIPT ON SERVICE OF PROCESS.

The Process Server shall endorse upon every Process the day and hour it was received by him. (PR21-008, 12/19/03)

SECTION 5-204.4 PROCESS SERVER TO EXECUTE AND RETURN PROCESS.

The Process Server shall execute every Process and return the same as required by law. (PR21-008, 12/19/03)

SECTION 5-204.5 ISSUANCE OF SUMMONS.

Upon the filing of a petition or complaint in a civil matter, the Court Clerk shall forthwith issue a summons and deliver it for service with a copy of the complaint to the Process Server or to a person specially appointed by the Court to serve it. Upon request of the plaintiff, separate or additional summons shall issue against any defendants. (PR21-008, 12/19/03)

SECTION 5-204.6 FORM OF SUMMONS.

The summons shall be signed by the Court Clerk, be under the seal of the Court, contain the name of the Court and the names of the parties, be directed to the defendant(s), state the name and address and telephone number of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which the party is required to respond or appear and defend, and shall notify him that in case of his failure to do so, judgment by default will be rendered against him for the relief demanded in the complaint. When service is made pursuant to a statute or rule of the Court, the summons, or notice, or order in lieu of summons shall correspond as nearly as may be to that required by an ordinance or rule of the Court. (PR19-016, 4/19/02)

SECTION 5-204.7 SERVICE BY PERSONAL DELIVERY.

A. Process, other than subpoenas, shall be served by a person licensed to make service of Process in civil cases by a state of the United States or the federal government, or a person specially appointed by the Court for that purpose. The Court shall freely make special appointees to serve all Process under this Section. Subpoenas shall be served in accordance with Subsections B and C below and Section 5-204.20.

B. When Process has been served, the return thereof shall be filed in the office of the Court Clerk.

C. Service shall be made as follows:

1. Persons upon whom service shall be made:

a. upon an individual other than an infant who is less than fifteen (15) years of age or an incompetent person, by delivering a copy of the summons and of the petition personally or by leaving copies thereof at the person's dwelling house or usual place of abode with some person then residing therein who is fifteen (15) years of age or older or by delivering a copy of the summons and of the petition to an agent authorized by appointment or by law to receive service of process;

b. upon an infant who is less than fifteen (15) years of age, by serving the summons and petition personally and upon either of the infant's parents or guardian, or if they cannot be found, then upon the person having the care or control of the infant or with whom the infant lives; and upon an incompetent person by serving the summons and petition personally and upon the incompetent person's guardian;

c. upon a foreign corporation, partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the petition to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process;

d. upon the United States or an officer or agency thereof in the manner specified by Federal Rule of Civil Procedure 4;

e. upon the Chickasaw Nation or any political subdivision, officer, employee, agent or representative thereof subject to suit, by delivering a copy of

the summons and of the petition to the office of Governor or to the office of the chief executive officer of a political subdivision that is organized separately from the Chickasaw Nation; and

f. upon an inmate incarcerated in an institution under the jurisdiction and control of a state department of corrections, by delivering a copy of the summons and of the petition to the warden or superintendent or the designee of the warden or superintendent of the institution where the inmate is housed. It shall be the duty of the receiving warden or superintendent or a designee to promptly deliver the summons and petition to the inmate named therein. The warden or superintendent or his or her designee shall reject service of process for any inmate who is not actually present in said institution.

2. How made:

a. whenever pursuant to this act service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court or final judgment has been rendered and the time for appeal has expired. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last-known address or, if no address is known, by leaving it with the Clerk of the Court. Delivery of a copy within this Section means:

I. handing it to the attorney or to the party;

ii. leaving it at his office with his clerk or other person in charge thereof;

iii. if there is no one in charge, leaving it in a conspicuous place therein; or

iv. if the office is closed or the person to be served has no

office, leaving it at his dwelling house or usual place of abode with some person residing therein who is fifteen (15) years of age or older. Except for service of the summons and the original petition, service by mail is complete upon mailing.

b. Numerous defendants. In any action in which there are unusually large numbers of defendants, the Court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counter-claim, or matter constituting an avoidance or affirmative defense contained therein shall

be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the Court directs.

c. Filing. All papers after the petition required to be served upon a party shall be filed with the Court either before service or within a reasonable time thereafter, but the Court may on motion of a party or on its own initiative order that depositions upon oral examination and interrogatories, requests for documents, requests for admission, and answers and responses thereto not be filed unless on order of the court or for use in the proceeding. All papers filed with the Court shall include a statement setting forth the names of the persons served and the date, place, and method of service.

I. The filing of papers with the Court as required by this Article shall be made by filing them with the Clerk of the Court, except that the Judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the Court Clerk.

ii. A duplicate of any paper shall be acceptable for filing with the Court and shall have the same force and effect as an original. For purposes of this Paragraph 5 a duplicate is a copy produced on unglazed white or eggshell paper by mechanical, chemical or electronic means, or by other equivalent technique, which accurately reproduces the original. A duplicate that is acceptable for filing shall not be refused because any signatures thereon are duplicates. A carbon copy shall not be considered a duplicate for purposes of this Paragraph.

iii. Papers may not be filed by facsimile or other electronic transmission.

iv. The Court Clerk shall not refuse to accept for filing any paper solely because it is not presented in proper form as required by these rules or any local rules or practices.

(PR21-008, 12/19/03)

SECTION 5-204.8 SERVICE OF PROCESS BY MAIL.

A. Certain Process, within the discretion of the Court, may be served by mail.

B. Service by mail may be accomplished by mailing the documents to be served by certified mail, return receipt requested and delivery restricted to the addressee.

C. Service pursuant to this Section shall not be the basis for the entry of a default or a Judgment by default unless the record contains a return receipt showing acceptance by the party served or a returned envelope showing refusal of the process by the defendant. If delivery of the process is refused, upon the receipt of notice of such refusal and at least ten (10) days before applying for entry of default or Judgment by default, the person serving the process shall mail to the opposing party(s) by first-class mail to the last known address, postage prepaid, notice of hearing on the matter. A copy of said notice and proof of mailing thereof shall be filed of record in the case prior to the entry of a Judgment by default.
(PR21-008, 12/19/03)

SECTION 5-204.9 SERVICE BY PUBLICATION.

A. Service of summons upon a named defendant may be made by publication when it is stated in the petition, verified by the plaintiff or the plaintiff's attorney, or in a separate affidavit by the plaintiff or the plaintiff's attorney filed with the court, that with due diligence service cannot be made upon the defendant by any other method.

B. Service of summons upon the unknown successors of a named defendant, a named decedent, or a dissolved partnership, corporation, or other association may be made by publication when it is stated in a petition, verified by the plaintiff or the plaintiff's attorney, or in a separate affidavit by the plaintiff or the plaintiff's attorney filed with the Court, that the person who verified the petition or the affidavit does not know and with due diligence cannot ascertain the following:

1. whether a person named as defendant is living or dead, and, if dead, the names or whereabouts of the person's successors, if any;

2. the names or whereabouts of the unknown successors, if any, of a named decedent;

3. whether a partnership, corporation, or other association named as a defendant continues to have legal existence or not; or the names or whereabouts of its officers or successors;

4. whether any person designated in a record as a trustee continues to be the trustee; or the names or whereabouts of the successors of the trustee; or

5. the names or whereabouts of the owners or holders of special assessment or improvement bonds, or any other bonds, sewer warrants or tax bills.

(PR21-008, 12/19/03)

SECTION 5-204.10 PUBLICATION SERVICE UPON PARTIES AND THE UNKNOWN SUCCESSORS OF NAMED PARTIES.

A. In a civil matter, service of summons upon named parties or to the unknown heirs and successors of the named party or parties may be made by publication as provided above when any person named as a party in interest cannot be found.

B. Service pursuant to this Section, after filing of the affidavit required by Section 5-204.9 and being granted an order approving notice by publication by the Judge, shall be made by publication of a notice, signed by the Court Clerk, one (1) day a week for three (3) consecutive weeks in a newspaper authorized by law to publish legal notices which is published in the county of the known party's last address. If a last known address cannot be obtained through due diligence as provided in Section 5-204.9, or service is to be made upon the unknown heirs and successors of a named party, the publication shall be made in the county where the Petition is filed. If no newspaper authorized by law to publish legal notices is published in such county, the notice shall be published in some such newspaper of general circulation which is published in an adjoining county. All named parties and their unknown heirs and successors who may be served by publication may be included in one notice. The notice shall state the name of the Court and the names of the plaintiff and the parties served by publication, and shall designate the parties whose unknown heirs and successors are being served. The notice shall also state that the named defendants and their unknown heirs and successors have been sued and must answer the petition on or before a time to be stated (which shall not be less than forty one (41) days from the date of the first publication), or judgment, the nature of which shall be stated, will be rendered accordingly. If jurisdiction of the Court is based on property, any real property subject to the jurisdiction of the Court and any property or debts to be attached or garnished must be described in the notice."

1. When the recovery of money is sought, it is not necessary for the publication notice to state the separate items involved, but the total amount that is claimed must be stated. When interest is claimed, it is not necessary to state the rate of interest, the date from which interest is claimed, or that interest is claimed until the obligation is paid.

2. It is not necessary for the publication notice to state that the judgment will include recovery of costs in order for a judgment following the publication notice to include costs of suit.

3. In an action to quiet title to real property, it is not necessary for the publication notice to state the nature of the claim or interest of either party, and in

describing the nature of the judgment that will be rendered should the defendant fail to answer, it is sufficient to state that a decree quieting plaintiff's title to the described property will be entered. It is not necessary to state that a decree forever barring the defendant from asserting any interest in or to the property is sought or will be entered if the defendant does not answer.

4. In an action to foreclose a mortgage, it is sufficient that the publication notice state that if the defendant does not answer, the defendant's interest in the property will be foreclosed. It is not necessary to state that a judgment forever barring the defendant from all right, title, interest, estate, property and equity of redemption in or to said property or any part thereof is requested or will be entered if the defendant does not answer.

C. It is not necessary for the publication notice to state that the Judgment will include recovery of costs in order for a Judgment following the publication notice to include costs of suit.
(PR21-008, 12/19/03; PR23-001, 11/18/05)

SECTION 5-204.11 COMPLETION OF PUBLICATION SERVICE.

Service by publication is complete when made in the manner and for the time prescribed herein. Service by publication shall be proved by the affidavit of any person having knowledge of the publication with a copy of the published notice attached. No default judgment may be entered on such service until proof of service by publication is filed with and approved by the Court. (PR21-008, 12/19/03)

SECTION 5-204.12 ENTRY OF DEFAULT ON PARTY SERVED BY PUBLICATION.

Before entry of a default judgment or order against a party who has been served solely by publication, the Court shall conduct an inquiry to determine whether the plaintiff, or someone acting in his behalf, made a distinct and meaningful search of all reasonably available sources to ascertain the whereabouts of any named parties who have been served solely by publication. (PR21-008, 12/19/03)

SECTION 5-204.13 VACATING DEFAULT JUDGMENTS WHERE SERVICE IS BY PUBLICATION.

A. A party against whom a default judgment or order has been rendered, without other service than by publication in a newspaper, may, at anytime within three (3) years after the date of the judgment or order, have the judgment or order opened and be left in to defend.

B. Before the judgment or order is opened, the applicant shall notify the adverse party of his intention to make such challenge, and shall:

1. file a full answer to the petition;

2. pay all costs if the Court requires them to be paid; and

3. satisfy the Court by affidavit or other evidence that during the pendency of the action he had no actual notice thereof in time to appear in Court and make his defense.

C. The adverse party, on the hearing of any application to open a Judgment or order as provided by this Section, shall be allowed to present evidence to show that during the pendency of the action the applicant had notice thereof in time to appear in Court and make his defense.
(PR21-008, 12/19/03)

SECTION 5-204.14 CERTAIN TECHNICAL ERRORS NOT GROUNDS FOR VACATING JUDGMENT.

A. No judgment heretofore or hereafter rendered in any action against any person or party served by publication shall be construed or held to be void or voidable because the affidavit for such service by publication on file in the action was made by the attorney for the plaintiff or because the complaint or other pleading was verified, if verification is necessary, by the attorney

for the plaintiff or party seeking such service by publication. In all such cases it shall be conclusively presumed, if otherwise sufficient, that the allegations and statements made by such attorney were and are in legal effect and for all purposes made by plaintiff and shall have the same force and effect as if actually made by the plaintiff.

B. All such judgments, if not otherwise defective or void, are hereby declared valid and legally effective and conclusive as of the date thereof as if such affidavit was made or the complaint or pleading was verified by the plaintiff or other party obtaining such service by publication.
(PR19-016, 4/19/02)

SECTION 5-204.15 CONSENT IS EFFECTIVE SUBSTITUTE FOR SERVICE.

An acknowledgment on the summons or the voluntary appearance of a defendant is equivalent to service. (PR19-016, 4/19/02)

SECTION 5-204.16 SERVICE PURSUANT TO COURT ORDER.

If service cannot be made by personal delivery or by mail, a party in interest may be served as provided by court order in any manner which is reasonable calculated to give actual notice of the proceedings and an opportunity to be heard. The Court may enter an order requiring such service whenever service has been by publication only prior to entering a default judgment. (PR19-016, 4/19/02)

SECTION 5-204.17 SUMMONS AND COMPLAINT TO BE SERVED TOGETHER.

A summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. If the complaint is not served with the summons, the case shall not be dismissed but the time to answer should be extended by the Court upon motion. The person serving the summons shall state on the copy that is left with the party served the date that service was made. Where service is to be made by mail, the person mailing the summons shall state on the copy that is mailed to the party to be served the date of mailing. These provisions are not jurisdictional, but if the failure to comply with them prejudices the party served, the Court may extend the time to answer. (PR21-008, 12/19/03)

SECTION 5-204.18 ALTERNATIVE PROVISIONS FOR SERVICE IN A FOREIGN JURISDICTION.

A. When Chickasaw law authorizes service upon a party not an inhabitant of or found within the territorial jurisdiction of the Court, and when service is to be effected upon a party in a foreign jurisdiction, it is also sufficient if service of the Process is made:

1. in the manner prescribed by the law of the Chickasaw Nation, tribe, state, or foreign jurisdiction for service in that tribe, state, or jurisdiction in an action in any of its courts of general jurisdiction;

2. as directed by the foreign authority in response to a letter rogatory when service in either case is reasonably calculated to give actual notice;

3. upon an individual, by delivery to him personally, and upon a corporation or partnership or association, by delivery to an officer, manager or general agent;

4. by a form of mail, requiring a signed receipt, to be addressed and dispatched by the Court Clerk to the party to be served; or

5. as directed by the order of the Court.

B. Service under Paragraph A.3 or 5 above may be made by any person who is not a party and is not less than eighteen (18) years of age or who is designated by order of the Court or

by the foreign court. On request, the Court Clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign court or officer who will make the service.

C. Proof of service may be made as prescribed herein, or by the law of the tribe, state, or foreign country, or by order of the Court. When service is made by mail, proof of service shall include a receipt signed by the addressee or other evidence of the delivery to the address satisfactory to the Court.
(PR19-016, 4/19/02)

SECTION 5-204.19 SUBPOENAS.

A. The Court or an attorney authorized to practice law in the courts of the Chickasaw Nation, as an officer of the Court, shall have the authority to issue Subpoenas in order to compel the presence of persons, documents or other items of evidence, or to compel the inspection of premises, documents or other items of evidence, as it sees fit. Service of Subpoenas may be made by any person who is not less than eighteen (18) years of age. Every Subpoena shall:

1. state the name of the Court from which it is issued and the title of the action; and

2. command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, documents or other items of evidence, at a time and place therein specified.

B. Service of a subpoena may be accomplished by any person who is eighteen (18) years of age or older. Proof of service of a notice to take deposition constitutes a sufficient authorization for the issuance of Subpoenas for the persons named or described therein; provided, any person aggrieved by the issuance or enforcement of the Subpoena may obtain judicial review upon the filing of a civil action and payment of the required fees.

C. Upon service of a Subpoena, a witness shall be obligated to attend a trial or hearing and to attend a deposition or produce or allow inspection of documents at a location that is specified in the Subpoena.

D. The Court Clerk shall issue a Subpoena for the production of documentary evidence signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

E. Leave of court for issuance of a Subpoena for the production of documentary evidence shall be required if a plaintiff seeks to serve a Subpoena for the production of documentary evidence on any person who is not a party prior to the expiration of thirty (30) days after service of the summons and petition upon any defendant.

F. Notwithstanding any other provision of law, a Court Clerk of the Chickasaw Nation shall not be subject to a Subpoena in matters relating to court records unless the Court makes a specific finding that the appearance and testimony of the Court Clerk are both material and necessary because of a written objection to the introduction of the court records made by a party prior to trial.

G. Except for expert witnesses, if a person's attendance is demanded by Subpoena, that person shall receive fees for one (1) day's attendance in the amount of thirty five dollars ($35) and the same amount of mileage fees as is then paid by the Chickasaw Nation, all fees to be paid by the party issuing the Subpoena. Expert witnesses may negotiate fees for attendance and mileage.

H. If the Subpoena commands production of documents and things or inspection of premises from a nonparty before trial but does not require attendance of a witness, the Subpoena shall specify a date for the production or inspection that is at least seven (7) days after the date that the Subpoena and copies of the Subpoena are served on the witness and all parties, and the Subpoena shall include the following language: “In order to allow objections to the production of documents and things to be filed, you should not produce them until the date specified in this Subpoena, and if an objection is filed, until the Court rules on the objection.”

I. **Protection of Persons Subject to Subpoenas.**

1. A party or an attorney responsible for the issuance and service of a Subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that Subpoena. The Court on behalf of which the Subpoena was issued shall enforce this duty and impose upon the party or attorney, or both, in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney fee.

2. Appearance at place of production and written objections to requested documents:

a. a person commanded by Subpoena to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of

production or inspection unless commanded by the Subpoena to appear for deposition, hearing or trial; and

b. subject to Subsection J below, a person commanded to produce and permit inspection and copying or any party may, within fourteen (14) days after service of the Subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve written objection to inspection or copying of any or all of the designated materials or of the premises. An objection that all or a portion of the requested material will or should be withheld on a claim that it is privileged or subject to protection as trial preparation materials shall be made within this time period and in accordance with Subsection D below. If the objection is made by the witness, the witness shall serve the objection on all parties; if objection is made by a party, the party shall serve the objection on the witness and all other parties. If objection is made, the party serving the Subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the Court. For failure to object in a timely fashion, the Court may assess reasonable costs and attorney fees or take any other action it deems proper; however, a privilege or the protection for

trial preparation materials shall not be waived solely for a failure to timely object under this Section. If objection has been made, the party serving the Subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

3. On timely motion, the Court by which a Subpoena was issued shall quash or modify the Subpoena if it:

a. fails to allow reasonable time for compliance;

b. requires disclosure of privileged or other protected matter and no exception or waiver applies;

c. subjects a person to undue burden; or

d. requires production of books, papers, documents or tangible things that fall outside the scope of discovery permitted by the Rules of Discovery.

4. If a Subpoena 1) requires disclosure of a trade secret or other confidential research, development, or commercial information; or 2) requires disclosure of an undetailed expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the Court may, to protect a person subject to or affected by the Subpoena, quash or modify the Subpoena. However, if the party in whose behalf the Subpoena is issued shows a

substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the Subpoena is addressed will be reasonably compensated, the Court may order appearance or production only upon specified conditions.

J. A person responding to a Subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand. When information subject to a Subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

K. Failure by any person without adequate excuse to obey a Subpoena served upon him may be deemed to be in contempt of court.
(PR21-008, 12/19/03)

ARTICLE E
BONDS AND SURETIES

Section 5-205.1 Justification of Surety.
Section 5-205.2 Qualifications of Surety.
Section 5-205.3 Real Estate Mortgage as Bond.
Section 5-205.4 Valuation of Real Estate.
Section 5-205.5 False Valuation; Penalty.
Section 5-205.6 Action by Chickasaw Nation or Tribal Department; No Bond Required.
Section 5-205.7 Appearance Bond; Enforcement.

SECTION 5-205.1 JUSTIFICATION OF SURETY.

A ministerial officer whose duty it is to take security in any undertaking provided for by the Chickasaw Nation Code shall require the person offered as surety, if not a qualified surety or bonding company, to make an affidavit of his qualifications, which affidavit may be made before such officer, and shall be endorsed upon or attached to the undertaking. If the undertaking is given by a qualified surety or bonding company, the credentials of the persons making the undertaking shall be shown and attached thereto. The ministerial officer shall have the power to administer oaths for the purpose of making any affidavits required by this Chapter. (PR18-044, 10/19/01)

SECTION 5-205.2 QUALIFICATIONS OF SURETY.

The surety in every undertaking provided for by the Chickasaw Nation Code, unless a surety or bonding company authorized to give their bond or undertaking by Tribal Law, irrevocably submits himself to the jurisdiction of the Tribal Court for the purpose of

enforcement of said bond or undertaking, and must be worth double the sum to be secured, over and above all exemptions, debts, and liabilities. Where there are two (2) or more sureties in the same undertaking they must in the aggregate have the qualifications prescribed in this Section.

SECTION 5-205.3 REAL ESTATE MORTGAGE AS BOND.

In every instance where bond, indemnity or guaranty is required, a first mortgage upon real estate within a State in which any portion of the Tribal jurisdiction lies shall be accepted, the amount of such bond, guaranty, or indemnity shall not exceed fifty percent (50%) of the reasonable valuation of such improved real estate, provided further, that where the amount of such bond, guaranty or indemnity shall exceed fifty percent of the reasonable valuation of such improved real estates then such first mortgage shall be accepted to the extent of such fifty

percent (50%) valuation.

SECTION 5-205.4 VALUATION OF REAL ESTATE.

The officer whose duty it is to accept and approve such bond, guaranty or indemnity shall require two affidavits (of either landowners, licensed real estate appraisers or brokers versed in land values in the community where such real estate is located) to attest to the value of such real estate. Said officer shall have the authority to administer the oaths and take said affidavits.

SECTION 5-205.5 FALSE VALUATION; PENALTY.

Any person wilfully making a false affidavit as to the value of any such real estate shall be guilty of perjury and punished accordingly. Any officer administering or accepting such affidavit knowing it to be false shall be guilty of conspiracy to commit perjury and punished accordingly. Any such wrongdoer shall be liable in a civil action to the party injured by such false affidavit to the extent of the injuring proximately caused thereby.

SECTION 5-205.6 ACTION BY CHICKASAW NATION OR TRIBAL DEPARTMENT; NO BOND REQUIRED.

Whenever an action is filed in the Court by the Chickasaw Nation, or by direction of any department of the Chickasaw Nation, its agencies, commissions, or political branches, no bond, including cost, replevin, attachment, garnishment, redelivery, injunction bonds, appeal bonds, or other obligations of security shall be required from such party either to prosecute said suit, answer, or appeal the same. In case of an adverse decision, such costs as by law are taxable against such party shall be paid out of the miscellaneous fund or other available fund of the party under whose direction the proceedings were instituted.

SECTION 5-205.7 APPEARANCE BOND; ENFORCEMENT.

A. If a bench warrant or command to enforce a Court order by body attachment is issued in a case for divorce, legal separation, annulment, child support, or alimony, or in any civil proceeding in which a judgment debtor is summoned to answer as to assets, and the person arrested, pursuant to the authority of such process, makes a bond for his appearance at the time of trial or other proceeding in the case, the bond made shall be disbursed by the Court Clerk upon order of the Court to the party in the suit who has procured the bench warrant or command for body attachment rather than to the Chickasaw Nation as the Court shall direct for the payment of any sums due. The penalty on the bond or any part thereof, shall, when recovered, first be applied to discharge the obligation adjudicated in the case in which the bond was posted,

and any excess shall be deposited in the Court fund. The party who is the oblige on such bond shall have the right to enforce its penalty to the same extent and in the same manner as the Chickasaw Nation may enforce the penalty on a forfeited bail bond.

B. Upon forfeiture of a bond payable to the Chickasaw Nation as ordered by the Court, including bail bonds, the Chickasaw Nation may enforce the penalty on the bond upon motion filed in the case by any method authorized for the execution of civil judgments. All amounts received upon such forfeited bonds as penalty shall be deposited in the court fund. The Court may, for good cause shown, vacate an order of bond forfeiture.

ARTICLE F
MISCELLANEOUS

Section 5-206.1 Deputy may Perform Official Duties.
Section 5-206.2 Affirmation.
Section 5-206.3 Publications in "Patent Insides".
Section 5-206.4 Action on Official Bond.
Section 5-206.5 May be Several Actions on Same Securities.
Section 5-206.6 Immaterial Errors to be Disregarded.
Section 5-206.7 Payments into Court for Minors and Incompetents.
Section 5-206.8 Conserving Moneys Obtained for Minors or Incompetent Persons.
Section 5-206.9 Sharing of Judicial Officers.
Section 5-206.10 Sharing of Other Judicial Personnel.
Section 5-206.11 Sharing of Material Resources.
Section 5-206.12 Sharing of Financial Resources.
Section 5-206.13 Effect of Prior Decisions of the Court.
Section 5-206.14 Action When No Procedure Provided.

SECTION 5-206.1 DEPUTY MAY PERFORM OFFICIAL DUTIES.

Any duty conferred by the Chickasaw Nation Code upon a ministerial officer and any, act permitted to be done, may be performed by a lawful deputy unless otherwise specifically stated. (PR18-044, 10/19/01)

SECTION 5-206.2 AFFIRMATION.

Whenever an oath is required by the Chickasaw Nation Code, the affirmation of a person, conscientiously scrupulous of taking an oath shall have the same effect.

SECTION 5-206.3 PUBLICATIONS IN "PATENT INSIDES."

Every daily or weekly newspaper published continuously for a period of two years in any county in which a portion of the tribal jurisdiction lies, or within or adjacent to the tribal jurisdiction, and the Tribal Newspaper shall be recognized and authorized to publish all publications and notices required or permitted to be published by the Chickasaw Nation Code.

SECTION 5-206.4 ACTION ON OFFICIAL BOND.

When an officer, executor, or administrator within the jurisdiction of the Chickasaw

Nation by misconduct or neglect of duty, forfeits his bond or renders his sureties liable, any person injured thereby or who is, by law; entitled to the benefit of the security, may bring an action thereon in his own name, against the officer, executor, or administrator and his sureties, or may proceed in a proper case as provided by Chickasaw Tribal Law, or Rule of the Supreme Court or District Court, to recover the amount to which he may be entitled by reason of the delinquency.

SECTION 5-206.5 MAY BE SEVERAL ACTIONS ON SAME SECURITIES.

A judgment in favor of a party for one delinquency does not preclude the same or another party from an action on the same security for another delinquency.

SECTION 5-206.6 IMMATERIAL ERRORS TO BE DISREGARDED.

The Court, in every stage of action, must disregard any error or defect in the pleadings or proceedings which does not effect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such immaterial or harmless error or defect.

SECTION 5-206.7 PAYMENTS INTO COURT FOR MINORS AND INCOMPETENTS.

Where any amount of money not exceeding Five Hundred Dollars ($500) shall be deposited and paid into Court by virtue of any judgment, order, settlement, distribution, or

decree for the use and benefit of, and to the credit of, any minor or incompetent person having no legal guardian of his estate appointed by the Court, and no person shall within ninety (90) days thereafter become the legal and qualified guardian of the estate of such minor or incompetent person, if it appears to the Court that such money is needed for the support of such minor or incompetent person or that it is otherwise for the best interest of such minor or incompetent person, the Court may, in its discretion, order payment of such funds to be made to any proper and suitable person as trustee for such minor or incompetent person, with bond, as the Court may direct, to be expended for the support, use, and benefit of such minor or incompetent person.

Such order may be made by the Court in the original cause in which the funds are credited upon the application of any interested person; and the Court may direct the Clerk of the Court to make payment of the same to be made in installments or in one lump sum as may seem for the best interests of such minor or incompetent person. If a qualified guardian has been appointed by the Court, with bond, the Court shall order the money paid to the guardian for the use of the minor or incompetent person, subject to such restrictions and accountings as the Court may direct.

SECTION 5-206.8 CONSERVING MONEYS OBTAINED FOR MINORS OR INCOMPETENT PERSONS.

Moneys recovered in any Court proceeding by a next friend or guardian ad litem for or on behalf of a person who is less than eighteen (18) years of age or incompetent in excess of Five Hundred Dollars ($500) over sums sufficient for paying costs and expenses including medical bills and attorney's fees shall, by order of the Court, be deposited in a banking or savings and loan institution, approved by the Court. Until the person becomes eighteen (18) years of age or competent to again handle his affairs, withdrawals of moneys from such account or accounts shall be solely pursuant to order of the Court made in the case in which recovery was had.

When an application for the order is made by a person who is not represented by an attorney, the Judge of the Court shall prepare the order. This Section shall not apply in cases where a legal guardian has been appointed by the Court for the estate of the minor or incompetent person with adequate bond to secure any money released. In such cases, such money, or any portion thereof as the Court may direct, may be paid over to the guardian to be used exclusively for the support and education of such minor or incompetent person, subject to such restrictions and accounting as the Court shall direct.

SECTION 5-206.9 SHARING OF JUDICIAL OFFICERS.

Notwithstanding any other provision of this Title, the Governor with the advise and consent of the Tribal Legislature is hereby authorized to negotiate an agreement with the Bureau of Indian Affairs any or other Indian Tribe, or the State or Federal Government for the shared use of magistrates or trial judges. In addition to any other necessary or convenient provision, such agreements may determine the method of selection and retention of shared judicial officers,

their compensation, and required duties. When acting on behalf of the Chickasaw Nation, such judges, shall have all the powers and authority vested in a Magistrate, Judge, or Court Clerk of the Chickasaw Nation. Such judicial officers may be in addition to, in lieu of, or the same as, those magistrates or Judges, authorized by this Title.

SECTION 5-206.10 SHARING OF OTHER JUDICIAL PERSONNEL.

Notwithstanding any other provision of this Title, the Governor with the advise and consent of the Tribal Legislature is hereby authorized to negotiate an agreement with the Bureau of Indian Affairs or any other Indian Tribe, or the State or Federal Government for the shared use of Court Clerks, Attorneys General, Bailiffs, Court Reporters, and other judicial related or support personnel. In addition to any other necessary or convenient provision, such agreements may determine the method of selection and retention of shared personnel, their compensation, and required duties. When acting on behalf of the District Court, such personnel shall have all the powers and authority of the equivalent position in the Chickasaw Nation Code. Such

personnel may be the same as, in addition to, or in lieu of, tribal personnel in these positions.

SECTION 5-206.11 SHARING OF MATERIAL RESOURCES.

Notwithstanding any other provision of Chickasaw Tribal law, the Governor is hereby authorized to negotiate and approve an agreement with the Bureau of Indian Affairs, any other Indian Tribe, or State or Federal Government or any other unit of government for the shared use of facilities, including courtrooms, offices, and jail space, equipment, and supplies necessary for the operation of the tribal justice system of the Chickasaw Nation.
(PR38-026, 5/24/2021)

SECTION 5-206.12 SHARING OF FINANCIAL RESOURCES.

Provision may be made in the above mentioned agreements for the allocation of fines, fees, and court costs to support the functions of the judicial system, provided, that the salaries of the magistrates, judges, court personnel, and Attorney General shall not be subject to, or contingent upon the assessment or collection of any such fines, fees, court costs, or penalties. Such agreements may also provide for certain monetary contributions by the participating Tribe, governments or agencies to the funding of the Court and provide a formula therefore, and may designate any particular grant money for the use of the Courts or may designate the Court as a prime contractor, grantee, or similar designation to authorize the Court to apply directly to any funding source for any grant or contract funds available for the operation of the Court.

SECTION 5-206.13 EFFECT OF PRIOR DECISIONS OF THE COURT.

The prior decisions of the Courts acting for the Chickasaw Nation shall be binding upon the parties thereto. The rules of law stated in such decisions, not inconsistent with

Tribal statutes enacted after such decisions, shall be precedent in the Courts subject to modification or being overruled by subsequent opinion of the Court as in other cases.

SECTION 5-206.14 ACTION WHEN NO PROCEDURE PROVIDED.

Whenever no specific procedure is provided in the Chickasaw Nation Code, the Court may proceed in any lawful fashion.

ARTICLE G
APPEAL PROCEDURE FOR FINAL DECISION OF A CHICKASAW NATION COMMISSION OTHER THAN THE ELECTION COMMISSION

Section 5-207.1 Petition for Appeal from Final Decision of a Chickasaw Nation Commission.
Section 5-207.2 Hearing.
Section 5-207.3 Attorney's Fees, Costs; Punitive Damages.
Section 5-207.4 Appeals from District Court.

SECTION 5-207.1 PETITION FOR APPEAL FROM FINAL DECISION OF A CHICKASAW NATION COMMISSION.

A. This Section shall not apply to appeals from final decisions of the Chickasaw Nation Election Commission regarding challenges for candidacy, which are governed by Title 8, Section 8-200.9, *et seq.*, of the Chickasaw Nation Code or for challenges regarding voting privileges, which are governed by Title 8, Section 8-300.7 *et seq.*, of the Chickasaw Nation Code. (PR36-004, 3/15/2019).

B. Appeals to the District Court of the Chickasaw Nation from a final decision of a commission or board (collectively, "Commission") of the Chickasaw Nation, other than those decisions specifically mentioned in Section A above, may be taken by filing a Petition for Appeal with the District Court within thirty (30) days from the date the Commission's final decision was published. A party may request a rehearing of the matter by the Commission pursuant to rules promulgated by such Commission. However, such a request shall not extend the time limit for filing an appeal with the District Court.

C. The Petition for Appeal must include:

1. the name of the Court;

2. the names of all interested parties;

3. the date the Petition for Appeal is filed;

4. the final decision being appealed

5. the names of the Commission members from whose decision the appeal is taken;

6. a copy of the final decision of the Commission being appealed;

7. a specific statement of each conclusion of law and finding of fact urged as error. General allegations will not be accepted. General allegations include statements that the decision of the commission or board is "against the clear weight of evidence or contrary to law." The party or parties appealing to the District Court shall be bound by the allegations of error contained in the appeal and shall be deemed to have waived all others;

8. a brief statement of the relief sought;

9. a statement that all interested parties may file an Answer to said Petition within twenty (20) days from receipt of the Petition for Appeal; and

10. a non-refundable fee in the sum of fifty dollars ($50) plus all costs for transcribing the record from the commission or board.

D. The party filing the appeal (the "Petitioner") bears the responsibility for service of the Petition for Appeal on the Commission from which a final decision is being appealed and on all interested parties. Service of the Petition for Appeal shall be made as follows:

1. Service of the Petition to all interested parties designated the Petition shall be the responsibility of the Petitioner.

2. Service of the Petition shall be accomplished by certified mail, return receipt requested, or hand delivering a copy of the Petition to all interested parties. If such service is accomplished by personal delivery, the person making such a delivery shall file a statement which includes the details of delivery including the date, time and location of delivery.

3. Service of the Petition by publication in the tribal newspaper or in newspapers of general circulation shall contain the names of the party(ies) bringing the action, the name of all interested parties, the nature of the action being brought, the remedy being pursued and the hearing date. Such service by publication must be approved by the Court and may be used when the current address or whereabouts of the party(ies) to be served cannot be reasonably obtained by the Petitioner.

4. An Affidavit of Service with receipts shall be filed with the Court and shall be the responsibility of the Petitioner.

E. An Answer by any interested party served upon may be filed with the Court within twenty (20) days of the service of the Petition. The answer may contain specific denials of each material allegation(s) constituting a defense or a right to relief concerning the subject of the action. An interested party who chooses to respond (a "Respondent") must serve a copy to the Petitioner and all other interested parties. A Respondent must also file an Affidavit of Service and receipts with the Court. Pleadings must be typed on 8 ½ inch by 11 inch paper with one (1) inch margins and shall be double spaced and prepared in no less than twelve (12) point type.

F. Reply(ies) to the Answer may be filed within ten (10) days of receipt by the Petitioner and interested parties and file an Affidavit of Service and receipts with the Court.

G. All pleadings shall be in concise and ordinary language without repetition and shall be signed by the party or his attorney of record.

H. Pleadings shall be deemed as filed upon delivery of the original and three (3) copies of all materials to the Clerk of Court and the proof of service thereon.

I. Where a party believes that a memoranda brief would aid the District Court in its determination, the party may submit the brief to the Court and a copy of said brief to all interested parties no later than three (3) days prior to the hearing date. A memoranda brief shall not exceed five (5) pages in length, shall be submitted on 8 ½ inch by 11 inch paper with one (1) inch margins, double spaced and prepared in no less than twelve (12) point type. No appendix or other documents shall be attached to the brief.

J. Any party to the appeal may request a transcript of oral argument proceedings. Any party requesting such a transcript shall bear the costs associated with the preparation of the transcript.

K. During the pendency of an appeal to the District Court pursuant to this Article G, the Commission shall retain jurisdiction over any issue not affected by the eventual ruling of the Court.
(PR20-008, 7/18/03)

SECTION 5-207.2 HEARING.

A. The Court shall conduct a hearing on a Petition for Appeal no more than thirty

(30) days after the filing of the Petition and the filing of Answer(s) by any interested parties or the time for filing Answers has elapsed. The Court shall have the authority to issue subpoenas and compel the attendance of witnesses and the production of evidence.

B. Any party failing to appear when the appeal is called for oral argument shall be deemed as having waived the right to argue the case and the appeal shall be considered as being submitted on the record. If a basis of the appeal involves disputed questions of fact, or if there is controlling or significant appellate authority, copies of the relevant document(s), relevant portions of the Commission transcript, deposition testimony or final decisions, such shall be presented to the Court at the time of the hearing and shall be exchanged with all interested parties at least three (3) days prior to said hearing.

C. All appeals to the District Court shall be heard *de novo*. A copy of the judgment reached by the Court shall be furnished to the Petitioner, Commission and all interested parties. Said judgment shall be a final and appealable order on the last date of service to all parties. (PR20-008, 7/18/03)

SECTION 5-207.3 ATTORNEY'S FEES, COSTS; PUNITIVE DAMAGES.

If, in all cases regarding a Petition or Cross Petition for Appeal filed pursuant to this Article G, after hearing said allegations the Court determines that said allegations were frivolous in nature, the Court may hold the Petitioner civilly liable in damages to the Commission and interested party(ies) for all damages sustained, including a reasonable attorney fee and all reasonable and proper costs of conducting such contests. (PR20-008, 7/18/03)

SECTION 5-207.4 APPEALS FROM DISTRICT COURT.

A. Appeals from the District Court to the Supreme Court are governed by Title 5, Chapter 1, Article B of the Chickasaw Nation Code.

B. Should a party wish to appeal a decision of the District Court in a case filed pursuant to this Article G, the appealing party ("Appellant") shall file a Designation of Record (found at Appendix "D" to Chapter 1, Article B of this Title 5) with the Supreme Court concurrently with a Petition for Appeal. The Appellant shall also provide copies to all interested parties. The Appellant shall advance the costs of two hundred fifty dollars ($250) to be applied toward the cost of preparing a transcript and record of the District Court proceedings. Any costs exceeding the two hundred fifty dollars ($250) shall be paid by the Appellant upon

receipt of a bill from the District Court. If the costs are less than two hundred fifty dollars ($250), all remaining funds shall be refunded to the Appellant. A transcript shall be prepared and sent by the District Court to all parties to the appeal as soon as possible.
(PR20-008, 7/18/03)

ARTICLE H
CHICKASAW NATION DISTRICT COURT
RULES OF CIVIL PROCEDURE
GENERAL PROVISIONS

Section 5-208.1 Title of this Act.
Section 5-208.2 Scope of this Act.
Section 5-208.3 Jurisdiction in Civil Actions.
Section 5-208.4 Force of the Chickasaw Common Law.
Section 5-208.5 Definitions.
Section 5-208.6 No Effect upon Sovereign Immunity.
Section 5-208.7 Declaratory Judgment.
Section 5-208.8 Court Costs Not Charged to Chickasaw Nation.
Section 5-208.9 Effect of Previous Court Decisions.
Section 5-208.10 CFR Not Applicable.
Section 5-208.11 Laws Applicable to Civil Actions.
Section 5-208.12 Procedural Rules.
Section 5-208.13 Reserved.
Section 5-208.14 Repeal of Previously Granted Authorities.
Section 5-208.15 Savings Clause.

SECTION 5-208.1 TITLE OF THIS ACT.

Articles H through O of this Title and Chapter shall be known as the "Chickasaw Nation Civil Code Act of 2003" ("Act"). (PR20-018, 6/20/03)

SECTION 5-208.2 SCOPE OF THIS ACT.

A. This Act governs the procedure in the courts of the Chickasaw Nation in all suits of a civil nature whether cognizable as cases at law or in equity except where a law or ordinance of the Chickasaw Nation specifies a different procedure. These rules shall be construed to secure the just, speedy, and inexpensive determination of every action.

B. Authority to enforce the provisions of this Act is vested in the executive department of the Chickasaw Nation and any law enforcement agencies which they may create or designate for such purposes.

C. This Act is intended to provide for the just determination of every civil proceeding. It shall be construed to secure simplicity in procedure, fairness in administration of justice and the elimination of unjustifiable expense and delay.

D. In any case where no applicable procedure is contained in the Chickasaw Nation Code, the Court may proceed in any lawful fashion while protecting the rights of the parties.

SECTION 5-208.3 JURISDICTION IN CIVIL ACTIONS.

A. The Court may exercise jurisdiction over any person or subject matter on any basis, including but not limited to waiver and stipulation, as is consistent with the Constitution of the Chickasaw Nation, the Indian Civil Rights Act of 1968, as amended, and any specific restrictions or prohibitions contained in the Chickasaw Nation Code and federal law.

B. The Jurisdiction of the Courts shall extend to all territory as defined in Article I of the Constitution and to all territory described as Indian Country within the meaning of Section 1151 of Title 18 of the United States Code over which the Chickasaw Nation has authority, including tribal or individual, trust, non-trust and restricted land, and including all land owned by Chickasaw agencies in their own name, all waters, minerals and wildlife, and any other such land or interest in land acquired by virtue of a Congressional Act, Executive Order, a declaration or regulation of the United States Department of Interior, a declaration or order of a court of competent jurisdiction, by purchase, gift, relinquishment, or by any other lawful means.

SECTION 5-208.4 FORCE OF THE CHICKASAW COMMON LAW.

The customs and traditions of the Chickasaw Nation, to be known as the Chickasaw common law, as modified by the Constitution of the Chickasaw Nation and statutory law, judicial decisions, and the condition and wants of the people, shall remain in full force and effect within the Jurisdiction of the Chickasaw Nation in like force with any statute of the Chickasaw Nation insofar as the common law is not so modified, but all Chickasaw Nation laws shall be

liberally construed to promote their objective.

SECTION 5-208.5 DEFINITIONS.

For the purpose of this Act, the following terms shall have the meanings respectively ascribed to them in this Section unless the context clearly requires otherwise:

1. An “Advisory Jury” means a body of jurors impaneled to hear a case in which the parties have no right to a jury trial. The Judge may accept or reject the findings and verdict of the Advisory Jury.

2. “Chickasaw Nation Jurisdiction" or “Jurisdiction of the Chickasaw Nation” means all territory as defined in the Constitution and to all territory described as Indian Country within the meaning of Section 1151 of Title 18 of the United States Code over which the Chickasaw Nation has authority, including tribal or individual, trust, non-trust and restricted land, and including all land owned by Chickasaw agencies in their own name, all waters, minerals and wildlife, and any other such land or interest in land acquired by virtue of a Congressional Act, Executive Order, a declaration or regulation of the United States Department of Interior, a declaration or order of a court of competent jurisdiction, by purchase, gift, relinquishment, or by any other lawful means.

3. "Chickasaw Tribal Legislature," “Tribal Legislature” or “Legislature” means the legislative body of the Chickasaw Nation.

4. "Claim" means any right of action which may be asserted in a civil action or proceeding and includes, but is not limited to, a right of action created by statute.

5. “Court” means either the District Court or the Supreme Court of the Chickasaw Nation, or both, as is appropriate for the context in which it appears.

6. “Defendant” means a party against whom relief or recovery is sought.

7. “Executive Department” means the Executive Department of the Chickasaw Nation.

8. "Judgment" means a final determination of the rights of the parties in an action, including those determined by a decree and any order from which an appeal lies. It is not required that a Judgment contain a recital of pleadings, report of a Master or record of prior proceedings.

9. “Personal Property” means property that is not Real Property.

10. “Petitioner” means a party who presents a petition to a court, officer or legislative body.

11. “Property” means any thing of value and includes Personal Property and Real Property.

12. "Real Property" means land, and anything that is growing upon or affixed to land; real estate.

13. “Respondent” means a party who responds to a petition.

SECTION 5-208.6 NO EFFECT UPON SOVEREIGN IMMUNITY.

Nothing in this Act shall be construed to be a waiver of the sovereign immunity of the Chickasaw Nation, or any entity, agency, official, officer, employee, agent, or political subdivision thereof, or to be a consent to any suit beyond the limits now or hereafter specifically stated by Chickasaw or federal law.

SECTION 5-208.7 DECLARATORY JUDGMENT.

The Court, in any actual controversy before it, shall have the authority to declare the rights of the parties in that suit in order to resolve disputes even though a money Judgment or equitable relief is not requested or not due. In particular, the Court may issue its declaratory Judgment recognizing Chickasaw Nation common law marriages, render a divorce therein, and provide for the custody of children and division of property in such divorces.

SECTION 5-208.8 COURT COSTS NOT CHARGED TO CHICKASAW NATION.

The Chickasaw Nation and any entity, agency, official, officer, employee, agent, and political subdivision thereof acting in their official capacity shall not be charged or ordered to pay any court costs in actions brought under this Act. If such entities or persons prevail in such actions, the costs which such entities or persons would have been required to pay may be charged as costs to the losing party.

SECTION 5-208.9 EFFECT OF PREVIOUS COURT DECISIONS.

All previous decisions of the Chickasaw Nation Supreme Court, prior to the formation of the District Court, insofar as they are not inconsistent with this Act, shall continue to have value as precedence in all Courts of the Chickasaw Nation.

SECTION 5-208.10 CFR NOT APPLICABLE.

Any and all provisions of Part 11 of Title 25 of the Code of Federal Regulations as presently or hereafter constituted are declared to be not applicable to the Chickasaw Nation, except as otherwise allowed by this Act.

SECTION 5-208.11 LAWS APPLICABLE TO CIVIL ACTIONS.

A. In all civil cases, the Court shall apply:

1. the Constitution, laws and common law of the Chickasaw Nation not prohibited by applicable federal law; and, if none, then

2. federal law including federal common law; and, if none, then

3. the laws of any state or other jurisdiction which the Court finds to be compatible with the public policy and needs of the Chickasaw Nation.

B. The Court and the law enforcement agency as designated by the Executive Department shall be bound by the provisions of the Indian Civil Rights Act of 1968, as amended from time to time.

C. No federal or state law shall be applied to a civil action pursuant to Paragraphs A.2 and A.3 above if such law is inconsistent with Chickasaw law or the public policy of the Chickasaw Nation.

D. Where any doubt arises as to the customs and usages of the Chickasaw Nation, the Court, either on its own motion or the motion of any party, may subpoena and request the advice of elders and/or Legislators familiar with those customs and usages.

SECTION 5-208.12 PROCEDURAL RULES.

In all court proceedings pursuant to this Act, the Court and the law enforcement agency as designated by the Executive Department shall follow the rules of civil procedure contained herein and the Rules of Evidence contained in the Chickasaw Nation Code. In any case in which no specific procedure is provided for by Chickasaw law or Court rule, the Court may proceed in any lawful fashion not inconsistent with Chickasaw law, the rules of the Court, or the Indian Civil Rights Act of 1968, as amended.

SECTION 5-208.13 RESERVED.

(PR20-020, 8/15/03)

SECTION 5-208.14 REPEAL OF PREVIOUSLY GRANTED AUTHORITIES.

A. The provisions in this Act do not repeal any authorities previously granted to the Court by the Chickasaw Nation, unless a repeal provision is expressed in this Act; however the provisions contained in this Act shall supersede any similar provisions contained in Title 25 of the Code of Federal Regulations ("CFR"). Any authorities granted to the Court under Title 25 CFR that are not specifically addressed by this Act, or other Chickasaw tribal resolution, bill, law or enactment shall continue to be in full force and effect.

B. The Executive Department may create a law enforcement agency or the Governor may designate other law enforcement agencies, including the Bureau of Indian Affairs ("BIA) Law Enforcement Division to enforce the provisions of this Act including any orders or Judgments issued by the Court.

SECTION 5-208.15 SAVINGS CLAUSE.

Any provision or part thereof of this Act that is determined by a court of competent jurisdiction to be contrary to law or to be unconstitutional shall not affect the remaining provisions or parts thereof that have not been determined to be contrary to law or to be unconstitutional.

ARTICLE I
CHICKASAW NATION DISTRICT COURT
RULES OF CIVIL PROCEDURE
COMMENCEMENT OF ACTION: PLEADINGS, MOTIONS AND ORDERS

Section 5-209.1 Commencement of Action.
Section 5-209.2 One Form of Action.
Section 5-209.3 Notice of Pendency of Action.
Section 5-209.4 Notice of Pendency Contingent upon Service.
Section 5-209.5 Special Notice for Actions Pending in Other Courts.
Section 5-209.6 Pleadings Allowed; Form of Motions.
Section 5-209.7 General Rules of Pleading.
Section 5-209.8 Pleading Special Matters.
Section 5-209.9 Form of Pleadings; Motions; and Briefs.
Section 5-209.10 Signing of Pleadings.
Section 5-209.11 Defense and Objections; When and How Presented; by Pleadings or Motions; Motion for Judgment on the Pleadings.
Section 5-209.12 Final Dismissal on Failure to Amend.
Section 5-209.13 Counter-claim and Cross-claim.
Section 5-209.14 Counter-claim: Effect of the Statutes of Limitation.
Section 5-209.15 Counterclaim Against Assigned Claims.
Section 5-209.16 Third Party Practice.
Section 5-209.17 Amended and Supplemental pleadings.
Section 5-209.18 Pre-trial Procedure; Formulating Issues.
Section 5-209.19 Lost Pleadings.
Section 5-209.20 Tenders of Money or Property.

Section 5-209.21 Dismissal of Actions.

SECTION 5-209.1 COMMENCEMENT OF ACTION.

Other than actions governed by specific rules and procedures found in Title 6 of the Chickasaw Nation Code, a civil action is commenced by filing a complaint with the Court.

SECTION 5-209.2 ONE FORM OF ACTION.

A. There shall be one (1) form of action to be known as a "civil action."

B. All petitions filed for the commencement of any action shall contain the following language:

> "The party(ies) initiating this action, the attorney and attorney's law firm are subject to Chickasaw law and administrative regulations as enforced in the judicial and administrative forums of the Chickasaw Nation during the litigation of this action."

C. All responses filed in any action shall contain the following language:

> "The party(ies) responding to this action, the attorney and attorney's law firm are subject to Chickasaw law and administrative regulations as enforced in the judicial and administrative forums of the Chickasaw Nation during the litigation of this action."

D. Failure to comply with either Subsection B or C above shall be justification for dismissal without prejudice upon the application of any properly admitted party or upon the Court's own notice.
(PR27-007, 8/20/10)

SECTION 5-209.3 NOTICE OF PENDENCY OF ACTION.

Upon the filing of a complaint in the Court, the action is pending so as to charge third persons with notice of its pendency. While an action is pending, no third person shall acquire an interest in the subject matter of the suit as against the plaintiff's title, except as provided in Sections 5-209.4 and 5-209.5 of this Act.

SECTION 5-209.4 NOTICE OF PENDENCY CONTINGENT UPON SERVICE.

Notice of the pendency of an action shall have no effect unless service of process is made upon respondent(s) within one hundred twenty (120) days after the filing of the petition.

SECTION 5-209.5 SPECIAL NOTICE FOR ACTIONS PENDING IN OTHER COURTS.

No action pending in either state or federal court, or the court of any other Indian nation, shall constitute notice with respect to any Real Property or personal property located within the Jurisdiction of the Chickasaw Nation until a notice of pendency of the action, identifying the case and the court in which it is pending and giving the legal description of the land affected or the description of the personal property and its location (if known) affected by the action, is filed of record in the office of the Clerk of the Court.

SECTION 5-209.6 PLEADINGS ALLOWED; FORM OF MOTIONS.

A. **Pleadings.** There shall be a complaint; an answer; a reply to a counterclaim; an answer to a cross-claim; a third-party complaint; and a third-party answer. No other pleading shall be allowed, except that the Court may allow or order a reply to an answer or a third-party answer.

B. **Motions and Other Papers.**

1. An application to the Court for an order shall be by motion which, unless made during a hearing or trial, shall:

a. be made in writing;

b. state with particularity the grounds therefor; and

c. set forth the relief or order sought.

The requirement of a writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

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

3. All motions shall be signed in accordance with this Act.

SECTION 5-209.7 GENERAL RULES OF PLEADING.

A. **Claims for Relief.** A pleading which sets forth a Claim for relief, whether an original Claim, counterclaim, cross-claim, or third-party Claim, shall contain (1) a short and plain statement of the Claim showing that the pleader is entitled to relief, and (2) a demand for Judgment for the relief to which he deems himself entitled. Relief may be demanded in the alternative or in several different types.

B. **Defenses; Form of Denials.** A party shall state in short and plain terms his defenses to each Claim asserted and shall admit or deny the averments upon which the adverse party relies. Denials shall fairly meet the substance of the averments denied. He may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits. When a

pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. When he intends to controvert all averments in a pleading, including averments of the grounds upon which the Court's jurisdiction depends, if any, he may do so by general denial subject to the obligation set forth in this Act. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial.

C. **Affirmative Defenses.** In responding to a pleading, a party shall set forth affirmatively each of the following defenses relied upon:

1. accord and satisfaction;

2. arbitration and award;

3. assumption of risk;

4. contributory negligence;

5. discharge in bankruptcy

6. duress;

7. estoppel;

8. failure of consideration;

9. fraud;

10. illegality;

11. injury by fellow servant;

12. *laches*;

13. license;

14. payment;

15. release;

16. *res judicata*;

17. statute of frauds;

18. statute of limitations;

19. waiver; and

20. any other matter constituting an avoidance or affirmative defense.

When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the Court, in its discretion that justice so requires, may treat the pleading as if there had been a proper designation.

D. **Effect of Failure to Deny.** Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

E. **Pleading to be Concise and Direct; Consistency.**

1. Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings or motions are required.

2. A party may set forth and at a trial rely upon two (2) or more statements of a Claim or defense alternatively or hypothetically, either in a single count or defense or in separate counts or defenses. When two (2) or more statements are made in the alternative and one (1) of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one (1) or more of the alternative statements. A party may also state as many separate Claims or defenses as he has regardless of consistency and whether based on legal, equitable, or other grounds. All statements shall be made subject to the obligations set forth in this Act.

F. **Construction of Pleadings.** All pleadings shall be liberally construed so as to do substantial justice.

SECTION 5-209.8 PLEADING SPECIAL MATTERS.

A. **Capacity.** It is not necessary to aver or assert the capacity of a party to sue or be

sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the Court, if necessary. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge, and that party shall have the burden of proof on that issue.

B. **Fraud, Mistake, Condition of the Mind.** All averments of fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a p erson may be averred generally.

C. **Conditions Precedent.** In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence of conditions precedent shall be made specifically and with particularity.

D. **Official Document or Act.** In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

E. **Judgment.** In pleading a Judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the Judgment or decision without setting forth matters showing jurisdiction to render it.

F. **Time and Place.** For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

G. **Special Damage.** When items of special damage are claimed, they shall be specifically stated, but specific amounts need not be alleged in order to obtain Judgment in the amount to which the party is entitled.

SECTION 5-209.9 FORM OF PLEADINGS; MOTIONS; AND BRIEFS.

A. **Caption; Names of Parties.** Every pleading shall contain a caption setting forth the name of the Court, the title of the action, the file number, and a designation of the type of pleading in the terms expressed in this Act. In the complaint, the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first

party on each side with an appropriate indication of other parties. In the initial third party complaint, counterclaim, cross-claim, motion and petition in intervention or a pleading by a party suing or being sued in a representative capacity, appropriate designations of all affected parties shall be made and their names shall be stated. Thereafter, papers relating to such matters may contain only the name of the first party in each category with an appropriate indication of other parties.

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

C. **Adoption by Reference; Exhibits.** Statements in a pleading, or motion, or brief may be adopted by reference in a different part of the same pleading or in another pleading or in any motion or brief. A copy of any written instrument which is an exhibit to a pleading, or a motion, or a brief is a part thereof for all purposes.

SECTION 5-209.10 SIGNING OF PLEADINGS.

Every pleading of a party represented by a licensed attorney or advocate shall be signed by at least one (1) attorney or advocate of record in his individual name, whose address and telephone number shall be stated. A party who is not represented by attorney or advocate shall sign his pleading and his address and telephone number. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The English and American common law rule in equity that the averments of an answer under oath must be overcome by the testimony of two (2) witnesses or of one (1) witness sustained by corroborating circumstances is not applicable in any court of the Chickasaw Nation. The signature of an attorney or advocate constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this Section it may be stricken as sham and false and the action may proceed as though the pleading had not been served. For a willful violation of this Section an attorney or advocate may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

SECTION 5-209.11 DEFENSE AND OBJECTIONS; WHEN AND HOW PRESENTED; BY PLEADINGS OR MOTIONS; MOTION FOR JUDGMENT ON THE PLEADINGS.

A. **When Presented.**

1. A defendant shall serve his answer within twenty (20) days after the service of summons and complaint upon him except when service is specially made by order of the court and a different time is prescribed in such order or under a statute of the Chickasaw Nation.

A party served with a pleading stating a cross-claim against him shall serve an answer thereto within twenty (20) days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within twenty (20) days after service of the answer, or, if a reply is ordered by the Court, within twenty (20) days after service of the order unless the order otherwise directs. The Chickasaw Nation or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim, within sixty (60) days after the service upon the Chickasaw Nation of the pleading in which the Claim is asserted, provided that no default Judgment shall be entered against the Chickasaw Nation, and upon affidavit of the Governor of the Chickasaw Nation that the Chickasaw Nation has no attorney but that an attorney contract is pending approval, the Court shall allow the Chickasaw Nation to answer within twenty (20) days after the approval of the attorney contract or within sixty (60) days after service, whichever is later. The service of a motion permitted under this Section alters these periods of time as follows, unless a different time is fixed by order of the Court: (1) if the Court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten (10) days after notice of the Court's action; (2) if the Court grants a motion for a more definite statement the responsive pleading shall be served within ten (10) days after the service of the more definite statement.

2. Within the time in which an answer may be served, a defendant may file any entry of appearance and reserve twenty (20) additional days to answer or otherwise defend. Any entry of appearance shall extend the time to respond twenty (20) days from the last date for answering and is a waiver of all defenses numbered 2, 3, 4, 5, and 9 of Subsection B below, provided, that a waiver of sovereign immunity shall not be implied under defense of Paragraph B.9 below since a defense based upon sovereign immunity is a defense to the subject matter jurisdiction of the Court and not a defense to the parties capacity to be sued.

B. **How Presented.** Every defense, in law or fact, to a Claim for relief in any pleading, whether a Claim, counterclaim, cross-claim, or third-party Claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

1. lack of jurisdiction over the subject matter;

2. lack of jurisdiction over the person;

3. improper venue or *forum non conveniens*;

4. insufficiency of process;

5. insufficiency of service of process;

6. failure to state a Claim upon which relief can be granted;

7. failure to join a party;

8. another action pending between the same parties for the same Claim;

9. lack of capacity of a party to be sued; and

10. lack of capacity of a party to sue.

A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one (1) or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a Claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or in fact to that Claim for relief. If, on a motion asserting the defense numbered 6 to dismiss for failure of the pleading to state a Claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary Judgment and disposed of as provided in Section 5-215.5, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Section 5-215.5. Every motion to dismiss shall be accompanied by a concise brief in support of that motion unless waived by order of the Court.

C. **Motion for Judgment on the Pleadings.** After the pleadings are closed but within such time as not to delay the trial, any party may move for Judgment on the pleadings.
If, on a motion for Judgment on the pleadings, matters outside the pleadings are presented to and

not excluded by the Court, the motion shall be treated as one for summary Judgment and disposed of as provided in Section 5-215.5, and all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Section 5-215.5. Every motion for Judgment on the pleadings shall be accompanied by a concise brief in support of that motion unless waived by order of the Court.

D. **Preliminary Hearings.** The defenses specified in Paragraphs B.1 through 10 above, whether made in a pleading or by motion, and the motion for Judgment mentioned in Subsection C above shall be heard and determined before trial on application of any party, unless the Court orders that the hearing and determination thereof be deferred until the trial.

E. **Motion for More Definite Statement.** If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defect complained of and the details desired. If the motion is granted and the order of the Court is not obeyed within ten (10) days after notice of the order or within such other time as the Court may fix, the Court may strike the pleading to

which the motion was directed or make such order as it deems just. Such motions are not favored.

F. **Motion to Strike.** Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by this Act, upon motion made by a party within twenty (20) days after the service of the pleading upon him or upon the Court's own initiative at any time, the Court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. If, on a motion to strike an insufficient defense, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for partial summary Judgment and all parties shall be given reasonable opportunity
to present all materials made pertinent to such a motion by the rules relating to summary Judgment.

G. **Consolidation of Defenses in Motion.** A party who makes a motion under this Section may join with it any other motions herein provided for and then available to him. If a party makes a motion under this Section but omits therefrom any defense or objection then available to him which this Section permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in Paragraph
H.2 below on any of the grounds there stated. The Court may, in its discretion, permit a party to

amend his motion by stating additional defenses or objections at any time prior to a decision on the motion.

H. **Waiver or Preservation of Certain Defenses.**

1. A defense of lack of jurisdiction over the person, improper venue or *forum non conveniens*, insufficiency of process, insufficiency of service of process or lack of capacity of a party to sue is waived a) if omitted from a motion in the

circumstances described in Subsection G above; b) if it is neither made by motion under this Section nor included in a responsive pleading or an amendment thereof permitted by Subsection 5-209.17.A, to be made as a matter of course; or c) if a permissive counterclaim is filed pursuant to Subsection 5-209.13.B.

2. A defense of failure to state a Claim upon which relief can be granted, a defense of failure to join a party indispensable, an objection of failure to state a legal defense to a Claim, and a defense of another action pending may be made in any pleading permitted or ordered under this Act, or by motion for Judgment on the pleadings, or at the trial on the merits.

3. Whenever it is determined, upon suggestion of the parties or otherwise, that the Court lacks jurisdiction over the subject matter, the Court shall dismiss the action.

SECTION 5-209.12 FINAL DISMISSAL ON FAILURE TO AMEND.

Before granting a motion to dismiss, the Court may grant leave to amend a defective pleading if the defect can be remedied. If the Court grants leave to amend, it shall, by order, specify the time within which an amended pleading may be filed. If an amended pleading is not filed within the time allowed, final Judgment of dismissal with prejudice shall be entered on motion except in cases of excusable neglect. In cases of excusable neglect, amendment may be made by the party in default within a time specified by the Court for filing such amended pleading. A plaintiff may voluntarily dismiss the action without prejudice within the time allowed by the Court for filing an amended pleading.

SECTION 5-209.13 COUNTER-CLAIM AND CROSS-CLAIM.

A. **Compulsory Counterclaims.** A pleading shall state as a counterclaim any Claim, which at the time of serving the pleading, the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's Claim and does not require for its adjudication the presence of third parties over whom the Court cannot

acquire jurisdiction. But the pleader need not state the Claim if: (1) at the time the action was commenced the Claim was the subject of another pending action; or (2) the opposing party brought suit upon his Claim by attachment or other process by which the Court did not acquire jurisdiction to render a personal Judgment on that Claim and the pleader is not stating any other counterclaim under this Section. A party pleading a compulsory counterclaim does not thereby waive any defenses the pleader may have which are otherwise properly raised.

B. **Permissive Counterclaims.** A pleading may state as a counterclaim any Claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's Claim.

C. **Counterclaim Exceeding Opposing Claim.** A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may Claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

D. **Counterclaim Against the Chickasaw Nation.** This Act shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the Chickasaw Nation or an officer or agency thereof. A compulsory counterclaim does not waive the defense of sovereign immunity when made by the Chickasaw Nation or an officer or an agency thereof. A permissive counterclaim waives the defense of sovereign immunity for the purpose of determining the permissive counterclaim stated by the Chickasaw Nation, its officer, or agency, but does not waive such defense for any other purpose.

E. **Counterclaim Maturing or Acquired after Pleading.** A Claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the Court, be presented as a counterclaim by supplemental pleading.

F. **Omitted Counterclaim.** When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, he may by leave of court set up the counterclaim by amendment, except that when such amendment is served within the time otherwise allowed for amendment without leave of the Court, he may set up such counterclaim by amendment without leave of the Court.

G. **Cross-claim against Co-party.** A pleading may state as a cross-claim any Claim by one (1) party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a Claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a

Claim asserted in the action against the cross-claimant.

H. **Joinder of Additional Parties.** Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with this Act and Chickasaw law regarding service of notice.

I. **Separate Trials; Separate Judgments.** If the Court orders separate trials, Judgment on a counterclaim, cross-claim, or third-party Claim may be rendered when the Court has jurisdiction to do so, even if the Claims of the opposing party have been dismissed or otherwise disposed of.

SECTION 5-209.14 COUNTER-CLAIM; EFFECT OF THE STATUTES OF LIMITATION.

A. Where a counterclaim and the Claim of the opposing party arise out of the same transaction or occurrence, the counterclaim shall not be barred by a statute of limitation notwithstanding that it was barred at the time the petition was filed, and the counterclaimant shall not be precluded from recovering an affirmative Judgment.

B. Where a counterclaim and the Claim of the opposing party:

1. do not arise out of the same transaction or occurrence;

2. both Claims are for money Judgments;

3. both Claims had accrued before either was barred by a statute of limitation; and

4. the counterclaim is barred by a statute of limitation at the time that it is asserted, whether in an answer or an amended answer; then the counterclaim may be asserted only to reduce the opposing party's Claim.

C. Where a counterclaim was barred by a statute of limitation before the Claim of the opposing party arose, the barred counterclaim cannot be used for any purpose.

SECTION 5-209.15 COUNTERCLAIM AGAINST ASSIGNED CLAIMS.

A party, other than a holder in due course, who acquired a Claim by assignment or otherwise, takes the Claim subject to any defenses or counterclaims that could have been asserted against the person from whom he acquired the Claim, but the recovery on a counterclaim may be asserted against the assignee only to reduce the recovery of the opposing party.

SECTION 5-209.16 THIRD-PARTY PRACTICE.

A. **When Defendant may bring in Third-party.** At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's Claim against him, or who is or may be liable to him on a Claim arising out of the transaction or occurrence that is the subject matter of any one (1) or more of the Claim(s) being asserted against him. The third-party plaintiff need not obtain leave to make the service if he files the third-party complaint not later than ten (10) days after he serves his original answer.

Otherwise, he must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make his defenses to the third-party plaintiff's Claim and his counterclaims against the third-party plaintiff and cross-claims against other third-party defendants. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's Claim. The third-party defendant may also assert any Claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's Claim against the third-party plaintiff. The plaintiff may assert any Claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's Claim against the third-party plaintiff, and the third-party defendant thereupon shall assert his defenses and his counterclaims and cross-claims. A third-party defendant may proceed under this Section against any person not a party to the action who is or may be liable to him for all or part of the Claim made in the action against the third-party defendant. Any party may move to strike the third-party Claim, or for its severance or separate trial.

B. **When Plaintiff may bring in Third-Party.** When a counterclaim is asserted against a plaintiff, he may cause a third-party to be brought in under circumstances which under this Section would entitle a defendant to do so.

C. **Party Defendants in Real Property Actions.** In an action involving Real Property, any person appearing in any manner in the title thereto, or claiming or appearing to claim some interest in the Real Property involved, may be included as a party defendant by naming such person as a party defendant in the caption of the complaint; and when such person is made a defendant in the body of the complaint under the appellation of substantially the following words, "said defendant named herein claims some right, title, lien, estate,

encumbrance, Claim, assessment, or interest in and to the Real Property involved herein, adverse to plaintiff which constitutes a cloud upon the title of plaintiff", it not being necessary to set out the reason for such Claim or Claims in the complaint or other pleading for such person being made a party defendant.

SECTION 5-209.17 AMENDED AND SUPPLEMENTAL PLEADINGS.

A. **Amendments.** A party may amend his pleading once as a matter of course at a time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within twenty (20) days after it is served, including amendments to add omitted counterclaims or cross-claims or to add or drop parties. Otherwise a party may amend his pleading only by leave of the Court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleading, whichever period may be the longer, unless the Court otherwise orders.

B. **Amendments to Conform to the Evidence.** When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after Judgment; but failure to so amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the Court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the Court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The Court may grant a continuance to enable the objecting party to meet such evidence. Where the pretrial conference order has superseded the pleadings, the pre-trial order is controlling and it is sufficient to amend the order and the pleadings need not be amended.

C. **Relation Back of Amendments.** Whenever the Claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a Claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment: (1) has received such notice of the institution of the action and will not be prejudiced in maintaining his defense on the merits; and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action

would have been brought against him.

The delivery or mailing of process to the Governor, his designee, the prosecutor of the Chickasaw Nation or an agency or officer thereof who would have been a proper defendant if named, satisfies the requirement of clauses (1) and (2) above with respect to the Chickasaw Nation or any agency or officer thereof to be brought into the action as a defendant.

D. **Supplemental Pleadings.** Upon motion of a party the Court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a Claim for relief or defense. If the Court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor. A supplemental pleading will relate back to the original pleading if it arises out of the conduct, transaction, or occurrence set forth in the original pleading.

SECTION 5-209.18 PRE-TRIAL PROCEDURE; FORMULATING ISSUES.

A. In any action, the Court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider:

1. the simplification of the issues;

2. the necessity or desirability of amendments to the pleadings;

3. the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

4. the limitation of the number of expert witnesses;

5. the advisability of a preliminary reference of issues to a Master for findings to be used as evidence when the trial is to be by jury (the appointment and duties of a master are described in Section 5-213.30);

6. such other matters as may aid in the disposition of the action.

B. The Court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent

course of the action, unless modified at the trial to prevent manifest injustice. The Court in its discretion may establish by court rule a pre-trial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to non-jury actions or extend it to all actions.

SECTION 5-209.19 LOST PLEADINGS.

If a pleading is lost or withheld by any person, the Court may allow a copy thereof to be substituted.

SECTION 5-209.20 TENDERS OF MONEY OR PROPERTY.

When a tender of money or property is alleged in any pleading, it shall not be necessary to deposit the money or property in Court when the pleading is filed, but it shall be sufficient if the money or property is deposited in Court at trial, or when ordered by the Court.

SECTION 5-209.21 DISMISSAL OF ACTIONS.

A. **Voluntary Dismissal: Effect Thereof.**

1. By Plaintiff: By Stipulation. An action may be dismissed by the plaintiff without order of the Court:

a. by filing a notice of dismissal at any time before service by adverse party of an answer or of a motion of summary Judgment, whichever first occurs, or

b. by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal without the consent of the defendants operates as an adjudication upon the merits when filed by a plaintiff who has once voluntarily dismissed, without the consent of the defendants, in any Court of any Indian tribe, the United States, or any state an action based on or including the same Claim, unless such previous dismissal was entered due to inability to obtain personal jurisdiction over an indispensable party or lack of subject matter jurisdiction in the Court in which the case was previously filed. If the plaintiff claims either or both of these exceptions, it shall so state in its notice of dismissal and shall apply to the Court, upon notice to all adverse parties for an order determining that the previous dismissal was within

one (1) or both of the two (2) stated exceptions and that the plaintiff is entitled to dismiss the current action without prejudice. The Court may grant such application in its discretion and allow the plaintiff to dismiss without prejudice on such terms as are just, due regard being had for costs, attorney fees, and inconvenience of the defendants, and any apparent motive to harass, embarrass, or delay the defendants.

2. By order of the Court. Except as provided in Paragraph 1 above, an action shall not be dismissed at the plaintiff's instance save upon order of the Court and upon such terms and conditions as the Court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the Court. Unless otherwise specified in the order, a dismissal under this Paragraph 2 is without prejudice.

B. **Involuntary Dismissal: Effect Thereof.** For failure of the plaintiff to prosecute or to comply with this Act, a Court rule, or any order of the Court, a defendant may move for dismissal of an action or of any Claim against him. After the plaintiff, in an action tried by the Court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The Court as trier of the facts may then determine them and render Judgment against the

plaintiff or may decline to render any Judgment until the close of all the evidence. If the Court renders Judgment on the merits against the plaintiff, the Court shall make findings as provided in Subsection 5-213.31.A. Unless the Court in its order for dismissal otherwise specifies, a dismissal under this Subsection B for lack of jurisdiction, or for failure to join a party, operates as an adjudication upon the merits.

C. **Dismissal of Counterclaim, Cross-claim, or Third-party Claim.** The provisions of this Section apply to the dismissal of any counterclaim, cross-claim, or third-party Claim. A voluntary dismissal by the claimant alone pursuant to Paragraph A.1 above shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

ARTICLE J
CHICKASAW NATION DISTRICT COURT
RULES OF CIVIL PROCEDURE
PARTIES

Section 5-210.1 Parties, Plaintiff and Defendant; Capacity.
Section 5-210.2 Joinder of Claims, Remedies, and Actions.
Section 5-210.3 Joinder of Persons Needed for Just Adjudication.
Section 5-210.4 Permissive Joinder of Parties.
Section 5-210.5 Misjoinder and Non-joinder of Parties.
Section 5-210.6 Interpleader.
Section 5-210.7 Class Actions.
Section 5-210.8 Intervention.
Section 5-210.9 Substitution of Parties.

SECTION 5-210.1 PARTIES, PLAINTIFF AND DEFENDANT; CAPACITY.

A. **Real Party in Interest.** Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute of the Chickasaw Nation so provides, an action for the use or benefit of another shall be brought in the name of the Chickasaw Nation.

No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

B. **Capacity to Sue or be Sued.** Except as otherwise provided by law, every person, corporation, partnership, or incorporated association shall have the capacity to sue or be sued in its own name in the Courts of the Chickasaw Nation, and service may be had upon unincorporated associations and partnerships by providing service upon a managing or general partner, or upon an officer of an unincorporated association, in accordance with Chickasaw law.

C. **Infants or Incompetent Persons.** Whenever an Infant or Incompetent Person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the Infant or Incompetent Person. If an Infant

or Incompetent Person does not have a duly appointed representative he may sue by his next friend
or by a guardian ad litem. The Court shall appoint a guardian ad litem for an Infant or Incompetent Person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the Infant or Incompetent Person.

D. **Assignment of Tort Claims Prohibited.** Claims arising in tort may not be assigned and must be brought by the injured party, provided, that this Subsection D shall not preclude subrogation of the proceeds of such tort Claims for the benefit of any person, including insurance companies, who have compensated the injured party for their injuries, including property damage, to the extent of the payment made by the third party.

E. **Definitions.** For the purposes of this Section, the term "Infant" means and includes every natural person less than eighteen (18) years of age not declared emancipated from his parent or guardian by order of a Court of competent jurisdiction; and the term "Incompetent Person" means and includes every natural person who has been legally declared incompetent by a Court of competent jurisdiction by reason of mental incapacity, habitual or addictive abuse of alcohol or other drugs, or other cause as provided by law.

SECTION 5-210.2 JOINDER OF CLAIMS, REMEDIES, AND ACTIONS.

A. **Joinder of Claims**. A party asserting a Claim to relief as an original Claim, counterclaim, cross-claim, or third-party Claim, may join, either as independent or as alternate Claims, as many Claims, legal or equitable as he may have against an opposing party.

B. **Joinder of Remedies; Fraudulent Conveyances.** Whenever a Claim is one heretofore cognizable only after another Claim has been prosecuted to a conclusion, the two (2) Claims may be joined in a single action; but the Court shall grant relief in that action only in accordance with relative substantive rights of the parties. In particular, a plaintiff may state a Claim for money and a Claim to have set aside a conveyance fraudulent as to him, without first having obtained a Judgment establishing the Claim for money.

C. **Joinder of Actions by the Court.** Whenever it appears to the Court that separate actions are pending between the same parties, or involving the same facts or law, the Court may, if the parties will not be prejudiced thereby, order said actions joined for all, or a portion of, the further proceedings.

SECTION 5-210.3 JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION.

A. **Persons to be Joined if Feasible.** A person who is subject to service of process and whose joinder will not deprive the Court of jurisdiction over the subject matter of the action shall be joined as a party in the action if:

1. In his absence complete relief cannot be accorded among those already parties; or

2. He claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may:

a. as a practical matter impair or impede his ability to protect that interest, or

b. leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

If he has not been joined, the Court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or in a proper case, an involuntary plaintiff.

B. **Determination by Court Whenever Joinder is not Feasible**. If a person as described in Paragraphs A.1 and 2 above cannot be made a party, the Court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the Court in making such determination include:

1. to what extent a Judgment rendered in the person's absence might be prejudicial to him or those already parties;

2. the extent to which, by protective provisions in the Judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided;

3. whether a Judgment rendered in the person's absence will be adequate; and

4. whether the plaintiff will have an adequate remedy if the action is dismissed for non-joinder.

C. **Pleading Reasons for Non-Joinder.** A pleading asserting a Claim for relief shall state the names, if known to the pleader, of any persons as described in Paragraphs A. 1and 2 above, who are not joined, and the reasons why they are not joined.

D. **Exception of Class Actions.** This Section is subject to the provisions of Section 5-210.7.

SECTION 5-210.4 PERMISSIVE JOINDER OF PARTIES.

A. **Permissive Joinder.**

1. All persons may join in one (1) action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences, or if any question or fact common to all these persons will arise in the action, or if the Claims are connected with the subject matter of the action.

2. All persons may be joined in one (1) action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences, or if any question of law or fact common to all defendants will arise in the action, or if the Claims are connected with the subject matter of the action.

3. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one (1) or more of the plaintiffs according to their respective rights to relief, and against one (1) or more defendants according to respective liabilities.

4. In actions to quiet title or actions to enforce mortgages or other liens upon property, persons who assert an interest in the property that is the subject of the action may be joined although their interest does not arise from the same transaction or occurrence.

B. **Separate Trials.** The Court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no Claim, or who asserts no Claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

SECTION 5-210.5 MISJOINDER AND NON-JOINDER OF PARTIES.

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the Court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Leave of the Court shall not be required when the pleader amends his pleadings within the time period for amendment of pleadings without leave of the Court. Any Claim against a party may be severed and proceeded with separately upon order of the Court.

SECTION 5-210.6 INTERPLEADER.

A. Persons having Claims against the plaintiff may be joined as defendants and required to interplead when their Claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the Claims of the several claimants or the titles on which their Claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this Section supplement and do not in any way limit the joinder of parties permitted in Section 5-210.4.

B. The provisions of this Section shall be applicable to actions brought against a law enforcement officer or other officer for the recovery of personal property taken by him under execution or for the proceeds of such property so taken and sold by him; and the defendant in such action shall be entitled to the benefit of this Section against the party in whose favor the execution issued.

C. The Court may make an order for the safekeeping of the subject of the action or for its payment or delivery into the Court or to such person as the Court may direct, and the Court may order the person who is seeking relief by way of interpleader to give a bond, payable to the Clerk of the Court, in such amount and with such surety as the Court may deem proper, conditioned upon the compliance with the future order or Judgment of the Court with respect to the subject matter of the controversy. Where the party seeking relief by way of interpleader claims no interest in the subject of the action and the subject of the action has been deposited with the Court or with a person designated by the Court, the Court should discharge him from the action and from liability as to the Claims of the other parties to the action with costs and, in the discretion of the Court, a reasonable attorney fee.

D. In cases of interpleader, costs may be adjudged for or against any party, except as provided in Subsection C above.

SECTION 5-210.7 CLASS ACTIONS.

A. **Prerequisites to a Class Action**. One (1) or more members of a class may sue or be sued as representative parties on behalf of all only if:

1. The class is so numerous that joinder of all members is impracticable;

2. There are questions of law or fact common to the class;

3. The Claims or defenses of the representative parties are typical of the Claims or defenses of the class; and

4. The representative parties will fairly and adequately protect the interests of the class.

B. **Class Actions Maintainable.** An action may be maintained as a class action if the prerequisites of subsection A, are satisfied, and in addition:

1. The prosecution of separate actions by or against individual members of the class would create a risk of:

a. inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or

b. adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

2. The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

3. The Court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of

the controversy. The matters pertinent to the findings include: a) the interest of members of the class in individually controlling prosecution or defense of separate

actions; b) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; c) the desirability or undesirability of concentrating the litigation of the Claims in the particular forum; and d) the difficulties likely to be encountered in the management of a class action.

C. **Determination by Order Whether Class Action to be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.**

1. As soon as practicable after the commencement of an action brought as a class action, the Court shall determine by order whether it is to be so maintained. An order under this Paragraph 1 may be conditional, and may be altered or amended before the decision on the merits.

2. In any class action maintained under Paragraph B.3 above, the Court shall direct to the members of the class the best notice practicable under the circumstances, including individual members who can be identified through reasonable effort. The notice shall advise each member that:

a. the Court will exclude him from the class if he so requests by a specified date;

b. the Judgment whether favorable or not, will include all members who do not request exclusion; and

c. any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

3. The Judgment in an action maintained as a class action under Paragraphs B.1 or 2 above, whether or not favorable to the class, shall include and describe those whom the Court finds to be members of the class. The Judgment in an action maintained as a class action under Paragraph B.3 above, whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in Paragraph C.2 above was directed and who have not requested exclusion and whom the Court finds to be members of the class.

4. When appropriate:

a. an action may be brought or maintained as a class action with respect to particular issues; or

b. a class may be divided into subclasses and each subclass treated as a class, and the provisions of this Section shall then be construed and applied accordingly.

5. Where the class contains more than five hundred (500) members who can be identified through reasonable effort, it shall not be necessary to direct individual notice to more than five hundred (500) members, but the members to whom individual notice is not directed shall be given notice in such manner as the Court shall direct which may include publishing notice in newspapers, magazines, trade journals or other publications, posting it in appropriate places and taking other steps that are reasonably calculated to bring the notice to the attention of such members, provided that the cost of giving such notice shall be reasonable in view of the amounts that may be recovered by the class members who are being notified. Members to whom individual notice was not directed may request exclusion from the class at anytime before the issue of liability is determined, and commencing an individual action before the issue of liability is determined shall be the equivalent of requesting exclusion from the class.

D. **Orders in Conduct of Actions.** In the conduct of actions to which this Section applies, the Court may make appropriate orders:

1. determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

2. requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the Court may direct to some or all of the members of any step in the action, or of the proposed extent of the Judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present Claims or defenses, or otherwise to come into the action;

3. imposing conditions on the representative parties or on intervenors;

4. requiring that the pleadings be amended to eliminate therefrom allegations as to representations of absent persons, and that the action proceed accordingly; and

5. dealing with similar procedural matters.

The orders may be combined with other orders and may be altered or amended as may be desirable from time to time.

E. **Dismissal or Compromise.** A class action shall not be dismissed or compromised without the approval of the Court and notice of the proposed dismissal or

compromise shall be given to all members of the class in both such manner as the Court directs.

SECTION 5-210.8 INTERVENTION.

A. **Intervention of Right.** Upon timely application anyone shall be permitted to intervene in an action:

1. when a statute of the Chickasaw Nation confers an unconditional right to intervene; or

2. when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

B. **Permissive Intervention.** Upon timely application anyone may be permitted to intervene in an action when an applicant's Claim or defense and the main action have a question of law or fact in common. When a party to an action relies, as grounds of Claim or defense, upon any statute or executive order administered by a Chickasaw Nation, federal or state governmental officer or agency, that officer or agency may, upon timely application, be permitted to intervene in the action. In exercising its discretion the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

C. **Procedure.** A person desiring to intervene shall serve a motion to intervene upon the parties. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the Claim or defense for which intervention is sought. If the motion to intervene is granted, all other parties may serve a responsive pleading upon leave of the Court.

D. **Intervention by the Chickasaw Nation.** In any action, suit, or proceeding to which the Chickasaw Nation or any agency, officer, or employee thereof is not a party in their official capacity, wherein the constitutionality or enforceability of any statute of the Chickasaw

Nation affecting the public interest is drawn in question, the parties, and upon their failure to do so, the Court shall certify such fact to the Governor of the Chickasaw Nation, the prosecutor, and Chickasaw Tribal Legislature and the Court shall permit the Chickasaw Nation to intervene for presentation of evidence, if the evidence is otherwise admissible in the case, and for argument on the question of constitutionality or enforceability of the Chickasaw Nation laws at issue. It shall be the duty of the party raising such issue to promptly give notice thereof to the Court either orally upon the record in open Court and served upon all parties, and to state in said notice when and how notice of the pending question will be or has been certified to the Chickasaw Nation as provided above.

SECTION 5-210.9 SUBSTITUTION OF PARTIES.

A. **Death.**

1. If a party dies, the Court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party, and together with the notice of hearing, shall be served on the parties and upon persons not parties in the manner provided for the service of a summons, and may be served within or without the Chickasaw Nation Jurisdiction. Unless the

motion for substitution is made not later than ninety (90) days after the death is suggested upon the record, the action shall be dismissed as to the deceased party.

2. In the event of the death of one (1) or more of the plaintiffs or of one (1) or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

3. Actions for libel, slander, and malicious prosecution shall abate at the death of the defendant.

4. Other actions, including actions for wrongful death shall survive the death of a party.

B. **Incompetency.** If a party becomes incompetent, the Court upon motion served as provided in Subsection A above may allow the action to be continued by or against his representative.

C. **Transfer of Interest.** In case of any transfer of interest, the action may be continued by or against the original party, unless the Court upon motion directs the person to whom the interest
is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in Subsection A above.

D. **Public Officers; Death or Separation from Office.**

1. When a public officer is a party to an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not

affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an offer shall not affect the substitution.

2. When a public officer sues or is sued in his official capacity he may be described as a party by his official title rather than by name but the Court may require his name to be added.

ARTICLE K
CHICKASAW NATION DISTRICT COURT
RULES OF CIVIL PROCEDURE
DEPOSITIONS AND DISCOVERY

Section 5-211.1 General Provisions Governing Discovery.
Section 5-211.2 Depositions Before Action or Pending Appeal.
Section 5-211.3 Persons Before Whom Depositions May Be Taken.
Section 5-211.4 Stipulations Regarding Discovery Procedure.
Section 5-211.5 Depositions Upon Oral Examination.
Section 5-211.6 Depositions Upon Written Questions.
Section 5-211.7 Use of Depositions in Court Proceedings.
Section 5-211.8 Interrogatories to Parties.
Section 5-211.9 Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes.
Section 5-211.10 Physical and Mental Examination of Persons.
Section 5-211.11 Requests for Admission.
Section 5-211.12 Failure to Make Discovery; Sanctions.

SECTION 5-211.1 GENERAL PROVISIONS GOVERNING DISCOVERY.

A. **Discovery Methods.** Parties may obtain discovery by one (1) or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the Court orders otherwise under Subsection C below, the frequency of use of these methods is not limited. Discovery may be obtained as provided herein in aid of execution upon a Judgment.

B. **Scope of Discovery.** Unless otherwise limited by order of the Court in accordance with this Chapter, the scope of discovery is as follows:

1. In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to subject matter involved in the pending action, whether it relates to the Claim or defense of the party seeking discovery or to the Claim or defense

of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears

reasonably calculated to lead to the discovery of admissible evidence.

2. Insurance Agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a Judgment, which may be entered in the action or to indemnify or reimburse for payments made to satisfy the Judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this Paragraph 2, an application for insurance shall not be treated as part of an insurance agreement.

3. Trial preparation; Materials. Subject to the provisions of Paragraph B.4 below, a party may obtain discovery of documents and tangible things otherwise discoverable under Paragraph B.1 above and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain, without the required showing, a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain, without the required showing, a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. For purposes of this Subsection B, a statement previously made is: a) a written statement signed or otherwise adopted or approved by the person making it; or b) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

4. Trial Preparation; Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of Paragraph B.1 above and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

a. Identity of Expert Witnesses, Subject matter; Further Discovery:

I. Through interrogatories, a party may require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the

expert is expected to testify and a summary of the grounds for each opinion.

ii. Upon motion, the Court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant

to Subparagraph B.4.c below concerning fees and expenses as the Court may deem appropriate.

b. A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

c. Unless manifest injustice would result:

I. the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under Part B.4.ii and Subparagraph B.4.b above; and

ii. with respect to discovery obtained under Part B.4.a.ii above, the Court may require, and with respect to discovery obtained under Subparagraph B.4.b above the Court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party obtaining facts and opinions from the expert.

C. **Protective Orders.** Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the Court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue

burden or expense, including one (1) or more of the following:

1. that the discovery not be had;

2. that the discovery may be had only on specified terms and condition, including a designation of the time or place;

3. that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

4. that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

5. that discovery be conducted with no one present except persons designated by the Court;

6. that a deposition after being sealed be opened only by order of the Court;

7. that a trade secret or other confidential research development, or commercial information not be disclosed or be disclosed only in a designated way; and

8. that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Court.

If the motion for a protective order is denied in whole or in part, the Court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Section 5-211.12 apply to the award of expenses incurred in relation to the motion.

D. **Sequence and Timing of Discovery.** Unless the Court, upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

E. **Supplementation of Responses.** A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

1. A party is under a duty reasonably to supplement his response with respect

to any question directly addressed to:

a. the identity and location of persons having knowledge of discoverable matters; and

b. the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

2. A party is under a duty reasonably to amend a prior response if he obtains information upon the basis of which:

a. he knows that the response was incorrect when made; or

b. he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

3. A duty to supplement responses may be imposed by order of the Court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

SECTION 5-211.2 DEPOSITIONS BEFORE ACTION OR PENDING APPEAL.

A. **Before Action.**

1. Petition. A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in court may file a verified petition in the Court if the Jurisdiction of the Chickasaw Nation is the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show:

a. that the petitioner expects to be a party to an action cognizable in the Court but is presently unable to bring it or cause it to be brought;

b. the subject matter of the expected action and his interest therein;

c. the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it;

d. the names or description of the persons he expects will be adverse parties and their addresses so far as known; and

e. the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

2. Notice and Service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the Court, at a time and place named therein, for the order described in the petition. At least twenty (20) days before the date of hearing the notice shall be served either within or without the Chickasaw Nation Jurisdiction in the manner provided for service of summons. If personal service cannot with due diligence be made upon any expected adverse party named in the petition, the Court may make such order as is just for service by publication or otherwise, and shall appoint an attorney or advocate who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the provisions of Subsection 5-210.1.C apply. Any attorney appointed pursuant to this Section shall be compensated as provided by the Court from the Court fund, such compensation to be taxed as costs against the person perpetuating the testimony.

3. Order and Examination. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories.

4. Use of Deposition. If a deposition to perpetuate testimony is taken under this Chapter or if, although not so taken, it would be admissible in evidence in the Courts of the jurisdiction in which it is taken, it may be used in any action involving the same subject matter subsequently brought in the Court.

B. **Pending Appeal.** If an appeal has been taken from a Judgment of the Court or before the taking of an appeal if the time therefore has not expired, the Court may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the Court. In such case, the party who desires to perpetuate the testimony may

make a motion in the Court for leave to take the depositions upon the same notice and service thereof as if the action was pending in the Court. The motion shall show: 1) the names and addresses of persons to be examined and the substance of the testimony which he expects to illicit from each, and 2) the reasons for perpetuating their testimony. If the Court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an

order allowing the depositions to be taken and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these sections for depositions taken in actions pending in the Court.

C. **Perpetuation by Action.** This Section does not limit the power of a Court to entertain an action to perpetuate testimony.

SECTION 5-211.3 PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN.

A. **Within the Chickasaw Nation Jurisdiction.** Within the Jurisdiction of the Chickasaw Nation, depositions shall be taken before a person appointed by the Court. A person so appointed has power to administer oaths and take testimony.

B. **Outside the Chickasaw Nation Jurisdiction.** Outside the Jurisdiction of the Chickasaw Nation, depositions may be taken: 1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States; 2) before a person commissioned by the Court, such person to have the power by virtue of his commission to administer any necessary oath and take testimony, or 3) pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; an commission and/or a letter rogatory may designate the person before whom the deposition is to be taken either by name or descriptive title. Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the Jurisdiction of the Chickasaw Nation under this Act.

C. **Disqualification for Interest**. No deposition shall be taken before a person who is a relative, employee, attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

SECTION 5-211.4 STIPULATIONS REGARDING DISCOVERY PROCEDURE.

Unless the Court orders otherwise, the parties may by written stipulation 1) provide that 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, and 2) modify the procedures

provided by this Act for other methods of discovery, except that stipulations extending the time provided for responses to discovery may be made only with the approval of the Court.

SECTION 5-211.5 DEPOSITIONS UPON ORAL EXAMINATION.

A. **When Depositions May Be Taken.** 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, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of thirty (30) days after service of the summons and complaint upon any defendant or service made by publication, except that leave is not required 1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or 2) if special notice is given as provided in Paragraph B.2 below. The attendance of witnesses may be compelled by subpoena. The deposition of a person confined in prison may be taken only by leave of court on such terms as the Court prescribes.

B. **Notice of Examination: General Requirements; Special Notice; Non-Stenographic Recording; Production of Documents and Things; Deposition of Organization.**

1. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a *subpoena duces tecum* is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

2. Leave of court is not required for the taking of a deposition by plaintiff if the notice a) states that the person to be examined is about to go out of the Jurisdiction of the Chickasaw Nation, or is about to go out of the United States, or is bound on a voyage to sea, and will be unavailable for examination unless his deposition is taken before expiration of the thirty (30) day period; and b) sets forth facts to support the statement.

The plaintiff's attorney shall sign the notice, and his signature constitutes a certification by him that, to the best of his knowledge, information, and belief, the statement and supporting facts are true. The sanctions provided by Section 5-211.12 are applicable to the certification.

If a party shows that when he was served with notice under this Paragraph B.2 he was unable through the exercise of due diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.

3. The Court may for cause shown enlarge or shorten the time for taking the deposition.

4. The Court may upon motion order that the testimony at a deposition be recorded by other than stenographic means, in which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at his own expense.

5. The notice to a party deponent may be accompanied by a request for the production of documents and tangible things at the taking of the deposition. The procedures provided by Section 5-211.9 shall apply to the request.

6. A party may, in his notice and in a subpoena, name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one (1) or more officers, directors or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated the matters on which he will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This Paragraph B.6 does not preclude taking a deposition by any other procedure authorized in this Act.

C. **Examination and Cross-Examination; Record of Examination; Oath; Objections.** Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Chickasaw Nation Rules of Evidence. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under this direction in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with Paragraph B.4 above. If requested by one (1) of the parties, the testimony shall be transcribed.

All objections made at time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

D. **Appointment of Officer; Motion to Terminate or Limit Examination.**

1. The Court may appoint an officer to conduct depositions. Such officer shall only have the duties, responsibilities and powers granted to him in this Subsection D and by the Court specifically in the appointment.

2. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in an unreasonable manner to annoy, embarrass, or oppress the deponent or party, the Court or the Court in the jurisdiction where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the Court. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Paragraph 5-211.12 apply to the award of expenses incurred in relation to the motion.

E. **Submission to Witness; Changes; Signing.** When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for the change. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within thirty (30) days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefore; and the deposition may then be used as fully as though signed unless, on a motion to suppress, the Court holds that the reasons

given for the refusal to sign require rejection of the deposition in whole or in part.

F. **Certification and Filing by Officer; Exhibits; Copies; Notice of Filing.**

1. The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it with the Court.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to

and returned with the deposition, and may be inspected and copied by any party, except that a) the persons producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals; and b) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

2. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent. The court may, by rule or order, establish the maximum charges which are reasonable for such services.

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

G. **Failure to Attend or to Serve Subpoena; Expenses.**

1. If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the Court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

2. If the party giving the notice of the taking of a deposition of a witness fails

to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the Court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

SECTION 5-211.6 DEPOSITIONS UPON WRITTEN QUESTIONS.

A. **Serving Questions; Notice.** After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena. The deposition of a person confined in prison may be taken only by Leave of court on such terms as the Court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating 1) the name and address of the person who is to answer them,

if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs; and 2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Paragraph 5-211.5.B.6.

Within thirty (30) days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within ten (10) days after being served with cross questions, a party may serve redirect questions upon all other parties. Within ten (10) days after

being served with redirect questions, a party may serve re-cross questions upon all other parties. The Court may for cause shown enlarge or shorten the time.

B. **Officer to Take Responses and Prepare Record.** A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by him.

C. **Notice of Filing.** When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

SECTION 5-211.7 USE OF DEPOSITIONS IN COURT PROCEEDINGS.

A. **Use of Depositions.** At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the Rules of Evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice, thereof, in accordance with any of the following provisions:

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

2. The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Paragraph 5-211.5.B.6 or Subsection 5-211.6.A to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

3. The deposition of a witness, whether or not a party, may be used against any party for any purpose if the Court finds a) that the witness is dead; or b) that the witness is outside the Jurisdiction of the Chickasaw Nation and cannot be served with a

subpoena to testify at trial while within the Chickasaw Nation Jurisdiction, unless it appears that the absence of the witness was procured by the party offering the deposition; or c) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or d) that the party offering the deposition has been unable to procure the attendance of a witness by subpoena; or e) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court to allow the deposition to be used.

4. If only part of the deposition is offered in evidence by a party, an adverse party may require him to introduce any other party which ought in fairness to be considered with the part introduced, and any party may introduce any other parts, subject to the Chickasaw Nation Rules of Evidence.

Substitution of parties pursuant to Section 5-210.9 does not affect the right to use depositions previously taken and, when an action in any court of any Indian tribe, the United States, or of any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest in the Court, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefore.

B. **Objections to Admissibility.** Subject to the provisions of Subsection 5-211.3.B and Paragraph C.3 below, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reasons which would require the exclusion of the evidence if the witness were then present and testifying.

C. **Effect of Errors and Irregularities in Depositions.**

1. As to Notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

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

3. As to Taking of Deposition.

a. Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them

before or during the taking of the deposition unless the ground of the objection is one (1) which might have been obviated or removed if presented at that time.

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

c. Objections to the form of written questions submitted under Section 5-211.6 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within five (5) days after service of the last questions authorized.

4. As to Completion and Return of Deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Sections 5-211.5 and 5-211.6 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due

diligence might have been ascertained.

SECTION 5-211.8 INTERROGATORIES TO PARTIES.

A. **Availability; Procedures for Use.** Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any party with or after service of the summons and complaint upon that party.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. In the answers, the full text of the interrogatory shall immediately precede the answer to that interrogatory. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within thirty (30) days after the service of the interrogatories, except that a defendant may serve answers or objections within forty five
(45) days after service of the summons and complaint upon that defendant. The Court may allow a shorter or longer time. The party submitting the interrogatories may move for an order

under Subsection 5-211.12.A with respect to an objection to or other failure to answer an interrogatory.

B. **Scope; Use at Trial.** Interrogatories may relate to any matters which can be inquired into under Subsection 5-211.10.B, and the answers may be used to the extent permitted by the Chickasaw Nation Rules of Evidence. An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the Court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial conference or other later time.

C. **Option to Produce Business Records.** Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory

reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts or summaries.

SECTION 5-211.9 PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES.

A. **Scope.** Any party may serve on any other party a request 1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy designated documents (including writings, drawings, graphs, charts, photographs, phone-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form) or to inspect and copy, test, or sample any tangible things allowed under this Act which are in the possession, custody or control of the party upon whom the request is served; or 2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing testing, or sampling the property or any designated object or operation thereon, within the scope of Subsection B below.

B. **Procedure.** The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable

particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within thirty (30) days after the service of the request, except that a defendant may serve a response within forty five (45) days after service of the summons and complaint upon that defendant. The Court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Subsection 5-211.12.A with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

C. **Persons Not Parties.** This Section does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

SECTION 5-211.10 PHYSICAL AND MENTAL EXAMINATION OF PERSONS.

A. **Order for Examination.** When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the Court may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the item, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

B. **Report of Examining Physician.**

1. If requested by the party against whom an order is made under Subsection A above or the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report or examination of a person not a party, the party shows that he is unable to obtain it. The Court on motion may make an order against a party requiring delivery of a report of such terms as are just, and if a physician fails or refuses to make a report the court may exclude his testimony if offered at the trial.

2. By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

3. This Subsection B applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This Subsection B does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician in accordance with the provisions of this Act.

SECTION 5-211.11 REQUESTS FOR ADMISSION.

A. **Request for Admission.** A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope this Article K set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty (30) days after service of the request, or within such shorter or longer time as the Court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the Court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of forty five (45) days after service of the summons and complaint upon him. If objection is made, the reasons therefore shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit to deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter on which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Subsection 5-211.12.C, deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the Court determines that an objection is justified, it shall order that an answer be served. If the Court determines that an answer does not comply with the requirements of this Section, it may order either that the matter is admitted or that an amended answer be served. The Court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Paragraph 5-211.12.A.4 apply to the award of expenses incurred in relation to the motion.

B. **Effect of Admission.** Any matter admitted under this Section is conclusively established unless the Court on motion permits withdrawal or amendment of the admission. The Court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the Court that

withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. An admission made by a party under this Section is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

SECTION 5-211.12 FAILURE TO MAKE DISCOVERY: SANCTIONS.

A. **Motion for Order Compelling Discovery.** A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

1. An application for an order to a party or to a deponent who is not a party may be made to the Court.

2. If a deponent fails to answer a question propounded or submitted under Sections 5-211.5 or 5-211.6, or a corporation or other entity fails to make a designation under Paragraph 5-211.5.B.6 or Subsection 5-211.6.A, or a party fails to answer an interrogatory submitted under Section 5-211.8, or if a party, in response to a request for inspection submitted under Section 5-211.9 fails, to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

3. If the Court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Subsection 5-211.1.C.

4. For purposes of this Subsection A, an evasive or incomplete answer is to be treated as a failure to answer.

5. If the motion is granted, the Court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the Court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

6. If the motion is denied, the Court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the Court finds that the making of the motion was substantially justified or that other circumstances made an award of expenses unjust.

7. If the motion is granted in part or denied in part, the Court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in just manner.

B. **Failure to Comply with Order.**

1. If a deponent fails to be sworn or to answer a question after being directed to do so by the Court, the failure may be considered a contempt of court. Sanctions imposed in such matters shall be promptly enforced.

2. If a party or an officer, director, or managing agent of a party or a person designated under Paragraph 5-211.5.B.6, or Subsection 5-211.6.A to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under Subsection A above or Section 5-211.10, the Court may make such orders in regard to the failure as are just, and among others the following:

a. an order that the matters regarding which the order was made or any other designated facts shall be regarded as being established for the purposes of the action in accordance with the Claim of the party obtaining the order;

b. an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

c. an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a Judgment by default against the disobedient party;

d. in lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

e. where a party has failed to comply with an order under Subsection 5-211.10.A requiring him to produce another for examination, such orders as are

listed in Subparagraphs a, b and c above, unless the party failing to comply shows that his is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the Court shall require the party failing to obey the order, the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

C. **Expenses on Failure to Admit.** If a party fails to admit the genuineness of any document or the truth of any matter as requested under Section 5-211.11, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the Court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The Court shall make the order unless it finds that 1) the request was held objectionable pursuant to Subsection 5-211.11.A; or 2) the admission sought was of no substantial importance; or 3) the party failing to admit has reasonable ground to believe that he might prevail on the matter; or 4) there was other good reason for the failure to admit.

D. **Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection.** If a party or an officer, director, or managing agent of a party or a person designated under Paragraph 5-211.5.B.6, or Subsection 5-
211.6.A to testify on behalf of a party fails 1) to appear before the officer who is to take his deposition, after being served with a proper notice; 2) to serve answers or objections to interrogatories submitted under Section 5-211.8, after proper service of the interrogatories; or 3) to serve a written response to a request for inspection submitted under Section 5-211.9, after proper service of the request, the Court on motion may make such orders in regard to the failure

as are just, and among others it may take any action authorized under Subparagraphs a, b and c of Paragraph B. 2 above. In lieu of any order or in addition thereto, the Court shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this Subsection D may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Subsection 5-211.1. C.

ARTICLE L
CHICKASAW NATION DISTRICT COURT
RULES OF CIVIL PROCEDURE
JURORS

Section 5-212.1 Jury Pool.
Section 5-212.2 Selection Drum.
Section 5-212.3 Drawing Jury Panels.
Section 5-212.4 Certifying and Sealing Lists.
Section 5-212.5 Delivery of Envelopes.
Section 5-212.6 Sealing and Retaining Juror Name Cards.
Section 5-212.7 Refilling Drum.
Section 5-212.8 Summoning Jurors.
Section 5-212.9 On-call Systems Jurors.
Section 5-212.10 Drawing Trial Jurors From Panel.
Section 5-212.11 Qualifications and Exemptions of Jurors.
Section 5-212.12 Substantial Compliance.
Section 5-212.13 Oath to Jury.
Section 5-212.14 Discharge of Employee for Jury Service.
Section 5-212.15 Fees and Mileage for Jurors.
Section 5-212.16 Use and Management of Electronic Jury Management System.
Section 5-212.17 Disclosure of Personal Information About Jurors.

SECTION 5-212.1 JURY POOL.

A. On the first Monday in November of each year, or as soon thereafter as may be, and, at any time upon the order of the District Court or the Supreme Court, the Court Clerk or one (1) of his deputies, a District Court Judge and a Supreme Court Justice shall meet and select from lists as described in Subsection B below a jury pool consisting of all qualified prospective jurors for the ensuing calendar year in the manner provided in this Article L.

B. For the purpose of ascertaining the names of all persons qualified for the jury pool, it shall be the duty of the following tribal employees to provide the following lists of qualified prospective jurors to the Court Clerk on or before September 30 of each year:

1. The office of tribal registration shall supply a list of all enrolled Chickasaw Nation members over eighteen (18) years of age who are residents within the Jurisdiction of the Chickasaw Nation.

2. For the purpose of jury trial involving exercise of Special Tribal Criminal Jurisdiction under Chapter 4 of this Title, the Court Clerk shall supply a list of all persons over eighteen (18) years of age, irrespective of Chickasaw Nation citizenship, who have voluntarily registered as prospective jurors.
(PR39-013, 09/20/2022)

3. For the purpose of jury trial involving exercise of Special Tribal Criminal Jurisdiction under Chapter 4 of this Title, the office of human resources shall supply a list of all employees over eighteen (18) years of age, irrespective of Chickasaw Nation citizenship, who reside within the territorial boundaries of the Chickasaw Nation.
(PR39-013, 09/20/2022)

4. The Court Clerk shall maintain a list of qualified jurors as described in Section 5-212.11(A).
(PR38-014, 02/22/2021)

C. Each such list shall contain, insofar as is known, the date of birth or age, name, and actual place of residence of each person on the list.

D. It shall be the duty of the Court Clerk to maintain the jury pool at all times.

SECTION 5-212.2 SELECTION DRUM.

A. On an annual basis, the Court Clerk shall write or cause to be written or typed the names of all persons in the jury pool on separate cards of uniform size and color. The cards shall also contain the persons' address and age or date of birth. Such cards shall be deposited in a circular hollow drum.

B. The drum shall be made of wood, iron, steel, wire cloth or other substantial material, and shall be so constructed as to freely revolve on an axle. The drum shall be of such size as to freely mix all the cards placed therein when rotated on its axle. The drum shall have a door which shall be locked at all times, except when in use as hereinafter provided. The Court Clerk shall ensure that keys to the drum are safely stored.

C. The Court Clerk shall store the drum in a safe and secure place where the same cannot be tampered with nor permit the same to be opened by any person except at the time and in the manner and by the persons herein specified.

D. The expenses of the preparation of the drum and name cards are to be paid from the Court fund.

SECTION 5-212.3 DRAWING JURY PANELS.

A. The Court shall, no less than thirty (30) days prior to each jury docket of Court, determine approximately the number of jurors that are reasonably necessary for jury service in the Court during the jury docket, and shall thereupon order the drawing of such number of names from the drum, said number to be known as the general panel of jurors for service for the respective jury docket.

B. The Court Clerk or one (1) of his deputies shall draw from the drum, after the same has been well turned so that the cards therein are thoroughly mixed, one (1) by one (1) until the number of names for jury service are procured. The Court Clerk shall maintain a list of the drawn names at all times in a confidential manner. The persons attending such drawing shall not divulge the name of any person that may be drawn as a prospective juror to any person.

C. The Court may order additional drawings of names for the completion of a jury, the impaneling of a new jury or otherwise if additional drawing(s) shall become necessary; however, such prospective jurors shall be available only as special jurors and shall be discharged as soon as their services are not further needed. The Court may excuse or discharge any person drawn and summoned as a juror, whenever such action shall be deemed expedient or in the best interest of the Court or the administration of justice.

D. No person may be required, over his objection, to render service as a juror for more than a total of twenty (20) working days in any calendar year unless, when such time limit is reached, he is sitting on a jury panel engaged in the consideration of a case, in which event the juror shall be excused when such case is terminated. However, if the Court is of the opinion that the jury business of a jury docket fixed by the Court may be concluded within six (6) days, he may require a jury, or a juror, to remain until the termination of said jury service. Persons summoned for jury service need not be required to serve during previously fixed days or weeks or a docket fixed by the Court for jury trials, but they may be recalled from time to time as the needs of the Court require without regard to the docket term fixed by the Court for jury trials for which they were originally summoned.

SECTION 5-212.4 CERTIFYING AND SEALING LISTS.

The list of names so drawn for the general panel shall be certified under the hand of the

Court Clerk and the supervising Judge and shall be sealed in envelopes endorsed "Jurors for the jury docket of the Court scheduled to commence on _____" (filling in the blank with the appropriate date). The Court Clerk shall write his name across the seals of the envelopes.

SECTION 5-212.5 DELIVERY OF ENVELOPES.

The supervising Judge shall deliver such envelopes to the Court Clerk and shall administer to the Court Clerk and to each of his deputies an oath in substance as follows: "You and each of you do solemnly swear that you will not open the jury lists now delivered to you, nor permit them to be opened, until the time prescribed by law, nor communicate to anyone the name or names of persons appearing on the jury lists until the time it shall be published, and that you will not, directly or indirectly, converse or communicate with anyone selected as juror concerning any case pending for trial in the Court at the next jury docket, So help you God."

SECTION 5-212.6 SEALING AND RETAINING JUROR NAME CARDS.

The Court Clerk shall retain said envelopes securely and unopened, until otherwise directed by the Court.

SECTION 5-212.7 REFILLING DRUM.

If all the cards should be drawn out of the drum, the drum shall immediately be refilled with cards as provided in this Article L.

SECTION 5-212.8 SUMMONING JURORS.

The Court Clerk shall summon all persons for jury service by mailing a copy of such summons containing the time, place, and the name of the Court upon which said persons are required to attend, by certified mail, return receipt requested, or as directed by the Court, not less than ten (10) days before the day said person is to appear in the Court. The Court Clerk shall make a return of such service by filing an affidavit stating the date of mailing and type of mail used in sending the summons.

SECTION 5-212.9 ON-CALL SYSTEMS JURORS.

A. When an on-call system is implemented by order of the Court, each juror

retained for services subject to call shall be required to contact a center for information as to the time and place of his next assignment.

B. For purposes of this Section, "on-call system" means a method whereby the Court estimates the number of jurors required for a jury docket and those jurors not needed during any particular period are released to return to their home or employment subject to call when needed.

C. Pursuant to a summons for jury service, each qualified person is retained for service subject to call.

SECTION 5-212.10 DRAWING TRIAL JURORS FROM PANEL.

Prospective jurors for a trial shall be drawn by the Court Clerk under the direction and supervision of the Court either by numbering the prospective jurors cards and then drawing numbers from a pool containing a numbered marker for each prospective juror available to be called or by some similar form of random drawing approved by the Court. The initial six (6) jurors shall be drawn as shortly before the trial of the action as is reasonably practical in the discretion of the Court. As prospective jurors are removed or dismissed by challenge, whether preemptory or for cause, the Clerk shall draw another name from the general panel of jurors who shall take the place of the challenged prospective juror and be subject to *voir dire* to the same extent as the prospective jurors originally chosen.

SECTION 5-212.11 QUALIFICATIONS AND EXEMPTIONS OF JURORS.

A. Except as herein provided, those of the following who are of sound mind and discretion and of good moral character are competent to act as jurors:

1. All citizens of the Chickasaw Nation who are at least eighteen years of age, and

2. Other citizens of the United States who are at least eighteen years of age,

   a. are currently residing within the Chickasaw Nation jurisdiction, or

   b. who are current employees of the Chickasaw Nation.

B. The following persons are not qualified to serve as jurors:

   1. Justices of the Supreme Court of the Chickasaw Nation and the employees in their office;

2. Judges of the District Court and the employees in their office;

3. Peacemakers of the Peacemaking Court and the employees in their office;

4. the Court Clerk and the employees in his office;

5. Chickasaw Nation elected or appointed officials;

6. the Prosecutor and the employees in his office;

7. law enforcement personnel and staff;

8. licensed attorneys and advocates engaged in the practice of law; and

9. persons who have been convicted of any felony or crime involving moral turpitude, provided that when such conviction has been vacated, overturned upon appeal, or pardoned or when any such person has been fully restored to his civil rights by the jurisdiction wherein such conviction occurred, the person shall be eligible to serve as a juror; and

C. Persons over seventy (70) years of age, ministers, practicing physicians, optometrists, dentists, public school teachers, federal employees, regularly organized full time fire department employees, and parents with otherwise unattended minor children not in school may be excused from jury service by the Court, in its discretion, upon request.

D. The Clerk shall include questions relating to the above qualifications and exclusions in a form delivered to prospective jurors to determine their eligibility for jury duty. (PR38-014, 02/22/2021)

SECTION 5-212.12 SUBSTANTIAL COMPLIANCE.

Substantial compliance with the provisions of this Article L shall be sufficient to prevent the setting aside of any verdict or decision rendered by a jury chosen hereunder, unless the irregularity in drawing, and summoning, or impaneling the same resulted in depriving a party litigant of some substantial right; provided, however, that such irregularity must be specifically presented to the Court within ten (10) days of the filing of a decision in the action. (PR38-014, 02/22/2021)

SECTION 5-212.13 OATH TO JURY.

After selection of the jury and prior to the opening statements of the parties, the Court shall place the jury under oath or affirmation to well and truly try and determine the action

before them exclusively upon the evidence presented in the Court and the law and instructions given by the Court, and to return their true verdict thereon without partiality for any unlawful cause or reason.

SECTION 5-212.14 DISCHARGE OF EMPLOYEE FOR JURY SERVICE.

A. No person shall be discharged from his employment because of said person's absence from his employment by reason of having been required to serve on a jury for the Court.

B. Any person, firm, or corporation who discharges or causes to be discharged an employee because of said person's absence from his employment by reason of having been required to serve on a jury for the Court shall be liable to the person so discharged in a civil action at law for both actual and punitive damages. Damages shall include all pecuniary losses suffered including, but not limited to, lost earnings, both past and future, mental anguish, and all reasonable damages incurred in obtaining other suitable employment, including the cost of relocation and retraining, if any, and a reasonable attorney fee to be determined by the Court.

SECTION 5-212.15 FEES AND MILEAGE FOR JURORS.

Jurors serving at trial on criminal and civil matters shall receive a daily fee for each day of jury duty and mileage to and from their usual residence to the Court at the rate specified in the Federal Register of the United States. Such fee shall be in an amount provided by Court rule. (PR38-014, 02/22/2021; PR40-009, 04/17/2023)

SECTION 5-212.16 USE AND MANAGEMENT OF ELECTRONIC JURY MANAGEMENT SYSTEM.

A. In lieu of any other jury selection procedures now provided by law, the Court Clerk of the Chickasaw Nation, may utilize an approved electronic jury management system (JMS) authorized by the Chief Justice of the Supreme Court of the Chickasaw Nation for the random selection of jurors and the general administration of the jury process.

B. The Court Clerk of the Chickasaw Nation shall manage the jury selection process under the supervision and control of the Chief Justice of the Supreme Court of the Chickasaw Nation. In managing the jury selection process, the Court Clerk and Chief Justice are authorized

to delegate duties to their staff and to utilize the electronic processes, random selection functionality, and data processing services of the authorized JMS, as may be necessary in the jury selection and maintenance process.

C. The District Court Judge of the Chickasaw Nation shall, more than thirty (30) days prior to each term of court, determine approximately the number of jurors that are reasonably necessary to meet the needs of the District Court for each jury term and shall order the drawing of that number of jurors, either all at one time or at periodic intervals, in advance of each term as he or she deems proper.

D. The Court Clerk or Chief Justice may utilize the JMS to randomly draw a sufficient number of names from the source list provided by the appropriate source pursuant to Section 5-212.1(B), to satisfy the number of jurors ordered by the judge, including a margin of extra names sufficient to compensate for the estimated number that will be unavailable or ineligible. The names drawn shall comprise the general panel of jurors from which jurors are selected for service in the District Court during the period for which they are designated to serve. The Court Clerk or Chief Justice and its staff shall not disclose, copy, or permit any person to copy any general panel jury list or any portion thereof except as provided in Section 5-212.17.

E. The Court Clerk or Chief Justice may utilize the JMS to prepare the summons for jury service and shall cause the same to be mailed to every person whose name is drawn for the general jury panel. At the option of the Court Clerk or Chief Justice, jurors' summonses may be mailed by the clerk's office or by a commercial mailing service. The court may utilize an automated address verification process to avoid mailing summonses to incomplete or invalid addresses or to persons who no longer reside in the jurisdiction.

F. Use of an approved electronic JMS shall not be grounds for a challenge to a juror or a panel based on a material departure or irregularity from the requirements prescribed by law. Whenever the court utilizes the approved JMS to randomly select and sequentially order juror names during any step in the jury selection process, the laws relating to the selection of jurors by a selection drum, including those requirements set from Section 5-212.2 through Section 5-212.15 shall not apply.

G. The Court Clerk or Chief Justice may utilize the JMS for creation and maintenance of all records and documents necessary to summon, qualify, manage, and pay jurors for service and may maintain jury records in electronic format utilizing the data processing methods which are provided in the JMS.

H. The District Court may provide electronic resources, including but not limited to an automated telephone system and a website, for jurors to obtain information about their jury service and submit information to the court.

I. The District Court may utilize the JMS to prepare and mail juror questionnaires and may provide for jurors to answer juror questionnaires either by mail or by the court's website.
(PR41-002, 12/15/2023)

SECTION 5-212.17 DISCLOSURE OF PERSONAL INFORMATION ABOUT JURORS.

A. Persons serving as jurors during a trial shall not be asked or required to give their complete residence address or telephone number in the presence of the defendant.

B. Names and personal information concerning prospective and sitting jurors shall not be disclosed to the public outside open court, except upon order of the court. A request for disclosure of jurors' names and personal information shall be made in writing directly to the judge. The court shall order jurors' names and personal information to be kept confidential unless the interest of justice requires otherwise.

C. Names and personal information concerning prospective jurors may be provided to the attorneys of records after the general panel jurors have been selected and summoned, unless otherwise directed by the court. The names and information will be provided in written form only, hereafter referred to as "the jury list". The attorneys shall not share the jury list or information contained in the jury list except as necessary for purposes of jury selection. Following jury selection, the attorneys shall return the original jury lists and any copies to the court. Counsel shall be under a continuing duty to protect the confidentiality of juror information.
(PR41-002, 12/15/2023)

ARTICLE M
CHICKASAW NATION DISTRICT COURT
RULES OF CIVIL PROCEDURE
TRIALS

Section 5-213.1 Trial Defined.
Section 5-213.2 Trial of Issues.
Section 5-213.3 Jury Trial of Right.
Section 5-213.4 Trial by Jury or by the Court.
Section 5-213.5 Assignment of Cases for Trial.
Section 5-213.6 Consolidation; Separate Trials.
Section 5-213.7 Summoning Jury.
Section 5-213.8 Causes for Challenging Jurors.
Section 5-213.9 Examination of Jurors.
Section 5-213.10 Alternate Jurors.
Section 5-213.11 Order of Challenges.
Section 5-213.12 Challenges to Jurors; Filling Vacancies.
Section 5-213.13 Alternate Method of Selecting Jury.
Section 5-213.14 Oath of Jury.
Section 5-213.15 Juries of Less Than Six (6); Majority Verdict.
Section 5-213.16 Order of Trial.
Section 5-213.17 Taking of Testimony.

Section 5-213.18 Exceptions Unnecessary.
Section 5-213.19 Instruction to Jury; Objection.
Section 5-213.20 Uniform Jury Instruction.
Section 5-213.21 Objections to Instructions; Copies to Parties.
Section 5-213.22 View by Jury.
Section 5-213.23 Deliberations of the Jury.
Section 5-213.24 Admonition of Jury on Separation.
Section 5-213.25 Information after Retirement.
Section 5-213.26 When the Jury May Be Discharged.
Section 5-213.27 Retrial.
Section 5-213.28 Proof of Official Record.
Section 5-213.29 Determination of Foreign Law.
Section 5-213.30 Appointment and Duties of Masters.
Section 5-213.31 Findings by the Court.
Section 5-213.32 Delivery of Verdict.
Section 5-213.33 Requisites of Verdicts.
Section 5-213.34 General and Special Verdict.

Section 5-213.35 Special Verdict and Interrogatories.
Section 5-213.36 Jury Must Assess Amount of Recovery.
Section 5-213.37 Motion for a Directed Verdict and for Judgment Notwithstanding the Verdict.
Section 5-213.38 Provisions Applicable to Trials by Court.
Section 5-213.39 Trial Docket.
Section 5-213.40 Trial Docket Posted.
Section 5-213.41 Order of Trial of Cases Docketed.
Section 5-213.42 Time of Trial.
Section 5-213.43 Continuance.
Section 5-213.44 Trial by Judicial Panel.
Section 5-213.45 Bifurcated Jury Trials.

SECTION 5-213.1 TRIAL DEFINED.

A trial is a judicial examination of the issues, whether of law or fact, in an action brought before a court of proper jurisdiction.

SECTION 5-213.2 TRIAL OF ISSUES.

Issues of law must be tried by the Court. Issues of fact arising in actions for which a jury trial is provided by law may be tried by a jury, if a jury trial is demanded, unless a reference be ordered, as hereinafter provided. All other issues of fact shall be tried to the Court.

SECTION 5-213.3 JURY TRIAL OF RIGHT.

A. **Right Preserved.** The right of a trial by jury as declared by the Constitution or a statute of the Chickasaw Nation or the Indian Civil Rights Act of 1968 shall be preserved inviolate. In all actions regarding a forcible entry and detainer or arising in contract or tort where the amount in controversy, or the value of the property to be recovered, as stated in the prayer for relief or an affidavit of a party or as found by the Court where the amount in controversy is questioned by the affidavit of the adverse party exceeds ten thousand dollars ($10,000), except as otherwise specifically provided by law and in tax cases and in all actions for the involuntary removal of children from the custody of their parents or custodian and the involuntary termination of parental rights, the action may be tried to a jury upon demand of any party. All other actions and issues of fact shall be tried to the Court.

B. **Demand.** Any party entitled to a jury trial may demand a trial by jury of any issue triable of right by a jury pursuant to any law of the Chickasaw Nation by serving upon the

other parties a demand therefore in writing at any time after the commencement of the action and not later than ten (10) days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party. Such demand shall not be effective unless, at the time of filing or at such later time as the Court shall by rule allow, the party making such demand deposit with the Court a reasonable jury fee in such amount as the Court shall by rule determine. The amount of such deposit shall be set by the Court in such amount as may be reasonably necessary to offset the costs of juror fees for the impaneling and trying of the action without being in an amount which may preclude or prevent a party from exercising their right to a jury trial. Such rules shall contain a provision for waiver of the deposit requirement for persons proceeding *in forma pauperis*.

C. **Same; Specification of Issues.** In his demand for a trial by jury, a party may specify the issues which he wished so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within ten (10) days after service of the demand or such lesser time as the Court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

D. **Waiver.** The failure of a party to serve a demand and file it as required by this Section and other Chickasaw law regarding service of process constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without consent of the parties. Even though previously demanded, the trial by jury may be waived by the parties in actions arising on contract and with the assent of the Court in other actions, in the following manner: by the consent of the party appearing, when the other party fails to appear at the trial by himself or attorney; by written consent, in person or by attorney, filed with the Court; or by oral consent, in open court, entered on the journal.

SECTION 5-213.4 TRIAL BY JURY OR BY THE COURT.

A. **By Jury.** When trial by jury has been demanded as provided herein, the action shall be designated upon the docket as a jury action. The trial of all issues shall be by jury, unless:

1. the parties or their attorneys of record, by written stipulation filed with the Court or by an oral stipulation made in open Court and entered in the record, consent to trial by the Court sitting without a jury; or

2. the Court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Constitution and laws of the

Chickasaw Nation or under the Indian Civil Rights Act of 1968.

B. **By the Court.** Issues not demanded for trial by jury as provided in Section 213.3 shall be tried by the Court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the Court in its discretion or upon motion of a party may order a trial by a jury of any or all issues properly triable to a jury.

C. **Advisory Jury and Trial by Consent.** In all actions not triable of right by a jury, the Court upon motion or its own initiative may try any issue with an Advisory Jury or, except in actions against the Chickasaw Nation when a statute of the Chickasaw Nation provides for trial without a jury, the Court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

SECTION 5-213.5 ASSIGNMENT OF CASES FOR TRIAL.

The Court shall provide by rule for the placing of actions upon the trial calendar:

1. without the request of the parties;

2. upon request of a party and notice to the other parties; or

3. in such other manner as the Court deems expedient. Precedence shall be given to actions entitled thereto by any statute of the Chickasaw Nation.

SECTION 5-213.6 CONSOLIDATION; SEPARATE TRIALS.

A. **Consolidation.** When different actions involving a common question of law or fact are pending before the Court, it may order a joint hearing or trial of any or all the matters in issue in the actions. The Court may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delays.

B. **Separate Trials.** The Court, in furtherance of convenience or to avoid prejudice or when separate trials will be conducive to expedition and economy, may order a separate trial of any Claim, cross-claim, counterclaim, or third-party Claim, or of any separate issue or of any number of Claims, cross-claims, counterclaims, or third-party claims, or issues, always preserving inviolate the right to trial by jury as declared by the Constitution or a statute of the Chickasaw Nation or the Indian Civil Rights Act of 1968, as amended.

SECTION 5-213.7 SUMMONING JURY.

The general mode of summoning and impaneling the jury, in cases in which a jury trial may be had, is such as is or may be provided by Article L of this Act.

SECTION 5-213.8 CAUSES FOR CHALLENGING JURORS.

If there shall be impaneled for the trial of any action, any juror who shall have been convicted of any crime which by law renders him disqualified to serve on a jury; or who has been arbitrator on either side relating to the same controversy; or who has an interest in the action; or who has an action pending between him and either party; or who has formerly been a juror on the same Claim; or who is the employer, employee, counselor, agent, steward or attorney of either party; or who is subpoenaed as a witness; or who is of kin to either party within the Second Degree by blood or marriage, such juror may be challenged for such causes. In either of such cases the same shall be considered as a principal challenge and the validity thereof be tried by the Court. Any juror who shall be returned upon the trial of any of the causes hereinbefore specified, against whom no principal cause of challenge can be alleged, may, nevertheless, be challenged on suspicion of prejudice against, or partiality for either party, or any other cause that may render him, at the time, an unsuitable juror, but a resident within the Jurisdiction of the Chickasaw Nation or a citizen of the Chickasaw Nation or any municipality therein shall not be thereby disqualified in actions in which the Chickasaw Nation or such municipality is a party. The validity of all principal challenges and challenges for cause shall be determined by the Court.

SECTION 5-213.9 EXAMINATION OF JURORS.

A. The Court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. The Judge may initiate the *voir dire* examination of jurors by identifying the parties and their respective counsel. He 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.

B. Should the parties or their attorneys be allowed to examine the prospective jurors, the parties or their attorneys shall scrupulously guard against injecting any argument in their *voir dire* examination and shall refrain from asking a juror how he would decide hypothetical

questions involving law or facts. The parties or their attorneys 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.
(PR21-002, 11/21/03)

SECTION 5-213.10 ALTERNATE JURORS.

The Court may direct that not more than three jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to one (1) peremptory challenge in addition to those otherwise allowed by law if alternate jurors are to be

impaneled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by law shall not be used against an alternate juror.

SECTION 5-213.11 ORDER OF CHALLENGES.

The plaintiff first, and afterward the defendant, shall complete his challenges for cause. The parties may then, in turn, in the same order, issue up to three peremptory challenges to jurors.

SECTION 5-213.12 CHALLENGES TO JURORS; FILLING VACANCIES.

After each challenge, the vacancy shall be filled before further challenges are made; and any new juror thus introduced may be challenged for cause as well as peremptorily.

SECTION 5-213.13 ALTERNATE METHOD OF SELECTING JURY.

Notwithstanding other methods authorized by law, the trial judge may direct in his discretion that a jury in an action be selected by calling and seating twelve (12) prospective jurors in the jury box and then examining them on *voir dire*; when twelve (12) such prospective jurors have been passed for cause, each side of the lawsuit shall exercise peremptory challenges out of the hearing of the jury by alternately striking three (3) names each from the list of those so passed for cause, and the remaining six (6) persons shall be sworn to try the case.

If there be more than one (1) defendant in the case and the trial judge determines on motion that there is a serious conflict of interest between them, he may, in his discretion, allow

each defendant to strike three names from the list of jurors seated and passed for cause. In such case, he shall appropriately increase the number of jurors initially called and seated in the jury box for *voir dire* examination.

SECTION 5-213.14 OATH OF JURY.

The jury shall be sworn to well and truly try the matters submitted to them in the case before them, and to give a true verdict, according to the law and the evidence.

SECTION 5-213.15 JURIES OF LESS THAN SIX (6); MAJORITY VERDICT.

All juries shall be composed of six (6) persons and a unanimous verdict shall be required, except that the parties may stipulate that the jury shall consist of any number less than six (6) and greater than two (2), or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

SECTION 5-213.16 ORDER OF TRIAL.

When the jury has been sworn in an action before a jury and in trials to the Court, when the Court is ready to proceed, the trial shall proceed in the following order, unless the Court for special reasons otherwise directs:

1. The party on whom rests the burden of proving the issues may briefly state his case, and the evidence by which he expects to sustain it.

2. The adverse party may then briefly state his defense and the evidence he expects to offer in support of it, or the adverse party may reserve his opening statement until the beginning of the presentation of his evidence.

3. The party on whom rests the burden of proving the issues must first produce his evidence; after he has closed his evidence, the adverse party may interpose a motion for a directed verdict thereto upon the ground that no Claim for relief or defense is proved. If the Court shall sustain the motion, no formal verdict of the jury shall be required and Judgment shall be rendered for the party whose motion for a directed verdict is sustained as the state of the pleadings or the proof shall demand.

4. If the motion for a directed verdict be overruled, the adverse party may then briefly state his case if he did not do so prior to the beginning of the presentation of the evidence, and, shall then produce his evidence.

5. The parties will then be confined to rebutting evidence unless the Court, for good reasons in furtherance of justice, shall permit them to offer evidence in the

original case.

6. After the close of the evidence and when the jury instructions have been finalized by the Court, the parties may then make their closing arguments as to the evidence proved and reasonable inferences to be drawn therefrom. The party having the burden of proving the issue shall first present his argument. Thereafter, the other party shall present his argument, and then, the party having the burden of proof shall have the opportunity for rebuttal argument. The Court may place reasonable limitation upon the time allowed for closing argument; provided, that each side to the action should have the same total time for argument if time restrictions are placed thereon.

7. After the closing arguments of the parties have been completed, the Court shall instruct the jury as to the law of the case, and shall give a copy of the written instructions to the jury for their use during their deliberations.

8. The Court shall then place the bailiff or some other responsible person under oath to secure the jury against interference, and the jury shall retire to determine its verdict.

SECTION 5-213.17 TAKING OF TESTIMONY.

A. **Form.** In all trials, the testimony of witnesses shall be taken orally in open court unless otherwise provided by a law of the Chickasaw Nation or by this Act, the Chickasaw Nation Rules of Evidence or other rules adopted by the Supreme Court of the Chickasaw Nation.

B. **Affirmation in Lieu of Oath.** Whenever under this Act an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

C. **Evidence on Motions.** When a motion is based on facts not appearing of record, the Court may hear the matter on affidavits presented by the respective parties, but the Court may direct that the matter be heard wholly or partly on oral testimony or depositions.

SECTION 5-213.18 EXCEPTIONS UNNECESSARY.

Formal exceptions to rulings or orders of the Court are unnecessary; but it is sufficient that a party, at the time the ruling or order of the Court is made or sought, makes known to the Court the action which he desires the Court to take or his objection to the action of the Court and his grounds therefore; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.

SECTION 5-213.19 INSTRUCTION TO JURY; OBJECTION.

A. At the close of the evidence or at such earlier time during the trial as the Court reasonably directs, any party may file written requests that the Court instruct the jury on the law as set forth in the requests. The Court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the Court shall instruct the jury after the arguments are completed. No party may assign as error the giving or the failure to give an instruction unless he objects thereto or proposes the requested instruction before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

B. All instructions requested and modifications thereof, shall be reduced to writing, numbered, and signed by the party or his attorney asking the same and filed in the record of the case.

C. When either party asks special instructions to be given to the jury, the Court shall either give such instructions as requested, positively refuse to do so, or give the instructions with modification in such manner that it shall distinctly appear what instructions were given in whole or part, and in like manner those refused, so that either party may except to the instructions as asked for, or as modified, or to the modification, or to the refusal.

D. All instructions given by the Court must be numbered and signed by the Judge and filed together with those asked for by the parties as a part of the record.

SECTION 5-213.20 UNIFORM JURY INSTRUCTION.

The Supreme Court, in its discretion, is authorized to promulgate by rule uniform instructions to be given in jury trials of civil or criminal actions, which, if applicable in a civil or criminal action, due regard being given to the facts and prevailing law, shall be used unless the Court determines that the instruction does not accurately state the law.

SECTION 5-213.21 OBJECTIONS TO INSTRUCTIONS; COPIES TO PARTIES.

A party objecting to the giving of instructions or the refusal thereof, shall not be required to file a formal bill of exceptions but it shall be sufficient to make objection thereto by dictating into the record in open Court, out of the hearing of the jury, before the reading of all instructions, the number of the particular instruction that was requested, refused, and objected to, or the

number of the particular instruction given by the Court that is excepted to; provided, further, that the Court shall furnish copies of the instructions to the Plaintiff and Defendant prior to the time said instructions are given by the Court.

SECTION 5-213.22 VIEW BY JURY.

Whenever, in the opinion of the Court, it is proper for the jury to have a view of the property which is the subject of litigation, or of the place in which any material fact occurred, it may order the jury to be conducted, in a body, under the charge of a law enforcement officer or an officer of the Court, to the place which shall be shown to them by some person appointed by the Court for that purpose. While the jury are thus absent, no person, other than the person so appointed, shall speak to them on any subject connected with the trial.

SECTION 5-213.23 DELIBERATIONS OF THE JURY.

When the case is finally submitted to the jury, they shall retire for deliberation. When they retire, they must be kept together in some convenient place, under charge of a law enforcement officer or an officer of the Court, until they agree upon a verdict or be discharged by the Court, subject to the discretion of the Court, to permit them to separate temporarily at night and at their meals. The officer having them under this charge shall not suffer any communication to be made to them or make himself, except to ask them if they are agreed upon their verdict, and to communicate a request by the jury to the Court in open Court, unless by order of the Court, and he shall not, before their verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

SECTION 5-213.24 ADMONITION OF JURY ON SEPARATION.

If the jury are permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the Court that it is their duty not to converse with, or suffer themselves to be addressed by, any other person on any subject of the trial, and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them.

SECTION 5-213.25 INFORMATION AFTER RETIREMENT.

After the jury has retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed as to any part of the testimony, or if they desire to be informed as to any part of the law arising in the case, they may request the officer to conduct them to the Court where the information on the point of law shall be given in writing, and the Court may give its recollections as to the testimony on the point in dispute or

cause the same to be read by the stenographer or played back on an electronic recording device by the reporter in the presence of, or after notice to, the parties or their counsel. Upon motion in appropriate circumstances, the Court may order that other portions of the record relating to the same issue also be read or played back to the jury upon the questioned point.

SECTION 5-213.26 WHEN THE JURY MAY BE DISCHARGED.

The jury may be discharged by the Court on account of the sickness of a juror or other accident or calamity requiring their discharge, or by consent of both parties, or after they have been kept together, until it satisfactorily appears to the Court that there is no probability of their agreeing.

SECTION 5-213.27 RETRIAL.

In all cases where the jury are discharged during the trial, or after the cause is submitted to them, it may be tried again immediately or at a future time as the Court may direct.

SECTION 5-213.28 PROOF OF OFFICIAL RECORD.

A. **Authentication.**

1. **Domestic.** An official record kept within the United States or a jurisdiction of another federally recognized Indian tribe or Alaskan Native tribe or organization, state, district, commonwealth, territory, or insular possession thereof, or within the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record or by his deputy and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept and authenticated by the seal of such court, or may be made by any public office having a seal of office and having official duties in the district or political subdivision in which the record is kept and authenticated by the seal of his office.

2. **Foreign.** A foreign official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof, or a copy thereof, attested by a person authorized to make the attestation and accompanied by a final certification as to the genuineness of the signature and official position a) of the attesting person, or b) of any foreign official whose certificate of genuineness of signature and

official position related to the attestation or is in a chain of certificate of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the Court may, for good cause shown, a) admit an attested copy without final certification, or

b) permit the foreign official record to be evidenced by an attested summary with or without a final certification.

B. **Lack of Record.** A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in Paragraph A.1 above in the case of a domestic record or complying with the requirements of Paragraph A.2 above for summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

C. **Other Proof.** This Section does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

SECTION 5-213.29 DETERMINATION OF FOREIGN LAW.

A party who intends to raise an issue concerning the law of a foreign jurisdiction shall give notice in his pleadings or other reasonable written notice. The Court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Chickasaw Nation Rules of Evidence. The Court's determination shall be treated as a ruling on a question of law. The Court shall take judicial notice of the law of any foreign jurisdiction within the United States published in an official publication of that jurisdiction upon reasonable notice of the law in question. The term "foreign jurisdiction within the United States" includes every federally recognized Indian tribe, every state, territory, or possession of the United States, the United States, and their political subdivisions and agencies.

SECTION 5-213.30 APPOINTMENT AND DUTIES OF MASTERS.

A. **Appointment and Compensation.** The District Court with the concurrence of a majority of the Supreme Court Justices may appoint one (1) or more standing Masters, and the trial judge, in an appropriate case, may appoint a special Master to act in a particular case. The word "Master" includes a referee, an auditor, and an examiner, a commissioner, and an assessor. The compensation to be allowed to a master shall be fixed by the Court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action which is in the custody and control of the Court as the Court may direct. The Master shall not retain his report as security for his compensation; but when the party ordered to pay the compensation allowed by the Court does not pay it after notice and within the time prescribed by the Court, the Master is entitled to a writ of execution against the delinquent party.

B. **Reference.** A reference to a Master shall be the exception and not the rule. In action to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matter of account and of difficult computation of

damages, a reference shall be made only upon a showing that some exceptional condition requires it.

C. **Powers.** The order of reference to the Master may specify or limit his powers and may direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the Master's report. Subject to the specifications and limitations stated in the order, the Master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. He may rule upon the admissibility of evidence unless otherwise directed by the order or reference and has the authority to put witnesses on oath and may himself examine them, and may call the parties to the action and examine them upon oath. When a party so requests, the Master shall make a record of the

evidence offered and excluded in the same manner and subject to the same limitations as provided for a Court sitting without a jury.

D. **Proceedings.**

1. **Meetings.** When a reference is made, the Court Clerk shall forthwith furnish the Master with a copy of the order of reference. Upon receipt thereof, unless the order of reference otherwise provides, the Master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within twenty (20) days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the Master to proceed with all reasonable diligence. Either party, on notice to the parties and Master, may apply to the Court for an order requiring the Master to speed the proceedings and to make his report. If a party fails to appear at the time and

place appointed, the Master may proceed *ex parte*, or, in his discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

2. **Witnesses.** The parties may procure the attendance of witnesses before the Master by the issuance and service of subpoenas. If without adequate excuse a witness fails to appear or give evidence, he may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided herein.

3. **Statement of Accounts.** When matters of accounting are in issue before the Master, he may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified

public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the Master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as he directs.

E. **Report.**

1. **Content and Filing.** The Master shall prepare a report upon the matters submitted to him by the order of reference and, if required to make findings of fact and conclusions of law, he shall set them forth in the report. He shall file the report with the Clerk of the Court and in an action to be tried without a jury, unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The Clerk shall forthwith mail to all parties notice of the filing.

2. **In Non-Jury Actions.** In an action to be tried without a jury, the Court shall accept the Master's findings of fact unless clearly erroneous. Within ten (10) days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the Court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed by Chickasaw law. The Court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

3. **In Jury Actions.** In an action to be tried by a jury the Master shall not be directed to report the evidence. His findings upon the issues submitted to him are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the Court upon any objections in point of law which may be made to the report.

4. **Stipulation as to Findings.** The effect of a Master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a Master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

5. **Draft Report.** Before filing his report, a Master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

SECTION 5-213.31 FINDINGS BY THE COURT.

A. **Effect.** In all actions tried upon the facts without a jury or with an advisory jury, the Court shall find the facts specially and state separately its conclusions of law thereon,

and Judgment shall be entered pursuant to Section 5-214.7; and in granting or refusing interlocutory injunctions the Court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Request for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a Master, to the extent that the Court adopts them, shall be considered as the findings of the Court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein.

B. **Amendment.** Upon motion of a party made not later than ten (10) days after entry of Judgment, the Court may amend its findings or make additional findings and may amend the Judgment accordingly. The motion may be made with a motion for a new trial. When findings of fact are made in actions tried by the Court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the Court an objection to such findings or has made a motion to amend them or a motion for Judgment.

SECTION 5-213.32 DELIVERY OF VERDICT.

When the jury have agreed upon their verdict they must be conducted into Court, and their verdict rendered by their foreman. When the verdict is announced, either party may require the jury to be polled, which is done by the Court asking each juror if it is his verdict. If anyone answers in the negative, the jury must again be sent out, for further deliberation.

SECTION 5-213.33 REQUISITES OF VERDICTS.

The verdict shall be written, signed by the foreman and read by the clerk to the jury, and the inquiry made whether it is their verdict. If any juror disagrees, the jury must be sent out again; but if no disagreement be expressed, and neither party requires the jury to be polled, the verdict is complete and the jury discharged from the case. If, however, the verdict be defective in form only, the same may, with the assent of the jury, before they are discharged, be corrected by the Court.

SECTION 5-213.34 GENERAL AND SPECIAL VERDICT.

The verdict of a jury is either general or special. A general verdict is either that by which they pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury finds facts only. It must present the facts as established by the evidence and not the evidence to prove them; and they must be so presented as that nothing remains to the Court but to draw from their conclusions of law.

SECTION 5-213.35 SPECIAL VERDICT AND INTERROGATORIES.

A. **Special Verdicts.** The Court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the Court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use other methods of submitting the issues and requiring the written findings thereon as it deems most appropriate. The Court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the Court omits any issue of fact raised by the pleadings or by the evidence, each party waived his right to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand the Court may make a finding; or, if it fails to do so it shall be deemed to have made a finding in accord with the Judgment on the special verdict.

B. **General Verdict Accompanied by Answer to Interrogatories.** The Court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one (1) or more issues of fact the decision of which is necessary to a verdict. The Court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the Court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are consistent with each other, Judgment shall be entered thereon, but, when the answers to one (1) or more interrogatories is inconsistent with the general verdict, Judgment may be

entered pursuant to Section 5-214.7 in accordance with the answers, notwithstanding the general verdict, or the Court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one (1) or more is likewise inconsistent with the general verdict, Judgment shall not be entered, but the Court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

SECTION 5-213.36 JURY MUST ASSESS AMOUNT OF RECOVERY.

When, by the verdict either party is entitled to recover money of the adverse party, the jury, in their verdict, must assess the amount of recovery.

SECTION 5-213.37 MOTION FOR A DIRECTED VERDICT AND FOR JUDGMENT NOTWITHSTANDING THE VERDICT.

A. **Motion for Directed Verdict; When Made; Effect.** A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not

granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for directed verdict shall state the specific grounds therefore. The order of the Court granting a motion for a directed verdict is effective without assent of the jury.

B. **Motion for Judgment Notwithstanding the Verdict.** Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the Court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Not later than ten (10) days after entry of Judgment, a party who has moved for a directed verdict may move to have the verdict and any Judgment entered thereon set aside and to have Judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned such party, within ten (10) days after the jury has been discharged, may move for Judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned the Court may allow the Judgment to stand or may reopen the Judgment and either order a new trial or direct the entry of the Judgment as if the requested verdict has been directed. If no verdict was returned the Court may direct the entry of Judgment as if the requested verdict has been directed or may order a new trial.

C. **Same: Conditional Rulings on Grant of Motion.**

1. If the motion for Judgment notwithstanding the verdict, provided for in Subsection B above, is granted, the Court shall also rule on the motion for a new trial, if

any, by determining whether it should be granted if the Judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the Judgment. In case the motion for a new trial has been conditionally granted and the Judgment is reversed on appeal, the new trial shall proceed unless the Supreme Court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the Judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the Supreme Court.

2. The party whose verdict has been set aside on motion for Judgment notwithstanding the verdict may serve a motion for a new trial pursuant to Section 5-
214.8 not later than ten (10) days after entry of the Judgment notwithstanding the verdict.

D. **Same: Denial of Motion.** If the motion for Judgment notwithstanding the verdict is denied, the party who prevailed on that motion may, on appeal, assert grounds entitling him to a new trial in the event the Supreme Court concludes that the trial court erred in denying the motion for Judgment notwithstanding the verdict. If the Supreme Court reverses

the Judgment, nothing in this Section precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

SECTION 5-213.38 PROVISIONS APPLICABLE TO TRIALS BY COURT.

The provisions of this Article M respecting trials by jury apply, so far as they are in their nature applicable, to trials by the Court.

SECTION 5-213.39 TRIAL DOCKET.

A trial docket shall be made out by the Clerk of the Court at least fifteen (15) days before the first day of each jury or non-jury docket of the Court, and the actions shall be set for particular days in the order prescribed by the Judge of the Court, and so arranged that the cases set for each day shall be considered as nearly as may be on that day. The trial docket shall be promptly mailed by the Clerk to each party or their attorney of record whose action is placed on the trial docket.

SECTION 5-213.40 TRIAL DOCKET POSTED.

The Clerk shall make out a copy of the trial docket before the first day of the docket of the Court and cause the same to be available to the public by posting such copy at appropriate places as determined by the Court.

SECTION 5-213.41 ORDER OF TRIAL OF CASES DOCKETED.

The trial of an issue of fact and the assessment of damages in any case shall be in the order in which they are placed on the trial docket, unless by the request of the parties with the approval of the Court or the order of the Court, they are continued or placed at the heel of the docket, unless the Court shall otherwise direct. The Court may, in its discretion, hear at any time a motion and may by rule prescribe the time for hearing motions.

SECTION 5-213.42 TIME OF TRIAL.

A. Actions shall be triable at the first trial docket of the Court after or during which the issues therein by the time fixed for pleading are or shall have been made up and discovery completed. When the issues are made up and discovery completed, or when the defendant has failed to plead within the time fixed, the cause shall be placed on the trial docket and shall stand for trial at such term twenty (20) days after the issues are made up and discovery completed and shall, in case of default, stand for trial forthwith.

B. The Court shall arrange its business so that two (2) non-jury trial dockets and two

(2) jury trial dockets are completed during each calendar year, unless the Court by order determines that additional trial dockets are necessary to promptly dispose of the cases pending before the Court.

SECTION 5-213.43 CONTINUANCE.

The trial of an action shall not be continued upon the stipulation of the parties alone but may be continued upon order of the Court.

SECTION 5-213.44 TRIAL BY JUDICIAL PANEL.

A. The Supreme Court may provide by rule for the trial of any action in the District Court by judicial panel in any or all cases when no jury is allowed by law or demanded by the parties. The judicial panel shall consist of the presiding Judge to whom the case was assigned, who shall make all rulings on questions of law during the trial of the action, and two (2) or more Judges, Special Judges, or Magistrates who shall hear the evidence. The Chief Justice of the Supreme Court, with the consent of the majority of the Justices, is hereby authorized to freely

appoint any person licensed to practice law before the Court as a Judge, Special Judge or Magistrate for the purpose of sitting upon a judicial panel and may compensate such person out of the Court fund reasonable compensation for his services in an amount not exceeding the daily rate paid to regular Judges of the Court.

B. The judicial panel shall jointly, by majority vote, determine the facts proved by the evidence and the panel shall enter findings of fact and conclusions of law as in a trial before a single Judge.

C. In a trial before a judicial panel, the votes of the Judges on the panel shall not be revealed but the verdict and Judgment shall be entered in accordance with the panel's findings of fact and conclusions of law.

SECTION 5-213.45 BIFURCATED JURY TRIALS.

A. The Supreme Court may provide by rule for the bifurcation of any jury trial in a civil action sounding in tort so that the jury shall first hear evidence on, and render its verdict upon, the issue of liability and thereafter hear evidence on and render its verdict upon the issue of the amount of damages if liability has been found.

B. In such bifurcated trials, evidence of insurance coverage or similar agreements by third parties to pay any part of a Judgment, and the nature and extent of such coverage or agreement shall be admissible and relevant to the issue of damages.

C. In any such cases not provided for by Court rule, the case may be determined in bifurcated proceedings as stated in Subsections A and B above by stipulation of the parties.

ARTICLE N
PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

Section 5-214.1 Seizure of Person or Property.
Section 5-214.2 Receivers Appointed by the Courts.
Section 5-214.3 Deposit in Court.
Section 5-214.4 Process on Behalf of and Against Persons not Parties.
Section 5-214.5 Security; Proceedings against Sureties.
Section 5-214.6 Execution.
Section 5-214.7 Injunction Defined.
Section 5-214.8 Cause for Injunction; Temporary Restraining Order.
Section 5-214.9 Temporary Restraining Order; Notice; Hearing; Duration.
Section 5-214.10 Temporary Restraining Order; Service.
Section 5-214.11 Preliminary Injunction.
Section 5-214.12 Preliminary Injunction; Criteria.
Section 5-214.13 Form and Scope of Injunction or Restraining Order.
Section 5-214.14 Employer and Employee; Interpleader; Constitutional Cases.
Section 5-214.15 Security.
Section 5-214.16 Use of Affidavits.
Section 5-214.17 Injunction by Defendant.
Section 5-214.18 Injunction is Equitable.
Section 5-214.19 Modification of Preliminary Injunction.
Section 5-214.20 Modification of Permanent Injunction; Separate Action.
Section 5-214.21 Injunctions Tried to the Court.
Section 5-214.22 Enforcement of Restraining Orders and Injunctions.
Section 5-214.23 Order of Delivery; Procedure.
Section 5-214.24 Penalty for Damage of Property Subject to Order of Delivery.
Section 5-214.25 Undertaking in Replevin.
Section 5-214.26 Replevin Bond; Value.
Section 5-214.27 Order of Delivery.
Section 5-214.28 Order Returnable.
Section 5-214.29 Execution of Order.
Section 5-214.30 Re-delivery on Bond.
Section 5-214.31 Exception to Sureties.
Section 5-214.32 Proceedings on Failure to Prosecute Action.
Section 5-214.33 Judgment; Damages; Attorney Fees.
Section 5-214.34 Officer May Break into Buildings.
Section 5-214.35 Compelling Delivery by Attachment.
Section 5-214.36 Improper Issue of Order of Delivery.

Section 5-214.37	Joinder of Cause of Action for Debt; Stay of Judgment.
Section 5-214.38	Grounds for Attachment.
Section 5-214.39	Attachment Affidavit.
Section 5-214.40	Attachment Bonds.
Section 5-214.41	Order of Attachment.
Section 5-214.42	When Returnable.
Section 5-214.43	Order of Execution.
Section 5-214.44	Execution of Attachment Order.
Section 5-214.45	Service of Order.
Section 5-214.46	Re-delivery on Bond.
Section 5-214.47	Nature of Garnishment.
Section 5-214.48	When Garnishment Available After Judgment; Written Directions Relating to Order of Garnishment.
Section 5-214.49	Answer of Garnishee; Form; Instructions.
Section 5-214.50	Effects of Offsets Claimed by Garnishee.
Section 5-214.51	Trial.
Section 5-214.52	Judgment in Garnishment Proceedings.
Section 5-214.53	Bond of Defendant for Payment of Judgment.
Section 5-214.54	Forms to be Used.
Section 5-214.55	Child Support Payment; Income Assignment or Garnishment Proceedings.
Section 5-214.56	Income Assignment Proceedings.
Section 5-214.57	Payments Pursuant to Income Assignment.
Section 5-214.58	Appointment of Receiver.
Section 5-214.59	Persons Ineligible.
Section 5-214.60	Oath and Bond.
Section 5-214.61	Powers of Receiver.
Section 5-214.62	Investment of Funds.
Section 5-214.63	Disposition of Property Litigated.
Section 5-214.64	Punishment for Disobedience of Court.
Section 5-214.65	Vacation of Appointment by Supreme Court.
Section 5-214.66	Definitions of Direct Contempt of Court and Indirect Contempt of Court.
Section 5-214.67	Judge's Power to Cite Contempt; Impose Censure; Notice and Opportunity; Sanction.
Section 5-214.68	Punishment for Contempt; Failure to Comply Child Support and Other Orders.
Section 5-214.69	Indirect Contempts; Notice; Appearance Bond.
Section 5-214.70	Violation of Child Custody Court Order; Defense; Emergency or Protective Custody.
Section 5-214.71	Failure to Appear for Jury Service; Good Cause; Sanctions; Penalties.
Section 5-214.72	Substance of Offense Made Part of Record.

SECTION 5-214.1 SEIZURE OF PERSON OR PROPERTY.

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the Judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the Chickasaw Nation existing at the time the remedy is sought.

SECTION 5-214.2 RECEIVERS APPOINTED BY THE COURTS.

An action wherein a receiver has been appointed shall not be dismissed except by order of the Court. The practice in the administration of estates by receivers or by other similar officers appointed by the Court shall be in accordance with Chickasaw Nation probate law, or, if none, then the practice heretofore followed in the courts of the United States or as provided in rules
promulgated by the Court. In all other respects, the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by this Article N.

SECTION 5-214.3 DEPOSIT IN COURT.

In an action in which any part of the relief sought is a Judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of Court, may deposit with the Court all or any part of such sum or thing. Money paid into the Court under this Section shall be deposited and withdrawn in accordance with Chickasaw Nation law detailing accounting procedures for the Court Clerk's Office, and if there be none, then in accordance with the Chickasaw Nation procedure for the administration and accounting of federal grant monies, upon order of the Court.

SECTION 5-214.4 PROCESS ON BEHALF OF AND AGAINST PERSONS NOT PARTIES.

When an order is made in favor of a person who is not a party to the action, he may enforce obedience to the order by the same process as if he were a party. When obedience to an order may be lawfully enforced against a person who is not a party, he is liable to the same process for enforcing obedience to the order as if he were a party.

SECTION 5-214.5 SECURITY; PROCEEDINGS AGAINST SURETIES.

Whenever this Act or other Chickasaw Nation law requires or permits the giving of security by a party and security is given in the form of a bond or stipulation or other undertaking with one (1) or more sureties, each surety submits himself to the jurisdiction of the Court and irrevocably appoints the Clerk of the Court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion

without the necessity of an independent action. The motion and such notice of the motion as the Court prescribes may be served on the Clerk of the Court, who shall forthwith mail copies to the sureties if their addresses are known.

Any surety authorized to give a bond, stipulation or other undertaking in either the federal courts or the courts within the State of Oklahoma and any individual approved by the Court who resides within the Territorial Jurisdiction of the Chickasaw Nation (except officers of the Court or elected Chickasaw Nation officials) shall be eligible to give such bond, stipulation or undertaking in the Court under this Act or other Chickasaw Nation law unless otherwise prohibited by Chickasaw Nation law.

SECTION 5-214.6 EXECUTION.

A. **In General**. Process to enforce a Judgment for the payment of money shall be a writ of execution, unless the Court directs otherwise. In aid of the Judgment or execution, the Judgment creditor or his successor in interest when that interest appears of record, may obtain discovery from any person, including the Judgment debtor, in the manner provided in this Act.

B. **Against Certain Public Officers.** When a Judgment otherwise authorized has been entered against a collector or other officer of revenue of the Chickasaw Nation or against any officer, or employee, or agency of the Chickasaw Nation in their official capacity; or if Judgment is entered against an individual in his personal capacity who purported to act as an officer or employee of the Chickasaw Nation, and the Court has given certificate of probable cause for his act wherein the Court determines that the individual had probable cause to believe that his action was authorized by the Chickasaw Nation in his official capacity, execution shall not issue against the officer or his property but the final Judgment shall be satisfied as may be provided by appropriation of such Judgment (or such part thereof as the legislative body of the Chickasaw Nation deems permissible considering the extent of available Chickasaw Nation resources) from available Chickasaw Nation funds. This Section is not intended, nor shall it be construed, as a waiver of sovereign immunity.

SECTION 5-214.7 INJUNCTION DEFINED.

The injunction provided for by this Article N is a command to refrain from or to do a particular act for the benefit of another. It may be the final Judgment in an action, or may be allowed as a provisional remedy, and when so allowed, it shall be by order.

SECTION 5-214.8 CAUSE FOR INJUNCTION; TEMPORARY RESTRAINING ORDER.

When it appears, by the verified complaint or an affidavit that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which, during the litigation, would produce injury to the plaintiff; or when, during the litigation, it appears that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the Judgment ineffectual, a temporary restraining order and preliminary injunction may be granted to restrain such act. And when, during the pendency of an action, it shall appear, by affidavit or proof, that the defendant threatens or is about to remove or dispose of his property with intent to defraud his creditors, or to render the Judgment ineffectual, a temporary restraining order and preliminary injunction may be granted to restrain such removal or disposition. It may, also, be granted in any case where it is specially authorized by statute.

SECTION 5-214.9 TEMPORARY RESTRAINING ORDER; NOTICE; HEARING; DURATION.

A. A temporary restraining order may be granted after commencement of the action without written or oral notice to the adverse party or his attorney only if:

1. it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition; and

2. the applicant's attorney certifies to the Court in writing the efforts, if any, which have been made to give the notice and the reasons supporting a Claim that notice should not be required.

B. Temporary restraining orders should not be granted except in cases of extreme urgency. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed ten (10) days, as the Court fixes, unless within the time so fixed the order, for good cause shown, is extended for like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and take precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the Court shall dissolve the temporary

restraining order. On two (2) days notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the Court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the Court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

SECTION 5-214.10 TEMPORARY RESTRAINING ORDER; SERVICE.

Temporary restraining orders shall be served in the same manner as provided for service of the summons and complaint.

SECTION 5-214.11 PRELIMINARY INJUNCTION.

A. **Notice.** No preliminary injunction shall be issued without notice to the adverse party. Notice may be in the form of an order to appear at a designated time and place and show cause why a proposed preliminary injunction should not be issued, or in such form as the Court shall direct. The burden of showing the criteria for issuance of a preliminary injunction remains with the moving party.

B. **Consolidation of Hearing With Trial on Merits.** Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This Subsection B shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

SECTION 5-214.12 PRELIMINARY INJUNCTION; CRITERIA.

Unless a statute of the Chickasaw Nation provides specifically for preliminary injunctive relief upon a showing of particular circumstances, no preliminary injunction shall be granted unless upon hearing the evidence presented by the parties the Court determines that:

1. there is a substantial likelihood that the moving party will eventually prevail on the merits of their Claim for a permanent injunction or other relief;

2. the moving party will suffer irreparable injury unless the preliminary injunction issues. Irreparable injury means an injury which cannot be adequately remedied by a Judgment for money damages;

3. the threatened injury to the moving party outweighs whatever damage or injury the proposed preliminary injunction may cause the opposing party; and

4. the preliminary injunction, if issued, would not be adverse to the public interest, and would not violate the public policy of the Chickasaw Nation or the United States.

SECTION 5-214.13 FORM AND SCOPE OF INJUNCTION OR RESTRAINING ORDER.

Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

SECTION 5-214.14 EMPLOYER AND EMPLOYEE; INTERPLEADER; CONSTITUTIONAL CASES.

This Chapter does not modify any statute of the Chickasaw Nation relating to temporary restraining orders and preliminary injunctions in actions affecting employer and employee; or relating to preliminary injunctions in actions of interpleader or in the nature of interpleader; or any other case where temporary restraining orders or preliminary injunctions are expressly authorized or prohibited upon certain express terms or conditions.

SECTION 5-214.15 SECURITY.

A. No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant in such sum as the Court deems proper for the payment of such costs, damages and a reasonable attorney fee as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the Chickasaw Nation or of an officer or agency thereof.

B. The provisions of Section 5-214.5 apply to a surety upon a bond or undertaking under this Section.

C. A party enjoined by a preliminary injunction may, at any time before final Judgment, upon reasonable notice to the party who has obtained the preliminary injunction, move the Court for additional security, and if it appears that the surety in the undertaking has removed from the Chickasaw Nation Jurisdiction or is insufficient, the Court may vacate the preliminary injunction unless sufficient surety be given in a reasonable time upon such terms as may be just and equitable.

SECTION 5-214.16 USE OF AFFIDAVITS.

On the hearing for a restraining order or preliminary injunction, each party may submit affidavits which shall be filed as a part of the record.

SECTION 5-214.17 INJUNCTION BY DEFENDANT.

A defendant may obtain a temporary restraining order or preliminary injunction upon filing his answer containing an appropriate counterclaim. He shall proceed in the manner hereinbefore prescribed.

SECTION 5-214.18 INJUNCTION IS EQUITABLE.

Relief by way of a restraining order, preliminary, or permanent injunction is of equitable cognizance and shall be issued or refused in the sound discretion of the Court. Relief by way of injunction shall be denied where the moving party may be adequately compensated for his injuries in money damages. The Court shall not enjoin the enforcement of the Chickasaw Nation tax laws or the collection of Chickasaw Nation taxes except to the extent that such relief is specifically provided for in those tax laws. No injunction shall issue to control the discretion or action of a Governmental officer or employee when such officer or employee has been delegated the authority to exercise his discretion in determining how to act upon the subject matter, and is acting or refusing to act in a manner not prohibited by Chickasaw Nation law or the Indian Civil Rights Act of 1968, as amended.

SECTION 5-214.19 MODIFICATION OF PRELIMINARY INJUNCTION.

If the preliminary injunction be granted, the defendant, at any time before the trial, may apply, upon notice, to the Court to vacate or modify the same. The application may be made upon the complaint and affidavits upon which the injunction is granted or upon affidavits on the part of the party enjoined, with or without answer. The order of the Court allowing, dissolving or modifying an injunction shall be returned to the Clerk of the Court and recorded.

SECTION 5-214.20 MODIFICATION OF PERMANENT INJUNCTION; SEPARATE ACTION.

A final Judgment containing a permanent injunction may be modified or dissolved by separate action upon a showing that the facts and circumstances have changed to the extent that the injunction is no longer just and equitable or that the injunction is no longer needed to protect the rights of the parties.

SECTION 5-214.21 INJUNCTIONS TRIED TO THE COURT.

All injunctive actions shall be tried to the Court and not to a jury unless the Court orders an advisory jury pursuant to Subsection 5-213.4.C of this Act.

SECTION 5-214.22 ENFORCEMENT OF RESTRAINING ORDERS AND INJUNCTIONS.

A restraining order of injunction granted by a Judge may be enforced as the act of the Court. Disobedience of any injunction may be punished as a contempt, by the Court or any Judge who might have granted it. An attachment may be issued by the Court or Judge, upon being satisfied, by affidavit or testimony, of the breach of the injunction against the party guilty of the same who may be required to make immediate restitution to the party injured and give further security to obey the injunction; or, in default thereof, he may be committed to close custody, until he shall fully comply with such requirements, be otherwise legally discharged or be punished by fine not exceeding two hundred dollars ($200) for each day of, or separate act of, contempt, to be paid into the Court fund, or by confinement for not longer than sixty (60) days.

SECTION 5-214.23 ORDER OF DELIVERY; PROCEDURE.

A. The plaintiff in an action to recover the possession of specific personal property may Claim the delivery of the property at the commencement of suit, as provided herein.

1. The complaint must allege facts which show:

a. a description of the property claimed;

b. that the plaintiff is the owner of the property or has a special ownership or interest therein, stating the facts in relation thereto, and that he is entitled to the immediate possession of the property;

c. that the property is wrongfully detained by the defendant;

d. the actual value of the property, provided that when several articles are claimed, the value of each shall be stated as nearly as practicable;

e. that the property was not taken in execution on any order or Judgment against said plaintiff, or for the payment of any tax, fine or amercement assessed against him, or by virtue of an order of delivery issued under this Title, or any other means or final process issued against said plaintiff;

or, if taken in execution or on any order or Judgment against the plaintiff, that it is exempt by law from being so taken; and

f. the prayer for relief requests that the Court issue an order for the immediate delivery of the property.

2. The above allegations are verified by the party or, when the facts are within the personal knowledge of his agent or attorney and this is shown in the verification, by said agent or attorney.

3. A notice shall be issued by the Clerk and served on the defendant with the summons which shall notify the defendant that an order of delivery of the property described in the complaint is sought and that the defendant may object to the issuance of such an order by a written objection which is filed with the Clerk and delivered or mailed to the plaintiff's attorney within five (5) days of the service of the summons. In the event that no written objection is filed within the five-day period, no hearing is necessary and

the Court Clerk shall issue the order of delivery. Should a written objection be filed within the five-day period specified, the Court shall, at the request of either party, set the matter for prompt hearing. At such hearing the Court shall proceed to determine whether the order for prejudgment delivery of the property should issue according to the probable merit of the plaintiff's complaint. Provided, however, that no order of delivery may be issued until an undertaking has been executed pursuant to Section 5-214.25 of this Title.

4. Nothing in this Act shall prohibit a party from waiving his right to a hearing or from voluntarily delivering the goods to the party seeking them before the commencement of the proceedings or at any time after institution thereof.

B. Where the notice that is required by Subsection A above cannot be served on the defendant but the Judge finds that a reasonable effort to serve him was made and at the hearing the plaintiff has shown the probable truth of the allegations in his complaint, the Court may issue an order for the prejudgment delivery of the property. If an order for the prejudgment delivery of the property is issued without actual notice being given the defendant, the defendant may move to have said order dissolved and if he does not have possession of the property, for a return of the property. Notice of the right to move for return of said property shall be contained in the order for seizure and delivery of such property which shall be served upon the defendant or left in a conspicuous place where the property was seized, and the law enforcement agency designated by the Governor shall hold said property in such cases for three (3) working days prior to delivery to the plaintiff in order to give the defendant a reasonable opportunity to move for the return of such property. Notice of said motion with the date of the hearing shall be served upon the attorney for the plaintiff in the action. The motion shall be heard promptly, and

in any case within ten (10) days after the date it is filed. The Court must grant the motion unless, at the hearing on defendant's motion, the plaintiff proves the probable truth of the allegations contained in his complaint. If said motion and notice is filed before the law enforcement agency designated by the Governor turns the property over to the plaintiff, such law enforcement agency shall retain control of the property pending the hearing on the motion.

C. The Court may, on request of the plaintiff, order the defendant not to conceal, damage or destroy the property or a part thereof and not to remove the property or a part thereof from the Jurisdiction of the Chickasaw Nation pending the hearing on plaintiff's request for an order for the prejudgment delivery of the property, and said order may be served with the summons.

SECTION 5-214.24 PENALTY FOR DAMAGE OF PROPERTY SUBJECT TO ORDER OF DELIVERY.

Any person who willfully and knowingly damages property in which there exists a valid right to issuance of an order of delivery, or on which such order has been sought under the provisions of this Title, or who conceals it, with the intent to interfere with enforcement of the order, or who removes it from the jurisdiction of the Court with the intention of defeating enforcement of an order of delivery, or who willfully refuses to disclose its location to an officer charged with executing an order for its delivery, or, if such property is in his possession, willfully interferes with the officer charged with executing such writ, may be held in civil contempt of Court, and shall be guilty of an offense, and if convicted of such offense shall be subject to a fine of not more than five hundred dollars ($500) and imprisonment for a term of not more than six (6) months, or both; and, in addition to such civil and criminal penalties, shall be liable to the plaintiff for double the amount of damage done to the property together with a reasonable attorney's fee to be fixed by the Court, in which damages and fee shall be deemed based upon tortious conduct and enforced accordingly.

SECTION 5-214.25 UNDERTAKING IN REPLEVIN.

The order shall not be issued until there has been executed by one (1) or more sufficient sureties of the plaintiff, to be approved by the Court, an undertaking in not less than double the value of the property as stated in the complaint to the effect that the plaintiff shall duly prosecute the action, and pay all costs and damages which may be awarded against him, including attorney's fees and, if the property be delivered to him, that he will return the same to the defendant if a return be adjudged; provided, that where the Chickasaw Nation or its agents or subdivisions is a party plaintiff, an undertaking in replevin shall not be required of the plaintiff but a writ shall issue upon complaint duly filed as provided by law. The undertaking shall be filed with the Court and shall be subject to the provisions of Section 5-214.5 of this Title.

SECTION 5-214.26 REPLEVIN BOND; VALUE.

On application of either party which is made at the time of executing the replevin bond or the redelivery bond, or at a later date, with notice to the adverse party, the Court may hold a hearing to determine the value of the property which the plaintiff seeks to replevy. If the value as determined by the Court is different from that stated in the complaint, the value as determined by the Court shall control for the purpose of Sections 5-214.25 and 5-214.30 of this Title.

SECTION 5-214.27 ORDER OF DELIVERY.

The order for the delivery of the property to the plaintiff shall be addressed and delivered to the commanding officer of the law enforcement agency designated by the Governor. It shall

state the names of the parties, the Court in which the action is brought, and command the law enforcement agency to take the property, describing it, and deliver it to the plaintiff as prescribed in this Act, and to make return of the order on a day to be named therein.

SECTION 5-214.28 ORDER RETURNABLE.

The return day of the order of delivery, when issued at the commencement of the suit, shall be the same as that of the summons; when issued afterwards, it shall be ten (10) days after it is issued.

SECTION 5-214.29 EXECUTION OF ORDER.

The commanding officer of the law enforcement agency designated by the Governor shall execute or cause the execution of the order by taking the property therein mentioned. He shall also deliver a copy of the order to the person charged with the unlawful detainer of the property, or leave such copy at his usual place of residence, or at the place such property was seized.

SECTION 5-214.30 RE-DELIVERY ON BOND.

If, within three (3) working days after service of the copy of the order, there is executed one (1) or more sufficient sureties of the defendant, to be approved by the Court or the commanding officer of the law enforcement agency designated by the Governor, an undertaking to the plaintiff in not less than double the amount of the value of the property as stated in the affidavit of the plaintiff to the effect that the defendant will deliver the property to the plaintiff, if such delivery be adjudged, and will pay all costs and damages that may be awarded against him, the commanding officer of the law enforcement agency designated by the Governor shall return or shall cause the return the property to the defendant. If such undertaking be not given within three (3) working days after service of the order, the commanding officer of the law

enforcement agency designated by the Governor shall return or shall cause the return the property to the plaintiff.

SECTION 5-214.31 EXCEPTION TO SURETIES.

Any party for whose benefit an undertaking is made may except at any time to the sufficiency of the sureties on such undertaking. Such exception shall be made in writing and filed with the Court. Upon hearing, the Court shall make an order as is just to safeguard the rights of the parties.

SECTION 5-214.32 PROCEEDINGS ON FAILURE TO PROSECUTE ACTION.

If the property has been delivered to the plaintiff and Judgment rendered against him or his action be dismissed, or if he otherwise fails to prosecute his action to final judgment, the Court shall, on application of the defendant or his attorney, proceed to inquire into the right of property and right of possession of the defendant to the property taken.

SECTION 5-214.33 JUDGMENT; DAMAGES; ATTORNEY FEES.

In an action to recover the possession of personal property, Judgment for the plaintiff may be for the possession, the recovery of possession or the value thereof in case a delivery cannot be had and of damages for the detention. If the property has been delivered to the plaintiff and the defendant claim a return thereof, Judgment for the defendant may be for a return of the property or the value thereof, in case a return cannot be had, and damages for taking and withholding the same. The Judgment rendered in favor of the prevailing party in such action may include a reasonable attorney fee to be set by the Court, to be taxed and collected as costs.

SECTION 5-214.34 OFFICER MAY BREAK INTO BUILDINGS.

Upon probable cause to believe that the property is concealed therein, but not until he has been refused entrance into said building or enclosure and the delivery of the property, after having demanded the same, or if no person having charge thereof is present, a law enforcement officer of the agency designated by the Governor, in the execution of the order of delivery issued by the Court, may break open any building or enclosure in which the property claimed or any part thereof is concealed.

SECTION 5-214.35 COMPELLING DELIVERY BY ATTACHMENT.

In an action to recover the possession of specific personal property, the Court may for good cause shown, before or after Judgment, compel the delivery of the property to the officer or party entitled thereto by attachment and may examine either party as to the possession or control of the property. Such authority shall only be exercised in aid of the foregoing provisions of this Chapter N.

SECTION 5-214.36 IMPROPER ISSUE OF ORDER OF DELIVERY.

Any order for the delivery of property issued under this Chapter N without the affidavit

and undertaking required, shall be set aside and the plaintiff shall be liable in damages to the party injured.

SECTION 5-214.37 JOINDER OF CAUSE OF ACTION FOR DEBT; STAY OF JUDGMENT.

In any action for replevin in the Court, it shall be permissible for the plaintiff to join with the Claim in replevin a Claim founded on debt claimed to be owing to the plaintiff if the debt shall be secured by a lien upon the property sought to be recovered in the Claim in replevin. In such cases, the execution of the Judgment for debt shall be stayed pending the sale of the property and the determination of the amount of debt remaining unpaid after the application of the proceeds of the sale thereto.

SECTION 5-214.38 GROUNDS FOR ATTACHMENT.

The plaintiff in a civil action for the recovery of money may, at or after the commencement thereof, have an attachment against the property of the defendant, and upon proof of any of the following grounds:

1. when the defendant, or one (1) of several defendants, is a foreign corporation or a nonresident of the Jurisdiction of the Chickasaw Nation (but no order of attachment shall be issued on this Paragraph 1 for any Claim other than a debt or demand arising upon contract, Judgment or decree, unless the Claim arose wholly within the Jurisdiction of the Chickasaw Nation);

2. when the defendant, or one (1) of several defendants, has absconded with intention to defraud his creditors;

3. when the defendant, or one (1) of several defendants, has left the Jurisdiction of the Chickasaw Nation to avoid the service of summons;

4. when the defendant, or one (1) of several defendants, so conceals himself that a summons cannot be served upon him;

5. when the defendant, or one (1) of several defendants, is about to remove his property, or a part thereof, out of the jurisdiction of the Court with the intent to defraud his creditors;

6. when the defendant, or one (1) of several defendants, is about to convert his property, or a part thereof, into money for the purpose of placing it beyond the reach

of his creditors;

7. when the defendant, or one (1) of several defendants, has property or rights in action, which he conceals;

8. when the defendant, or one (1) of several defendants, has assigned, removed or disposed of, or is about to dispose of, his property, or a part thereof, with the intent to defraud, hinder or delay his creditors;

9. when the defendant, or one (1) of several defendants, fraudulently contracted the debt, or fraudulently incurred the liability or obligations for which the suit has been brought;

10. where the damages for which the action is brought are for injuries arising from the commission of a criminal offense;

11. when the debtor has failed to pay the price or value of any article or thing delivered, which by contract he was bound to pay upon delivery; or

12. when the action is brought by the Chickasaw Nation or its officers, agents, or political agencies or subdivisions for the purpose of collection of any Chickasaw Nation tax, levy, charge, fee, assessment, rental, or debt arising in contract or by statute and owed to the Chickasaw Nation.

SECTION 5-214.39 ATTACHMENT AFFIDAVIT.

An order of attachment may be issued by the Court when:

1. there is a civil complaint filed in the Court stating a Claim for relief and an application that the Court issue an order of attachment which states facts which show:

a. the nature of the plaintiff's Claim;
b. that it is just;

c. the amount which the affiant believes the plaintiff ought to recover; and

d. the existence of one (1) of the grounds for an attachment enumerated in Section 5-214.38.

2. The application must be verified by the plaintiff, or, where his agent or attorney has personal knowledge of the facts, by said agent or attorney.

3. The defendant has been served with a notice, issued by the Clerk which shall notify the defendant that an order of attachment of property is requested and that he may object to the issuance of such an order by a written objection which is filed with the Court Clerk and mailed or delivered to the plaintiff's attorney within five (5) days of the receipt of the notice. A copy of plaintiff's application shall be attached to and served with the notice, and the notice and application may be served with the summons in the action.

4. If no written objection is filed within the five-day period, no hearing is necessary and the clerk may issue the order of attachment. If a written objection is filed within the five-day period, the Court shall, at the request of either party, set the matter for a prompt hearing with notice to the adverse party. If the plaintiff proves the probable merit of his cause and the truth of the matters asserted in his application for an order of attachment, the Court may issue the order of attachment. Provided, however, before an order of attachment is issued by either the Court or the Clerk, the Plaintiff has executed an undertaking pursuant to Section 5-214.40. The Chickasaw Nation and its agents shall not be required to execute an undertaking.

5. If the Court finds that the defendant cannot be given notice as provided herein, although a reasonable effort was made to notify him, but at the hearing the plaintiff proves the probable merit of his Claim and the truth of the matters asserted in his application, the Court may issue the order of attachment. The defendant may subsequently move to have the attachment vacated.

SECTION 5-214.40 ATTACHMENT BONDS.

The attachment bond for the benefit of the party whose property is attached shall be in such form and in such amount, not less than double the amount of the plaintiff's Claim, as the Court shall direct and shall guarantee payment of all damages, costs, and reasonable attorney fees incurred as a result of a wrongful attachment. No bond shall be required of the Chickasaw Nation.

SECTION 5-214.41 ORDER OF ATTACHMENT.

The order of attachment shall be directed and delivered to the law enforcement agency designated by the Governor. The order shall require the agency to attach the lands, tenements,

goods, chattels, stocks, rights, credits, moneys and effects of the defendant within the Territorial Jurisdiction of the Chickasaw Nation not exempt by law from being applied to the payment of the plaintiff's Claim, or so much thereof as will satisfy the plaintiff's Claim, to be stated in the order as in the affidavit and the probable cost of the action not exceeding one hundred dollars ($100).

SECTION 5-214.42 WHEN RETURNABLE.

The return day of the order of attachment when issued at the commencement of the action shall be the same as that of the summons, and otherwise within twenty (20) days of the date of issuance.

SECTION 5-214.43 ORDER OF EXECUTION.

Where there are several orders of attachment against the defendant, they shall be executed in the order in which they are received by the law enforcement agency.

SECTION 5-214.44 EXECUTION OF ATTACHMENT ORDER.

The order of attachment shall be executed by the law enforcement agency designated by the Governor without delay. An officer thereof shall go to the place within the Jurisdiction of the Chickasaw Nation where the defendant's property may be found, and declare that, by virtue of said order, he attaches said property at the suit of the plaintiff. The officer shall make a true inventory and appraisement of all the property attached, which shall be signed by the officer and returned with the order, leaving a copy of said inventory with the person or in the place from which the property was seized.

SECTION 5-214.45 SERVICE OF ORDER.

A. When the property attached is Real Property, the officer shall leave a copy of the order with the occupant or, if there be no occupant, then a copy of the order shall be posted in a conspicuous place on the Real Property. Where it is personal property and he can get possession, he shall take such into his custody and hold it subject to the order of the Court.

B. When the property attached is Real Property, third parties shall not be affected until a copy of the attachment order and the legal description of the Real Property attached shall be filed and placed of record in the Court.

C. When the subject Real Property lies within the jurisdiction of the State of Oklahoma or any other state, then the laws of such jurisdiction must be satisfied in order for the

Real Property to be attached. In such instances, entering the Judgment of the Court as a foreign Judgment in a court of that jurisdiction may be necessary.

SECTION 5-214.46 RE-DELIVERY ON BOND.

The law enforcement agency designated by the Governor shall re-deliver the property to the person in whose possession it was found upon the execution by such person, in the presence an officer of said law enforcement agency, an undertaking to the plaintiff, with one (1) or more sufficient sureties, to the effect that the parties to the same are bound, in double the appraised value thereof, that the property or its appraised value in money shall be forthcoming to answer the Judgment of the Court in the action.

SECTION 5-214.47 NATURE OF GARNISHMENT.

Garnishment is an aid to execution of Judgments entered by the Court or a Judgment of a foreign court to which the Court may grant comity as provided by Chickasaw Law. An order of garnishment before Judgment may not be obtained.

SECTION 5-214.48 WHEN GARNISHMENT AVAILABLE AFTER JUDGMENT; WRITTEN DIRECTIONS RELATING TO ORDER OF GARNISHMENT.

As an aid to the enforcement of the Judgment, an order of garnishment may be obtained and shall be issued by the Court in connection with an execution thereof as designated by the written direction of the party entitled to enforce the Judgment. Garnishment may only be used for the purpose of attaching earnings of the defendant and no other property of the Defendant may be affected.

1. An order of garnishment issued as an aid for the enforcement of a Judgment and for the purpose of attaching earnings of the defendant, is declared to be sufficient if substantially in the following form:

"In the District Court of the Chickasaw Nation, A.B., Plaintiff vs. C.D., Defendant, and E.F., Garnishee. The Chickasaw Nation to the Garnishee: You are hereby ordered as a garnishee to file with the above named Court, within thirty (30) days after service of this order upon you, your answer under oath stating whether you are indebted to the Defendant by reason of earnings (compensation for personal services, whether denominated as wages, salary, commission, bonus or otherwise) due and owing the Defendant and stating the amount of any such indebtedness. Computation of the

amount of your indebtedness shall be made as prescribed by the answer form served herewith and shall be based upon Defendant's earnings for the entire normal pay period in which this order is served upon you. You are further ordered to withhold the payment of that portion of Defendant's earnings required to be withheld pursuant to the directions accompanying the answer form until the further order of the court. Your answer on the form shall constitute substantial compliance with this order.

Failure to file your answer may entitle the Plaintiff to Judgment against you for the full amount of the Claim and costs.

Witness my hand and seal of the Court, this ____day of _____, ____.

_____

Clerk of the Court, Chickasaw Nation."

a. If the garnishment is to enforce a Court order for the support of any person, the garnishment shall not exceed 50% of an individual's disposable earnings.

b. The maximum part of the aggregate disposable earnings of any person for any workweek which is subject to garnishment or income assignment shall not exceed: I) fifty percent (50%) of such person's disposable earnings for that week, if such person is supporting his spouse or a dependent child other than the child with respect to whose support such support is used; and ii) sixty percent (60%) of such person's disposable earnings for that week if such person is not supporting a spouse or dependent child. The fifty percent (50%) specified herein shall be deemed to be fifty-five percent (55%) and the sixty percent (60%) specified in paragraph 2 of this subsection shall be deemed to be sixty-five percent (65%), if and to the extent that such earnings are subject to garnishment or income assignment to enforce a court order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

2. **Service and Return**. The order of garnishment shall be served on the garnishee, together with two (2) copies of the form for the garnishee's answer and amendments thereto and returned by the officer making service.

3. **Effect**. An order of garnishment issued for the purpose of attaching

earnings of the defendant shall have the effect of attaching the nonexempt portion of the defendant's earnings for the entire normal pay period in which the order is served. Nonexempt earnings are earnings which are not exempt from wage garnishment pursuant to Subparagraphs 1.a and b above and computation thereof for a normal pay period shall be made in accordance with the direction accompanying the garnishee's answer form served with the order of garnishment.

SECTION 5-214.49 ANSWER OF GARNISHEE; FORM; INSTRUCTIONS.

A. Within ten (10) days after service upon a garnishee of an order of garnishment issued for the purpose of attaching any earnings due and owing the defendant, the garnishee shall file an answer thereto with the Court, stating the facts with respect to the demands of the order. If the defendant is not employed by the garnishee or has terminated employment with the garnishee, the answer is not required to be verified. Otherwise, the answer shall be verified. The answer of the garnishee is declared to be sufficient if substantially in the following form, but the garnishee's answer shall contain not less than the prescribed in the form:

"**ANSWER OF GARNISHEE**

The Defendant _____,

(check one:)

terminated employment _____, on _____, _____.

or

was never employed_____.

_____

Garnishee"

B. If one of the above applies, you are not required to complete the remainder of this form. You must return the form within the time prescribed in the order for garnishment. If neither of the above applies, you must complete the remainder of this form and have it verified.

"**CHICKASAW NATION DISTRICT COURT**

_____says that on the _____day of _____, _____, I was served with an order of garnishment in the above entitled action; that since being served with said order I have delivered to the employee _____only

that portion of the said employee's earnings authorized to be delivered to the said employee pursuant to the instructions accompanying this form and that the statements in my answer are true and correct.

_____

Garnishee

Instructions to Garnishee:

The order of garnishment served upon you has the effect of attaching that portion of the defendant's earnings (defined as compensation for personal services, whether denominated as wages, salary, commission, bonus or otherwise) which is not exempt from wage garnishment. This form is provided for your convenience in furnishing the answer required of you in the order. It is designed so that you may prepare your answer in conjunction with the preparation of your payroll. Wait until the end of the normal pay period in which this order has been served upon you and apply the tests set forth in these instructions to the entire earnings of the defendant-employee during the pay period, completing your answer in accordance with these instructions. If you do not choose to use this form, your answer, under oath, shall not contain less than that prescribed herein. Your answer must be filed with the above named Court within the time prescribed in the order of the garnishment.

First, furnish the information required by Paragraphs A through F of the form below. Read carefully the "Note to Garnishee" following Paragraph G. Then, if the total amount of the employee's disposable earnings are not exempt from wage garnishment pursuant to Section 5-214.48, complete Paragraph G of the form by computing the amount of employee's disposable earnings which are to be paid over to the employee. Any disposable earnings remaining after payment of the above amounts shall be retained until further order of the Court.

STATEMENT OF GARNISHMENT

A. The normal pay period for employee is weekly ____; every two weeks _____; semi-monthly _____; monthly _____. (designate one).

B. This answer covers earnings for the normal pay period beginning on the _____ day of _____ , _____, which normal pay period includes the day on which the order of garnishment was served upon me.

C. Total gross earnings due for the normal pay period covered by B above are $_____.

D. Average gross earnings for normal pay period as designated in A. above are $_____.

E. Amounts required by law to be withheld for the normal pay period covered by B above are:

1. Federal social security tax .... $_____.

2. Federal income tax ..... $_____.

3. State income tax. ..... $_____.

4. Other withholding tax. ..... $_____.

Total ..... $_____.
(Deduct only those items listed above)

F. In accordance with the instructions accompanying this answer form, I have determined that the amount which may be paid to employee is $_____.

G. After paying to employee the amount stated in F above, I am holding the remainder of employees's disposable earnings in the amount of $_____.

I will hold in my possession until further order of the Court all of the moneys required to be withheld.

_____

Garnishee"

Answer of the garnishee must be filed with Court pursuant to this Act. This form is provided for your convenience in furnishing the answer required of you in the order of garnishment. If you do not choose to use this form, your answer shall not contain less than that prescribed herein. Your answer must be filed with the Court within the time prescribed in the order of garnishment.

C. The Court shall cause a copy of the answer to be mailed promptly to the plaintiff and the defendant. Within ten (10) days after the filing of the answer the plaintiff or defendant,

or both of them, may reply thereto controverting any statement in the answer. If the garnishee fails to answer within the time and manner herein specified, the Court may grant Judgment against garnishee for the amount of the plaintiff's Judgment or Claim against the defendant. Such Judgments may be taken only upon written motion and notice. If the garnishee answers as required herein and no reply thereto is filed, the allegations of the answer are deemed to be confessed. If a reply is filed as herein provided, the Court shall try the issues joined, the burden

being upon the party filing the reply to disprove the sworn statements of the answer, except that the garnishee shall have the burden of the answer, except that the garnishee shall have the burden of proving offsets or indebtedness claimed to be due from the defendant to the garnishee, or liens asserted by the garnishee against property of the defendant.

SECTION 5-214.50 EFFECTS OF OFFSETS CLAIMED BY GARNISHEE.

When the garnishee claims that he or she is not indebted to the defendant for the reason that the defendant is indebted to the garnishee, or that the indebtedness due to the defendant is reduced thereby, the garnishee is not discharged unless and until he or she applies the amount of his or her indebtedness to the defendant to the liquidation of his or her Claim against the defendant.

SECTION 5-214.51 TRIAL.

A. **Hearing.** Trial of all garnishment issues shall be in the Court.

B. **Right of Defendant to Contest Garnishment.** The defendant may, in addition to controverting the statements in the answer of the garnishee upon the ground that the indebtedness of the garnishee, or any property held by him or her, is exempt from execution against such defendant, or for any other reason is not liable to garnishment and the defendant may participate in the trial of any issue between the plaintiff and the garnishee for the protection of his or her interest.

C. **Right of Garnishee to Defend the Action.** The garnishee in the answer may, on behalf of the defendant, state any Claim of exemption from execution or attachment which the defendant may have, or any other objection known to the garnishee that the defendant might have or assert. The garnishee may at his option defend the principal action for a defendant who defaults, but is under no obligation to do so.

SECTION 5-214.52 JUDGMENT IN GARNISHMENT PROCEEDINGS.

A. Upon determination of the issues, either by admissions in the answer or reply, by default, or by findings of the court on controverted issues, Judgment shall be entered fixing the

rights and liabilities of all the parties in the garnishment proceedings 1) by determining the liability of garnishee upon default, 2) discharging the garnishee, or 3) making available to the satisfaction of the Claim of the plaintiff any indebtedness due from the garnishee to the defendant or any property in the hands of the garnishee belonging to the defendant, including ordering the payment of money by the garnishee into court or the impoundment preservation and sale of property, 4) rendering Judgment against the garnishee for the amount of his or her indebtedness to the defendant or for the value of any property of the defendant or for the value if any property of the defendant held by the garnishee, or 5) if the answer of a garnishee is

controverted without good cause, the Court may award the garnishee Judgment against the party controverting such answer damages for his or her expenses, including reasonable attorney's fees, necessarily incurred in substantiating the same.

B. When Judgment is entered in garnishment proceedings for the purpose of enforcing an order of any court for the support of any person and such court finds that a continuing order of garnishment is necessary to insure payment of a court order of support, the Court may issue a continuing order of garnishment to allow any indebtedness that will become due from the garnishee to the defendant because of an employer-employee relationship to be made available to the plaintiff on a periodic and continuing basis for so long as the court issuing the order may determine or until otherwise ordered by such court in a further proceeding. No other may be made pursuant to this Subsection B, unless the Court finds that the defendant is in arrearage of a court order for support in an amount equal to or greater than one (1) year of support as ordered and the defendant receives compensation from his or her employer on a regular basis in substantially equal periodic payments. On motion of a defendant who is subject to a garnishment order pursuant to this subsection B, the Court for good cause shown may modify or revoke any such order.

SECTION 5-214.53 BOND OF DEFENDANT FOR PAYMENT OF JUDGMENT.

The defendant may at any time after the proceeding is commenced file with the clerk of the court a bond, to be approved by the clerk, in double the amount of the Claim or such lesser amount as shall be approved by order of the judge to the effect that the defendant will pay to the plaintiff on demand the amount of the Judgment and costs that may be assessed against him or her, and thereupon the garnishee shall be discharged and any money or property paid or delivered to any officer shall be delivered to the person entitled thereto.

SECTION 5-214.54 FORMS TO BE USED.

All necessary pleadings and forms to be used in garnishment proceedings shall be promulgated by the Supreme Court.

SECTION 5-214.55 CHILD SUPPORT PAYMENT; INCOME ASSIGNMENT OR GARNISHMENT PROCEEDINGS.

A. Pursuant to Section 6-102.2 of the Chickasaw Nation Code, in all child support cases arising out of an action for divorce, paternity or other proceeding, the Court shall order the wage of the obligor subject to immediate income assignment, with certain exceptions. Otherwise, any person awarded custody of and support for a minor child by the Court, upon proper application, shall be entitled to proceed to collect any current child support and child support due and owing through income assignment or by garnishment of any Chickasaw Nation Department or Agency or Business Enterprise, if the minor child is in the custody and care of

the person entitled to receive the child support or as is otherwise provided by the Court or administrative order at the time of the income assignment or garnishment proceedings.

B. The maximum part of the disposable earnings of any person for any workweek which is subject to garnishment or income assignment for the support of a minor child shall not exceed:

1. fifty percent (50%) of such person's disposable earnings for that week, if such person is supporting his spouse or a dependent child other than the child with respect to whose support such order is used; and

2. sixty percent (60%) of such person's disposable earnings for that week if such person is not supporting a spouse or dependent child. The fifty percent (50%) specified in Paragraph B.1 above shall be deemed to be fifty-five percent (55%) and the sixty percent (60%) specified in this Paragraph B.2 shall be deemed to be sixty-five percent (65%), if and to the extent that such earnings are subject to garnishment or income assignment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

SECTION 5-214.56 INCOME ASSIGNMENT PROCEEDINGS.

A. Any person or entity entitled to receive child support payments for the current or for any prior month or months, or such person's legal representative may initiate income assignment proceedings by filing with the court an application signed under oath specifying:

1. that the obligor has failed to make child support payments required by a child support order in an amount equal to the child support payable for at least one (1)

month;

2. a certified copy of the support order and all subsequent modifications or orders relating thereto;

3. that some person or entity, known or unknown, is indebted to or has earnings in his/its possession or under his control belonging to the obligor;

4. that the indebtedness or earnings specified in the affidavit, to the best of the knowledge and belief of the person making such affidavit, are not exempt by law; and

5. the amount of the support order and the amount of arrearage.

B. **Notice of Delinquency.**

1. Upon application by the person or entity entitled to receive child support payments or such person's legal representative, the Court shall mail, by certified mail, return receipt requested, to the last known address of the obligor, or shall serve in accordance with law, a notice of delinquency. The notice of delinquency shall be postmarked or issued no later than ten (10) days after the date on which the application was filed and shall specify:

a. that the obligor is alleged to be delinquent under a support order in a specified amount;

b. that an assignment will become effective against the obligor's earnings unless within fifteen (15) days of the date of mailing or service on the obligor of the delinquency notice, said date of mailing to be specified in the notice, the obligor requests a hearing with the Court pursuant to this Section;

c. that on or prior to the date of the hearing, in any case in which services are not being provided, the obligor may prevent the income assignment from taking effect by paying the full amount of the arrearage plus costs and attorney's fees provided, that the obligor shall only be entitled to prevent such income assignment from taking effect under this subparagraph a maximum of two
(2) times, thereafter, payment of any arrearage will not prevent an income assignment from taking effect;

d. that, at a requested hearing, the obligor may contest the claimed delinquency only with regards to mistake of identity or to the existence or the amount of the delinquency; and

e. that the assignment shall remain in effect for as long as current child support is due or child support arrearage remain unpaid and that payment of any arrearage, except as provided in Subparagraph c above, will not prevent an income assignment from taking effect.

2. **Hearing Request.**

a. An obligor may request a hearing with the Court pursuant to this Section on or before the fifteenth day from date of mailing or service of the delinquency notice. Upon request for hearing, the Court shall set the matter for

a hearing. A file-stamped copy of the request and a copy of the order for hearing shall be served in accordance with law upon the person or entity filing the affidavit for income assignment or his/its legal representative. The Court shall promptly hear and determine the matter and, unless the obligor successfully shows that there is a mistake of identity or a mistake as to the existence or the amount of delinquency, the court shall order that the income assignment take effect against the disposable earnings of the obligor;

b. the Court may order an obligor to pay all court costs and attorneys' fees involved in an income assignment proceeding pursuant to this Subsection B;

c. the order shall be a final Judgment for purposes of appeal. The effect of the income assignment shall not be stayed on appeal except by order of the Court; and

d. in all cases of paternity and for arrearage of child support, the Court shall make inquiry to determine if the noncustodial parent has been denied reasonable visitation. If reasonable visitation has been denied by the custodial parent to the noncustodial parent, the Court shall include visitation provisions in the support order.

C. The Court shall send a notice of the income assignment to the payor to effectuate the assignment pursuant to Subsection E below.

D. If, within fifteen (15) days of the date of mailing or service on the obligor of the delinquency notice, the obligor fails to request a hearing pursuant to Subsection B above, the Court shall send a notice of the income assignment to the payor pursuant to Subsection E below to effectuate the assignment.

E. **Delivery of Notice.**

1. The notice of the income assignment required pursuant to Subsections B, C, and D above shall be sent by the Court to the payor listed on the application. The notice shall be sent by certified mail, return receipt requested or otherwise served according to law. The payor shall be required to comply with the provisions of this subsection as stated in the notice. The notice shall specify:

a. the effective date of the assignment. The assignment shall take effect on the next payment of earnings to the obligor after the payor receives notice thereof and the amount withheld shall be sent to the person entitled to the child support within ten (10) days after the date upon which the obligor is

paid. The payor shall include with each payment a statement reporting the date on which the obligor's support obligation was withheld;

b. the amount specified in the support order and the amount of the arrearage to be withheld from the obligor's earnings. The amount withheld by the payor shall not exceed the limits on the percentage of an obligor's income which may be assigned for support pursuant to Section 5-214.55 of this Act;

c. that the withholding is binding upon the payor until further order of the Court or as long as the order for support on which it is based remains in effect;

d. that the payor is liable for any amount up to the accumulated amount that should have been withheld if the payor fails to withhold the earnings in accordance with the provisions of the assignment;

e. that two (2) or more income assignments may be levied concurrently, but if the total levy exceeds the maximum permitted under Section 5-214.55 of this title, all current child support due shall be paid before the payment of any arrearage. If total current child support exceeds the maximum permitted under Section 5-214.55, the amount available shall be paid *pro rata* by the percentage of total current support owed to all obligees. After current support, the sums due under the first assignment issued under this Section shall be paid before the payment of any sums due on any subsequent income assignment; provided, that the court which issued the initial income assignment, upon notice to all interested parties, is authorized to prorate the payment of the support between two (2) or more income assignments levied concurrently;

f. If the amount of support due under the assignments exceeds the maximum amount authorized by Section 5-214.55, the payor shall pay the amount due up to the statutory limit, and payor shall send written notice to the Court and person entitled to support that the amount due exceeds the amount subject to withholding; if payor fails to pay or notify as required herein, the payor may be liable for an amount up to the accumulated amount that is due and owing upon receipt of the notice;

g. that, if the payor is the obligor's employer, the payor shall notify the person entitled to the support payment, and the Court when the obligor terminates employment. The payor shall provide by written notice to the person

entitled to support and to the Court, the obligor's last-known address and the name of the of the obligor's new employer, if known; and

h. that if the payor has no income due or to be due to the obligor in his possession or control, or if the obligor has terminated employment with the payor prior to the receipt of notice required pursuant to Subsection C above, the payor shall send written notice to the Court and the person entitled to support within ten (10) days of receipt of said notice.

2. The payor may combine withheld amounts from earnings of two (2) or more obligors subject to the same support order in a single payment and separately identify that portion of the single payment which is attributable to each individual obligor.

3. An income assignment issued pursuant to the provisions of this Section shall have priority over any prior or subsequent garnishments of the same wages; provided, however, income assignments issued pursuant to the provisions of this Section and garnishments for child support issued pursuant to the provisions of Section 5-214.55 shall be of equal priority, except as may otherwise be provided for in this Section.

4. The payor may deduct from any earnings of the obligor a sum not exceeding ten dollars ($10) per pay period as reimbursement for costs incurred in the

income assignment.

5. The assignment shall remain effective upon notice to the new payor.

6. The income assignment issued pursuant to this Section shall remain in effect for as long as current child support is due or until all arrearage for support are paid, whichever is later. Payment of any arrearage shall not prevent the income assignment from taking effect.

7. The payor may not discipline, suspend, or discharge an obligor because of an assignment executed pursuant to this Section. Any payor who violates this Section shall be liable to such obligor for all wages and employment benefits lost by the obligor from the period of unlawful discipline, suspension, or discharge to the period of reinstatement.

F. Upon written notification of the name and address of a new employer or payor and payment of the required fees for mailing by the person or entity entitled to support, the Court shall issue a new notice of income assignment pursuant to Subsection E above.

G. Any existing support order or income assignment which is brought before the Court shall be modified by such Court to conform to the provisions of this Section.

H. Any person obligated to pay support, who has left or is beyond the jurisdiction of the Court, may be prosecuted under any other proceedings available pursuant to the laws of the Chickasaw Nation for the enforcement of the duty of support and maintenance.

I. The income assignment proceedings specified in this Section shall be available to other jurisdictions for the enforcement of child support and maintenance or to enforce foreign court orders.

J. Notwithstanding the provisions of Section 6-102.2 of the Chickasaw Nation Code, an income assignment shall be established pursuant to subsections A through I of this Section when there exists a delinquency equal to at least one (1) month's payment.

K. The wages of any parent ordered to pay child support shall be subject to immediate income assignment without regard to whether there is an arrearage, on the earliest of:

1. the date of the obligor requests that such withholding begin;

2. the date as of which the custodian requests that such withholding begin to enforce a child support order entered on or before the date of the custodian's request for income withholding if a court of competent jurisdiction finds that immediate income withholding would be in the best interest of the child. In making such determination, the Court shall consider, at a minimum, the timeliness of payment of previously ordered support and the agreement of the parent required to pay support to keep the Court and custodian advised of his or her current employer and information on any employment-related health insurance coverage to which that parent has access; or

3. such date as may be ordered by a court of competent jurisdiction.

SECTION 5-214.57 PAYMENTS PURSUANT TO INCOME ASSIGNMENT.

A. Payments made by the payor pursuant to an income assignment initiated by the person entitled to receive the child support payments shall be paid to the Chickasaw Nation Child Support Enforcement Department, the person entitled to support or to the Court, and shall be made in the manner specified in the notice of income assignment.

B. In the event the obligor is in arrears, any payment which exceeds the amount due for the period in which the payment is made shall be applied to past due and unpaid amounts owed in the order in which the payment came due.

SECTION 5-214.58 APPOINTMENT OF RECEIVER.

A receiver may be appointed by the Court:

1. in an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his Claim, or between partners or others jointly owning or interested in any property or fund, on the application of a plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured;

2. in an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property where it appears that the mortgaged property is in danger of being lost, removed or materially injured or that the condition of the mortgage has not been performed and that the property is probably insufficient to discharge the mortgage debt;

3. after Judgment, to carry the Judgment into effect;

4. after Judgment, to dispose of the property according to the Judgment, or to preserve it during the pendency of an appeal or in proceeding in aid of execution when an execution has been returned unsatisfied or when the Judgment debtor refuses to apply his property in satisfaction of the Judgment;

5. in the cases provided in this Act and by special statutes when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights; and

6. in all other cases where receivers should be appointed to protect the property and rights of the parties thereto in dispute by the usages of the Court in equity.

SECTION 5-214.59 PERSONS INELIGIBLE.

No party, attorney or person so interested in an action, shall be appointed receiver therein except by consent of all parties thereto.

SECTION 5-214.60 OATH AND BOND.

Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with one (1) or more sureties, approved by the Court, execute an undertaking to such person

and in such sum as the Court shall direct, to the effect that he will faithfully discharge the duties of receiver in the action and obey the orders of the Court therein.

SECTION 5-214.61 POWERS OF RECEIVER.

The receiver shall have, under the control of the Court, power and authority to bring and defend actions in his own name, as receiver; to take and keep possession of the property; to

receive rents and collect debts; to compound for and compromise the same; to make transfers and generally to do such acts respecting the property as the Courts may authorize.

SECTION 5-214.62 INVESTMENT OF FUNDS.

Funds in the hands of a receiver may be invested upon interest, by order of the Court, but no such order shall be made except upon the consent of all the parties to the action or except by order of the Court when the principal and interest earned thereon are guaranteed by the Federal Government and may be withdrawn within a reasonable time.

SECTION 5-214.63 DISPOSITION OF PROPERTY LITIGATED.

A. When it is admitted, by the pleadings or on oral or written examination of a person, that he has in his possession or under his control any non-exempt money or other thing capable of delivery which is held by him as trustee for a party or which belongs or is due to a party, the Court may order the same to be deposited in Court or delivered to such party, with or without security, subject to the further direction of the Court.

B. Any person abiding by an order of the Court in such cases and paying or delivering the money or other property subject to said order into Court, shall not thereafter be liable to the party for whom he held as trustee, or to whom the money or property belonged or was due, in any civil action for the collection or return of the property or money delivered or paid into Court.

C. Such order may be made by ordering the party to procure the deposit or payment into Court of the property, which order may be enforced by contempt, or the Court, upon proper application, may order the person holding said property to be served with summons and brought into the action as a special defendant for the sole purpose of determining the nature and amount of property in his possession subject to payment into Court under this Section and ordering said person to pay or deliver such non-exempt property into Court. After such payment has been made, the person shall be dismissed from the action.

D. In cases where Judgment has been obtained against the party whose property or money is to be paid into Court, it is not necessary to formally appoint a receiver for the money

or property paid into Court under this Section, but the Court Clerk shall act as receiver as an aid to the enforcement of a Judgment and shall pay such money or deliver such property over to the person entitled thereto in conformity with the order of the Court.

SECTION 5-214.64 PUNISHMENT FOR DISOBEDIENCE OF COURT.

Whenever, in the exercise of its authority, the Court shall have ordered the deposit or delivery of money or other thing, and the order is disobeyed, the Court, besides punishing the disobedience as for contempt, may make an order requiring the law enforcement agency designated by the Governor to take the money, or thing, and deposit or deliver it in conformity with the direction of the Court.

SECTION 5-214.65 VACATION OF APPOINTMENT BY SUPREME COURT.

In all cases in which a receiver has been appointed, or refused, the party aggrieved may, within ten (10) days thereafter have the right to file a motion to vacate the order refusing or appointing such receiver, and hearing on such motion may be had before the Court at such time and place as the Court may determine, and, pending the final determination of the cause, if the order was one of the appointment of a receiver, the moving party shall have the right to give bond with good and sufficient sureties, and in such amount as may be fixed by the order of the Court conditioned for the due prosecution of such case and the payment of all costs and damages that may accrue to the Chickasaw Nation, or any officer or person by reason thereof, and the authority of any such receiver shall be suspended pending a final determination of such cause. If such receiver shall have taken possession of any property in controversy in said action, the same shall be surrendered to the rightful owner thereof, upon the filing and approval of said bond.

SECTION 5-214.66 DEFINITIONS OF DIRECT CONTEMPT OF COURT AND INDIRECT CONTEMPT OF COURT.

A. "Direct Contempt of Court" shall consist of disorderly or insolent behavior committed during the session of the Court and in its immediate view, and presence, and of the unlawful and willful refusal of any person to be sworn as a witness, and the refusal to answer any legal or proper question; and any breach of the peace, noise or disturbance, so near to it as to interrupt its proceedings.

B. "Indirect Contempt of Court" shall consist of willful disobedience of any process or order lawfully issued or made by the Court; resistance willfully offered by any person to the execution of a lawful order or process of a court.
(PR22-004, 11/19/04)

SECTION 5-214.67 JUDGE'S POWER TO CITE CONTEMPT; IMPOSE CENSURE; NOTICE AND OPPORTUNITY; SANCTION.

A. The Judge has the power to cite for contempt anyone who, in his presence in open court, willfully obstructs judicial proceedings. If necessary, the Judge may punish a person cited for contempt after an opportunity to be heard has been given.

B. Censure shall be imposed by the Judge only if:

1. it is clear from the identity of the offender and the character of his acts that disruptive conduct is willfully contemptuous; or

2. the conduct warranting the sanction is preceded by a clear warning that the conduct is impermissible and that specified sanctions may be imposed for its repetition.

C. The Judge, as soon as practicable after he is satisfied that courtroom misconduct requires contempt proceedings, should inform the alleged offender of his intention to institute said proceedings.

D. Before imposing any punishment for contempt, the Judge shall give the offender notice of the charges and an opportunity to adduce evidence or argument relevant to guilt or punishment.

E. The Judge before whom courtroom misconduct occurs may impose appropriate sanctions including punishment for contempt. If the Judge's conduct was so integrated with the contempt that he contributed to it or was otherwise involved or his objectivity can reasonably be questioned, the matter shall be referred to another Judge.
(PR22-004, 11/19/04)

SECTION 5-214.68 PUNISHMENT FOR CONTEMPT; FAILURE TO COMPLY CHILD SUPPORT AND OTHER ORDERS.

A. Punishment for Direct or Indirect Contempt of Court shall be by the imposition of a fine in a sum not exceeding five hundred dollars ($500) or by imprisonment not exceeding six
(6) months, or by both, at the discretion of the Court.

B. **Failure to Support Child After Order.**

1. In the case of Indirect Contempt of Court for the failure to comply with an order for child support, other support, visitation, or other court orders regarding minor children, the Supreme Court shall promulgate guidelines for determination of the sentence and purge fee. If the Court fails to follow said guidelines, the Court shall make a specific finding stating the reasons why the imposition of the guidelines would result in inequity. The factors that shall be used in determining the sentence and purge fee are:

a. the proportion of the child support or other support that was unpaid in relation to the amount of support that was ordered paid;

b. the proportion of the child support or other support that could have been paid by the party found in contempt in relation to the amount of support that was ordered paid;

c. the present capacity of the party found in contempt to pay any arrearages;

d. any willful actions taken by the party found in contempt to reduce factor c above;

e. the past history of compliance or noncompliance with the support or visitation order; and

f. willful acts to avoid the jurisdiction of the Court.

2. When a court of competent jurisdiction makes an order compelling a parent to furnish monetary support, necessary food, clothing, shelter, medical attention, medical insurance or other remedial care for the minor child of the parent:

a. proof that:

1. the order was made, filed, and served on the parent; or

2. the parent had actual knowledge of the existence of the order; or

3. the order was granted by default after prior due process notice to the parent; or

4. the parent was present in court at the time the order was pronounced; and

b. proof of noncompliance with the order;

shall be *prima facie* evidence of an Indirect Contempt of Court.

C. The Court has the power to enforce an order for child support, other support, visitation, or other court orders regarding minor children of any court of competent jurisdiction and to punish an individual for failure to comply therewith, as set forth in Subsection A above. (PR22-004, 11/19/04)

SECTION 5-214.69 INDIRECT CONTEMPTS; NOTICE; APPEARANCE BOND.

A. In all cases of Indirect Contempt of Court, the party charged with contempt shall be notified in writing of the accusation and have a reasonable time for defense.

B. The Court shall fix the amount of an appearance bond to be posted by said party charged, which bond shall be signed by said party and two sureties, which sureties together shall qualify by showing ownership of real property, the equal of which property shall be in double the amount of the bond, or, in the alternative, the party charged may deposit with the Court Clerk cash equal to the amount of the appearance bond.

C. In a case of Indirect Contempt of Court, it shall not be necessary for the party alleging indirect contempt, or an attorney for that party, to attend an initial appearance or arraignment hearing for the party charged with contempt, unless the party alleging the Indirect Contempt of Court is seeking a cash bond. If a cash bond is not being requested, the Clerk of the Court shall, upon request, notify the party alleging the Indirect Contempt of Court of the date of the trial.
(PR22-004, 11/19/04)

SECTION 5-214.70 VIOLATION OF CHILD CUSTODY COURT ORDER; DEFENSE; EMERGENCY OR PROTECTIVE CUSTODY.

A. Any parent or other person who violates an order of any court of competent jurisdiction granting the custody of a child under the age of eighteen (18) years of age to any person, agency, institution, or other facility, with the intent to deprive the lawful custodian of

the custody of the child, shall be guilty of a misdemeanor. The fine for a violation of this Subsection A shall not exceed five thousand dollars ($5,000).

B. The offender shall have an affirmative defense if the offender reasonably believes that the act was necessary to preserve the child from physical, mental, or emotional danger to the child's welfare.

C. If a child is removed from the custody of the child's lawful custodian pursuant to the provisions of this Section any law enforcement officer may take the child into custody without a court order and, unless there is a specific court order directing a law enforcement officer to take the child into custody and release or return the child to a lawful custodian, the child shall be held in emergency or protective custody.
(PR22-004, 11/19/04)

SECTION 5-214.71 FAILURE TO APPEAR FOR JURY SERVICE; GOOD CAUSE; SANCTIONS; PENALTIES.

An individual who fails to appear in person on the date scheduled for jury service and who has failed to obtain a postponement in compliance with the provisions for requesting a postponement, or who fails to appear on the date set, shall be in Indirect Contempt of Court and shall be punished by the imposition of a fine not to exceed five hundred dollars ($500). The prospective juror may be excused from paying sanctions for good cause shown or in the interests of justice. In addition to or in lieu of the fine, the Court may order that the prospective juror complete a period of community service for a period no less than if the prospective juror would have completed jury service, and provide proof of completion of this community service to the Court. (PR22-004, 11/19/04)

SECTION 5-214.72 SUBSTANCE OF OFFENSE MADE PART OF RECORD.

Whenever a person shall be imprisoned for contempt, the substance of the offense shall be set forth in the order for his confinement and made a matter of record in the Court. (PR22-004, 11/19/04)

ARTICLE O
JUDGMENTS

Section 5-215.1 Judgments; Costs.
Section 5-215.2 Default.
Section 5-215.3 Offer of Judgment.
Section 5-215.4 Judgment for Specific Acts; Vesting Title.
Section 5-215.5 Summary Judgment.
Section 5-215.6 Declaratory Judgments.

Section 5-215.7	Entry of Judgment.
Section 5-215.8	New Trials; Amendments of Judgments.
Section 5-215.9	Relief from Judgment or Order.
Section 5-215.10	Harmless Error.
Section 5-215.11	Stay of Proceedings to Enforce a Judgment.
Section 5-215.12	Disability of a Judge.
Section 5-215.13	Judgment Against Infant.
Section 5-215.14	Judgments as Liens.
Section 5-215.15	Discharge of Money Judgment Liens.
Section 5-215.16	Additional Cash Deposits.
Section 5-215.17	Reversal by Supreme Court.
Section 5-215.18	Interest on Money Judgments.
Section 5-215.19	Exempt Property; Homestead; Area and Value; Indian Allottees; Temporary Renting.
Section 5-215.20	Payment of Judgments from Individual Indian Moneys.
Section 5-215.21	Contents of Filed Judgments, Decrees and Appealable Orders; Court Clerk's Endorsement; Mailing.
Section 5-215.22	Power to Vacate or Modify its Judgments; When.
Section 5-215.23	Motions to Correct, Open, Modify or Vacate.
Section 5-215.24	Mistakes or Omissions of the Court Clerk.
Section 5-215.25	Motions After Thirty (30) Days.
Section 5-215.26	Liens and Securities Preserved.
Section 5-215.27	Order Suspending Proceedings.
Section 5-215.28	Judgment Before Trial.
Section 5-215.29	Time Limitations.

SECTION 5-215.1 JUDGMENTS; COSTS.

A. **Judgment Upon Multiple Claims or Involving Multiple Parties.** When more than one (1) Claim for relief is presented in an action, whether as a Claim, counterclaim, cross-claim, or third-party Claim or when multiple parties are involved, the Court may direct the entry of a final Judgment as to one (1) or more but fewer than all of the Claims or parties only upon an express determination that there are no just reasons for delay and upon an express direction for the entry of Judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the Claims, or rights and liabilities of fewer than all of the parties shall not terminate the action as to any of the Claims or parties, and the order or other form of decision is subject to revision at anytime before the entry of Judgment adjudicating all the Claims and the rights and liabilities of all the parties.

B. **Demand for Judgment; Default.** A Judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for Judgment. Except as to a party against whom a Judgment is entered by default, every final Judgment shall

grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

C. **Costs.** Except when express provision therefore is made either in a statute of the Chickasaw Nation or in this Act, costs shall be allowed as of course to the prevailing party unless the Court otherwise directs, but costs, including attorney fees and statutory authorization for collection of damages or requirement for bonds or undertakings, against the Chickasaw Nation, its officers and agencies shall be imposed only to the extent specifically permitted by Chickasaw law. A general statement in this Act that such are payable by a party or by the plaintiff or defendant is not authority to impose such costs, damages, or requirements upon the Chickasaw Nation, its officers, and agencies. Costs may be taxed by the Court on one (1) day's notice. On motion served within ten (10) days thereafter, the action of the Court may be reconsidered.

D. **Applied to Probate Proceedings.** A Judgment shall be considered a lawful debt in all proceedings held by the Court in the distribution of decedent's estates in accordance with Chickasaw and federal law.

SECTION 5-215.2 DEFAULT.

A. **Entry.** When a party against whom a Judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by this Act and that fact is made to appear by affidavit or otherwise, the Court shall enter his default.

B. **Judgment.** Judgment by default may be entered by the Court. In all cases the party who claims to be entitled to a Judgment by default shall apply to the Court therefore, but no Judgment by default shall be entered against an infant or incompetent person unless

represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom Judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall be served with written notice of the application for Judgment at least three (3) days prior to the hearing on such application. If, in order to enable the Court to enter Judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the Court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the Chickasaw Nation.

C. **Setting Aside Default.** For good cause shown, the Court may set aside an entry of default and, if a Judgment by default has been entered, may likewise set it aside in accordance with Subsection 5-215.9. B.

D. **Plaintiff, Counter Claimants, Cross-Claimants.** The provisions of this Section apply whether the party entitled to the Judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a Judgment by default is subject to the limitations of Subsection 5-215.1.B.

E. **Judgment Against the Chickasaw Nation.** No Judgment by default may be entered against the Chickasaw Nation, its officers, or agencies unless sixty (60) days written notice has been served upon the Governor and the Chickasaw Tribal Legislature. If during such sixty-day period the Chickasaw Nation is without counsel, no default may be entered until thirty
(30) days after counsel has been procured by the Chickasaw Nation. During such period, the Chickasaw Nation its agencies and officers shall be allowed to cure any default. No Judgment by default shall be entered against the Chickasaw Nation its agencies or officers in any case unless the claimant establishes his Claim or right to relief, including his authority to bring the suit, and his damages by evidence satisfactory to the Court.

SECTION 5-215.3 OFFER OF JUDGMENT.

At any time more than ten (10) days before the trial begins, a party defending against a Claim may serve upon the adverse party an offer to allow Judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within ten (10) days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the Court shall enter Judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine

costs. If the Judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one (1) party to another has been determined by verdict or order or Judgment, but the amount or extent of the liability, or both, remains to be determined by further proceedings, the party adjudged liable may make an offer of Judgment, which shall have the same effect as an offer made before trial if it is

served within a reasonable time not less than ten (10) days prior to the commencement of hearings to determine the amount or extent of liability.

SECTION 5-215.4 JUDGMENT FOR SPECIFIC ACTS; VESTING TITLE.

If a Judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act in accordance with Chickasaw and Federal law and the party fails to comply within the time specified, the Court may direct the act to be done at the cost of the disobedient party by some other person appointed by the Court and the act when

so done has like effect as if done by the party. On application of the party entitled to performance, the Court shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the Judgment. The Court may also in proper cases adjudge the party in contempt. If real or personal property is within the Jurisdiction of the Chickasaw Nation and the interest in said property at issue in the action is not held in trust by the United States, the Court, in lieu of directing a conveyance of that interest, may enter a Judgment divesting the interest from any party and vesting it in others. Such Judgment has the effect of a conveyance executed in due form of law. When any order or Judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application.

SECTION 5-215.5 SUMMARY JUDGMENT.

A. **For Claimant.** A party seeking to recover upon a Claim, counterclaim, or cross-claim or to obtain a declaratory Judgment may, at any time after the expiration of twenty (20) days from the commencement of the action or after service of a motion for summary Judgment by the adverse party, move with or without supporting affidavits for a summary Judgment in his favor upon all or any part thereof.

B. **For Defending Party.** A party against whom a Claim, counterclaim, or cross-claim is asserted or a declaratory Judgment is sought may, at any time, move with or without supporting affidavits for a summary Judgment in his favor as to all or any part thereof.

C. **Motion and Proceedings Thereon.** The motion shall be served at least ten (10) days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The Judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a Judgment as a matter of law. A summary Judgment, interlocutory in character, may be entered on the issue of liability alone although there is a genuine issue as to the amount of damages.

D. **Case Not Fully Adjudicated on Motion.** If on motion under this Section Judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the Court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall, if practicable, ascertain what material facts exist without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

E. **Forms of Affidavits; Further Testimony; Defense Required.** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be

admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The Court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary Judgment is made and supported as provided in this Section, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this Section, must set forth specific facts showing that there is genuine issue for trial. If he does not so respond, summary Judgment, if appropriate, shall be entered against him.

F. **When Affidavits are Unavailable.** Should it appear from the affidavits of a party opposing the motion that he cannot provide, for reasons stated by affidavit, facts essential to justify his opposition, the Court may refuse the application for Judgment or may order a continuance to
permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

G. **Affidavits Made in Bad Faith.** Should it appear to the satisfaction of the Court

at any time that any of the affidavits presented pursuant to this Section are presented in bad faith or solely for the purpose of delay, the Court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

SECTION 5-215.6 DECLARATORY JUDGMENTS.

The procedure for obtaining a declaratory Judgment in actions arising in equity or through contract, or pursuant to any specific Chickasaw Nation law authorizing a declaratory Judgment, shall be in accordance with this Act, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Sections 5-213.3 and 5-213.4. The existence of another adequate remedy does not preclude a Judgment for declaratory relief in cases where it is appropriate. The Court may order a speedy hearing of an action for a declaratory Judgment and may advance it on the calendar.

SECTION 5-215.7 ENTRY OF JUDGMENT.

A. Subject to the provisions of Subsection 5-215.1.A, the Court shall promptly approve the form of the Judgment and shall thereupon enter it:

1. upon a general verdict of a jury, or upon a decision by the Court that a party shall recover only a sum certain or costs or all relief shall be denied; or

2. upon a decision by the Court granting other relief; or

3. upon a special verdict or a general verdict accompanied by answers to interrogatories.

B. Every Judgment shall be set forth on a separate document. A Judgment is effective only when so set forth and when entered in the civil docket book. Entry of the Judgment shall not be delayed for the taxing of costs. Attorneys shall not submit forms of Judgment except upon direction of the Court.

SECTION 5-215.8 NEW TRIALS; AMENDMENTS OF JUDGMENTS.

A. **Grounds.** A new trial is a re-examination in the same Court, of an issue of fact or of law, or both, and may be granted to all or any of the parties and on all or part of the issues for any of the following reasons:

1. irregularity in the proceedings of the Court, jury, referee, or prevailing party, or any order of the Court or referee, or abuse of discretion, by which the party was prevented from having a fair trial;

2. misconduct of the jury or prevailing party;

3. accident or surprise which ordinary prudence could not have guarded against;

4. excessive or inadequate damages appearing to have been given under the influence of passion or prejudice;

5. error in the assessment of the amount of recovery, whether too large or too small, where the action is upon a contract or for the injury or detention of property;

6. that the verdict, report or decision is not sustained by sufficient evidence or is contrary to law;

7. newly-discovered evidence or material for the party applying which he could not, with reasonable diligence, have discovered and produced at the trial;

8. error of law occurring at the trial and objected to by the party making the application; or

9. when, without fault of the complaining party, it becomes impossible to make a record sufficient for appeal.

On a motion for a new trial in an action tried without a jury, the Court may open the Judgment, if one has been entered, take additional testimony, amend findings of fact and conclusions and direct the entry of a new Judgment.

B. **Time for Motion.** A motion for a new trial shall be served not later than ten (10) days after the entry of the Judgment, except that a motion based upon newly discovered evidence shall be made within one (1) year from the date of the Judgment.

C. **Time for Serving Affidavits.** When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has ten (10) days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding twenty (20) days either by the Court for good cause shown or by the parties by written stipulation. The Court may permit reply affidavits.

D. **On Initiative of Court.** Not later than ten (10) days after entry of Judgment, the Court on its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the Court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the Court shall specify in the order the grounds therefore.

E. **Motion to Alter or Amend a Judgment.** A motion to alter or amend the Judgment shall be served not later than ten (10) days after entry of the Judgment.

F. **Petition for New Trial on Grounds Discovered More than 10 Days After Judgment, Decree or Appealable Order was Filed.**

Where the grounds for a new trial could not with reasonable diligence have been discovered before but are discovered more than ten (10) days after the judgment, decree, or appealable order was filed, or where the impossibility of preparing a record for an appeal, without fault of the complaining party, arose more than ten (10) days after the judgment, decree, or appealable order was filed, the application may be made by petition filed in the original case, as in other cases, within thirty (30) days after such discovery or occurrence; on which a summons shall issue, be returnable and served, or publication made, as in the beginning of civil actions, or service may be made on the attorney of record in the original case. The facts stated in the petition shall be considered as denied without answer, and the case shall be heard and summarily decided after the expiration of twenty (20) days from the date of service and not more than sixty (60) days after service, and the witnesses shall be examined in open court, or their depositions taken as in other cases; but no petition shall be filed more than one (1) year after the filing of the final judgment.

(PR21-002, 11/21/03)

SECTION 5-215.9 RELIEF FROM JUDGMENT OR ORDER.

A. **Clerical Mistakes.** Clerical mistakes in Judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Court at any time of its own initiative or on the motion of any party. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the Supreme Court, and thereafter while the appeal is pending, may be so corrected with leave of the Supreme Court.

B. **Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.** On motion and upon such terms as are just, the Court may relieve a party or his legal representative from a final Judgment, order, or proceeding for the following reasons:

1. mistake, inadvertence, surprise, or excusable neglect;

2. newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Subsection 5-215.8.B;

3. fraud (whether denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

4. the Judgment is void;

5. the Judgment has been satisfied, released, or discharged, or a prior Judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the Judgment should have prospective application; or

6. any other reason justifying relief from the operation of the Judgment.

C. The motion shall be made within a reasonable time, and for reasons in Paragraphs 1, 2 and 3 above not more than one (1) year after the Judgment, order or proceeding was entered or taken. A motion under Subsection B above and this Subsection C does not affect the finality of a Judgment or suspend its operation. This Section does not limit the power of a Court to entertain an independent action to relieve a party from a Judgment, order or proceeding, or to grant relief to a defendant not actually personally notified of the proceedings, or to set aside a Judgment for fraud upon the Court. Writs of *coram nobis*, *coram vobis*, *audita querela*, and bills of review or in the nature of a bill of review are abolished, and the procedure for obtaining any relief from a Judgment shall be by motion as prescribed in this Act or by an independent action.

SECTION 5-215.10 HARMLESS ERROR.

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the Court or by any of the parties is ground for granting a new trial, setting aside a verdict or for vacating, modifying or otherwise disturbing a Judgment or order, unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court at every stage of the proceeding must disregard any error or

defect in the proceeding which does not affect the substantial rights of the parties.

SECTION 5-215.11 STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT.

A. **Automatic Stay; Exceptions; Injunctions; Receiverships; Patent Accountings.** Except as otherwise stated in this Act, no execution shall issue upon a Judgment nor shall proceedings be taken for its enforcement until the expiration of ten (10) days after its entry. Unless otherwise ordered by the Court, an interlocutory or final Judgment in an action for an injunction or in a receivership action, or a Judgment or order directing an accounting, shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of Subsection C below govern suspending, modifying, restoring, or granting an injunction during the pendency of an appeal.

B. **Stay on Motion for New Trial or for Judgment.** In its discretion and on such conditions for the security of the adverse party as are proper, the Court may stay the execution of any proceedings to enforce a Judgment pending the deposition of a motion for a new trial or to alter or amend a Judgment made pursuant to Section 5-215.8, or of a motion or relief from a Judgment or order made pursuant to Section 5-215.9, or of a motion for Judgment in accordance with a motion for a directed verdict made pursuant to Section 5-213.37, or of a motion for amendment to the findings or for additional findings made pursuant to Subsection 5-213.31.B.

C. **Injunction Pending Appeal.** When an appeal is taken from an interlocutory or final Judgment granting, dissolving or denying an injunction, the Court in its discretion may suspend, modify, restore or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

D. **Stay Upon Appeal.** When an appeal is taken, the appellant, by giving a supersedeas bond, may obtain a stay subject to the exceptions contained in Subsection A above. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the Court.

E. **Stay in Favor of the Chickasaw Nation or Agency Thereof.** When an appeal is taken by the Chickasaw Nation or an officer or agency thereof or by direction of any

department of the Government of the Chickasaw Nation, the operation or enforcement of the Judgment is stayed and no bond, obligation, or other security shall be required from the appellant.

F. **Power of the Supreme Court Not Limited.** The provisions in this Section do not limit any power of the Supreme Court or of a Justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the *status quo* or the effectiveness of the Judgment subsequently to be entered.

G. **Stay of Judgment as to Multiple Claims or Multiple Parties.** When the Court has ordered a final Judgment under the conditions stated in Subsection 5-215.1.A, the Court may stay enforcement of that Judgment until the entering of a subsequent Judgment or Judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the Judgment is entered.

SECTION 5-215.12 DISABILITY OF A JUDGE.

If by reason of death, sickness, or other disability, a District Court Judge before whom an action has been tried is unable to perform the duties to be performed by the Court under this Act after a verdict is returned or findings of fact and conclusions of law are filed, then any other District Court Judge, including a Judge appointed Specially under this Section, may perform those duties; but if such other Judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

SECTION 5-215.13 JUDGMENT AGAINST INFANT.

It shall not be necessary to reserve in a Judgment or order the right of a minor to show cause against it after his attaining majority; but in any case in which such reservation would be proper, the minor, within two (2) years after arriving at the age of eighteen (18) years, may show cause against such order of Judgment.

SECTION 5-215.14 JUDGMENTS AS LIENS.

Judgments of the Court shall be liens on real estate of the Judgment debtor within the Jurisdiction of the Chickasaw Nation from and after the time a certified copy of such Judgment has been filed in the Court's land tract records book. A five dollar ($5) fee shall be collected for each requested filing in the land tract records book. No Judgment shall be a lien on the real estate of a Judgment debtor until it has been filed in this manner. Execution shall be issued only by the Court.

SECTION 5-215.15 DISCHARGE OF MONEY JUDGMENT LIENS.

In the event of an appeal to the Chickasaw Nation Supreme Court from a money Judgment, the lien of such Judgment, and any lien by virtue of an attachment issued and levied in the action in which such Judgment was rendered, shall cease upon the Judgment debtor or debtor's depositing, with the Supreme Court, cash sufficient to cover the whole amount of the Judgment including interest, costs and any attorney fees, together with costs and interest on the appeal, accompanied by a written statement, executed by the Judgment debtor or debtors, that such deposit is made to discharge the lien of such Judgment and any lien by virtue of an attachment issued and levied in the action, as provided for herein. It shall be the duty of the Court Clerk, upon receipt of such a cash deposit and written statement, immediately to enter the same and the amount of cash received upon the civil appearance docket in the action, upon the Judgment docket opposite the entry of such Judgment, and upon the land tract records book, if the Judgment has been filed therein. It shall further be the duty of the Court Clerk to deposit the cash so received in any action in a separate interest bearing official depository account and to hold the same pending final determination of the action, and, upon final determination of the action, to pay, or apply the same upon any Judgment that might be rendered against the depositor or depositors and to refund any balance in excess of any such Judgment to the depositor or depositors, or, in the event the action be finally determined in favor of the depositor or depositors, to refund the whole amount thereof to the depositor or depositors.

SECTION 5-215.16 ADDITIONAL CASH DEPOSITS.

A Judgment creditor may, at any time, upon reasonable notice to the Judgment debtor or debtors, move the Court for the deposit of additional cash. If it appears that the cash which has been deposited is insufficient to cover the whole amount of the Judgment, including interest, costs and any attorney fees, together with costs and interest on the appeal, the Court shall order the deposit of additional cash. If the additional cash is not deposited within a reasonable time, which time shall be set by the Court, the Judgment shall be revived and attachment may be issued thereon.

SECTION 5-215.17 REVERSAL BY SUPREME COURT.

In the event of a reversal of the Judgment by the Supreme Court, no money deposited to discharge the lien of such Judgment shall be refunded by the Court until final disposition of the action.

SECTION 5-215.18 INTEREST ON MONEY JUDGMENTS.

All money Judgments of the Court shall bear interest at the rate of ten percent (10%) simple interest *per annum*, except authorized Judgments against the Chickasaw Nation, its

political subdivisions, and agents in their official capacity which Judgments shall not bear interest unless such is specifically provided for; provided, that when a rate of interest is specified in a contract, the rate therein shall apply to the Judgment debt and be specified in the Judgment if the rate does not exceed the lesser of any limitation imposed by Chickasaw Nation law or the law of the jurisdiction in which the contract was made upon the amount of interest which may be charged.

SECTION 5-215.19 EXEMPT PROPERTY; HOMESTEAD; AREA AND VALUE; INDIAN ALLOTTEES; TEMPORARY RENTING.

A. The following property shall be exempt, except as to enforcement of contractual liens or mortgages, from garnishment, attachment, execution and sale and other process for the payment of principal and interest, costs, and attorney fees upon any Judgment of the Court:

1. the homestead of such person; provided, that such home is the principal residence of such person; provided further, that such homestead, if not within any city or town, shall consist of not more than one hundred sixty (160) acres of land, which may be in one or more parcels, to be selected by the owner; provided further, that such homestead within any city or town, owned and occupied as a residence only, or used for both residential and business purposes, shall consist of an area not exceeding one (1) acre of land, to be selected by the owner. For purposes of this Paragraph 1, at least seventy-five percent (75%) of the total square foot area of the improvements for which an exemption is claimed must be used as the principal residence in order to qualify for the exemption. If more than twenty-five percent (25%) of the total square foot area of the improvements for which an exemption is claimed is used for business purposes, the exemption amount shall not exceed five thousand dollars ($5,000). Any temporary renting of the homestead shall not change the character of the same when no other homestead has been acquired;

2. a manufactured home, provided that such manufactured home is the principal residence of such person;

3. all household and kitchen furniture held primarily for the personal, family or household use of such person or a dependent of such person;

4. any lot or lots in a cemetery held for the purpose of sepulcher;

5. implements of husbandry necessary to farm the homestead;

6. tools, apparatus and books used in any trade or profession of such person or a dependent of such person;

7. all books, portraits and pictures that are held primarily for the personal, family or household use of such person or a dependent of such person;

8. the person's interest, not to exceed four thousand dollars ($4,000.00) in aggregate value, in wearing apparel that is held primarily for the personal, family or household use of such person or a dependent of such person;

9. all professionally prescribed health aids for such person or a dependent of such person;

10. five (5) milk cows and their calves under six (6) months old, that are held primarily for the personal, family or household use of such person or a dependent of such person;

11. one hundred (100) chickens that are held primarily for the personal, family or household use of such person or a dependent of such person;

12. two horses and two bridles and two saddles, that are held primarily for the personal, family or household use of such person or a dependent of such person;

13. such person's interest, not to exceed three thousand dollars ($3,000.00) in value, in one motor vehicle;

14. one gun, that is held primarily for the personal, family or household use of such person or a dependent of such person;

15. ten (10) hogs, that are held primarily for the personal, family or household use of such person or a dependent of such person;

16. twenty (20) head of sheep, that are held primarily for the personal, family or household use of such person or a dependent of such person;

17. All provisions and forage on hand, or growing for home consumption, and for the use of exempt stock for one (1) year;

18. seventy-five percent (75%) of all current wages or earnings for personal or professional services earned during the last ninety (90) days, except as provided in the

Chickasaw Nation Code regarding garnishment proceedings for collection of child support;

19. such person's right to receive alimony, support, separate maintenance or child support payments to the extent reasonably necessary for the support of such person and any dependent of such person;

20. any interest in a retirement plan or arrangement qualified for tax exemption purposes under present or future Chickasaw or federal law; provided, such interest shall be exempt only to the extent that contributions by or on behalf of a participant were not subject to federal income taxation to such participant at the time of such contributions, plus earnings and other additions thereon; provided further, any transfer or rollover contribution between retirement plans or arrangements which avoids current federal income taxation shall not be deemed a transfer which is fraudulent as to a creditor under Chickasaw or federal law. "Retirement plan or arrangement qualified for tax exemption purposes" shall include without limitation, trusts, custodial accounts, insurance, annuity contracts and other properties and rights constituting a part thereof. By way of example and not by limitation, retirement plans or arrangements qualified for tax exemption purposes permitted under present Chickasaw and federal law include defined contribution plans and defined benefit plans as defined under the Internal Revenue Code, individual retirement accounts, individual retirement annuities, simplified employee pension plans, Keogh plans, IRC Section 403(a) annuity plans, IRC Section 403(b) annuities, and eligible state deferred compensation plans governed under IRC Section 457. This provision shall be in addition to, and not a limitation of, any other provision of the Chickasaw Nation Code which grants an exemption from attachment or execution and every other species of forced sale for the payment of debts. This provision shall be effective for retirement plans and arrangements in existence on, or created after the effective date of this Act;

21. such person's interest in a claim for personal bodily injury, death or workers' compensation claim, for a net amount not in excess of fifty thousand dollars ($50,000), but not including any claim for exemplary or punitive damages;

22. any interest in a Roth individual retirement account;

24. any interest in an education individual retirement account;

25. any amount received pursuant to the federal earned income tax credit; and

26. all ceremonial or religious items.

B. In no event shall any property under Paragraph 5 or 6 of Subsection A above, the total value of which exceeds five thousand dollars ($5,000), of any person residing within the Jurisdiction of the Chickasaw Nation be deemed exempt.

C. Nothing in the laws of the Chickasaw Nation or United States, or any treaties between the Chickasaw Nation and the United States, shall deprive any Chickasaw allottee

or other Indian allottee of the benefit of the exemptions provided by this Section or any other section of the Chickasaw Nation Code.

SECTION 5-215.20 PAYMENT OF JUDGMENTS FROM INDIVIDUAL INDIAN MONEYS.

Whenever the Court shall have ordered payment of money damages to an injured party and the debtor refuses or neglects to make such payment within the time set for payment by the Court, or when an execution is returned showing no property found and when the debtor has sufficient funds to his credit at any Bureau of Indian Affairs Agency Office to pay all or part of such Judgment, the Clerk of the Court, upon request of the Judgment creditor, shall certify the record to the superintendent of the agency, who shall certify to the Secretary of the Interior the record of the cash and the amount of the available funds. If the Secretary shall so direct, the disbursing agent shall pay over to the Judgment creditor the amount of the Judgment or such lessor amount as may be specified by the Secretary from the account of the Judgment debtor.

SECTION 5-215.21 CONTENTS OF FILED JUDGMENTS, DECREES AND APPEALABLE ORDERS; COURT CLERK'S ENDORSEMENT; MAILING.

A. Judgments, decrees and appealable orders that are filed with the Clerk of the Court shall contain:

1. a caption setting forth the name of the Court, the names and designation of the parties, the file number of the case and the title of the instrument;

2. a statement of the disposition of the action, proceeding or motion, including a statement of the relief awarded to a party or parties and the liabilities and obligations imposed on the other party or parties;

3. the signature and title of the Court; and

4. any other matter approved by the Court.

B. Judgments, decrees and appealable orders that are filed with the Clerk of the Court may contain a statement of costs, attorney's fees and interest, or any of them, if they have been determined prior to the time the judgment, decree or appealable order is signed by the Court in accordance with this Section.

C. The Court Clerk shall endorse on the judgment, decree or appealable order the date it was filed and the name and title of the Court Clerk.

D. A file-stamped copy of the judgment, decree, or appealable order shall be mailed to all parties who are not in default for failure to appear in the action. (PR21-002, 11/21/03)

SECTION 5-215.22 POWER TO VACATE OR MODIFY ITS JUDGMENTS; WHEN.

The District Court shall have power to vacate or modify its own judgments or orders within the times prescribed hereafter:

1. by granting a new trial for the cause, within the time and in the manner prescribed in Sections 5-215.23 through 5-215.29 below;

2. where the defendant had no actual notice of the pendency of the action at the time of the filing of the judgment or order;

3. for mistake, neglect, or omission of the Court Clerk or irregularity in obtaining a judgment or order;

4. for fraud, practiced by the successful party, in obtaining a judgment or order;

5. for erroneous proceedings against an infant, or a person of unsound mind, where the condition of such defendant does not appear in the record, nor the error in the proceedings;

6. for the death of one of the parties before the judgment in the action;

7. for unavoidable casualty or misfortune, preventing the party from prosecuting or defending;

8. for errors in a judgment, shown by an infant in twelve (12) months after arriving at full age; or

9. for taking judgments upon warrants of attorney for more than was due to the plaintiff, when the defendant was not summoned or otherwise legally notified of the time and place of taking such judgment.

(PR24-008, 7/20/07)

SECTION 5-215.23 MOTIONS TO CORRECT, OPEN, MODIFY OR VACATE.

A. The Court may correct, open, modify or vacate a judgment, decree, or appealable order on its own initiative not later than thirty (30) days after the judgment, decree, or appealable order has been filed with the Court Clerk. Notice of the Court's action shall be given as directed by the Court to all affected parties.

B. On motion of a party made not later than thirty (30) days after a judgment, decree, or appealable order has been filed with the Court Clerk, the Court may correct, open, modify, or vacate the judgment, decree, or appealable order. If the moving party did not prepare the judgment, decree, or appealable order, and this Title 5 required a copy of the judgment, decree, or appealable order to be mailed to the moving party, and the court records do not reflect the mailing of a copy of the judgment, decree, or appealable order to the moving party within three
(3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or appealable order, the motion to correct, open, modify, or vacate the judgment, decree, or appealable order may be filed no later than thirty (30) days after the earliest date on which the court records show that a copy of the judgment, decree, or appealable order was mailed to the moving party. The moving party shall give notice to all affected parties. A motion to correct, open, modify, or vacate a judgment or decree filed after the announcement of the decision on all issues in the case but before the filing of the judgment or decree shall be deemed filed immediately after the filing of the judgment or decree.

C. After thirty (30) days after a judgment, decree, or appealable order has been filed, proceedings to vacate or modify the judgment, decree, or appealable order shall be by petition in conformance with this Title 5.

(PR24-008, 7/20/07)

SECTION 5-215.24 MISTAKES OR OMISSIONS OF THE COURT CLERK.

Proceedings to correct mistakes or omissions of the clerk, or irregularity in obtaining a judgment or order, shall be by motion, upon reasonable notice to the adverse party or his attorney in the action. (PR24-008, 7/20/07)

SECTION 5-215.25 MOTIONS AFTER THIRTY (30) DAYS.

If more than thirty (30) days after a judgment, decree, or appealable order has been filed, proceedings to vacate or modify the judgment, decree, or appealable order, on the grounds mentioned in Paragraphs 2, 4, 5, 6, 7, 8 and 9 of Section 5-215.22 above, shall be by petition, verified by affidavit, setting forth the judgment, decree, or appealable order, the grounds to vacate or modify it, and the defense to the action, if the party applying was defendant. On this

petition, a summons shall issue and be served as in the commencement of a civil action. (PR24-008, 7/20/07)

SECTION 5-215.26 LIENS AND SECURITIES PRESERVED.

The Court may first try and decide upon the grounds to vacate or modify a judgment or order before trying or deciding upon the validity of the defense or cause of action. If a judgment is modified, all liens and securities obtained under it shall be preserved to the modified judgment. (PR24-008, 7/20/07)

SECTION 5-215.27 ORDER SUSPENDING PROCEEDINGS.

The party seeking to vacate or modify a judgment or order, may obtain an order suspending proceedings on the whole or part thereof; which order may be granted by the Court, or any judge thereof, upon its being rendered probable, by affidavit, or by exhibition of the record, that the party is entitled to have such judgment or order vacated or modified. On the granting of any such order, the Court, or Judge, may require the party obtaining any such order to enter into an undertaking to the adverse party to pay all damages that may be caused by granting of the same. (PR24-008, 7/20/07)

SECTION 5-215.28 JUDGMENT BEFORE TRIAL.

When the judgment was rendered before the action stood for trial, the suspension may be granted, as provided in Section 5-215.27 above, although no valid defense to the action is shown; and the Court shall make such orders, concerning the executions to be issued on the judgment as shall give to the defendant the same rights of delay he would have had if the judgment had been rendered at the proper time. (PR24-008, 7/20/07)

SECTION 5-215.29 TIME LIMITATIONS.

Proceedings to vacate or modify a judgment, decree or order, for the causes mentioned in paragraphs 4, 5, and 7 of Section 5-215.22 above must be commenced within two (2) years after the filing of the judgment, decree or order, unless the party entitled thereto be an infant, or a person of unsound mind and then within two (2) years after removal of such disability. Proceedings for the causes mentioned in Paragraphs 3 and 6 of Section 5-215.22 of this title, shall be within three (3) years, and in Paragraph 9 of Section 5.215.22 of this title, within one (1) year after the defendant has notice of the judgment, decree or order. A void judgment, decree or order may be vacated at any time, on motion of a party, or any person affected thereby. (PR24-008, 7/20/07; PR36-004, 3/15/2019)

CHAPTER 3
COURT RULES CRIMINAL AND PROCEDURE

Section 5-301.1 Authority Granted to Courts of the Chickasaw Nation.
Section 5-301.2 Jurisdiction.
Section 5-301.3 Law to be Applied.
Section 5-301.4 Indian Civil Rights Act.
Section 5-301.5 Procedural Rules.
Section 5-301.6 Savings Clause.
Section 5-301.7 Scope, Purpose and Construction.
Section 5-301.8 Prosecution of Offenses.
Section 5-301.9 Rights of Defendant.
Section 5-301.10 Statute of Limitations.
Section 5-301.11 No Common Law Offenses.
Section 5-301.12 Court Appointed Attorneys.
Section 5-301.13 Victim Rights.
Section 5-301.14 Confidentiality.

SECTION 5-301.1 AUTHORITY GRANTED TO COURTS OF THE CHICKASAW NATION.

A. In Tribal Law 14-002, 4/18/97, as amended by subsequent Permanent Resolutions, under authority of sub-part (e) of part 11.100 of Title 25 of the Code of Federal Regulations, the Chickasaw Nation, through its governing body, the Chickasaw Nation Tribal Legislature, enacted the “Chickasaw Nation Criminal Code Act” (hereinafter referred to as the "Act"), which upon approval by the Assistant Secretary--Indian Affairs or his designee, became enforceable in the Court of Indian Offenses for the Chickasaw Nation in all criminal matters arising within the jurisdiction of said Court of Indian Offenses. In the original enactment of this Act, the Chickasaw Nation reserved the right to revoke such jurisdiction of said Court and to enforce the Act at such time that the Chickasaw Nation established its own tribal court system.

B. The Chickasaw Nation hereby declares that it has established its own court system and revokes the jurisdiction of the Court of Indian Offenses for the Chickasaw Nation to enforce this Act. For the purposes of this Act, “Court” means the courts of the Chickasaw Nation or the Court of Indian Offenses for the Chickasaw Nation when it sits as a Court for the Chickasaw Nation.
(PR21-003, 11/21/03)

SECTION 5-301.2 JURISDICTION.

In the enforcement of this Act, Territorial Jurisdiction, Subject Matter Jurisdiction and Personal Jurisdiction shall be as provided in Sections 5-201.3, 5-201.4 and 5-201.5 of this Title respectively. (PR21-003, 11/21/03)

SECTION 5-301.3 LAW TO BE APPLIED.

The law to be applied in the enforcement of this Act shall be in accordance with Section 5-201.6 of this Title. (PR21-003, 11/21/03)

SECTION 5-301.4 INDIAN CIVIL RIGHTS ACT.

The Court and Law Enforcement Agency shall be bound by the provisions of the Indian Civil Rights Act of 1968, as amended, and as may be amended from time to time, as defined in 25 USC § 1302. (PR21-003, 11/21/03)

SECTION 5-301.5 PROCEDURAL RULES.

In all Court Proceedings pursuant to this Act, the Court and the Law Enforcement Agency shall follow the Rules of Evidence, and the Rules of Criminal Procedure contained in the Code of the Chickasaw Nation. If the Code of the Chickasaw Nation does not provide guidance to the Court in a particular situation, the Court may refer to the Federal Rules of Evidence or Criminal Procedure. (PR21-003, 11/21/03)

SECTION 5-301.6 SAVINGS CLAUSE.

Any provision or part thereof of this Act that is determined by a court of competent jurisdiction to be contrary to law or to be unconstitutional shall not affect the remaining provisions or parts thereof that have not been determined to be contrary to law or to be unconstitutional. (PR21-003, 11/21/03)

SECTION 5-301.7 SCOPE; PURPOSE AND CONSTRUCTION.

A. This Act governs the procedure in all Criminal Proceedings in the Court and all preliminary or supplementary procedures as specified herein.

B. All proceedings related to the investigation, prosecution, adjudication, and/or punishment of a crime are considered “Criminal Proceedings.”

C. This Act is intended to provide for the just determination of every Criminal Proceeding. It shall be construed to secure simplicity in procedure, fairness in administration of justice and the elimination of unjustifiable expense and delay.
(PR21-003, 11/21/03)

SECTION 5-301.8 PROSECUTION OF OFFENSES.

A. No person shall be punished for an offense except upon a legal conviction, including a plea or admission of guilt or *nolo contendere* in open court, by a court of competent jurisdiction; provided, however, that no incarceration or other disposition of one accused of an offense prior to trial in accordance with this Act shall be deemed punishment, except that deemed so in accordance with Section 5-701.2. (PR36-004, 3/15/2019).

B. All Criminal Proceedings shall be prosecuted in the name of the Chickasaw Nation, against the person charged with an offense, referred to as the "Defendant."

C. The case number prefix assigned to criminal actions shall be sufficiently different and unique from the prefix assigned to other types of cases to clearly distinguish them.

SECTION 5-301.9 RIGHTS OF DEFENDANT.

A. In all Criminal Proceedings, the Defendant shall have the following rights:

1. to appear and defend in person or by counsel except:

a. trial of traffic or hunting and fishing offenses not resulting in injury to any person nor committed while using alcohol or non-prescription drugs may be prosecuted without the presence of the Defendant upon a showing that the Defendant received actual notice five (5) days prior to the proceeding, if no imprisonment is ordered, and any fine imposed does not exceed fifty dollars ($50);

b. the Defendant may represent himself or be represented by any attorney admitted to practice before the Court. An indigent Defendant shall have the right to have court-appointed counsel provided at the Chickasaw Nation's expense, pursuant to Chickasaw law or as may be provided in the rules of the Court;

2. to be informed of the nature of the charges against him and to have a written copy thereof;

3. to testify in his own behalf, or to refuse to testify regarding the charge against him; provided, however, that once a Defendant takes the stand to testify on any matter relevant to the immediate proceeding against him, he shall be deemed to have waived all right to refuse to testify in that immediate Criminal Proceeding. He shall

not, however, be deemed to have waived his right to remain silent in other distinct phases of the criminal trial process;

4. to confront and cross examine all witnesses against him, subject to the Rules of Evidence;

5. to compel by subpoena the attendance of witnesses in his own behalf;

6. to have a speedy public trial by an impartial judge or jury;

7. to appeal in all cases;

8. not to be twice put in jeopardy by the Chickasaw Nation for the same offense; and

9. to prevent his present or former spouse from testifying against him concerning any matter which occurred during such marriage, except in any case in which the offense charged is alleged to have been committed against the spouse or the immediate family, the children of either the spouse, the Defendant, or against the marital relationship.

B. In a Criminal Proceeding in which the Defendant may be subjected to a term of imprisonment greater than one (1) year for a single offense, the Chickasaw Nation shall provide to the Defendant those rights set forth in the Tribal Law and Order Act of 2010 (25 U.S.C. § 1302(c)), as amended, including all of the following:

1. the right to effective assistance of counsel at least equal to that guaranteed by the Constitution of the United States;

2. at the expense of the Nation, an indigent Defendant shall be provided the assistance of a defense attorney licensed to practice law before all Courts of the Chickasaw Nation and by any jurisdiction in the United States that applies professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;

3. that the Judge presiding over the Criminal Proceeding:

a. has sufficient legal training to preside over Criminal Proceeding; and

b. is licensed to practice law by any jurisdiction in the United States;

4. prior to charging the Defendant, the Nation shall make publicly available its criminal laws, rules of evidence, and rules of criminal procedure; and

5. a record of the Criminal Proceeding shall be maintained, including an audio or other recording of the trial proceeding.
(PR38-003, 11/20/2020)

SECTION 5-301.10 STATUTE OF LIMITATIONS.

A. Unless otherwise provided under this Code, every criminal proceeding which is in prosecution of an offense under Title 17, Chapter 5, Offenses against Persons, or in prosecution of an offense under Title 17, Chapter 6, Offenses against Public Justice shall be commenced within twelve (12) years of the date of commission and/or diligent discovery of the offense, or prosecution for that offense shall be forever barred. Unless otherwise provided under this Code, prosecution of every other criminal offense shall be commenced within five (5) years of the date of commission and/or diligent discovery of the offense, or prosecution for that offense shall be forever barred.
(PR38-014, 02/22/2021; PR39-007, 05/20/2022)

B. If an offense is committed by actions occurring on two (2) or more separate days, the offense will be deemed to have been committed on the day the final act which caused the offense to be complete.

C. The date of "Diligent Discovery" is the date at which, in the exercise of reasonable diligence, some person other than the Defendant and his co-conspirator(s) know or should have known that an offense had been committed.

D. A prosecution may be brought at any time for Homicide in the First Degree, Homicide in the Second Degree, Rape in the First Degree, Rape in the Second Degree, Kidnapping, or Treason.

E. Whenever any criminal offense is dismissed by a separate sovereign because that sovereign did not have jurisdiction to prosecute, and the dismissal occurs after the expiration of the period prescribed by the applicable Chickasaw Nation statute of limitations, a complaint charging the criminal offense may be filed in the Chickasaw Nation within one hundred eighty
(180) days of the later of two events: 1) the date of the dismissal of the charge; or 2) if appealed, the date the separate sovereign's appellate court enters a final decision ordering the dismissal. This section does not permit the filing of a new complaint charging a criminal offense where the reason for the dismissal was the failure of the separate sovereign to file the complaint within the period prescribed by its own applicable statute of limitations.

F. Whenever any criminal offense was prosecuted by a separate sovereign, for which a defendant was convicted, sentenced, and punished under the laws of the separate sovereign, and the convictions and sentences were later vacated for lack of jurisdiction after the expiration of the period prescribed by the applicable Chickasaw Nation statutes of limitations, a complaint charging the criminal offense may be filed in the Chickasaw Nation within one hundred eighty
(180) days of the final order vacating the Judgment and Sentence. This section does not permit the filing of a new complaint charging a criminal offense where the reason for the dismissal was the failure of the separate sovereign to file the information within the period prescribed by its own applicable statute of limitations.
(PR38-023, 5/24/2021)

SECTION 5-301.11 NO COMMON LAW OFFENSES.

No act or failure to act shall be subject to criminal prosecution unless made an offense by statute of the Chickasaw Nation or the United States.

SECTION 5-301.12 COURT APPOINTED ATTORNEYS.

A. For a Defendant to have a court-appointed attorney, the Court may consider, but is not limited to, the following:

1. ability to make bond;

2. earning capacity and living expenses;

3. outstanding debts and liabilities;

4. the number of dependents in the Defendant's family;

5. the willingness and ability of the Defendant's family to assist the Defendant with attorney fees;

6. past and present financial history;

7. property owned; and

8. any other relevant considerations as determined by the Court.

B. When a Defendant makes a request for a court-appointed attorney, an application and an Affidavit of Indigence shall be completed in written form and signed under

oath. The initial determination of indigence shall be based on the Defendant's application and Affidavit of Indigence, which shall be filed in the case with the District Court;

C. A status of indigence is subject to change and the determination of indigence shall be continually subject to review by the Judge of the District Court;

D. Before the Court appoints a court-appointed attorney for a Defendant based on the application set forth in Subsection B above, the Court shall ensure that the application is in the form prescribed in Subsection E below, and the person understands that the application is signed under oath and under the penalty of perjury for intentional misrepresentations therein;

E. The application for a court-appointed attorney shall be in substantially the following form:

APPLICATION FOR COURT-APPOINTED ATTORNEY
AND AFFIDAVIT OF INDIGENCE

Defendant's Name:_____
Address:_____Phone:_____
Date of Birth:_____Did you post bond? Yes No Bond Amount:$___ Marital Status:_____Spouse's Name:_____Number of dependents:
Employer:_____Length of time at job:_____
Average Monthly Income:$_____Additional Income:$_____
Spouse's Employer:_____Length of time at job:_____
Average Monthly Income:$_____Additional Income:$_____
Are you a student?__Yes__No If yes, what institution:_____
List monthly expenses: Rent/Mortgage:$_____Utilities:$_____
Car Payment:$_____Insurance:$_____Gas:$_____
Groceries:$_____Healthcare:$_____Other:$_____
_____ Circle if you receive: Government Assistance – Unemployment - Social Security - VA

How much do you receive per month for each?$_____
Do you have a checking account? Yes No If yes, how much is in the account:$_____
Do you have a savings account? Yes No If yes, how much is in the account:$_____
Do you own a car?__Yes No Make:_____Model:_____Value:$_____
Do you own any other property with a value of more than $500, real or personal? Yes No
If yes, list such property and its value:_____
Do you have any friends or family that are willing and able to aid you in payment of attorney fees? Yes No

I swear and affirm under penalty of perjury that I am without funds or other resources of income to pay an attorney and/or to pay costs associated with this case. I have read and understand the

above statement and understand that if it is knowingly false, then a charge of perjury could be filed against me.

Defendant's signature:_____Date:_____

This application is hereby: □ APPROVED □ DENIED, by:

Judge's signature:_____Date:_____

SECTION 5-301.13 VICTIM RIGHTS.

A. A victim of a crime shall have the following rights:

1. to be treated with fairness, respect, and dignity and to be reasonably protected from intimidation, harassment, or abuse throughout the criminal justice process;

2. to be informed of financial assistance and other social services available as a result of being a victim, including information on how to apply for the assistance and services; and

3. to be informed of the procedures to be followed in order to apply for and receive any restitution to which the victim is entitled.

B. In addition to the above, a victim of a violent crime shall have the following rights:

1. to be informed of all hearing dates;

2. to provide the Court with a victim impact statement and an assessment of the risk of future harm;

3. to be present at all hearings and at sentencing of the Defendant, unless prohibited by the rules of evidence or other applicable law;

4. to be heard at any proceeding involving the Defendant's release, plea or sentencing;

5. to be provided a waiting area in the court building that reduces contact with the Defendant;

6. to suggest conditions of probation that may be necessary to ensure the safety of the victim and the victim's family;

7. to request restitution for losses sustained as a direct consequence of any criminal conduct;

8. to apply for victim compensation and be informed of procedures for applying; and

9. to confidential communications with a victim advocate, unless specifically waived.

C. The Prosecutor shall make reasonable efforts to notify a violent-crime victim when the Prosecutor has decided to:

1. decline the prosecution of the crime involving the victim;

2. withdraw the criminal charges filed against the Defendant; or

3. enter into a plea agreement with the Defendant.

D. The Prosecutor shall ensure the victim is notified of their rights herein.

SECTION 5-301.14 CONFIDENTIALITY.

The Chickasaw Nation District Court, upon the request of a victim, witness, the Prosecutor or upon the Court's own motion, may order that the residential address, telephone number, place of employment, or other personal information of the victim or witness shall not be disclosed in any law enforcement record or any court document, other than the transcript of a court proceeding, if it is determined by the Court to be necessary to protect the victim, witness, or immediate family of the victim or witness from harassment or physical harm and if the Court determines that the information is immaterial to the defense.

ARTICLE B
CHICKASAW NATION HEALING TO WELLNESS COURT

Section 5-302.1 Creation and Purpose.
Section 5-302.2 Definitions.
Section 5-302.3 Jurisdiction.

SECTION 5-302.1 CREATION AND PURPOSE.

A. The Chickasaw Nation hereby establishes its Chickasaw Nation Healing to Wellness Courts.

B. The Chickasaw Nation Healing to Wellness Courts are to:

1. offer treatment to offenders who have committed a crime that is directly or indirectly related to mental health, substance abuse, addiction, and other conditions that may be a focus of clinical attention;

2. identify and recommend potential participants to the Wellness Court for legal and clinical screening as soon as possible during any stage of the criminal court process;

3. strictly monitor and supervise each participant through random and frequent drug and alcohol testing, court appearances, and all Wellness Court requirements;

4. impose immediate sanctions and offer immediate rewards or incentives when a participant's behavior warrants such actions; and

5. make the participant a part of the Wellness Court and to encourage and support each participant in the goal of individual wellness.

SECTION 5-302.2 DEFINITIONS.

"Wellness Court" means the entire Healing to Wellness Court programs including, but not limited to, Drug Court, Driving Under the Influence Court, Veterans Court, Mental Health Court, Domestic Violence Court, and Family Court.

SECTION 5-302.3 JURISDICTION.

A. The Wellness Court shall have jurisdiction over any case that is

transferred to it by an order of the Chickasaw Nation District Court. Upon successful completion of the Wellness Court program, or at such time when a participant of the Wellness Court becomes ineligible to continue in the program as set out in the Wellness Court rules, policies, and procedures, the Wellness Court shall transfer jurisdiction of the case back to the Chickasaw Nation District Court for final disposition.

B. Referrals to the Wellness Court may be made by prosecutors, defense counsel, social workers, case managers, and health care providers who provide services to the Wellness Court or work within the Chickasaw Nation District Court system.

C. Once a referral is made to the Wellness Court, potential participants shall be evaluated for eligibility and report back to the Chickasaw Nation District Court about the eligibility of the potential participant.

D. Each Wellness Court shall establish its own policies and procedures and amend and modify its policies and procedures as necessary.
(PR40-001, 11/18/2022)

ARTICLE C
TRUANCY COURT

Section 5-303.1 Chickasaw Nation Truancy Court.
Section 5-303.2 Definitions.
Section 5-303.3 School Attendance.
Section 5-303.4 Exception to School Attendance.
Section 5-303.5 Participation in the Chickasaw Nation Truancy Court.
Section 5-303.6 Chickasaw Nation Truancy Court Programs.
Section 5-303.7 Cooperative Agreements.

SECTION 5-303.1 CHICKASAW NATION TRUANCY COURT.

There is hereby established a Chickasaw Nation Healing to Wellness Court under Title 5, Chapter 3, Article B, of the Chickasaw Nation Code known as the "Chickasaw Nation Truancy Court." Policies and procedures, and amendments to such policies and procedures as necessary, to improve the attendance or conduct of a Child in School will be developed.

SECTION 5-303.2 DEFINITIONS.

A. Except as otherwise provided for herein, defined terms used in this Article shall have the meaning ascribed to them in Title 6, Section 6-301.3.

B. "School" means the state-supported public school district within which the Child resides or receives a valid school transfer; a private school or extension program approved either under the Chickasaw Nation Code or State law; or a home-based instructional program as authorized pursuant to Oklahoma law, or approved under the Chickasaw Nation Code, designed to allow the Child and Parent, Guardian, or Custodian to administer to the unique needs of the Child.

SECTION 5-303.3 SCHOOL ATTENDANCE.

Any Child who is over the age of five (5) years, and under the age of eighteen (18) years, is compelled to attend and comply with the rules of some public, private, or other School, unless other means of education are provided for the full term the Schools of the district are in session or the Child is excused.

SECTION 5-303.4 EXCEPTION TO SCHOOL ATTENDANCE.

A Child and his or her Parent, Guardian, or Custodian shall be excused from the requirements of this Chapter and shall not be subject to the penalties set out herein if any of the following are present:

A. The School attended by the Child has excused such student from attendance because the Child is physically or mentally unable to attend School and the School is providing all legally required services in a home-based or other approved program;

B. The Child is attending an accredited online school program or residential school operated by the Chickasaw Nation, other Indian education agency, or the Oklahoma Department of Human Services; or

C. The Child has been temporarily excused upon the request of his or her Parent, Guardian, or Custodian for purposes agreed upon by the School authorities and Parent, Guardian, or Custodian. Such excused absences shall not be permitted if deemed to cause a serious adverse effect upon the Child's educational progress.

SECTION 5-303.5 PARTICIPATION IN THE CHICKASAW NATION TRUANCY COURT.

The office of the Prosecutor may elect not to file charges for an offense of mandatory school attendance if the Child's Parent, Guardian, or Custodian participates in the Chickasaw Nation Truancy Court and completes any program established thereby.

SECTION 5-303.6 CHICKASAW NATION TRUANCY COURT PROGRAMS.

A. A program of services from the Chickasaw Nation department(s) assigned the responsibility of providing truancy services to a Child and their Parent, Guardian, or Custodian to improve school attendance or the conduct of a Child in School shall be developed. Services shall clearly document diligent attempts to provide appropriate services to the Child and the Child's Parent, Guardian, or Custodian unless it is determined that there is no substantial likelihood that the Child and the Child's Parent, Guardian, or Custodian will benefit from further services and supervision of the Chickasaw Nation Truancy Court.

B. Steps taken by the School district to improve the attendance or conduct of the Child in School shall be reviewed and attempts to engage the School district in further diversion attempts shall be made if it appears that such attempts will be beneficial to the Child.

C. Upon completion of the program established by the Chickasaw Nation Truancy Court, the Court shall release the Child and the Child's Parent, Guardian, or Custodian from the Chickasaw Nation Truancy Court. The Court may order status hearings as the Court

determines necessary to monitor the attendance or conduct of a Child in School. The Court may refer the Child and the Child's Parent, Guardian, or Custodian to the Chickasaw Nation Truancy Court if the Court finds the Child will benefit from additional participation in the Chickasaw nation Truancy Court.

SECTION 5-303.7 COOPERATIVE AGREEMENTS.

A. The Chickasaw Nation may enter into cooperative agreements with any school or school district operating in whole or in part within the Chickasaw Nation for purposes of increasing and improving the attendance and overall well-being of students who are covered by this Chapter.

B. The Chickasaw Nation may enter into cooperative agreements with other courts in whole or in part within the Chickasaw Nation to ensure the goals of the Chickasaw Nation Truancy Court are met.
(PR40-004, 2/17/2023)

CHAPTER 4
SPECIAL TRIBAL CRIMINAL JURISDICTION OVER COVERED OFFENSES

Section 5-401.1 Definitions.
Section 5-401.2 Exercise of Special Tribal Criminal Jurisdiction.
Section 5-401.3 Special Tribal Criminal Jurisdiction.
Section 5-401.4 Nature of Special Tribal Criminal Jurisdiction
Section 5-401.5 Covered Offenses.
Section 5-401.6 Procedures under Special Tribal Criminal Jurisdiction.
Section 5-401.7 Defendant's Right to Habeas Corpus Relief.
Section 5-401.8 Juries under the Exercise of Special Tribal Criminal Jurisdiction of the Chickasaw Nation.
Section 5-401.9 Fees, Costs and Expenses.

SECTION 5-401.1 DEFINITIONS.

The following words have the meanings given below when used in this Chapter:

1. "Assault of Tribal Justice Personnel" shall mean any offense in the Chickasaw Nation that involves the use, attempted use, or threatened use of physical force against an individual authorized to act for, or on behalf of, the Chickasaw Nation

or serving the Chickasaw Nation during, or because of, the performance or duties of that individual in—

A. preventing, detecting, investigating, making arrests relating to, making apprehensions for, or prosecuting a Covered Offense;

B. adjudicating, participating in the adjudication of, or supporting the adjudication of a Covered Offense;

C. detaining, providing supervision for, or providing services for persons charged with a Covered Offense; or

D. incarcerating, supervising, providing treatment for, providing rehabilitation services for, or providing reentry services for persons convicted of a Covered Offense.

2. "Child" shall mean a person who has not attained the lesser of—

A. the age of 18; and

B. except in the case of sexual abuse, the age specified by the criminal law of the Chickasaw Nation.

3. "Child Violence" shall mean the use, threatened use, or attempted use of violence against a Child defined as a criminal offense in the Chickasaw Nation.

4. The terms "Coercion" and "Commercial Sex Act" shall have the meanings given to the terms in 18 U.S.C. § 1591(e).

5. "Dating Violence" shall mean the commission of any criminal offense in the Chickasaw Nation that is committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

6. "Domestic Violence" shall mean the commission of any criminal offense in the Chickasaw Nation that is committed by

A. a current or former spouse or intimate partner of the victim;

B. a person with whom the victim shares a child in common;

C. a person who is cohabitating with or who has cohabitated with the victim as a spouse or intimate partner; or

D. a person similarly situated to a spouse of the victim under the domestic or family violence laws of the Chickasaw Nation.

7. "Indian" shall mean a person who is a member of a federally recognized Indian tribe.

8. "Indian Country" shall have the meaning given to the term in 18 U.S.C. § 1151.

9. "Obstruction of Justice" shall mean any offense in the Chickasaw Nation that involves interfering with the administration or due process of the laws of the Chickasaw Nation, including any criminal proceeding in the Chickasaw Nation or investigation of a criminal offense under the laws of the Chickasaw Nation.

10. "Protective Orders" shall mean:

A. any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and

B. any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendent lite order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

11. "Sex Trafficking" shall mean conduct within the meaning of 18 U.S.C. § 1591(a).

12. "Sexual Violence" shall mean any nonconsensual sexual act or contact defined as an offense in the Chickasaw Nation, including in any case in which the victim lacks the capacity to consent to the act.

13. "Spouse or Intimate Partner" shall have the meaning given to the term in 18 U.S.C. § 2266.

14. "Stalking" shall mean engaging in a course of conduct at a specific person in violation of the laws of the Chickasaw Nation wherein a person engages in a course of conduct that would cause a reasonable person:

A. to fear for the person's safety or the safety of others; or

B. to suffer substantial emotional distress.

15. "Violation of a Protection Order" shall mean an act that:

A. occurs in the Chickasaw Nation; and

B. violates a provision of a Protective Order that—

i. prohibits or provides protection against violent or threatening acts or harassment against, Sexual Violence against, contact or communication with, or physical proximity to, another person;

ii. was issued against the Defendant;

iii. is enforceable by the Chickasaw Nation; and

iv. is consistent with 18 U.S.C. § 2265(b). (PR39-013, 09/20/2022)

SECTION 5-401.2 EXERCISE OF SPECIAL TRIBAL CRIMINAL JURISDICTION.

The Chickasaw Nation elects to exercise Special Tribal Criminal Jurisdiction over the Indian Country of the Chickasaw Nation, under its inherent tribal sovereignty and in conformity as a "participating tribe" under 25 U.S.C. § 1304.

(PR39-013, 09/20/2022)

SECTION 5-401.3 SPECIAL TRIBAL CRIMINAL JURISDICTION.

A. "Special Tribal Criminal Jurisdiction" shall mean the criminal jurisdiction that the Chickasaw Nation may exercise under this Chapter, but, prior to the enactment of these provisions, was otherwise prevented from exercising under federal law.

B. The Chickasaw Nation may exercise Special Tribal Criminal Jurisdiction over all non-Indian persons for a Covered Offense that occurs within the Indian Country of the Chickasaw Nation.

C. No Special Tribal Criminal Jurisdiction may be exercised over an alleged offense if neither the defendant nor the victim is an Indian, except in prosecution of the Covered Offenses set forth in Section 5-401.5(A) and (E), in which case neither the defendant nor the victim are required to be an Indian.

(PR39-013, 09/20/2022)

SECTION 5-401.4 NATURE OF SPECIAL TRIBAL CRIMINAL JURISDICTION.

A. The Chickasaw Nation may exercise Special Tribal Criminal Jurisdiction over all persons as prescribed for herein.

B. Nothing in this Chapter shall be construed to create any federal or state jurisdiction over Indian Country.

C. Nothing herein shall be construed to waive the sovereign rights and immunities of the Chickasaw Nation or otherwise provide for any cause of action against the Chickasaw Nation, except as may be explicitly set forth herein.

(PR39-013, 09/20/2022)

SECTION 5-401.5 COVERED OFFENSES.

A "Covered Offense" shall include:

A. Any offense of the criminal laws of the Chickasaw Nation involving Assault of Tribal Justice Personnel,

B. Any offense of the criminal laws of the Chickasaw Nation involving Child Violence,

C. Any offense of the criminal laws of the Chickasaw Nation involving Dating Violence,

D. Any offense of the criminal laws of the Chickasaw Nation involving Domestic Violence,

E. Any offense of the criminal laws of the Chickasaw Nation involving Obstruction of Justice,

F. Any offense of the criminal laws of the Chickasaw Nation involving Sexual Violence,

G. Any offense of the criminal laws of the Chickasaw Nation involving Sex Trafficking,

H. Any offense of the criminal laws of the Chickasaw Nation involving Stalking, and

I. Any offense of the criminal laws of the Chickasaw Nation involving Violation of a Protection Order.

(PR39-013, 09/20/2022)

SECTION 5-401.6 PROCEDURES UNDER SPECIAL TRIBAL CRIMINAL JURISDICTION.

A. Except as otherwise specified in this Chapter, any prosecution exercising Special Tribal Criminal Jurisdiction shall follow all the procedures applicable to the Chickasaw Nation District Court in the exercise of its general criminal jurisdiction.

B. In addition to those rights specified in this Chapter, the Defendant shall have all rights otherwise available to Defendants brought before the Chickasaw Nation District Court in the exercise of its general criminal jurisdiction.

(PR39-013, 09/20/2022)

SECTION 5-401.7 DEFENDANT'S RIGHT TO HABEAS CORPUS RELIEF.

A. At the Initial Appearance, the Court shall provide the Defendant with written notification of his rights:

1. to file in a court of the United States a petition for a writ of habeas corpus under 25 U.S.C. § 1303; and

2. to petition the Court to stay further detention pending determination of a habeas corpus petition in a court of the United States.

3. If the Defendant requests a stay of detention as described in subsection A(2) above from the Chickasaw Nation Courts, then the Court shall grant a hearing at the

earliest possible time to rule on such stay of detention. The Court shall grant a stay of detention if it determines the following:

a. that there is a substantial likelihood the habeas corpus petition will be granted by a court of the United States; and

b. that by clear and convincing evidence, after giving each alleged victim in the matter an opportunity to be heard, that under conditions imposed by the Court, the Defendant is not likely to flee or pose a danger to any person or the community if released.

B. Prior to the sentencing of a Defendant, nothing herein shall prohibit a person in custody from petitioning a court of the United States to stay further detention of that person by the Chickasaw Nation.

C. After a Defendant has been sentenced by the Chickasaw Nation, a person in custody shall exhaust all tribal remedies prior to filing a writ of habeas corpus in a court of the United States.

(PR39-013, 09/20/2022)

SECTION 5-401.8 JURIES UNDER THE EXERCISE OF SPECIAL TRIBAL CRIMINAL JURISDICTION OF THE CHICKASAW NATION.

A. All Defendants charged under an exercise of Special Tribal Criminal Jurisdiction shall have the right to a trial by an impartial jury, selected from a jury pool that reflects a fair cross section of the community.

B. Juries empaneled under the exercise of Special Tribal Criminal Jurisdiction shall include six members drawn at random from a jury pool consisting of persons as set forth in Title 5, Chapter 2, Article L.

C. All jury verdicts under the exercise of Special Tribal Criminal Jurisdiction by the Chickasaw Nation must be unanimous.

(PR39-013, 09/20/2022)

SECTION 5-401.9 FEES, COSTS, AND EXPENSES.

Upon conviction, a Defendant shall be required to pay all incarceration fees, Court costs, restitution, counseling costs, class fees, treatment program fees or any other fees or costs associated with the case, or as otherwise ordered by the Court.

(PR39-013, 09/20/2022)

CHAPTER 5
RULES OF CRIMINAL PROCEDURE
PROCEEDINGS BEFORE TRIAL

ARTICLE A

Section 5-501.1 The Complaint.
Section 5-501.2 Arrest Warrant or Summons to Appear.
Section 5-501.3 Criminal Citations.
Section 5-501.4 Initial Appearance.
Section 5-501.5 Commitments.
Section 5-501.6 Joinder.
Section 5-501.7 Pleas.
Section 5-501.8 Withdrawing Guilty Plea.
Section 5-501.9 Plea Bargaining.
Section 5-501.10 Pleading and Motions Before Trial: Defenses and Objections.
Section 5-501.11 Concurrent Trial of Defendants or Charges.
Section 5-501.12 Discovery and Inspection.
Section 5-501.13 Subpoena.

SECTION 5-501.1 THE COMPLAINT.

A. **Complaint**. Every criminal proceeding shall be commenced by the filing of a criminal complaint. The complaint is a sworn written statement of the essential facts charging that a named individual(s) has committed a particular offense.

B. **Contents of Complaint.** The complaint shall contain:

1. the name and address of the Court;

2. the name of the Defendant, if known or some other name if not known plus whatever description of the defendant is known;

3. the signature of the prosecutor or his assistant and his typewritten name;

4. a written statement describing in ordinary and plain language the facts of the offense alleged to have been committed including a reference to the time, date, and place as nearly as be known. The offense may be alleged in the language of the statute violated;

5. the person against whom or against whose property the offense was committed and the names of the witnesses of the Chickasaw Nation, if known, otherwise no statement need be made;

6. the general name and Chickasaw Nation Code title and section number of the alleged offense.

C. **Error.** Neither an omission from nor an error in the form of the complaint shall be grounds for dismissal of the case unless some significant prejudice against the defendant can be shown to result therefrom.

D. **Time of Filing Complaint.** A complaint may be filed at any time within the period prescribed by Section 5-301.11, provided that if an accused has been arrested without a warrant, the complaint shall be filed promptly and in no case later than the time of arraignment.

(PR21-003, 11/21/03)

SECTION 5-501.2 ARREST WARRANT OR SUMMONS TO APPEAR.

A. If it appears from the complaint that an offense has been charged against the Defendant, a Judge shall issue a summons to the Defendant to bring him before the Court. An arrest warrant shall issue only upon a complaint charging an offense by the Defendant within the Chickasaw Nation, supported by the sworn recorded *ex parte* testimony or affidavit of some person having knowledge of the facts of the case through which the Judge can determine that probable cause exists to believe that an offense has been committed and that the Defendant committed it.

B. **Issuance of Arrest Warrant or Summons.** Unless the Judge has reasonable grounds to believe that the person will not appear on a summons, or unless the complaint charges an offense, a summons shall be issued instead of an arrest warrant.

C. **Contents of Arrest Warrant.** The warrant of arrest shall be signed by the Judge issuing it and shall contain the name and address of the Court; the name of the Defendant, or if the correct name is unknown, any name by which the Defendant is known, the Defendant's description, and a description of the offense charged with a reference to the section of the Chickasaw Nation Code alleged to have been violated. It shall order and command that the

Defendant be arrested and brought before a Judge of the Court to enter a plea. When two (2) or more charges are made against the same person, only one (1) warrant shall be necessary to commit him to trial.

D. **Contents of Summons.** A criminal summons shall contain the same information as an arrest warrant except that instead of commanding the arrest of the accused, it shall order the Defendant to appear before a Judge within five (5) days or on some certain day to enter a plea to the charge and a notice that upon refusal, the Defendant may be further charged with disobeying a lawful order of the Court. If the Defendant fails to appear in response to a summons or refuses to accept the summons, an arrest warrant shall issue.

E. **Service of Arrest Warrants and Summons.**

1. A warrant for arrest and criminal summons may be served by any law enforcement officer of an agency designated by the Governor. Service may be made at any place within the jurisdiction of the Chickasaw Nation.

4. An officer need not have the warrant in his possession at the time of arrest, but if not, he shall inform the Defendant of the charge and that a warrant of arrest has been issued. The officer shall provide the Defendant a copy of the warrant not later than the time of arraignment.
(PR21-003, 11/21/03)

SECTION 5-501.3 CRIMINAL CITATIONS.

A. Whenever a law enforcement officer would be empowered to make an arrest without a warrant for an offense and has reasonable grounds to believe an immediate arrest is not necessary to preserve the public peace and safety, he may, in his discretion, issue the defendant a citation instead of taking said person into custody. Such citation, signed by the law enforcement officer, shall be considered a court order, and may be filed in the action in lieu of a formal complaint, unless the Court orders that a formal complaint be filed.

B. **Contents of Citation.**

1. The citation shall contain the name and address of the Court, the name or alias and description of the Defendant, a description of the offense charged, and the signature of the law enforcement officer who issued the citation.

2. The citation shall contain an agreement by the Defendant to appear before a Judge within five (5) days or on a day certain to answer to the charge, and the signature of the Defendant.

3. The citation shall contain a notice that upon defendant's failure to appear, an arrest warrant shall issue and that the Defendant may be further charged with disobeying a lawful order of the court.

4. One (1) copy of the citation shall be given to the Defendant and two (2) copies shall be delivered to the Prosecutor's office.
(PR21-003, 11/21/03)

SECTION 5-501.4 INITIAL APPEARANCE.

A. Initial Appearance. Initial Appearance is the bringing of an accused person before the Court, informing them of the charge(s) against them and of their rights, receiving their plea and setting bail. Initial Appearances shall be held in open court wherein the accused person may appear in-person or by video or audio conference technology, as approved by the District Court. If the accused was arrested in response to a warrant and confined, the Initial Appearance shall occur within seventy-two (72) hours of the arrest, Saturdays, Sundays and legal holidays excepted. If the accused is arrested without a warrant and confined, the arresting law enforcement officer must complete an Affidavit of Probable Cause to Make Warrantless Custodial Arrest and present it to a j udicial officer within forty-eight (48) hours for determination of probable cause to detain the accused until arraignment is held. The Court shall maintain a record of all Initial Appearances in conformity with 5 § 5-202.13.

B. Procedure at Initial Appearance. Unless waived by the Defendant, the Initial Appearance shall be conducted in the following order:

1. The Court shall ascertain whether the identifying information of the accused person, as indicated in the caption of the complaint, is accurate and correct. The Court or prosecutor should read all charge(s) set forth in the complaint alleged against the accused, inclusive of the minimum and maximum punishment allowed by law. The Court shall ensure that the Office of the Prosecutor has provided a true and accurate copy of the Complaint to the Defendant.

2. The Court should determine that the accused understands the nature of the charge(s) alleged against him and shall explain to the Defendant that he or she has the following rights:

    a. The Defendant is presumed to be innocent of all charges.

    b. That the Chickasaw Nation bears the burden to establish the Defendant's guilt of the alleged offenses beyond a reasonable doubt.

c. The Defendant has the right to remain silent and the right against self-incrimination.

d. The Defendant is entitled to a speedy and public trial. The Defendant has the right to request a trial before a jury comprised of six (6) persons for all offenses in which incarceration is a possible punishment.

e. The right to hear, see, and confront all witnesses called to testify against him.

f. The right to present evidence on his own behalf and the right to compel witnesses to appear before the Court to testify on his own behalf.

g. The right to consult with an attorney prior to the disposition of the case. The right to have an attorney represent the Defendant at all stages of the case; and, for all offenses in which incarceration is a possible punishment, the right to request a court-appointed attorney if the defendant is determined to be indigent by the Court.

h. The right to file a *Writ of Habeas Corpus* with the Federal District Court to determine the legality of the Chickasaw Nation's detention under 25 U.S.C. §1303.

3. The Defendant should be advised that requests for court-appointed counsel shall be made on a form approved by the District Court for that purpose. If the Court determines that the Defendant is indigent, a licensed attorney will be appointed to represent the Defendant.

C. Receipt of Plea at Initial Appearance. Once the Defendant has been properly advised of all rights afforded to him under the law, as set forth above, the Court should inquire whether the Defendant desires to enter a plea of not guilty, *nolo contendere*, or guilty.

1. If the Defendant refuses to plead, the Court shall enter a plea of not guilty on his behalf.

2. If the Defendant is uncertain how to plead, the Court shall enter a plea of not guilty on his behalf.

3. If the Defendant pleads not guilty, the Court shall set a future hearing date, affix bail for bailable offenses, and set any special conditions for bail prior to trial.

4. If the Defendant pleads *nolo contendere* or guilty, the Court shall conduct an inquiry to determine the following:

a. The Defendant understands the nature of the charges and the applicable range of punishment for each offense and that the Court may impose sentencing within the range of punishment for each offense, as set forth by law;

b. That by entering a plea of *nolo contendere* or guilty, the Defendant is waiving all rights, as set forth above;

c. That the Defendant desires to enter such plea voluntarily without coercion.

5. If the Court accepts the plea of *nolo contendere* or guilty, the Court may impose sentencing in conformity with 5 § 5-701.2 *et seq.*

6. If the Defendant desires to enter a plea of *nolo contendere* or guilty to a felony offense or to an enhanceable misdemeanor offense, the Court shall cause a verbatim record to be made of the plea by digital, electronic, or stenographic means, as approved by the District Court in conformity with 5 § 5-202.13 et seq., unless expressly waived by the Defendant and the Chickasaw Nation.

(PR38-002, 11/20/2020; (PR41-004, 12/15/2023; PR21-019, 5/21/04; PR41-010, 5/22/2024)

SECTION 5-501.5 COMMITMENTS.

No person shall be detained or jailed for a period longer than seventy-two (72) hours, Saturdays, Sundays, and legal holidays excepted, unless a commitment bearing the signature of a Judge has been issued.

1. A temporary commitment shall be issued pending investigation of charges or trial.
2. A final commitment shall be issued for those persons incarcerated as a result of a judgment and sentence of the Court.

(TL14-002, 4/18/97)

SECTION 5-501.6 JOINDER.

A. **Joinder of Offenses.** Two (2) or more offenses may be charged in one (1) complaint so long as they are set out in separate counts and:

1. they are part of a common scheme or plan; or

2. they arose out of the same transaction.

B. **Joinder of Defendants.** Two or more Defendants may be joined in one complaint if they are alleged to have participated in a common act, scheme, or plan to commit one (1) or more offense. Each defendant need not be charged in each count.
(TL14-002, 4/18/97)

SECTION 5-501.7 PLEAS.

A. A Defendant may plead guilty, *nolo contendere*, or not guilty. The Court shall not enter a judgement upon a plea of guilty or *nolo contendere* unless it is satisfied that there is a factual basis for the plea.

B. The Defendant, with the consent of the Court and the Prosecutor, may plead guilty to any lesser offense than that charged which is included in the offense charged in the complaint or to any lesser degree of the offense charged.
(TL14-002, 4/18/97)

SECTION 5-501.8 WITHDRAWING GUILTY PLEA.

A motion to withdraw a plea of guilty may be made only before a sentence is imposed, deferred, or suspended, except that the Court may allow a guilty plea to be withdrawn to correct a manifest injustice. (TL14-002, 4/18/97)

SECTION 5-501.9 PLEA BARGAINING.

Whenever the Defendant pleads guilty as a result of a plea arrangement with the Prosecutor, the full terms of such agreement shall be disclosed to the Judge. The Judge in his discretion is not required to honor such agreement. In the event the Judge decides not to honor such agreement, he should offer the Defendant an opportunity to withdraw his plea and proceed to trial. (TL14-002, 4/18/97)

SECTION 5-501.10 PLEADING AND MOTIONS BEFORE TRIAL: DEFENSES AND OBJECTIONS.

A. Pleadings in criminal proceedings shall consist of the complaint or citation and the plea of either guilty, *nolo contendere*, or not guilty. All other pleas and motions shall be made in accordance with this Act.

B. Motions raising defenses and objections may be made as follows:

1. Any defenses and objections which are capable of determination other than at trial may be raised before trial by motion.

2. Defenses and objections based on defects in the institution of the prosecution of the complaint other than that it fails to show jurisdiction in the Court or fails to charge an offense may be raised on motion only before trial or such shall be deemed waived, unless the Court, for good cause shown, grants relief from such waiver. Lack of jurisdiction or failure to charge an offense may be raised as a defense or noticed by the Court on its own motion at any stage of the proceeding.

3. Such motions shall be made in writing and filed with the Court at least five (5) business days before the day set for trial. Such motions will be argued before the Court on the date of trial unless the Court directs otherwise. Decision on such motions shall be made by the Judge and not by the jury.

4. If a motion is decided against a Defendant, the trial shall proceed as if no motion were made. If a motion is decided in favor of a defendant, the Judge shall alter the proceedings, allow an interlocutory appeal to be taken as provided in the Appellate Rules, or enter judgment as is appropriate in light of the decision.

(TL14-002, 4/18/97)

SECTION 5-501.11 CONCURRENT TRIAL OF DEFENDANTS OR CHARGES.

A. The Court may order two (2) or more Defendants tried together if they could have been joined in a single complaint, or may order a single Defendant tried on more than one (1) complaint at a single trial.

B. If it appears that a Defendant or the Chickasaw Nation is prejudiced by a joinder of offenses or other defendants for trial, the Court may order separate complaints and may order separate trials or provide such other relief as justice requires. In ruling on a Motion for Severance, the Court may order the Chickasaw Nation to deliver to the Court for inspection in chambers, any statements made by a Defendant which the Chickasaw Nation intends to introduce in evidence at the trial.

(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 5-501.12 DISCOVERY AND INSPECTION.

A. The Prosecutor shall, upon request, permit the Defendant or his attorney to inspect and copy any statements or confessions, or copies thereof, made by the Defendant if such are within the possession or control of or reasonably obtainable by the Prosecutor. The Prosecutor shall make similarly available copies of reports of physical, mental or scientific tests or examinations in relation to or performed upon the Defendant.

B. The Defendant or his attorney shall reveal by written notice to the Court and the Prosecutor at least five (5) working days before trial the names and addresses of any witnesses upon whom the defense intends to rely to provide a defense for the Defendant. Failure to provide such notice will prevent the use of such witnesses by the defense unless it can be shown by the defense that prior notice was impossible or that no prejudice to the prosecution has resulted, in which case the Judge may order the trial delayed or make such other orders as tend to assure a just determination of the case.

(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 5-501.13 SUBPOENA.

A. Upon request of any party, the Court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or any other physical evidence relevant to the determination of the case and not an undue burden on the person possessing the evidence. The Clerk of the Court may act on behalf of the Court and issue subpoenas which have been signed either by the Clerk of the Court or by a magistrate of the Court and which are to be served within Indian Country over which the Court has jurisdiction.

B. A subpoena shall bear the signature of the chief magistrate of the Court, and it shall state the name of the Court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.

C. A subpoena may be served at any place but any subpoena to be served outside of the Indian Country over which the Court has jurisdiction shall be issued personally by a magistrate of the Court.

D. A subpoena may be served by any law enforcement officer or other person appointed by the Court for such purpose. Service of a subpoena shall be made by delivering a copy of it to the person named or by leaving a copy at his or her place of residence or business with any person eighteen (18) years of age or older who also resides or works there.

E. Proof of service of the subpoena shall be filed with the Clerk of the Court by noting on the back of the subpoena the date, time and place that it was served and noting the name of the person to whom it was delivered. Proof of service shall be signed by the person who actually served the subpoena.

F. In the absence of a justification satisfactory to the Court, a person who fails to obey a subpoena may be deemed to be in contempt of court and a bench warrant may be issued for his or her arrest.

(TL14-002, 4/18/97; PR15-030, 9/23/98)

ARTICLE B
COMPETENCY

Section 5-502.1	Definitions.
Section 5-502.2	Application for Determination of Competency; Service; Notice; Suspension of Criminal Proceedings.
Section 5-502.3	Hearing; Date; Evidence; Orders; Examination of Accused; Instructions to Physician.
Section 5-502.4	Post-Examination Competency Hearing; Evidence; Presumptions; Witness; Instructions.
Section 5-502.5	Questions to be Answered in Determining Competency.
Section 5-502.6	Disposition Orders.
Section 5-502.7	Person Capable of Achieving Competence within a Reasonable Time; Suspension of Criminal Proceedings; Civil Commitment.
Section 5-502.8	Incompetent and Dangerous; Placement.
Section 5-502.9	Person Incompetent due to Intellectual Disability; Not Dangerous; Suspension of Criminal Proceedings.
Section 5-502.10	Conditional Release; Requirements.
Section 5-502.11	Resumption of Competency.

SECTION 5-502.1 DEFINITIONS.

As used in this Article:

1. "Competent" or "Competency" means the present ability of a person arrested for or charged with a crime to understand the nature of the charges Criminal and Proceedings brought against him or her and have the ability to assist counsel in conducting a defense in a rational manner.

2. “Criminal Proceeding" means every stage of a criminal prosecution after arrest and before judgment.

3. "Dangerous" means a person who satisfies the criteria of either 7(a), 7(b), or 7(c) of this Section.

4. "Incompetent" or "Incompetency" means the present inability of a person arrested for or charged with a crime to understand the nature of the charges and criminal proceedings brought against them and their inability to assist counsel in the conduct of a defense in a rational manner.

5. "Intellectual Disability" or “Intellectually Disabled” means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior, that adversely affects the person’s performance.

6. "Mental Health Facility" means a public or private hospital or institution offering or providing inpatient mental health services or substance abuse services, a public or private facility accredited as an inpatient or residential psychiatric facility by the Joint Commission on Accreditation of HealthCare Organizations or like accrediting body, or a facility operated by Chickasaw Nation to provide mental health services or substance abuse services.

7. "Person in Need of Treatment" means a person who, because of his or her mental illness or drug or alcohol dependency:

a. poses a substantial risk of immediate physical harm to self as manifested by evidence or serious threats of or attempts at suicide or other significant self-inflicted bodily harm;

b. poses a substantial risk of immediate physical harm to another person or persons as manifested by evidence of violent behavior directed toward another person or persons;

c. has placed another person or persons in a reasonable fear of violent behavior directed towards such person or persons or serious physical harm to them as manifested by serious and immediate threats;

d. is in a condition of severe deterioration such that, without immediate intervention, there exists a substantial risk that severe impairment or injury will result to the person; or

e. poses a substantial risk of immediate serious physical injury to self or death as manifested by evidence that the person is unable to provide for and is not providing for his or her basic physical needs.

8. "Qualified Forensic Examiner" means any:

a. psychiatrist with forensic training and experience, or

b. psychologist with forensic training and experience.

9. “Reasonable Period of Time" means a period not to exceed:

a. a maximum of six (6) months for a misdemeanor criminal offense or the maximum sentence specified for the most serious misdemeanor offense with which the defendant is charged, or

b. a maximum of one (1) year for a felony

offense. (PR41-008, 02/16/2024; comprehensive amendment)

SECTION 5-502.2 APPLICATION FOR DETERMINATION OF COMPETENCY; SERVICE; NOTICE; SUSPENSION OF CRIMINAL PROCEEDINGS.

A. No person shall be subject to any Criminal Procedures after the person is determined to be Incompetent except as provided in this Article. The question of the Incompetency of a person may be raised by the person, the attorney for the person whose Competency is in question, or the prosecutor, by an application for determination of Competency. The application for determination of Competency shall allege that the person is Incompetent to undergo further Criminal Proceedings and shall state facts sufficient to raise a doubt as to the Competency of the person. The court, at any time,

may initiate a Competency determination on its own motion, without an application, if the court has a doubt as to the Competency of the person.

B. A copy of the application for determination of Competency and a notice, as hereinafter described, shall be served personally at least one (1) day before the first hearing on the application for a determination of Competency. The notice shall contain the following information:

1. The definition provided by Section 5-502.1 of this Article of “Competency” and “Incompetency;”

2. That the petitioner and any witnesses identified in the application may offer testimony under oath at the hearings on the application and that the defendant may not be called to testify against the defendant's will, unless the application is initiated by the defendant;

3. That if the person whose Competency is in question does not have an attorney, the court will appoint an attorney for the person who shall represent the person until final disposition of the case;

4. That if the person whose Competency is in question is indigent or poor, the court will pay the attorney fees; and

5. That the person whose Competency is in question shall be afforded such other rights as are guaranteed by tribal and federal law. The notice of hearing on the application for determination of competency shall be served as follows:

a. upon the person whose Competency is in question, and upon the person's parent(s) or spouse; or

b. in the absence of the person's parent(s) or spouse, the person's next of kin that is at least eighteen (18) years of age, if the next of kin is known to be residing within the Chickasaw Nation; or

c. as may be ordered by the court, upon any of the person's relatives residing inside or outside of the Chickasaw Nation; or

d. as may be ordered by the court, upon the person with whom the person whose Competency is in question may reside, or at whose house the person may be.

6. The person making such service shall make affidavit of the same and file such notice, with proof of service, with the court.
(PR41-001, 02/16/2024)

C. Any Criminal Proceedings against a person whose Competency is in question shall be suspended pending the determination of the Competency of the person.

SECTION 5-502.3 HEARING; DATE; EVIDENCE; ORDERS; EXAMINATION OF ACCUSED; INSTRUCTIONS TO PHYSICIAN.

A. Upon filing of an application for determination of Competency, the court shall set a hearing date, which shall be as soon as practicable, but at least one (1) day after service of notice as provided by Section 5-502.2.

B. The court shall hold a hearing on the date provided. At the hearing, the court shall examine the application for determination of Competency to determine if the application alleges facts sufficient to raise a doubt as to the Competency of the person. Any additional evidence tending to create a doubt as to the Competency of the person may be presented at this hearing.

C. If the court finds there is no doubt as to the Competency of the person, it shall order the Criminal Proceedings to resume.

D. If the court finds there is a doubt as to the Competency of the person, it shall order the person to be examined by a Qualified Forensic Examiner employed by

or under contract with the appropriate Chickasaw Nation department or division with the authority to conduct such Competency examinations (the "Examining Department").

1. The Examining Department shall receive written notice from the prosecutor and shall be authorized by order of the court to participate with professionals assigned by any other public or private agency in any Competency evaluation wherein developmental or intellectual disability may be involved.

2. The Examining Department's Qualified Forensic Examiner may issue a separate opinion and recommendation to the court. The person shall be examined by a Qualified Forensic Examiner on an outpatient basis prior to referral for any necessary inpatient evaluation, as ordered by the court. The examination may be conducted in the community, the jail or detention facility where the person is held. The Qualified Forensic Examiner shall have access to all records and documents necessary to assist in the examination of the person whose Competency is in question.

3. If the court determines that the person whose Competency is in question may be Dangerous, it shall order the person retained in a secure facility until the completion of the Competency hearing provided in Section 5-502.4. If the court determines the person may be Dangerous, the court may commit the person to the custody of the appropriate Chickasaw Nation Department or any other tribal or state agency or private facility for the examination. The person shall be required to undergo examination for a period of time sufficient for the Qualified Forensic Examiner(s) to reach a conclusion as to Competency, and the court shall impose a reasonable time limitation for such period of examination.

(PR41-001, 02/16/2024)

E. The Qualified Forensic Examiner(s) shall receive instructions in the court's order that they shall examine the person whose Competency is in question to determine:

1. If the person is able to understand the nature of the charges and Criminal Proceedings brought against him or her;

2. If the person is able to assist counsel in conducting a defense in a rational manner;

3. If the person is unable to understand the nature of the charges and Criminal Proceedings or assist counsel in conducting a defense in a rational manner, then the Qualified Forensic Examiner must determine whether the person can attain Competency within a Reasonable Period of Time if provided with a course of treatment, therapy or training;

4. If the person is Dangerous; and

5. If the person is Incompetent because the person is intellectually -

disabled.; (PR41-001, 02/16/2024)

F. Upon completion of the Competency evaluation, the ~~Department Health or~~ Qualified Forensic Examiner submit a report containing its findings and determinations to the court. If the person is in the custody of the Chickasaw Nation, the person shall be returned to the court in the customary manner within five (5) business days. If the person is in the custody of a Mental Health Facility, the judge shall issue a transportation order requiring the appropriate Chickasaw Nation department to transport the person to court within five (5) business days of receipt of the order.
(PR41-001, 02/16/2024)

SECTION 5-502.4 POST-EXAMINATION COMPETENCY HEARING; EVIDENCE; PRESUMPTIONS; WITNESS; INSTRUCTIONS.

A. A post-examination competency hearing shall be held within thirty (30) days of the date of the Qualified Forensic Examiner(s) have made the determination required in Section 5-502.3 of this Article.
(PR41-001, 02/16/2024)

B. The court, at the hearing, shall determine by a preponderance of the evidence if the person is Incompetent. Such determination shall include consideration of all reports prepared by the Qualified Forensic Examiner(s). The person shall be presumed to be Competent for the purposes of the allocation of the burden of proof and burden of going forward with the evidence. The person shall not have a right to a jury trial for the determination of Competency.

C. The person whose Competency is in question shall have the right to be present at the hearing on the application unless the court determines that the presence of the person makes it impossible to conduct the hearing in a reasonable manner. The court may not decide in advance of the hearing, solely based on the certificate of the examining Qualified Forensic Examiner that the person whose Competency is in question should not be allowed to appear. The court shall determine based on clear and convincing evidence that alternatives to exclusion were attempted before the court renders the person's removal for that purpose or the person's appearance at such hearing improper and unsafe.
(PR41-001, 02/16/2024)

D. All witnesses shall be subject to cross-examination in the same manner as is provided by law. If so stipulated by counsel for a person whose Competency is in question, the prosecutor and the court, testimony may be given by telephone or other electronic transmitting

device approved by the court. No statement, admission or confession made by the person whose Competency is in question obtained during the examination for Competency may be used for any purpose except for proceedings under this Article. No such statement, admission or confession may be used against such person in any criminal action whether pending at the time the hearing is held or filed against such person at any later time, directly, indirectly or in any manner or form.

SECTION 5-502.5 QUESTIONS TO BE ANSWERED IN DETERMINING COMPETENCY.

The court shall answer the following questions in determining the disposition of the person whose Competency is in question:

1. Is the person Incompetent to undergo further Criminal Proceedings at this time? If the answer is no, Criminal Proceedings shall be resumed. If the answer is yes, the following questions shall be answered.

2. Can the Incompetency of the person be corrected within a Reasonable Period of Time, through treatment, therapy, or training?

3. Is the person Incompetent because the person is Intellectually Disabled?

4. If the answer to question 3 is “no”, why is the person Incompetent?

5. Is the person presently Dangerous? (PR41-001, 02/16/2024)

SECTION 5-502.6 DISPOSITION ORDERS.

Upon the finding by the court as provided by Section 5-502.5, the court shall issue the appropriate order regarding the person as follows:

1. If the person is found to be Competent, the Criminal Proceedings shall be resumed;

2. If the person is found to be Incompetent but capable of achieving competency within a reasonable time, the court shall issue the appropriate order as set forth in Section 5-502.7;

3. If the person is found to be Incompetent because the person is Intellectually Disabled, and the person is found to be Dangerous, the court shall issue the appropriate order as set forth in Section 5-502.8;

4. If the person is found to be Incompetent for reasons other than the person is Intellectually Disabled, and the person is found to be Dangerous, the court shall issue the appropriate order as set forth in Section 5-502.8; or

5. If the person is found to be Incompetent because the person is Intellectually Disabled, and the person is found to be not Dangerous, the court shall issue the appropriate order as set forth in Section 5-502.9.

(PR41-001, 02/16/2024)

SECTION 5-502.7 PERSON CAPABLE OF ACHIEVING COMPETENCE WITHIN A REASONABLE TIME; SUSPENSION OF CRIMINAL PROCEEDINGS; CIVIL COMMITMENT.

A. If the person is found to be Incompetent prior to conviction but capable of achieving Competence with treatment within a Reasonable Period of Time, the court shall suspend the Criminal Proceedings and order Competency restoration treatment in the least restrictive and suitable setting available, which may include community outpatient, jail-based, or inpatient hospitalization. In addition to a service provider of the Chickasaw Nation, the court may designate a willing behavioral health private or public entity appropriate to carry out the Competency restoration services to provide such Competency restoration services. The court shall order the person to undergo such treatment, therapy or training which is calculated to allow the person to achieve Competence. Such Competency restoration services shall begin within a Reasonable Period of Time after the court has determined that the person is not Competent. The person shall remain in a detention or jail facility until such time as the setting of Competency restoration is identified and ordered.

B. The Mental Health Facility or a Qualified Forensic Examiner shall make periodic reports to the court as to the Competency of the person, provided that those conducting subsequent evaluations for purposes of these reports are not involved in the restoration of Competency or other treatments to the person. Such reports shall be provided to or made available to the prosecutor and defense counsel.

C. If the Qualified Forensic Examiner, in their professional opinion, has reason to believe that the person is no longer Incompetent, then the Qualified Forensic Examiner shall notify the court in writing and a hearing shall be scheduled within twenty (20) days:

1. If found Competent by the court after such rehearing, Criminal Proceedings shall be resumed;

2. If the court finds that the person remains Incompetent, the person shall be returned to the custody of the Chickasaw Nation Lighthorse Police and the person shall be transported to the jail or the Mental Health Facility from which the person was received for the resumption of Competency restoration services;

3. If after the hearing, the court finds that the person remains Incompetent, but subsequently finds that the person's Incompetency is because of Intellectual Disability and the person is Dangerous, the court shall issue the appropriate order as set forth in Section 5-502.8;

4. If after the hearing, the court finds that the person remains Incompetent,

but subsequently finds that the person's Incompetency is because of Intellectual Disability, and the person is not Dangerous, the court shall issue the appropriate order as set forth in Section 5-502.9.

D. If the person is found to be Incompetent and found to be a Person in Need of Treatment, but not capable of achieving Competence with treatment within a Reasonable Period of Time, the court shall commence civil commitment proceedings pursuant to Title 13 and shall dismiss without prejudice the Criminal Proceeding. If the person is subsequently committed to a Mental Health Facility, the statute of limitations for the criminal charges which were dismissed by the court shall be tolled until the person is discharged from the Mental Health Facility. (PR41-001, 02/16/2024)

SECTION 5-502.8 INCOMPETENT AND DANGEROUS; PLACEMENT.

If the person is found Incompetent, whether due to Intellectual Disability or otherwise, and the person is found to be Dangerous, the court shall suspend the Criminal Proceedings and refer the matter to the Chickasaw Nation Department of Family Services for determination of appropriate placement. In determining the appropriate placement of the person, the Chickasaw Nation Department of Family Services shall consider the type of placement needed, the level of services to be provided, level of supervision required, medical and psychological health of the person, the level security that is appropriate to the needs of the person, and, as applicable, the willingness of the facility to accept the individual.
(PR41-001, 02/16/2024)

SECTION 5-502.9 PERSON INCOMPETENT DUE TO INTELLECTUAL DISABILITY; NOT DANGEROUS; SUSPENSION OF CRIMINAL PROCEEDINGS.

If the person is found to be Incompetent because the person is Intellectually Disabled, and is also found not to be Dangerous, the court shall suspend the Criminal Proceedings and refer the matter to the Chickasaw Nation Department of Family Services for determination of appropriate placement for individuals with Intellectual Disability.
(PR41-001, 02/16/2024)

SECTION 5-502.10 CONDITIONAL RELEASE; REQUIREMENTS.

A. If the person is found to be Incompetent, due to Intellectual Disability or otherwise, and the Chickasaw Nation Department of Family Services deems appropriate, the person may be considered by the court for conditional release as set forth in this section.

B. For any person recommended for conditional release, a written plan for services shall be prepared by the Chickasaw Nation Department of Family Services and filed with the court. In its order of conditional release, the court shall specify the conditions of release and shall direct the appropriate agencies or personnel to submit periodic reports regarding the person's compliance with conditions of release and progress.

C. Conditional Release Requirements:

1. The person cannot have been found Dangerous pursuant to the court's order for evaluation giving rise to these proceedings.

2. There shall be free transmission of all pertinent information, including clinical, medical, and educational information regarding the person, among the person's treatment providers, the appropriate prosecuting attorneys, law enforcement, the person's counsel, and court personnel by order of the court.

3. The person placed on conditional release shall remain in a conditional release status until the reviewing court issues a full release from all conditions.

4. The court's order placing the person on conditional release shall include notice that the person's conditional release may be revoked upon good cause.

5. The prosecuting attorney, as well as any agency or individual involved in providing services with regard to the person's conditional release, may prepare and file an affidavit under oath if the prosecuting attorney, agency, or individual believes that the person has failed to comply with the conditions of release. The court shall then conduct a hearing to determine if the person has violated the conditions of release. Notice of the hearing shall be issued at least twenty-four (24) hours before the hearing, to the Chickasaw Nation Department of Family Services; the person; and counsel for the person. After reviewing the evidence of the alleged violation, the person's progress, treatment alternatives, and the need for public safety, the court may order no change to the conditions for the person's release, modify the conditions of release, or revoke the conditional release.

(PR41-001, 02/16/2024)

SECTION 5-502.11 RESUMPTION OF COMPETENCY.

If the person appears to have achieved Competency after a finding of Incompetency, the court shall hold another Competency hearing to determine if the person has achieved Competency. If Competency has been achieved, the Criminal Proceedings shall be resumed.

(PR38-032, 7/16/2021)

ARTICLE C
PRELIMINARY HEARINGS

Section 5-503.1 Preliminary Hearing Conference.
Section 5-503.2 Right to Preliminary Hearing.
Section 5-503.3 Burden of Proof at Preliminary Hearing.
Section 5-503.4 Rules of Evidence at Preliminary Hearing.
Section 5-503.5 Admissible Evidence at Preliminary Hearing.
Section 5-503.6 Subpoenaing of Witnesses for Preliminary Hearing.
Section 5-503.7 Rights of Defendant at Preliminary Hearing.
Section 5-503.8 Preliminary Hearing Record.
Section 5-503.9 Termination of Preliminary Hearings.
Section 5-503.10 Order of Witnesses.
Section 5-503.11 Defendant Held to Answer.
Section 5-503.12 Discharge of Defendant, When.
Section 5-503.13 Appeal by the Chickasaw Nation at Preliminary Hearing.
Section 5-503.14 Time for Filing Appeal by the Chickasaw Nation.
Section 5-503.15 Preliminary Hearing – Review of Record in Light Most Favorable to Chickasaw Nation.
Section 5-503.16 Erroneous Ruling or Order – Remand.

SECTION 5-503.1 PRELIMINARY HEARING CONFERENCE.

After the defendant has had his or her Initial Appearance on a felony charge, as defined by Section 17-101.5 of the Chickasaw Code, the Court shall order the defendant to appear for a Preliminary Hearing Conference. The purpose of the Preliminary Hearing Conference is as follows:

1. To ensure that the defendant has had the opportunity to obtain counsel;

2. To inquire whether or not the defendant and the Chickasaw Nation waive the right to a Preliminary Hearing;

a. If the defendant or the Chickasaw Nation does not waive the right to a Preliminary Hearing, then the Court shall set a specific date for Preliminary Hearing before a Special Judge,

b. If the defendant and the Chickasaw Nation waive the right to a Preliminary Hearing, then the Court shall set a specific date for formal

Arraignment before a District Court Judge or upon the waiver the Court may accept a plea from the defendant;

3. To ensure that the Chickasaw Nation has presented a plea offer to the defendant, if one is to be made; and

4. To discuss any and all other issues that may need to be addressed prior to Preliminary Hearing or formal Arraignment.

(PR41-016, 9/20/2024)

SECTION 5-503.2 RIGHT TO PRELIMINARY HEARING.

A Preliminary Hearing may only be held when a defendant faces punishment for a felony offense, as defined by Section 17-101.5 of the Chickasaw Code. The Nation or the defendant may request a Preliminary Hearing either by written or oral Motion. If a Preliminary Hearing is requested, the Special Judge must conduct a Preliminary Hearing within a reasonable time. The Court shall make efforts to schedule the Preliminary Hearing within sixty (60) calendar days of the request before a Special Judge.

(PR41-016, 9/20/2024)

SECTION 5-503.3 BURDEN OF PROOF AT PRELIMINARY HEARING.

A. The purpose of a Preliminary Hearing is to determine whether probable cause exists to believe an alleged crime has occurred, and whether probable cause exists to believe the defendant committed that crime. The Chickasaw Nation bears the burden of proof at a Preliminary Hearing, and is entitled to the presumption that it will strengthen its evidence at trial.

B. The Special Judge may find probable cause to bind the defendant over on the charges as filed by the Chickasaw Nation, to amend the charges based on the evidence presented, or to find the defendant committed different or additional felony charges, based on the evidence presented at the Preliminary Hearing. If the Special Judge makes such a determination, the Special Judge must include the new or amended charges in the Order and advise the defendant of the new charges and the maximum range of punishment for each charge. The Defendant shall not be entitled to a new Preliminary Hearing or Initial Appearance for any amended or additional charge added by the Special Judge after a Preliminary Hearing. The

Chickasaw Nation shall submit an amended complaint in conformance with the Special Judge's findings within five (5) working days of the Preliminary Hearing.
(PR41-016, 9/20/2024)

SECTION 5-503.4 RULES OF EVIDENCE AT PRELIMINARY HEARING.

The Rules of Evidence shall apply in all Preliminary Hearings, but should not be applied as rigidly as is required at trial. It shall be within the Special Judge's discretion to hear testimony or admit evidence at Preliminary Hearing, so long as the evidence relates to the finding of probable cause as described in Section 5-503.3. The defendant may ask questions at the Preliminary Hearing to assist in the development of a sufficient record for pretrial motions. The Special Judge maintains discretion to limit questions unrelated to a finding of probable cause pursuant to Section 5-503.3. The defendant may challenge evidence or move to suppress evidence at a preliminary hearing subject to the rules herein and reassert its challenges to evidence or move to suppress evidence at trial.
(PR41-016, 9/20/2024)

SECTION 5-503.5 ADMISSIBLE EVIDENCE AT PRELIMINARY HEARING.

The following documents shall be admitted into evidence at Preliminary Hearing, provided the Chickasaw Nation has made the documents available to the defendant or defendant's attorney at least five (5) working days before the Preliminary Hearing, to-wit:

1. Noncertified copies of a Judgment and Sentence, as proof of prior conviction, when the copies appear to the Special Judge to be facially reliable;

2. Report(s) of the findings of the laboratory of the Oklahoma State Bureau of Investigations, the Federal Bureau of Investigation, the Drug Enforcement Administration or any other organization that produces reliable laboratory, technical, or medical findings;

3. The report of investigation or autopsy report of a medical examiner or coroner;

4. If the report(s) set forth in subsections (2) and (3) have been certified as correct, by the persons making the report, said report shall be received as evidence of the facts and findings stated therein without the need for further testimony authentication, if relevant and otherwise admissible in evidence, regardless of whether the report was made available to the defendant before the Preliminary Hearing.

(PR41-016, 9/20/2024)

SECTION 5-503.6 SUBPOENAING OF WITNESSES FOR PRELIMINARY HEARING.

The Chickasaw Nation and the defendant may issue subpoenas for witnesses to testify at the Preliminary Hearing. All witnesses called by the parties at Preliminary Hearing must be disclosed in writing at least five (5) working days before the Preliminary Hearing. The Tribal Prosecutor may meet this requirement by endorsing witnesses on the Complaint.

(PR41-016, 9/20/2024)

SECTION 5-503.7 RIGHTS OF DEFENDANT AT PRELIMINARY HEARING.

At a Preliminary Hearing, every defendant shall be advised of the following rights on the record, unless waived:

1. The defendant has the right against self-incrimination and that exercising this right cannot be used against the defendant at a later trial;

2. Any testimony, evidence, or statements offered by the defendant may be used against the defendant at a later trial; and

3. Bail may be reduced, increased, or the conditions of bail may be modified, based on the evidence presented at the Preliminary Hearing.

(PR41-016, 9/20/2024)

SECTION 5-503.8 PRELIMINARY HEARING RECORD.

A verbatim record of the Preliminary Hearing shall be made in accordance with Section 5-202.13(C).
(PR41-016, 9/20/2024)

SECTION 5-503.9 TERMINATION OF PRELIMINARY HEARINGS.

A. Once a showing of probable cause is made, the Special Judge may terminate the Preliminary Hearing and enter a Bind Over Order; provided, however, that the Preliminary Hearing shall be terminated only if the Chickasaw Nation made available for inspection law enforcement reports within the Tribal Prosecutor's knowledge or possession at the time to the defendant five (5) working days before the date of the Preliminary Hearing. This provision does not require the Tribal Prosecutor to provide copies for the defendant, but only to make them available for inspection by defense counsel. Alternatively, by agreement of the Chickasaw Nation and the defendant, the court may terminate the Preliminary Hearing once a showing of probable cause is made. If law enforcement reports were not made available before the Preliminary Hearing, the Court may not terminate the Preliminary Hearing until both parties rest their case.

B. A defendant may call a witness upon a proffer of expected testimony of a subpoenaed witness, with the Court maintaining discretion to allow the defendant to call a witness.

C. If a Bind Over Order is entered, a defendant's case shall be assigned to the District Court Judge's docket.
(PR41-016, 9/20/2024)

SECTION 5-503.10 ORDER OF WITNESSES.

When the examination of the witnesses on the part of the Chickasaw Nation is closed, any witnesses the defendant may produce may be sworn and examined upon proper offer of proof made by defendant and if such offer of proof shows that additional testimony is relevant to the issues of a Preliminary Hearing.
(PR41-016, 9/20/2024)

SECTION 5-503.11 DEFENDANT HELD TO ANSWER.

A. If the Special Judge finds probable cause to support the Complaint, the Special Judge must enter an order to the following effect:

> Upon hearing sworn testimony and reviewing the admitted evidence, this Court finds probable cause to believe the defendant committed the offenses as listed in the Criminal Complaint. The defendant is hereby held to answer to the charges as listed in the Criminal Complaint. (or Amended Criminal Complaint, as appropriate).

B. The Special Judge shall also address the matter of bail, and indicate whether any changes in the amount or conditions of bail shall apply, based on the evidence received during the Preliminary Hearing.
(PR41-016, 9/20/2024)

SECTION 5-503.12 DISCHARGE OF DEFENDANT, WHEN.

A. After hearing the evidence, if it appears either that a charged offense has not been committed, or there is no probable cause to believe the defendant committed the crime, the Special Judge must order the defendant to be discharged as to that charged offense, and enter an Order to the following effect:

> This Court finds there is no probable cause to support that defendant committed the offenses (or specific counts, as is appropriate), as listed within the Criminal Complaint. The Court

hereby dismisses this case (or specific counts, whichever is appropriate) without costs.The Tribal Prosecutor is granted time to

appeal.

B. The Chickasaw Nation retains the right to refile a Criminal Complaint upon the discovery of additional evidence.
(PR41-016, 9/20/2024)

SECTION 5-503.13 APPEAL BY THE CHICKASAW NATION AT PRELIMINARY HEARING.

The Chickasaw Nation, by and through the Tribal Prosecutor, shall have the right to appeal any adverse ruling at a Preliminary Hearing to the District Court Judge of the Chickasaw Nation for the following reasons:

1. Upon judgment for the defendant on setting aside a Criminal Complaint;

2. Upon judgment for the defendant for insufficient evidence; and

3. Upon an order, decision, or judgment suppressing or excluding evidence where appellate review of the issue would be in the best interest of justice.
(PR41-016, 9/20/2024)

SECTION 5-503.14 TIME FOR FILING APPEAL BY THE CHICKASAW NATION.

A. The Chickasaw Nation must announce in open court, immediately after receiving the adverse ruling or order by the Court, its intent to appeal. If the Tribal Prosecutor makes such Notice in open Court, the Special Judge shall then enter the notice in the Court's written Order and address appropriate bond. The Tribal Prosecutor must file its notice of intent to appeal and designation of record within five (5) working days after the adverse ruling was entered by the Special Judge.

B. The Chickasaw Nation must then file a Petition to Appeal within ten (10) days from the filing of its Notice of Intent to Appeal. Failure to file a Notice of Intent to Appeal, designation of record, or Petition to Appeal as set forth in this Section, the Chickasaw Nation shall have waived any right to appeal from the Special Judge's adverse decision.

C. The court reporter shall file a notice of completion of record with the District Court Clerk of the Chickasaw Nation and give notice to the parties therein. Upon receipt of the notice of completion, the Tribal Prosecutor shall have thirty (30) days to submit its brief in support of the appeal. The defendant shall have thirty (30) days upon receipt of the Tribal Prosecutor's brief to a file a response.

D. The District Court Judge may schedule a hearing on the appeal or issue an order from the written documents. The District Court shall issue a written order within ninety (90) days of defendant's response.
(PR41-016, 9/20/2024)

SECTION 5-503.15 PRELIMINARY HEARING – REVIEW OF RECORD IN LIGHT MOST FAVORABLE TO CHICKASAW NATION.

In the event that the Chickasaw Nation appeals the ruling of the preliminary hearing ordering a defendant discharged based upon a finding of insufficiency of the evidence to show that there is probable cause to believe that the accused has committed a felony, the District Court Judge shall determine, based upon the entire record developed, whether the evidence, taken in the light most favorable to the Chickasaw Nation, is sufficient to find that a felony crime has been committed, and that the defendant probably committed said crime.
(PR41-016, 9/20/2024)

SECTION 5-503.16 ERRONEOUS RULING OR ORDER – REMAND.

In the event the District Court Judge finds, based upon a *de novo* review of the record developed before the Special Judge, that the ruling or order was in error, the District Court Judge shall enter an order finding that the ruling or order entered by the Special Judge was erroneous and shall remand the cause to the Special Judge with directions to enter a proper ruling or order. (PR41-016, 9/20/2024)

CHAPTER 6

RULES OF CRIMINAL PROCEDURE
TRIAL

Section 5-601.1 Trial by Jury or by the Court.
Section 5-601.2 Trial Jurors.
Section 5-601.3 Order of Trial.
Section 5-601.4 Judge's Disability.
Section 5-601.5 Recordings.
Section 5-601.6 Expert Witnesses and Interpreters.
Section 5-601.7 Motion for Judgment of Acquittal.
Section 5-601.8 Jury Instructions.
Section 5-601.9 Verdict.

SECTION 5-601.1 TRIAL BY JURY OR BY THE COURT.

A. All trials of offenses shall be by the Court without a jury unless the Defendant requests a jury trial not less than ten (10) business days before the date set for trial.
(PR41-003, 12/15/2023)

B. Juries shall be composed of six (6) members with one (1) alternate if an alternate juror is deemed advisable by the Court.

C. In a case tried without a jury, the Judge shall make a general finding of guilt or innocence and shall, upon request of any party, make specific findings which may be embodied in a written decision.
(TL14-002, 4/18/97; PR15-030, 9/23/98; PR16-025, 8/23/99; PR21-003, 11/21/03)

SECTION 5-601.2 TRIAL JURORS.

Jurors shall be drawn, examined, challenged, selected and sworn as provided in Title 5, Article L of the Chickasaw Nation Code. (PR21-003, 11/21/03)

SECTION 5-601.3 ORDER OF TRIAL.

The trial of all criminal offenses shall be conducted in the following manner:

1. The Court shall call the case name and number and ask the parties if they are ready to proceed. If the parties are not ready, the Court may continue the case or direct the case to proceed in its discretion.
2. If the parties are ready to proceed, and if the case is to be tried by jury, the Judge should require all prospective jurors to swear to decide the case in a fair and impartial manner if selected for jury duty.

3. If the case is to a jury, the Court should select a jury panel as provided in Title 5, Article L of the Chickasaw Nation Code.

4. The Court should request the Prosecutor to read the criminal complaint and to make his opening statement. Prior to reading the complaint, the Court should explain to the jury that the complaint is not evidence, but is being read for the sole purpose of informing the Defendant and the jury of the offense charged against the Defendant. The Court should also inform the jury that the statements of counsel are not evidence but are presented so that the jury will have an opportunity to hear what counsel for each party expects the evidence to show.

5. The Prosecutor should then read the complaint and briefly present the facts which he intends to prove to show the offense. No argument of the facts or law shall be

allowed. In reading the complaint, no reference to any recommendation for punishment may be made prior to the verdict of guilty or not guilty.

6. The defense may then make an opening statement or may reserve their opening statement until the beginning of the presentation of the defense evidence.

7. The Prosecutor shall then present his evidence followed by the Defendant's presentation of his defense evidence. After the Defendant has presented his evidence, the Prosecutor may present evidence in rebuttal.

8. The Prosecutor shall then present his closing argument, the Defendant his closing argument, and the Prosecutor shall be allowed to present a rebuttal.

9. If trial is to a jury, the Judge should give the jury his instructions and the jury shall retire to decide its verdict. If trial is to the Judge, he shall then make his decision or announce the time at which he will present his decision.

10. If the verdict is not guilty, the Defendant should be discharged and bail exonerated.

11. If the verdict is guilty, the Judge may impose sentence immediately or may hold a hearing at a later time or date to decide on an appropriate sentence.

12. After sentencing, the Judge may hold a hearing to determine the amount or necessity of an appeal bond if an appeal is filed.
(TL14-002, 4/18/97; PR15-030, 9/23/98; PR16-025, 8/23/99; PR21-003, 11/21/03)

SECTION 5-601.4 JUDGE'S DISABILITY.

A. If by reason of death, sickness or other disability, the Judge before whom a jury trial has commenced is unable to proceed with the trial, the Chief Justice of the Supreme Court shall designate by court order, pursuant to rules promulgated by the Supreme Court, a person who is licensed to practice law before the Court and who is not an employee of, or under contract with, the Chickasaw Nation in any capacity to act as Special Judge in the case.

B. If by reason of death, sickness or other disability, the Judge before whom the defendant has been tried is unable to perform the required duties of a Judge after the verdict or finding of guilt, the Chief Justice of the Supreme Court shall designate by court order, pursuant to rules promulgated by the Supreme Court, a person who is licensed to practice law before the Court and who is not an employee of, or under contract with, the Chickasaw Nation in any capacity to act as Special Judge in the case. A new trial shall not be granted if all that remains to be done is the sentencing of a defendant.

(PR21-009, 2/20/04)

SECTION 5-601.5 RECORDINGS.

All trials, whether by Judge or jury, must be recorded by electronic means to ensure that an accurate record of the proceeding is kept. Such recording shall be provided by the Court, at no cost to any party. The court may charge for copies of transcripts of the recorded proceeding at a minimal fee to be determined by the District Court Clerk.
(PR15-030, 9/23/98; PR38-014, 02/22/2021)

SECTION 5-601.6 EXPERT WITNESSES AND INTERPRETERS.

A. Either party may call expert witnesses of their own selection and each shall bear the cost of such.

B. The Court may appoint an interpreter of its own selection and each party may provide their own interpreters. An interpreter through whom testimony is received from a Defendant or witness or communicated to a Defendant or other witness shall be put under oath to faithfully and accurately translate and communicate as required by the Court.

C. The trial Judge or Clerk may act as interpreter only with the consent of all parties.

D. All persons interpreting for deaf witnesses or parties, whether called by the Court or provided by the witness or party, must be certified to provide such services by the State of Oklahoma.
(TL14-002, 4/18/97)

SECTION 5-601.7 MOTION FOR JUDGMENT OF ACQUITTAL.

A. The Court on motion from Defendant or on its own motion, shall order the entry of a judgment of acquittal of one or more offenses charged in the complaint after the evidence of either side is closed if the evidence is insufficient as a matter of law to sustain a conviction of

such offenses. A motion for acquittal by the Defendant does not affect his right to present evidence.

B. If a motion for judgment of acquittal is made at the close of all the evidence, the Court may reserve decision on the motion, submit the case to the jury and decide the motion any time either before or after the jury returns its verdict or is discharged.
(TL14-002, 4/18/97)

SECTION 5-601.8 JURY INSTRUCTIONS.

A. Prior to trial, each party may file proposed jury instructions within a timeframe determined by the Court. Copies of such proposed jury instructions shall be furnished to adverse parties.

B. At or before trial, the Court shall determine the final jury instructions. The Court shall then instruct the jury on the final jury instructions on the day of trial. Any objections to the final jury instructions shall be made prior to deliberation and outside of the presence of the jury. (TL14-002, 4/18/97; PR38-014, 02/22/2021)

SECTION 5-601.9 VERDICT.

A. The verdict of a jury shall be unanimous and shall be returned by the jury to the Judge in open court. If the jury is unable to agree, the jury may be discharged and the Defendant tried again before a new jury.

B. If there are multiple Defendants or charges, the jury may at any time return its verdict as to any Defendants or charges to which it has agreed and continue to deliberate on the others.

C. If the evidence is found to support such verdict, the Defendant may be found guilty of a lesser included offense or attempt to commit the crime charged or a lesser included offense without having been formally charged with the lesser included offense or attempt.

D. Upon return of the verdict, the jury may be polled at the request of either party. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberation or may be discharged.

E. After return of the verdict, the jury may, in the Judge's discretion, be requested to recommend the punishment to be imposed after a hearing at which both parties have the opportunity to present evidence in mitigation or aggravation of the sentence. The jury's recommendation in such cases shall not be binding on the Judge at sentencing. (TL14-002, 4/18/97; PR15-030, 9/23/98)

CHAPTER 7
RULES OF CRIMINAL PROCEDURE
JUDGMENT AND SENTENCE

Section 5-701.1 Judgment.
Section 5-701.2 Sentence.

Section 5-701.3	General Sentencing Provisions.
Section 5-701.4	Probation; Violations of the Rules, Restrictions and Conditions of Probation; Dismissal and Expungement after Deferred Sentence.
Section 5-701.5	Reserved.
Section 5-701.6	Reserved.
Section 5-701.7	New Trial.
Section 5-701.8	Clerical Mistakes.
Section 5-701.9	Commutation.
Section 5-701.10	Conditional Pardons.
Section 5-701.11	Revocation of Pardons or Commutations.
Section 5-701.12	Modification of Sentence.

SECTION 5-701.1 JUDGMENT.

A Judgment of conviction shall set forth in writing the charge, plea, verdict or findings, and the sentence imposed. If the Defendant is found not guilty or is otherwise entitled to be released, judgment shall be entered accordingly. The judgment shall be signed by the Judge and filed with the Chickasaw Nation District Court Clerk. (TL14-002, 4/18/97; PR38-014, 02/22/2021)

SECTION 5-701.2 SENTENCE.

A. The Judge is empowered to impose judgment and sentence, at his discretion, and to modify, reduce, suspend or defer the imposition of such sentence or any part thereof and to authorize probation under such terms or conditions as the Judge may specify.

A. Sentence shall be imposed without unreasonable delay in accordance with the provisions of the criminal statute or ordinance violated and this Act. Sentencing shall be imposed on all offenses pursuant to the Chickasaw Nation Code. Where the Court in its discretion deems it appropriate, a form of customary and cultural traditional punishments according to Tribal Common Law may be imposed in addition to or in place of any punishment provided in the Chickasaw Nation Code.

B. After imposing sentence, the Court shall inform the Defendant of his right to appeal. At any time after a notice of appeal is filed, the Court may entertain a motion to set bail pending appeal.

C. Time served in jail prior to the judgment and sentence may be allowed as a credit toward any sentence of imprisonment in the discretion of the Judge consistent with applicable law.

D. Sentences may be imposed to run concurrently or consecutively consistent with applicable law, and if imposed to run consecutively shall run no more than the maximum term allowed by federal law.
(TL14-002, 4/18/97; PR15-030, 9/23/98; PR38-013, 2/22/2021; PR38-014, 2/22/2021)

SECTION 5-701.3 GENERAL SENTENCING PROVISIONS.

A. Statement of Policy. The sentencing policy of the Chickasaw Nation in criminal cases is to strive toward restitution and reconciliation of the offender and the victim and the Chickasaw Nation. While one goal of sentencing is to impress upon the wrongdoer the wrong he has committed, the paramount goal is to restore the victim and Chickasaw Nation to the position that existed prior to the commitment of the offense, and to restore the offender to harmony with them and the community by requiring him to right his wrongdoing. Therefore, with consideration of these goals in mind, the provisions of this Section shall govern sentencing for criminal offenses.

B. **Sentencing Considerations.** Consideration in sentencing include:

1. The offense(s) committed;

2. The prospects of rehabilitation of the Defendant;

3. The circumstances under which the offense was committed;

4. The criminal history of the Defendant;

5. The safety of the community, victim, or the Defendant;

6. Statements of the victim;

7. Alternatives to imprisonment of the Defendant;

8. The ability of the Defendant to pay a fine; and

9. Any other consideration the Court deems relevant.

B. **Penalties and Consequences.** A Defendant found guilty or pleaded guilty or nolo contendere to an offense may be sentenced to one or more of the following penalties and/or consequences:

1. Imprisonment for a period of time not to exceed the maximum permitted for the offense;

2. A fine in an amount not to exceed the maximum permitted for the offense;

3. Community service;

4. Any diagnostic, therapeutic, or rehabilitative measures, treatments, or services deemed appropriate;

5. Restitution to a victim of an offense for which the Defendant was convicted;

6. Suspension of all or part of the sentence for a reasonable time, not to exceed the maximum time permitted for the offense, under such terms imposed by the Court;

7. Deferred imposition of sentence for a period not exceeding four (4) times the maximum sentence allowed with reasonable restrictions and conditions monitored by the probation officer;

8. Supervised or unsupervised probation;

9. A prohibition from owning or carrying a dangerous weapon;

10. Restriction of the Defendant's freedom of movement;

11. Restriction of the Defendant's freedom of association;

12. If employed, to remain employed and, if unemployed, to actively seek employment;

13. Subjection to search of their residence, vehicle, and person; and

14. Any requirement or limitation intended to improve the mental or physical health or marketable skills of the Defendant.

C. **Pre-Sentence Report.** The Court may order or consider any pre-sentence reports offered by the parties. The Defendant and the Defendant's counsel shall be afforded an opportunity to examine any pre-sentence report and to cross-examine the preparer of such report on the basis for any sentencing recommendations contained in the report.

D. **Imposition of Sentence.** No sentence shall be imposed until:

1. The Prosecutor and Defendant have had an opportunity to present evidence, witnesses, and an argument regarding the appropriateness of a sentencing option; and

2. The Judge has given the Defendant an opportunity to inform the Court of any extenuating or mitigating circumstances which should be considered by the Court.

E. **Incarceration.** If the Defendant is sentenced to imprisonment, the Defendant shall be discharged from custody after satisfactorily fulfilling the conditions of the imposed sentence or earlier upon order of the Court.

F. **Post-Imprisonment Supervision.** The Court may include in the sentence of any person who is convicted of a crime and sentenced to a term of confinement greater than one year a term of post-imprisonment supervision. The post-imprisonment supervision shall be for a period of one (1) year following release of confinement of the person and shall be served under conditions prescribed by the supervising department. Should the Defendant fail to comply with the restrictions and conditions of post-imprisonment supervision, the Defendant may be sanctioned to serve a term of imprisonment of up to six (6) months.

G. **Restitution.** When restitution is ordered, the Court shall specify the amount, method of payment, and payment schedule. The Defendant may request a hearing before restitution is ordered.

H. **Payment of Fines and Restitution.** All monies collected as the result of a fine or restitution imposed by the Court shall be paid to the Court. Upon receiving the monies:

1. A receipt shall be issued to the paying person;

2. The account of the Defendant shall be credited, noting whether the fine is paid in full or what balance, if any, remains due; and

3. Restitution shall be paid to whom it is owed upon application or upon order of the Court.

I. **Fixing and Collection of Costs.** Upon conviction or judgment of any offense, costs will be assessed to the Defendant as established by the Court. In an exceptional case, the Court may waive costs. Such costs shall be payable to the Court Clerk, and may include: witness fees; cost of service of Court papers; and any other costs sustained by the Court in connection with the matter.
(TL14-002, 4/18/97; PR15-030, 9/23/98; PR38-013, 02/22/2021; PR38-014, 02/22/2021)

SECTION 5-701.4 PROBATION; VIOLATIONS OF THE RULES, RESTRICTIONS AND CONDITIONS OF PROBATION; DISMISSAL AND EXPUNGEMENT AFTER DEFERRED SENTENCE.

A. **Probation Office.** In the event the Court orders the Defendant to supervised probation, the probation office shall be responsible for the following:

1. explaining the conditions specified by the Court and provide the Defendant with the rules of probation;

2. aiding the Defendant to bring about improvements in their conduct and condition;

3. monitoring Defendant's compliance with the rules and conditions of probation and report any violations of conditions of release to the Prosecutor;

4. imposing remedial measures to cure violations of conditions; and

5. performing any other duty that the Court may order.

B. **Violations of Conditions of Probation.** If a Defendant violates a restriction or condition of probation, then the Prosecutor may move the Court to accelerate a deferred sentence or revoke a suspended sentence. The motion shall set forth the grounds describing such violations by the Defendant. The Prosecutor may issue the Defendant a summons to appear or seek an arrest warrant from the Court. The Court shall set the matter for hearing within 30 days after the entry of the plea of not guilty to the motion, unless waived by both the Prosecutor and the Defendant. The Prosecutor shall prove by a preponderance of the evidence the Defendant violated the restrictions or conditions of probation. Upon a finding of a violation of a restriction or condition of probation, an appropriate sanction may be ordered, including imposition of sentence. The Defendant shall have no right to a trial by a jury for violations of conditions of probation.

C. **Failure to Pay Fine.**

1. If a Defendant sentenced to pay a fine fails to make payment as ordered, the Court, on its own accord, may order that the Defendant show cause why sanctions should not be imposed for failure to pay.

2. Show Cause Hearing. Notice of a show cause hearing shall be served on the Defendant personally or by first class mail at the address provided by the Defendant at least five days prior to the date set for hearing. In the event service is not obtained or Defendant fails to appear at the hearing, the Court may issue a bench warrant. If the Court determines that the Defendant's nonpayment was attributable to an intentional refusal to obey the Court's order or that the Defendant failed to make a good faith effort to make the ordered payments, then the Court may impose sanctions, including incarceration. If the Court determines that the Defendant's nonpayment was not attributable to an intentional refusal, the Court may modify the original sentence,

judgment, or order, allowing the Defendant additional time to pay the fine or reducing the amount owed. Nothing contained herein prohibits the Prosecutor from filing a motion for violations of conditions of probation.

D. **Failure to Pay Restitution.**

1. If a Defendant sentenced to pay restitution fails to make payment as ordered, the Prosecutor may move that the Defendant show cause why sanctions should not be imposed for failure to pay.

2. Show Cause Hearing. Notice of a show cause hearing shall be served on the Defendant personally or by first class mail at the address provided by the Defendant at least five days prior to the date set for hearing. In the event service is not obtained or Defendant fails to appear at the hearing, the Court may issue a bench warrant. If the Court determines that the Defendant's nonpayment was attributable to an intentional refusal to obey the Court's order or that the Defendant failed to make a good faith effort to make the ordered payments, the Court may impose sanctions, including incarceration. If the Court determines that the Defendant's nonpayment was not attributable to an intentional refusal, the Court may modify the original sentence, judgment or order, allowing the Defendant additional time to pay the restitution. Nothing contained herein prohibits the Prosecutor from filing a motion for violations of conditions of probation.

E. **Dismissal and Expungement after Deferred Sentencing.** Whenever the Court has deferred the imposition of sentence, and after expiration of the period of deferral and the Defendant's successful completion of any conditions of deferral, upon motion by the Court, the Defendant, or the Defendant's counsel, the Court shall allow the Defendant to withdraw his or her plea of guilty or strike the verdict or judgment expunging the Court records of all record of the proceedings by entering an order of dismissal of charges and expungement, inscribing each record of the proceedings with the word "Expunged" and sealing the file.

(PR16-025, 8/23/99; PR38-013, 2/22/2021)

SECTION 5-701.5 RESERVED.
(PR38-014, 02/22/2021)

SECTION 5-701.6 RESERVED.
(PR38-014, 02/22/2021)

SECTION 5-701.7 NEW TRIAL.

The Court, on motion of a Defendant, may grant a new trial if required in the interest of justice. If trial was by the Court without a jury, the Court, on motion of a Defendant for a new

trial, may vacate the judgment, if entered, take additional testimony, and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made at any time, but, if an appeal is pending, the Court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within seven (7) days after verdict or finding of guilty or within such further time as the Court may fix during the seven (7) day period. (TL14-002, 4/18/97; PR38-014, 02/22/2021)

SECTION 5-701.8 CLERICAL MISTAKES.

Clerical mistakes in judgments, orders, or other parts of the record and errors in the record arising from oversight or omission may be corrected by the Court at any time after such notice, if any, as the Court orders. (TL14-002, 4/18/97)

SECTION 5-701.9 COMMUTATION.

"Commutation" shall mean the power to commute a criminal sentence as, for example, the power to reduce a sentence of jail time and a fine. The Governor is vested with the sole and exclusive power to commute a sentence after conviction, except in cases of impeachment, provided that its issuance is not illegal, immoral, or impossible to be performed. Questions

concerning whether the convicted person's continued confinement in jail would be detrimental to the health of the convicted person is a matter exclusively for the Governor. (PR15-030, 9/23/98)

SECTION 5-701.10 CONDITIONAL PARDONS.

"Conditional Pardon" shall mean a pardon which remains in effect as long as conditions are met but becomes voidable when any condition of the pardon is violated. The Governor is vested with the sole power to issue Conditional Pardons after convictions, except in cases of impeachment, provided that its issuance is not illegal, immoral, or impossible to be performed. When a convicted person is released by the Chickasaw Nation, he remains theoretically a prisoner of the Chickasaw Nation while he continues to be free under terms and conditions of a Conditional Pardon. A Conditional Pardon is granted as to the sentence, but the crime stays on the convicted person's record. The Governor may enact a Conditional Pardon in stages. (PR15-030, 9/23/98)

SECTION 5-701.11 REVOCATION OF PARDONS OR COMMUTATIONS.

Where a convicted person was granted and accepted a Conditional Pardon or Commutation which expressly provided that the Governor might revoke the same and remand the party to prison for a violation of the conditions or for any other reason by him

deemed sufficient, the Governor may order the convicted person to be so remanded without notice to him, and without giving him the opportunity to be heard. (PR15-030, 9/23/98)

SECTION 5-701.12 MODIFICATION OF SENTENCE.

A. At any time after a deferred or suspended sentence has been imposed, the Prosecutor may make a written request that the Defendant's sentence be modified if the Defendant has failed to abide by the terms and conditions of probation, including but not limited to, acceleration of a deferred sentence or revocation of a suspended sentence.

B. Upon motion by the Prosecutor, the Court shall set a hearing which shall be conducted no later than thirty (30) days thereafter, unless for good cause shown. The Defendant shall not have a right to a jury trial regarding sentence modification.

C. A motion for sentence modification must be made prior to the end of the Defendant's term of probation. Motions made after the termination of the Defendant's probation term shall not be considered and shall be denied.

D. If, after hearing, the Court determines the Defendant's sentence should be modified, accelerated or revoked, the Court shall enter orders regarding the modified, accelerated or revoked sentence and its terms and conditions. A sentence modified, accelerated or revoked under this Section shall not exceed the terms of the original sentence imposed.

CHAPTER 8
RULES OF CRIMINAL PROCEDURE
APPEAL

Section 5-801.1 Right of Appeal.
Section 5-801.2 Stay of Judgment and Relief Pending Review.

SECTION 5-801.1 RIGHT OF APPEAL.

A. The Defendant has the right to appeal from the following:

1. a final judgment of conviction and the sentence imposed thereon; and

2. from an order made, after judgment and sentences, affecting his substantial rights.

B. The Chickasaw Nation has the right to appeal from the following:

1. a judgment of dismissal, upon a motion to dismiss based on any procedural irregularity occurring before trial, or an order excluding evidence in favor of the Defendant prior to trial;

2. an order arresting judgment or acquitting the Defendant contrary to the verdict of the jury or before such verdict can be rendered;

3. an order of the Court directing the jury to find for the Defendant; and

4. an order made after judgment and sentence affecting the substantial rights of the Chickasaw Nation.

C. A notice of appeal must be filed within ten (10) days of the entry of the final judgment and sentence or other appealable order and such must be served on all parties except the party filing the appeal.

D. If the Defendant wishes to appeal, an attorney shall be appointed to him if he is found indigent.

(TL14-002, 4/18/97; PR38-014, 02/22/2021)

SECTION 5-801.2 STAY OF JUDGMENT AND RELIEF PENDING REVIEW.

A. A sentence of imprisonment may be stayed if an appeal is taken and the Defendant may be given the opportunity to make bail. Any Defendant not making bail or otherwise obtaining release pending appeal shall have all time spent in incarceration counted towards his sentence in the matter under appeal.

B. A sentence to pay a fine or a fine and costs, may be stayed pending appeal upon motion of the Defendant, but the Court may require the Defendant to pay such money subject to return if the appeal should favor the Defendant and negate the requirement for paying such fine or fine and costs.

C. An order placing the Defendant on probation may be stayed on motion of the Defendant if an appeal is taken.
(TL14-002, 4/18/97; PR15-030, 9/23/98)

CHAPTER 9
RULES OF CRIMINAL PROCEDURE
SEARCH, SEIZURE, AND ARREST

Section 5-901.1 Search and Seizure.
Section 5-901.2 Arrest.
Section 5-901.3 Arrest in Hot Pursuit.
Section 5-901.4 Limitation on Arrests in the Home.
Section 5-901.5 Notification of Rights.

SECTION 5-901.1 SEARCH AND SEIZURE.

A. **Search Warrants.** A search warrant is an order to any law enforcement officer that is authorized under this Act directing him to search a particular place for described persons or property and, if found, to seize them.

B. **Probable Cause.** A warrant shall issue only on an affidavit or affidavits sworn to before a Judge and establishing grounds for issuing the warrant. If the Judge is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. The finding of probable cause may be based on hearsay evidence either in whole or in part. Before ruling on a request for a warrant, the Judge may require the affiant to appear personally and be examined under oath.

C. **Contents of Search Warrants.** Every search warrant shall contain the name and address of the Court and the signature of the Judge issuing the warrant. It shall specifically describe the place to be searched and the items to be searched for and seized. The warrant shall be directed to any law enforcement officer authorized under this Section and shall command such officer to search, within a specified period of time not to exceed ten (10) days, the person or place named in the warrant for the property or persons specified, and contain the date on which it was issued.

D. **Service of Search Warrants.** Search warrants shall be served between the hours of 7:00 a.m. and 9:00 p.m., unless otherwise directed on the warrant by the Judge who issued it. A copy of the warrant shall be left with an occupant or owner over sixteen (16) years of age of the place searched if present during said search. If the place to be searched is not occupied at the time of the search, a copy of the warrant shall be left in some conspicuous place on the premises. The officer may break open any outer or inner door or window of a place to be searched, or any part of any place to be searched,

or anything thereon to execute a search warrant, if after notice of his authority and purpose, he is denied or refused admittance, when necessary to liberate himself, or a person aiding
in the execution of the warrant or when the premises to be searched are unoccupied at the time of the search.

E. **Inventory.** The officer serving a search warrant shall make a signed inventory of all property seized and attached such inventory to the warrant. A copy of the inventory and search warrant shall be left with an occupant or owner over sixteen (16) years of age if present during the search or left in a conspicuous place with the search warrant if an occupant is not present during the search.

F. **Return of Search Warrants.**

1. The officer shall endorse on the warrant the date, time, and place of service and the signature of the officer serving it.

2. The warrant shall be returned to the Court with an inventory of property seized within twenty four (24) hours of service, Saturdays, Sundays, and legal holidays excluded.

3. In every case the warrant shall be returned within ten (10) days of the date of issuance, unless return is due on a Saturday, Sunday, or legal holiday, in which case, the return shall be made on the next business day.

G. **Property Subject to Seizure.** Property which is subject to seizure is property in which there is probable cause to believe such property is:

1. stolen, embezzled, contraband, or otherwise criminally possessed; or

2. which is or has been used to commit a criminal offense; or

3. property which constitutes evidence of the commission of a criminal offense.

H. **Warrantless Searches.** A law enforcement officer may conduct a search without a warrant only:

1. when incident to a lawful arrest;

2. with the consent of the person to be searched;

3. with the consent of the person having actual possession and control of the property to be searched;

4. when he has reasonable grounds to believe that the person searched may be armed and dangerous;

5. when the search is of a vehicle capable of being moved and the officer has probable cause to believe that it contains property subject to seizure, or upon inventory of such vehicle after impoundment and seizure; or

6. in any other circumstances wherein federal law has held that a search without obtaining a warrant prior to the search in those circumstances would not be unreasonable.

I. A person aggrieved by an unlawful search and seizure may move the Court for the return of the property, not contraband, on the ground that he is entitled to lawful possession of the property illegally seized. The Judge may receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted, the property shall be returned, if not contraband, and shall not be admissible at any hearing or trial.

J. A law enforcement officer may stop any person in a public place whom he has reasonable cause to believe is in the act of committing an offense, or has committed an offense, or is attempting to commit an offense and demand of him his name, address, an explanation of his actions and may, if he has reasonable grounds to believe his own safety or the safety of other nearby is endangered, conduct a frisk type search of such person for weapons.

K. The term "property" is used in this Section to include documents, books, papers, and any other tangible object.
(PR15-030, 9/23/98)

SECTION 5-901.2 ARREST.

A. An arrest is the taking of a person into custody in the manner authorized by law. An arrest may be made by either a police or law enforcement officer or by a private person.

B. A police or law enforcement officer may make an arrest in obedience to an arrest warrant, or he may, without a warrant, arrest a person:

1. when he has probable cause to believe that an offense has been committed in his presence;

2. when he has probable cause for believing the person has committed an offense, although not in his presence, and there is reasonable cause for believing that such person before a warrant can be obtained may:

a. flee the jurisdiction or conceal himself to avoid arrest;

b. destroy or conceal evidence of the commission of an offense; or

c. injure or annoy another person or damage property belonging to another person.

3. anywhere, including a place of residence of the person, if the police or law enforcement officer has probable cause to believe the person within the preceding seventy-two (72) hours has committed an act of domestic violence as defined by Chapter 17, Chapter 5, of the Chickasaw Nation Code, although the act of domestic violence did not take place in the presence of the police or law enforcement. A police or law enforcement officer may not arrest a person pursuant to this section without first observing a recent physical injury to, or an impairment of the physical condition of, the alleged victim.
(PR38-019, 04/16/2021)

C. A private person may arrest another for prompt delivery to a law enforcement officer:

1. when an offense is committed or attempted in his presence; or

2. when an arrest warrant for that person is in fact outstanding.

D. Any person making an arrest may orally summon as many persons as he deems necessary to help him.

E. If the offense charged is an offense in violation of the Federal Major Crimes Act, the arrest may be made at his residence at any time of the day or night. Otherwise the arrest pursuant to a warrant can be made at a person's residence only between the hours of 7:00 a.m. and 9:00 p.m. unless arrest at night at the residence is specifically authorized by the issuing Judge. Arrests at places other than at the residence may be made at any time.

F. Any person, upon making an arrest:

1. must inform the person to be arrested of his intention to arrest him, of the cause or reasons for the arrest, and his authority to make it, except when the person to be arrested is actually engaged in the commission of, or an attempt to, commit an offense, or is pursued immediately after its commission or an escape if such is not reasonably possible under the circumstances;

2. must show the warrant of arrest as soon as is practicable, if such exists and is demanded;

3. if a law enforcement officer, may use reasonable force and use all necessary means to effect the arrest if the person to be arrested either flees or forcibly resists after receiving information of the officer's intent to arrest except that deadly force may be used only as otherwise provided by law;

4. if a law enforcement officer, may break open a door or window of a building in which the person to be arrested is, or is reasonably believed to be, after demanding admittance and explaining the purpose of which admittance is desired;

5. may search the person arrested and take from him and put into evidence all weapons he may have about his person; and

6. shall as soon as is reasonably possible, deliver the person arrested to a police office or do as commanded by the arrest warrant or deliver the person arrested to the jail for processing of a complaint.

(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 5-901.3 ARREST IN HOT PURSUIT.

A. Any law enforcement officer otherwise empowered to arrest a person within this jurisdiction may continuously pursue such person from a point of initial contact within the jurisdiction of the Chickasaw Nation to any point of arrest within or

without the jurisdiction of the Chickasaw Nation and such arrest shall be valid, provided that such officer shall respect and comply with the extradition requirements of the jurisdiction in which the arrest is finally made.

B. Any law enforcement officer commissioned by the federal government, any Indian tribe or state, when in hot and continuous pursuit of any person for the commission of a felony within such other jurisdiction, may validly arrest such person within the jurisdiction of the Chickasaw Nation, provided that any person so arrested shall be forthwith delivered to a Chickasaw Nation Judge for a show cause hearing pursuant to the extradition laws of the Tribe.
(TL14-002, 4/18/97)

SECTION 5-901.4 LIMITATION ON ARRESTS IN THE HOME.

A person may be arrested in his own home only:

1. by a law enforcement officer pursuant to an arrest warrant;

2. by a law enforcement officer for an offense committed in the home in the presence of the officer; or

3. by a law enforcement officer in continuous pursuit of a person who flees to his home to avoid arrest.
(TL14-002, 4/18/97)

SECTION 5-901.5 NOTIFICATION OF RIGHTS.

A. Upon arrest, the Defendant shall be notified that he has the following rights:

1. the right to remain silent and that any statements made by him may be used against him in Court;

2. that he has the right to obtain an attorney and to have an attorney present at any questioning; and, if he cannot afford an attorney, one will be provided at no charge;

3. that if he wishes to answer the questions of the police he may stop or request time to speak with his attorney at any point in the questioning.

B. Prior to conducting a consensual warrantless search pursuant to Paragraph 5-901.1.H. 2 or 3 above, the officer shall specifically inform the person to be searched or the person in charge of the property to be searched that:

1. the search will be conducted only with the person's consent;

2. that the person is under no obligation or requirement to consent to the search and may refuse to consent to the search if he chooses to do so, or request the advice of an attorney at his own expense prior to responding to the requested consent to the search; and

3. that if the person refused to consent to the search, the officer will not search the person or property without first obtaining a warrant from the courts.

C. Whenever possible, the officer should obtain a written statement that the person knows these rights, understands, and waives them prior to taking a voluntary statement from a defendant or conducting a warrantless, consensual search, provided that the absence of such a written statement does not preclude the admission of the statement or other evidence if the Court determines that the statement or consent to search were voluntary.
(TL14-002, 4/18/97; PR15-030, 9/23/98)

CHAPTER 10
RULES OF CRIMINAL PROCEDURE
BAIL

Section 5-1001.1 Definitions.
Section 5-1001.2 Establishment.
Section 5-1001.3 Persons Authorized to Accept Bail.
Section 5-1001.4 Form of Payment.
Section 5-1001.5 Sureties.
Section 5-1001.6 Bail Amount.
Section 5-1001.7 Procedures.
Section 5-1001.8 Release in Cases Prior to Trial.
Section 5-1001.9 Penalties for Failure to Appear.
Section 5-1001.10 Persons or Classes Prohibited as Bail Bondsmen.
Section 5-1001.11 Authority to Act as Bail Bondsmen.
Section 5-1001.12 Disbursement of Bail Amounts.

SECTION 5-1001.1 DEFINITIONS.

A. "Bail" means a monetary amount deposited as a condition of pretrial release from custody set by the Judge, by court rule or at the initial appearance or arraignment.

B. "Bail Bond" means a three-party contract between the Chickasaw Nation, the Person charged and the Surety, under which the Surety guarantees the Nation that the Person charged will appear at subsequent proceedings.

C. "Bail Bondsman" means any person or corporation which will act as a Surety and pledge money or property as Bail for the appearance of a criminal defendant in court.

D. "Bailable Offense" means an action or offense for which the Person charged is entitled to be discharged from arrest upon posting Bond.

E. "Cash Bail" means a cashier's check or money order, in the total amount designated by the Court, to be posted by or on behalf of the Person charged, with a Court or other authorized person to accept Bail, upon condition that such money will be forfeited if the Person charged does not comply with the directions of the Court, including directions to appear at a criminal proceeding and other orders of the Court.

F. "Court" or "District Court" means the Chickasaw Nation District Court.

G. "Guaranteed Arrest Bond Certificate" means a printed card or other certificate issued by an insurance company authorized to transact Bail Bonds and Bondsmen transaction insurance within this jurisdiction, or an insurance company authorized to transact fidelity and surety insurance business within this jurisdiction to any of its members or insureds, which is signed by such member or insured, and contains a printed statement that a fidelity and surety company authorized to do business in this jurisdiction guarantees the appearance of the Person whose signature appears on the card or certificate, and that such company will, in the event of the failure of such Person to appear in court at the time of hearing, pay any fine or forfeiture imposed on such Person in an amount not to exceed the amount of Bail Bond set by the Court.

H. "Judge" means a Judge of the Chickasaw Nation District Court.

I. "Non-bailable Offense" means an action or offense for which the Person charged is not entitled to be discharged from arrest upon posting Bond, but only after arraignment before a Judge.

J. "Surety" means a person who, at the request of another, and for the purpose of securing to him a benefit, becomes responsible for the performance by the latter of some act in favor of a third party or court or a pledge of property as security. One who is primarily liable for payment of debt or performance of obligation of another.

K. "Release on Own Recognizance" means pretrial release based on the promise by the Person charged that he will appear for trial without posting Bond, and therefore that no Bond is required.

L. "Person" or "Bailee" means one who has been arrested and/or charged with an offense under the laws of the Chickasaw Nation. (TL14-002, 4/18/97; PR15-030, 9/23/98; PR26-010, 9/18/09)

SECTION 5-1001.2 ESTABLISHMENT.

A. There is hereby established the following Bail Bond procedures for the Chickasaw Nation District Court. Said Bail Bond procedures shall be effective upon the passage of this legislation.

B. Bail amounts shall be set forth in a bail schedule adopted by the District Court by court rule or otherwise provided by court order. (PR15-030, 9/23/98; PR26-010, 9/18/09)

SECTION 5-1001.3 PERSONS AUTHORIZED TO ACCEPT BAIL.

A. The following persons shall be authorized to accept Bail by a Cash Bail or Bail Bond for any Bailable Offense or offenses under this Chapter:

1. the Clerk of the District Court;

2. any officer of the Lighthorse Police Department, if the Clerk of the District Court is unavailable; and

3. a law enforcement officer of a jurisdiction that houses those Persons arrested by the Lighthorse Police Department through a jail detention agreement.

B. Persons authorized to accept Bail pursuant to this section are further authorized to release Persons held in custody upon payment of the amount of Bail set forth for each specific charge in the bond schedule adopted by the Court. (TL14-002, 4/18/97; PR15-030, 9/23/98; PR16-025, 8/23/99; PR26-010, 9/18/09)

SECTION 5-1001.4 FORM OF PAYMENT.

A. Unless otherwise directed by the Court, payment of Bail shall be accepted in the

form of:

1. a cashier's check;

2. postal or commercial money order; or

3. a Guaranteed Arrest Bond Certificate as provided by this Chapter 2.

B. Bail payment shall be accepted only for the specific amount prescribed for the Bailable Offense described in the schedule adopted by court rule.

C. No cash or personal checks shall be accepted. (TL14-002, 4/18/97; PR26-010, 9/18/09)

SECTION 5-1001.5 SURETIES.

A. The Clerk of the District Court shall accept as Bail a Guaranteed Arrest Bond Certificate issued by a Surety if all of the following conditions are met:

1. the issuer is authorized to do business within the Chickasaw Nation's jurisdiction by law;

2. the certificate is issued to and signed by the Person;

3. The certificate contains a printed statement that the appearance of such Person is guaranteed by the issuer, and in the event of failure by such Person to appear in court at the time prescribed by the Court, the issuer will pay any fine or forfeiture imposed;

4. the limit provided on the certificate equals or exceeds the amount of Bail provided for in this section; and

5. the certificate contains a printed verified statement that the Surety company has met the above requirements.

B. No attorney or other officer of the Court shall be accepted or received as guarantor or Surety on any undertaking of any kind in the District Court, nor shall any Bail Bond or undertaking be approved having the name of any such person thereon as Surety or guarantor.
(TL14-002, 4/18/97; PR26-010, 9/18/09)

SECTION 5-1001.6 BAIL AMOUNT.

A. If there is more than one criminal charge filed against a Person, the Person's Bail shall be the sum of the amounts of Bail established for each charge.

B. The Court shall have the authority to increase or decrease any preset Bail amount at its discretion based on the total circumstances of the case, including but not limited to the following:

1. the seriousness of the crime charged against the Person;

2. the apparent likelihood of conviction and the extent of the punishment prescribed by law;

3. the Person's criminal record, if any, and previous record on Bail, if any;

4. the Person's reputation and mental condition;

5. the length of residency in the community;

6. the Person's family ties and relationships;

7. the Person's employment status, record of employment and financial condition;

8. the identity of responsible members of the community who would vouch for the Person's reliability; and/or

9. Any other factors indicating the Person's mode of life, or ties to the community or bearing on the risk of failure to appear.

(PR26-010, 9/18/09)

SECTION 5-1001.7 PROCEDURES.

A. Bail shall be required of a Person as set forth in a bail schedule adopted by court rule unless otherwise provided by court order. A Person shall be required to post Bail by a Bail Bond or by Cash Bail before being released from custody.

B. At any time after an arrest on a Bailable Offense, a Person may post Bail in an amount in accordance with the bail schedule adopted by the Court and be released from custody, unless a Cash Bail amount is set or Bail is otherwise set by the Court.

C. Any Person released from jail by Bail Bond or Cash Bail and pursuant to the bail schedule must appear in court at the time and date provided the Person upon release from custody. The Person must keep the Court advised of a current address at all times and remain on good behavior while released, and comply with the pre-trial conditions, if any.

D. The bail schedule shall be used only if the Person was arrested for a crime that is a Bailable Offense. Bailable and Non-bailable Offenses shall be set out in the bail schedule adopted by the Court.

E. Cash Bail shall be used when the Person is arrested for a crime that is a Bailable Offense and the fine does not exceed Five Hundred Dollars ($500.00) and the term of imprisonment is not to exceed three (3) months, unless otherwise directed by the Court.

F. Any Person arrested under a Non-bailable Offense, or if the Person is unable to post Bail on a Bailable Offense, shall be held in the custody of the Lighthorse Police Department or its designee, and the following procedures shall be followed:

1. The Person shall be brought before a Judge as provided in Section 5-501.4 of this Title 5.

2. The Judge, after considering arguments from the prosecution and the Person regarding Bail, shall determine whether the Bail is adequate, shall be increased or decreased, or if the Person may be released on his own recognizance. All such determinations shall be made at the discretion of the Judge.

3. If the Person is unable to post Bail after appearing before the Judge, the Person shall continue to remain in the custody of the Chickasaw Nation Lighthorse Police Department or its designee and be returned to jail until such a time that the Person is able to post Bail, reappears before the Court, or until further order of the Court.

(PR26-010, 9/18/09)

SECTION 5-1001.8 RELEASE IN CASES PRIOR TO TRIAL.

A. Any Person charged with an offense shall, at his appearance before a judge, be ordered released pending trial on Bail, on his personal recognizance, or upon

other judicial order subject to the condition that such Person shall not attempt to influence, injure, tamper with or retaliate against an officer, juror, witness, informant, or victim or violate any other law, unless the Judge determines in the exercise of his discretion, that such a release will not reasonably assure the appearance of the Person as required.

B. When such determination is made, the Judge shall, either in lieu of or in addition to release on Bail or personal recognizance or execution of a Bail Bond, impose one (1) or any combination of the following conditions of release which will reasonably assure the appearance of the Person for trial:

1. place the Person in the custody of a designated person or organization agreeing to supervise him;

2. place restrictions on the travel, association, or place of abode of the Person during the period of release;

3. require the execution of an appearance Bond in a specified amount and the deposit in the registry of the Court, in cash or other security as directed, of a sum not to exceed 10 percent (10%) of the amount of the Bond, such deposit to be returned upon the performance of the conditions of release;

4. require the execution of a Bail Bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; and/or

5. impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the Person return to custody after a specified hour.

C. A Judge authorizing the release of a Person under this Section shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform such Person of the penalties applicable to violations of the conditions of release and shall advise him that a warrant for his arrest will be issued immediately upon any such violation.

D. A Person for whom conditions of release are imposed and who after seventy two (72) hours from the time of the Bail hearing, continues to be detained as a result of his inability to meet the conditions of release, shall, upon application, be entitled to have the conditions reviewed by the Judge who imposed them. Unless the conditions of release are amended and the Person is thereupon released, the Judge shall set forth in writing the reasons for requiring the conditions imposed. A Person who is ordered released on a condition which requires that he return to custody after specified hours shall, upon application, be entitled to a review by the Judge who imposed the

condition. Unless the requirement is removed and the Person is thereupon released on another condition, the Judge shall set forth in writing the reasons for continuing the requirement. In the event that the Judge who imposed conditions of release is not available, any other

Judge of the Court may review such conditions.

E. A Judge ordering the release of a Person on any condition specified in this Section may at any time amend his order to impose additional or different conditions of release: provided, that, if the imposition of such additional or different conditions results in the detention of the Person as a result of his inability to meet such conditions or in the release of the Person on a condition requiring him to return to custody after specified hours, the provisions of Subsection C shall apply.

F. Information stated in, or offered in connection with, any order entered pursuant to this Section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

G. Nothing contained in this Section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the Court, nor to prevent the Court by rule from authorizing and establishing a bail schedule for certain offenses or classes of offenses through which a Person arrested may post Bail with a Person authorized to accept Bail and obtain his release prior to his appearance before a Judge.
(PR26-010, 9/18/09)

SECTION 5-1001.9 PENALTIES FOR FAILURE TO APPEAR.

Whoever, having been released pursuant to this Chapter 2, willfully fails to appear before the Court as required, and in violation of Section 17-601.9 or Section 17-601.14, shall incur a forfeiture of any security which was given or pledged for his release, and in addition, shall, if released in connection with a criminal charge, be fined not more than the maximum provided for the offense charged or imprisoned for not more than one (1) year or both. (PR26-010, 9/18/09; PR39-007, 05/20/2022)

SECTION 5-1001.10 PERSONS OR CLASSES PROHIBITED AS BAIL BONDSMEN.

The following persons or classes shall not be Bail Bondsmen and shall not directly or indirectly receive any benefits from the execution of any Bail Bond; jailers, police officers, magistrates, Judges, court clerks, attorneys and any person having the

power to arrest or having anything to do with the care, custody or control of Chickasaw Nation prisoners. (PR26-010, 9/18/09)

SECTION 5-1001.11 AUTHORITY TO ACT AS BAIL BONDSMEN.

Any person authorized by law to act as Bail Bondsmen in the federal or state courts, and pursuant to the conditions in Section 5-1001.5, shall be qualified to act as Bondsmen in the Chickasaw Nation District Court, and shall be liable to the same obligations as in their licensing jurisdiction and comply with all orders and rules of the Court. (PR26-010, 9/18/09)

SECTION 5-1001.12 DISBURSEMENT OF BAIL AMOUNTS.

A. All Bail amounts shall be first applied to any fines, court costs or fees as ordered by the Judge before any residual Bail is refunded to any Person.

B. Any Person or Bail Bondsman who is entitled to receive a refund of any Bail amounts posted shall make application to the Court for reimbursement of such amounts within a reasonable time.
(PR26-010, 9/18/09)

CHAPTER 11
RULES OF CRIMINAL PROCEDURE
EXTRADITION

Section 5-1101.1 Extradition from the Chickasaw Nation.
Section 5-1101.2 Demands for Extradition to the Chickasaw Nation.

SECTION 5-1101.1 EXTRADITION FROM THE CHICKASAW NATION.

A. Whenever a state, territory, or Indian tribe demands any person as a fugitive from justice from the Chickasaw Nation, and produces a copy of an indictment, a valid warrant, or an affidavit made before a magistrate of any state, territory, or Indian tribe, charging the person demanded with having committed a crime:

1. the Chickasaw Nation shall arrest and secure the person.

2. The arrested person shall be promptly informed of:

a. the extradition request,

b. the underlying criminal charge, and

c. the arrested person's right to legal counsel, and if the arrested person obtains legal counsel for the purpose of suing out a writ of habeas corpus, then the person shall be given ample time to sue out such writ as determined by the Chickasaw Nation District Court.

2. the Chickasaw Nation shall notify the demanding jurisdiction, or the agent of such authority appointed to receive the person, and shall cause the person to be delivered to such agent when he shall appear. If no such agent appears within fifteen (15) days from the time of the arrest, the person shall be discharged. The demanding jurisdiction may request additional time, but the person shall not be held by the Chickasaw Nation for more than forty-five (45) days.

B. The demanding jurisdiction is responsible for transporting the person and all costs associated therewith and shall reimburse the Chickasaw Nation for the costs of detention.

C. Nothing in this Section shall be deemed to constitute a waiver by the Chickasaw Nation of its right, power, or privilege to try such demanded person for an

alleged offense committed within the Chickasaw Nation. (PR39-001, 11/19/2021).

SECTION 5-1101.2 DEMANDS FOR EXTRADITION TO THE CHICKASAW NATION.

A. In all cases in which a charge of any offense is brought against a person who cannot be found in Chickasaw Nation, the Chickasaw Nation may demand extradition of such person from the jurisdiction in which such person may be found.

B. When the Chickasaw Nation shall demand the surrender of a fugitive, the actual and necessary expenses to return the person to the Chickasaw Nation may be paid by the Chickasaw Nation.
(PR39-001, 11/19/2021).

CHAPTER 12
RULES OF CRIMINAL PROCEDURE
PROTECTION FROM DOMESTIC ABUSE

Section 5-1201.1 Definitions.

Section 5-1201.2	Protective Order - Petition.
Section 5-1201.3	Emergency Ex Parte Order.
Section 5-1201.4	Hearing; Issuance of Protective Orders; Period of Relief.
Section 5-1201.5	Copies of Ex Parte or Final Protective Orders to be Sent to Appropriate Law Enforcement Agencies.
Section 5-1201.6	Violation of Ex Parte or Final Protective Order - Penalty.
Section 5-1201.7	Nationwide Validity of Orders.
Section 5-1201.8	Foreign Protective Orders.
Section 5-1201.9	Duties of Police Officer; Emergency Temporary order of Protection.
Section 5-1201.11	Violation of Order; Warrantless Arrest; Presumption of Validity of Orders.
Section 5-1201.12	Presentation of an Altered or False Protective Order.

SECTION 5-1201.1 DEFINITIONS.

In this Chapter 12:

1. "Child" means a person under eighteen (18) years of age (plural "Children").

2. “Dating Relationship” means intimate association, primarily characterized by affectionate or sexual involvement. For purposes of this act, a casual acquaintance or ordinary fraternization between persons in a business or social context shall not constitute a dating relationship.

3. "Domestic Abuse" means any act of physical harm, or the threat of imminent physical harm which is committed by an adult, emancipated Child, or Child age thirteen (13) years of age or older against another adult, emancipated Child or Child who are Family or Household Members or who are or were in a Dating Relationship;

4. “Ex Parte” means a hearing held or an order granted by the Court upon the request of and for the benefit of one party only, without notice to, or contestation, by the party being adversely interested;

5. "Family or Household Members" means:

a. spouses,
b. ex-spouses,
c. present spouses of ex-spouses,
d. parents, including grandparents, stepparents, adoptive parents, and foster parents,

e. Children, including grandchildren, stepchildren, adopted Children, and foster Children,
f. persons otherwise related by blood or marriage,
g. persons living in the same household or who formerly lived in the same household, or
h. persons who are the biological parents of the same Child, regardless of their marital status, or whether they have lived together at any time. This shall include the elderly and disabled.

6. “Final” means an order issued by the Chickasaw Nation or any other such valid order issued by a Court of another state, tribe, or territory which has been issued after reasonable notice and opportunity to be heard has been granted to the Respondent.

7. "Firearm" means any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; or any destructive device. “Firearm” does not include an antique firearm;

8. “Foreign Protective Order” means any valid Protective Order issued by a court of another state, tribe, or territory which is consistent with the requirements of 18
U.S.C. § 2265(b).

9. "Harassment" means a knowing and willful course or pattern of conduct by a Family or Household Member or an individual who is or has been involved in a Dating Relationship with the person, directed at a specific person which seriously alarms or annoys the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial distress to the person. "Harassment" shall include, but not be limited to, harassing or obscene telephone calls in violation of provisions of Title 17 of the Chickasaw Code.

10. “Law Enforcement Officer” or “Officer” means an officer of the Chickasaw Nation Lighthorse Police Department, a federal law enforcement agency, or a tribal or state law enforcement agency with which the Nation has entered into cross-

deputation agreements, including, but not limited to, a police department in incorporated municipalities or the office of the county sheriff, or law enforcement officers of the State of Oklahoma or any other state.

11. “Petitioner” means a person petitioning the Court for a Protective Order.

12. "Protective Order" or "Order" means a valid order or decree of a court which has the purpose of protecting a person from further harassment, stalking, abuse, or bodily injury. A Protective Order or Order includes both Final and *Ex Parte* Protective Orders.

13. "Respondent" means the party against whom a Protective Order petition is filed; and, if a Protective Order is entered, the party whose activities are restrained by the Protective Order.

14. "Stalking" means the willful, malicious, and repeated following of a person by an adult, emancipated Child, or Child thirteen (13) years of age or older, in a manner that would cause a reasonable person to feel frightened, intimidated, threatened, harassed or molested. Stalking also means a course of conduct composed of a series of two or more separate acts over a period of time, however short, evidencing a continuity of purpose of unconsented contact with a person that is initiated or continued without the consent of the individual or in disregard of the expressed desire of the individual that the contact be avoided or discontinued. Unconsented contact or course of conduct includes, but is not limited to:

a. maintaining a visual or physical proximity to the individual;

b. approaching or confronting that individual in a public place or on private property;

c. appearing at the workplace of the individual or contacting the employer or coworkers of the individual;

d. appearing at the residence of the individual or contacting the neighbors of the individual;

e. entering onto or remaining on property owned, leased or occupied by the individual;

f. contacting the individual by telephone, text message, electronic message, electronic mail, or other means of electronic communication causing the telephone or electronic device of the individual or the telephone or electronic device of any other person to ring or generate notifications repeatedly or continuously, regardless whether a conversation ensues;

g. photographing, videotaping, audiotaping, or, through any other electronic means, monitoring or recording the activities of the

individual. This subparagraph applies regardless of where the act occurs;

h. sending any physical or electronic material or contacting the individual by any means, including any message, comment, or other content posted on any internet site or web application;

i. sending to a family member or member of the household of the individual, or any current or former employer of the individual, or any current or former coworker of the individual, or any friend of the individual, any physical or electronic material or contacting such person by any means, including any message, comment, or other content posted on any Internet site or web application, for the purpose of obtaining information about, disseminating information about, or communicating with the individual;

j. placing an object on, or delivering an object to, property owned, leased or occupied by the individual;

k. delivering an object to a family member or member of the household of the individual, or an employer, coworker, or friend of the individual, or placing an object on, or delivering an object to, property owned, leased, or occupied by such a person with the intent that the object be delivered to the individual; or

l. causing a person to engage in any of the acts described in subparagraphs a through k of this paragraph.

(TL14-002, 4/18/97; PR15-030, 9/23/98; PR38-014, 02/22/2021; PR38-021, 5/24/2021; PR40-010, 04/17/2023)

SECTION 5-1201.2 PROTECTIVE ORDER; PETITION.

A. The Court shall have full civil jurisdiction to issue and enforce Protective Orders involving any person in matters arising in the Indian Country of the Chickasaw Nation or otherwise within the authority of the Court.

B. The following persons may seek relief under the provisions of this Section by filing a petition for Protective Order with the Court:

1. any victim of Domestic Abuse who is age sixteen (16) years or older;

2. any victim of Stalking who is age sixteen (16) years or older;

3. any victim of Harassment who is age sixteen (16) years or older; or

4. any adult or emancipated Child who is a Family or Household Member of a victim who is a Child or incompetent, on behalf of such victim.

C. The petition forms shall be provided by the Clerk of the Court.

D. No filing fee shall be charged to the Petitioner at the time the petition is filed. The Court may assess court costs and filing fees to the Respondent if a Protective Order is issued against the Respondent at the hearing, at the discretion of the Court. The Court may only charge fees to the Petitioner if the Court specifically finds that the petition has been filed frivolously and no victim exists.

E. The Petitioner shall prepare the petition as set forth above or, at the request of the Petitioner, the Court Clerk or victim-advocate shall prepare or assist the Petitioner in preparing the same.

F. A copy of the petition, notice of hearing and a copy of any *Ex Parte* Order issued by the Court, if applicable, shall be served upon the Respondent in the same manner as a summons.
(TL14-002, 4/18/97; PR15-030, 9/23/98; PR21-020, 5/21/04; PR38-014, 02/22/2021)

SECTION 5-1201.3 EMERGENCY *EX PARTE* ORDER.

A. If a Petitioner requests an emergency *Ex Parte* Order, the court shall hold an *Ex Parte* hearing on the next day the court is in session. The court may, for good cause shown at the hearing, issue any emergency *Ex Parte* Order that it finds necessary to protect the Petitioner from immediate and present danger of Domestic Abuse, Stalking, or Harassment.

B. An emergency *Ex Parte* Order authorized by this Section shall include the following:

1. an order to the Respondent not to abuse, injure, or otherwise engage in Domestic Abuse of the victim(s);

2. an order to the Respondent not to visit, assault, or otherwise interfere with the victim(s);

3. an order to the Respondent not to threaten the victim(s);

4. an order to the Respondent to cease Stalking the victim(s);

5. an order to the Respondent to cease Harassment of the victim(s); or

6. an order to the Respondent not to contact or direct others to contact through any means, including, but not limited to, contact at the home, work, or school of the Petitioner, in public places, by phone, in writing, by electronic communication or device, or through social media;

7. an order to the Respondent to leave the residence, if applicable; and

8. an order to the Respondent to surrender any Firearm in the Respondent's possession, care, custody, or control to the Chickasaw Nation Lighthorse Police Department or a federal firearms licensee immediately following the hearing or service of the *Ex Parte Order* while the Order is in effect and to refrain from purchasing, receiving, or possessing or attempting to purchase, receive or possess any Firearm while the Order is in effect. Nothing in this subsection shall prevent a Law Enforcement Officer from retrieving any Firearm(s) in Respondent's possession, care, custody, or control at any time following the issuance of an Order;

9. an order to the Respondent to avoid the residence of the Petitioner or any premises temporarily occupied by the Petitioner;

10. an order to the Respondent not to impersonate or adopt the personification of the Petitioner by pretending to be the Petitioner, ordering items, posting information or making inquiries, or publishing photographs of the Petitioner by use of social media, or by use of computer, telephone, texting, emailing, or by use of any electronic means;

11. an order to the Respondent to refrain from removing, hiding, damaging, harming, mistreating, or disposing of a household pet;

12. an order to the Respondent to allow the Petitioner or a family member or household member of the Petitioner acting on his or her behalf to retrieve a household pet;

13. an order to the Respondent to avoid contacting the Petitioner or causing any person other than an attorney for the Petitioner or law

enforcement officer to contact the Petitioner unless the Petitioner consents in writing; and (PR40-010, 04/17/2023)

C. An emergency *Ex Parte* Order authorized by this Section may include the following:

1. an order awarding attorney fees;

2. an order requiring payment of court costs and service of process fees;

3. an order requiring a preliminary inquiry in a delinquent or deprived Child proceeding;

4. an order removing a Respondent who is Child from the residence by immediately placing the Child in any type of care authorized for children taken into custody; and/or

5. an order granting other relief including suspension of an existing order for child visitation and/or custody, until further order of the court.

D. *Ex Parte* Orders shall be given priority for service by authorized Law Enforcement Officers and can be served twenty-four (24) hours a day.

E. The emergency *Ex Parte* Order shall be in effect until after a full hearing involving all parties is conducted. If the Respondent has been served prior to the hearing, but does not appear at the hearing, the *Ex* Parte Order shall remain in effect until the Respondent is served with the Final Protective Order.
(TL14-002, 4/18/97; PR21-020, 5/21/04; PR38-014, 02/22/2021; PR38-021, 5/24/2021)

F. The Chickasaw Lighthorse Police Department and any other Law Enforcement Agency shall accompany the Petitioner and assist in placing the Petitioner in physical possession of Petitioner's residence, if requested and as ordered by the Court.
(PR40-010, 04/17/2023)

SECTION 5-1201.4 HEARING; ISSUANCE OF PROTECTIVE ORDERS; PERIOD OF RELIEF.

A. Within thirty (30) days of the filing of the petition, the Court shall schedule a full hearing on the petition, regardless of whether an emergency *Ex Parte* Order has been previously issued, requested or denied.

1. If an emergency *Ex Parte* Protective Order was issued prior to the hearing and if service has not been made on the Respondent at the time of the hearing, the Court shall, at the request of the Petitioner, issue a new emergency *Ex Parte* Order reflecting a new hearing date and direct service to issue.

2. A petition for a Protective Order shall, upon the request of the Petitioner, renew every thirty (30) days with a new hearing date assigned until the Respondent is served. A petition for a Protective Order shall not expire unless the Petitioner fails to appear at the hearing or fails to request a new order. A Petitioner may move to dismiss the petition and *Ex Parte* or Final Protective Order at any time, however, a Protective Order must be dismissed by Court order.

3. Failure to serve the Respondent shall not be grounds for dismissal of a petition or an *Ex Parte* Order unless the Petitioner requests dismissal or fails to appear for the hearing thereon.

B. At the hearing on the petition, the Court may grant any Protective Order, whether a temporary or Final Protective Order, to bring about the cessation of Domestic Abuse against the victim or Stalking or Harassment of the victim.

C. Protective Orders subject to this Section shall include all of the elements

enumerated in Subsection 5-1201.3(B), above, and may include any or all of the elements enumerated in Subsection 1201.3(C), above.
(PR38-021, 5/24/2021)

D. After notice and hearing, Protective Orders authorized by this Section may require the Respondent to undergo treatment or participate in the counseling services necessary to bring about cessation of Domestic Abuse against the victim(s). The Respondent shall be solely responsible for paying all or any part of the cost of such treatment or counseling services.

E. Protective Orders granted pursuant to the provisions of this Section may be served upon the Respondent by a Law Enforcement Officer authorized by this Act.

F. Any Protective Order issued shall be:

1. for a fixed period, not to exceed a period of five (5) years, unless extended, modified, vacated, or rescinded upon motion by either party, or if the Court approves any consent agreement entered into by the Petitioner and Respondent; provided, if the Respondent is incarcerated, the Protective Order shall remain in full force in effect during the period of incarceration. The period of incarceration in any jurisdiction shall not be included in the calculation of the five (5) year time limitation..

2. continuous upon a specific finding by the Court of one of the following:

a. Respondent has a history of violating the orders of any court or governmental entity;

b. Respondent has previously been convicted of a violent felony offense;

c. Respondent has a previous conviction for stalking as provided in Title 17, Section 17-506.6 of the Chickasaw Nation Code or a similar offense in another jurisdiction;

d. a court order for a final Protection Order has previously been issued against the person in the Chickasaw Nation or another jurisdiction; or

e. the Petitioner provides proof that a continuous Protective Order is necessary for his or her protection.

Further, the Court may take into consideration whether the person has a history of domestic violence or a history of other violent acts. The protective order shall remain in effect until modified, vacated or rescinded upon motion by either party or if the Court approves any consent agreement entered into by the plaintiff and defendant. If the defendant is incarcerated, the protective order shall remain in full force and effect during the period of incarceration.

G. No Order issued pursuant to this Chapter shall in any manner affect title to real property, purport to grant to the parties a divorce or otherwise purport to determine the issues between the parties as to child custody, visitation, child support or division of property or any other like relief obtainable under other provisions of this Chapter.

I. The Court shall not issue mutual Protective Orders. If both parties allege Domestic Abuse by the other party, the parties shall do so by separate petitions. The Court shall review each petition separately in an individual or a consolidated hearing and grant or deny each petition on its individual merits. If the Court finds cause to grant both petitions, the Court shall do so by separate Orders and with specific findings justifying the issuance of each Order. (TL14-002, 4/18/97; PR21-020, 5/21/04; PR38-014, 02/22/2021; PR40-010, 04/17/2023)

SECTION 5-1201.5 COPIES OF *EX PARTE* OR FINAL PROTECTIVE ORDERS TO BE SENT TO APPROPRIATE LAW ENFORCEMENT AGENCIES.

A. Within twenty-four (24) hours of the, the Court Clerk shall provide notice thereof to the Chickasaw Lighthorse Police Department and any other Law Enforcement Agencies which are designated by the Petitioner.

B. Any Law Enforcement Agency receiving copies of the documents listed in subsection A of this section shall ensure that other Law Enforcement Agencies have access twenty-four (24) hours a day to the information contained in the documents which may include entry of information about the *Ex Parte* or Final Protective Order in the National Crime Information Center database.
(TL14-002, 4/18/97; PR38-014, 02/22/2021)

SECTION 5-1201.6 VIOLATION OF *EX PARTE* OR FINAL PROTECTIVE ORDER; PENALTY.

A. Except as otherwise provided by this Section, any person who has been served with an *Ex Parte* or Final Protective Order and is in violation of such Protective Order, upon conviction, shall be guilty of a criminal offense and shall be punished by a fine of not more than

one thousand dollars ($1,000) or by a term of imprisonment of not more than one (1) year, or both.

B. Any person who after a previous conviction of a violation of a Protective Order is convicted of a second or subsequent offense pursuant to the provisions of this Section shall be deemed guilty of the offense and shall be punished by a term of imprisonment of not less than ten (10) days and not more than three (3) years. In addition to the term of imprisonment, the person may be punished by a fine of not less than one thousand dollars ($1,000) and not more than fifteen thousand dollars ($15,000). In determining the term of imprisonment required by this Section, the jury or sentencing Judge shall consider the degree of physical injury or physical impairment to the victim.

C. The minimum sentence of imprisonment issued pursuant to the provisions of Subsection B of this Section shall not be subject to statutory provisions for suspended sentences, deferred sentences or probation, provided that the Court may subject any remaining penalty under the jurisdiction of the Court to the statutory provisions for suspended sentences, deferred sentences or probation.

D. In addition to any other penalty specified by this Section, the Court may require a defendant to undergo the treatment or participate in the counseling services necessary to bring about the cessation of Domestic Abuse against the victim or to bring about the cessation of Stalking or Harassment of the victim.
(TL14-002, 4/18/97; PR38-014, 02/22/2021)

SECTION 5-1201.7 NATIONWIDE VALIDITY OF ORDERS.

All orders issued pursuant to provisions for the protection from Domestic Abuse shall have validity throughout the jurisdiction of the Chickasaw Nation, the State of Oklahoma and the United States of America unless specifically modified or terminated by a court of competent jurisdiction.
(PR38-014, 02/22/2021)

SECTION 5-1201.8 FOREIGN PROTECTIVE ORDERS.

A. All Foreign Protective Orders shall be accorded full faith and credit pursuant to 18 U.S.C. § 2265, even if the Foreign Protective Order contains provisions which could not be contained in a Protective Order issued by a Chickasaw Nation Court. The validity of a Foreign Protective Order shall only be determined by a court of competent jurisdiction. Until a Foreign Protective Order is declared invalid by a court of competent jurisdiction it shall be given full faith and credit by all Law Enforcement Officers and Courts of the Chickasaw Nation.

B. A Law Enforcement Officer shall be immune from liability for enforcing provisions of a Foreign Protective Order.
(PR38-014, 02/22/2021)

SECTION 5-1201.9 DUTIES OF POLICE OFFICER; EMERGENCY TEMPORARY ORDER OF PROTECTION.

A. A peace officer shall not discourage a victim of domestic abuse from pressing charges against the assailant of the victim.

B. A peace officer may arrest without a warrant a person anywhere, including a place of residence, if the peace officer has probable cause to believe the person within the preceding seventy-two (72) hours has committed an act of domestic abuse, although the assault did not take place in the presence of the peace officer. A peace officer may not arrest a person pursuant to this Section without first observing a recent physical injury to, or an impairment of the physical condition of, the alleged victim.

C. When the Court is not open for business, the victim of domestic abuse may request a petition for an emergency temporary order of protection. The peace officer making the preliminary investigation shall:

1. provide the victim with a petition for an emergency temporary order of protection and, if necessary, assist the victim in completing the petition form. The petition shall be in substantially the same form as provided by the Court Clerk;

2. immediately notify, by telephone or otherwise, a Judge of the District Court of the request for an emergency temporary order of protection and describe the circumstances. The Judge shall inform the peace officer of the decision to approve or disapprove the emergency temporary order;

3. inform the victim whether the Judge has approved or disapproved the emergency temporary order. If an emergency temporary order has been approved, the officer shall provide the victim, or a responsible adult if the victim is a minor child or an incompetent person, with a copy of the petition and a written statement signed by the officer attesting that the Judge has approved the emergency temporary order of protection and notify the victim that the emergency temporary order shall be effective only until the close of business on the next day that the Court is open for business;

4. notify the person subject to the emergency temporary protection order of the issuance and conditions of the order. Notification pursuant to this Paragraph may be made personally by the officer or in writing. A copy of the petition and the statement of the officer attesting to the order of the Judge shall be made available to such person; and

5. File a copy of the petition and the statement of the officer with the Court immediately upon the opening of the Court on the next day it is open for business.

SECTION 5-1201.11 VIOLATION OF ORDER; WARRANTLESS ARREST; PRESUMPTION OF VALIDITY OF ORDERS.

A. Pursuant to Section 5-901.2 of this Title, a Law Enforcement Officer, without a warrant, shall arrest and take into custody a person if the Law Enforcement Officer has reasonable cause to believe that:

1. An Order has been issued and served upon the person pursuant to this Chapter;

2. A true copy and proof of service of the Order has been filed with the law enforcement agency having jurisdiction of the area in which the Petitioner or any family or household member named in the Order resides or a certified copy of the Order and proof of service is presented to the Law Enforcement Officer as provided in Subsection D of this Section;

3. The person named in the Order has received notice of the Order and has had a reasonable time to comply with the Order; and

4. The person named in the Order has violated the Order or is then acting in violation of the Order.

B. A Law Enforcement Officer, without a warrant, shall arrest and take into custody a person if the following conditions have been met:

1. The Law Enforcement Officer has reasonable cause to believe that a Foreign Protective Order has been issued, pursuant to the law of the state or tribal court where the Foreign Protective Order was issued;

2. A copy of the Foreign Protective Order has been presented to the Law Enforcement Officer that appears valid on its face; and

3. The Law Enforcement Officer has reasonable cause to believe the person named in the Order has violated the Order or is then acting in violation of the Order.

C. A person arrested pursuant to this Section shall be brought before the Court after arrest, pursuant to Section 5-501.4(A), to answer to a charge for violation of the Order, at which time the court shall do each of the following:

1. Set a time certain for a hearing on the alleged violation of the Order within seventy-two (72) hours after arrest, unless extended by the court on the motion of the arrested person;

2. Set a reasonable bond pending a hearing of the alleged violation of the Order, provided, however, that the court may also consider the safety of any and all alleged victims that are subject to the protection of the Order prior to the Court setting a reasonable bond pending a hearing of the alleged violation of the Order; and

3. Notify the party who has procured the Order and direct the party to appear at the hearing and give evidence on the charge.

D. A copy of a Protective Order shall be *prima facie* evidence that such Order is valid in this jurisdiction when such documentation is presented to a Law Enforcement Officer by the plaintiff, defendant, or another person on behalf of a person named in the Order. Any Law Enforcement Officer may rely on such evidence to make an arrest for a violation of such Order, if there is reason to believe the defendant has violated or is then acting in violation of the Order without justifiable excuse. When a Law Enforcement Officer relies upon the evidence specified in this subsection, such officer and the employing agency shall be immune from liability for the

arrest of the defendant if it is later proved that the evidence was false.

SECTION 5-1201.12 PRESENTATION OF AN ALTERED OR FALSE PROTECTIVE ORDER.

A. It shall be unlawful to knowingly and willfully present any false or materially altered Protective Order to any Law Enforcement Officer to effect an arrest of any person.

B. Presentation of an Altered or False Protective Order shall be punishable by a fine not to exceed five thousand dollars ($5,000), by a term of imprisonment not to exceed one (1) year, or by both such fine and imprisonment.
(PR38-022, 5/24/2021)

CHAPTER 13
RULES OF EVIDENCE

ARTICLE A
GENERAL PROVISIONS

Section 5-1301.1 Scope.
Section 5-1301.2 Purpose and Construction.
Section 5-1301.3 Rulings on Evidence.
Section 5-1301.4 Preliminary Questions.
Section 5-1301.5 Limited Admissibility.
Section 5-1301.6 Remainder or Related Writings or Recorded Statements.

SECTION 5-1301.1 SCOPE.

This Chapter 13 governs evidentiary questions in all proceedings in the Court, whether civil, criminal, juvenile, or otherwise, except as may be otherwise specifically provided by Chickasaw law. (PR21-009, 2/20/04)

SECTION 5-1301.2 PURPOSE AND CONSTRUCTION.

These provisions on rules of evidence shall be constructed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined. (TL14-002, 4/18/97)

SECTION 5-1301.3 RULINGS ON EVIDENCE.

A. **Effect of Erroneous Ruling.** Error may not be predicated, nor a judgment reversed or modified, upon a ruling which admits or excludes evidence unless a substantive right of the party is affected, and:

1. **Objection.** In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

2. **Offer of Proof.** In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer of proof, or was

apparent from the context within which questions were asked.

B. **Record of Offer and Ruling.** The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

C. **Hearing of Jury.** In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury. Questions on evidentiary matters known to be in issue prior to trial may be determined by a hearing prior to trial, and the matter does not have to be raised at the trial by the party whose evidence is ruled inadmissible in order to preserve the error so long as the error is apparent from the transcript of the hearing. Questions which arise concerning the admissibility of evidence during the trial may be resolved in open court, if practicable, at a hearing at the bench out of the hearing of the jury, if practicable, or a recess may be taken and a hearing held upon the admissibility of the evidence at issue.

D. **Plain Error.** Nothing in this Section precludes taking notice of plain errors affecting substantive rights although they were not brought to the attention of the Court.

(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 5-1301.4 PRELIMINARY QUESTIONS.

A. **Questions of Admissibility Generally.** Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the Court, subject to the provisions of Subsection B below. In making its determination, the Court is not bound by this Chapter except those provisions with respect to privileges.

B. **Relevancy Conditioned on Fact.** When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or may admit it subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

C. **Hearing of Jury.** Hearings on the admissibility of confessions in a criminal case shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require or, when an accused in a criminal case is a witness, if he so requests.

D. **Testimony by Accused.** The accused in a criminal case does not, by testifying upon a preliminary matter, or other matter which would be heard outside the hearing of the jury, if any, subject himself to cross-examination as to other issues in the case. The accused in a criminal case waives his right against self-incrimination as to all issues in the case by testifying upon any fact pertaining to any element of the charge against him during the actual trial of the case before the jury or other finder of fact.

E. **Weight and Credibility.** This Section does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 5-1301.5 LIMITED ADMISSIBILITY.

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the Court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly. (TL14-002, 4/18/97)

SECTION 5-1301.6 REMAINDER OR RELATED WRITINGS OR RECORDED STATEMENTS.

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him at that time to introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it. (TL14-002, 4/18/97)

ARTICLE B
JUDICIAL NOTICE

Section 5-1302.1 Judicial Notice of Adjudicative Facts.

SECTION 5-1302.1 JUDICIAL NOTICE OF ADJUDICATIVE FACTS.

A. **Scope of Chapter.** This Chapter 13 governs only judicial notice of adjudicative facts in the courts of the Chickasaw Nation, including the CFR Court when sitting as a court for the Chickasaw Nation.

B. **Kinds of Facts.** A judicially-noticed fact must be one not subject to reasonable dispute in that it is either:

1. generally known within the territorial jurisdiction of the Court; or

2. capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

C. **When Discretionary.** The Courts may take judicial notice, whether requested or not.

D. **When Mandatory.** The Courts shall take judicial notice if requested by a party and supplied with the necessary information, or when required to do so by Chickasaw law.

E. **Opportunity to be Heard.** A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

F. **Time of Taking Notice.** Judicial notice may be taken at any stage of the proceeding.

G. **Instructing Jury.** In a civil action or proceeding, the Court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the Court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially-noticed.

(TL14-002, 4/18/97)

ARTICLE C
PRESUMPTIONS

Section 5-1303.1 Presumptions in General in Civil and Criminal Actions and Proceedings.

SECTION 5-1303.1 PRESUMPTIONS IN GENERAL IN CIVIL AND CRIMINAL ACTIONS AND PROCEEDINGS.

In all civil and criminal actions and proceedings, a presumption imposes upon the party against whom it is directed the burden of going forward with evidence to rebut or meet the

presumption, but does not shift to the party the burden of proof in the sense of the risk of non-persuasion, which remains throughout the trial upon the party on whom it was originally cast.

(TL14-002, 4/18/97; PR15-030, 9/23/98)

ARTICLE D
RELEVANCY AND ITS LIMITS

Section 5-1304.1	Definition of "Relevant Evidence."
Section 5-1304.2	Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible.
Section 5-1304.3	Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time.
Section 5-1304.4	Character Evidence not Admissible to Prove Conduct; Exceptions; Other Crimes.
Section 5-1304.5	Methods of Proving Character.
Section 5-1304.6	Habit; Routine Practice.
Section 5-1304.7	Subsequent Remedial Measures.
Section 5-1304.8	Compromise and Offers to Compromise.
Section 5-1304.9	Payment of Medical and Similar Expenses.
Section 5-1304.10	Inadmissibility of Pleas, Offers of Pleas and Related Statements.
Section 5-1304.11	Liability Insurance.
Section 5-1304.12	Sexual Offense Against Another Person; Evidence of Complaining Witness's Previous Sexual Conduct Inadmissible; Exception.
Section 5-1304.13	Evidence of Commission of Other Sexual Assault Offense; Admissibility; Disclosures by Prosecutor.
Section 5-1304.14	Evidence of Commission of Other Child Molestation Offense – Admissibility – Disclosures by Prosecutor.

SECTION 5-1304.1 DEFINITION OF "RELEVANT EVIDENCE."

"Relevant Evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. (TL14-002, 4/18/97)

SECTION 5-1304.2 RELEVANT EVIDENCE GENERALLY ADMISSIBLE; IRRELEVANT EVIDENCE INADMISSIBLE.

All Relevant Evidence is admissible, except as otherwise provided by applicable law of the Chickasaw Nation. Evidence which is not relevant is not admissible.
(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 5-1304.3 EXCLUSION OF RELEVANT EVIDENCE ON GROUNDS

OF PREJUDICE, CONFUSION, OR WASTE OF TIME.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence; or if it is inadmissible pursuant to some section of this Chapter. In criminal proceedings on charges of Rape or Lewd or Indecent Proposals or Acts as to Child Under 16; Sexual Battery, evidence concerning the prior sexual conduct of a victim may be excluded if its probative value
is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. (TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 5-1304.4 CHARACTER EVIDENCE NOT ADMISSIBLE TO PROVE CONDUCT; EXCEPTIONS; OTHER CRIMES.

A. **Character evidence generally.** Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:

1. **Character of accused.** Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same after the accused has offered such character evidence;

2. **Character of victim.** Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same after the accused has offered such character evidence, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

3. **Character of witness.** Evidence of the character of a witness, as provided in Sections 5-1306.7, 5-1306.8 and 5-1306.9 of this Chapter; and

4. **Other crimes, wrongs, or acts.** Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.
(TL14-002, 4/18/97)

SECTION 5-1304.5 METHODS OF PROVING CHARACTER.

A. **Reputation or opinion.** In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by

testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

B. **Specific instances of conduct.** In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of his conduct.
(TL14-002, 4/18/97)

SECTION 5-1304.6 HABIT; ROUTINE PRACTICE.

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice. (TL14-002, 4/18/97)

SECTION 5-1304.7 SUBSEQUENT REMEDIAL MEASURES.

When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event, in order to encourage additional safety measures to be taken for the protection of the public whether or not the previous measures were sufficient to prevent a finding of negligent or culpable conduct. This Section does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measure, if controverted, or impeachment.
(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 5-1304.8 COMPROMISE AND OFFERS TO COMPROMISE.

A. In order to encourage the non-judicial settlement of disputes, evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible.

B. This Section does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This Section also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.
(TL14-002, 4/18/97)

SECTION 5-1304.9 PAYMENT OF MEDICAL AND SIMILAR EXPENSES.

In order to encourage non-judicial settlement of disputes and to encourage persons to assist one another for their own benefit, evidence of furnishing or offering or promising to pay, or the payment of medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury. Evidence of payment of such charges may be introduced by the person making such payment for the purpose of reducing a judgment for damages. (TL14-002, 4/18/97)

SECTION 5-1304.10 INADMISSIBILITY OF PLEAS, OFFERS OF PLEAS, AND RELATED STATEMENTS.

A. Except as otherwise provided in this Section, evidence of a plea of guilty, later withdrawn, or a plea of *nolo contendere*, or of any offer to plead guilty or nolo contendere to the crime charged or any other crime, or of any statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer. However, evidence of a statement made in connection with, and relevant to, a plea of guilty, later withdrawn, a plea of *nolo contendere*, or an offer to plead guilty or *nolo contendere* to the crime charged or any other crime, is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.

B. A plea of guilty which has not been withdrawn, and statements made in connection therewith are admissible if relevant in any criminal or civil proceeding.

(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 5-1304.11 LIABILITY INSURANCE.

A. Evidence that a person was or was not insured against liability is not admissible upon the issue of whether he acted negligently or otherwise wrongfully. This Section does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

B. In the sound discretion of the Court, evidence that a person was or was not insured against liability and the limits of coverage and any other relevant factor is admissible in a bifurcated jury or judge trial sounding in tort, or otherwise, in the second phase of the trial upon the issue of the amount of actual and consequential damages to be awarded, after liability has been determined in the first phase of the trial.

(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 5-1304.12 SEXUAL OFFENSE AGAINST ANOTHER PERSON; EVIDENCE OF COMPLAINING WITNESS'S PREVIOUS SEXUAL CONDUCT INADMISSIBLE; EXCEPTION.

A. In a criminal case in which a person is accused of a sexual offense against another person, the following is not admissible:

1. Evidence of reputation or opinion regarding other sexual behavior of a victim or the sexual offense alleged.

2. Evidence of specific instances of sexual behavior of an alleged victim with persons other than the accused offered on the issue of whether the alleged victim consented to the sexual behavior with respect to the sexual offense alleged.

B. The provisions of subsection A of this section do not require the exclusion of evidence of:

1. Specific instances of sexual behavior if offered for a purpose other than the issue of consent, including proof of the source of semen, pregnancy, disease, or injury;

2. False allegations of sexual offenses; or

3. Similar sexual acts in the presence of the accused with persons other than the accused which occurs at the time of the event giving rise to the sexual offense alleged.

C. If the defendant intends to offer evidence described in subsection B of this section, the defendant shall file a written motion to offer such evidence accompanied by an offer of proof not later than fifteen (15) days before the date of the trial in which such evidence is to be offered, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties by counsel for the defendant and on the alleged victim by the prosecutor.

D. If the court determines that the motion and offer of proof described in Subsection C contains evidence described in subsection B of this section, the court may order an in-camera hearing to determine whether the proffered evidence is admissible under subsection B of this section.

SECTION 5-1304.13 EVIDENCE OF COMMISSION OF OTHER SEXUAL ASSAULT OFFENSE; ADMISSIBILITY; DISCLOSURES BY PROSECUTOR.

A. In a criminal case in which the defendant is accused of an offense of sexual assault, evidence of the defendant's commission of another offense or offenses of sexual assault is admissible and may be considered for its bearing on any matter to which it is relevant.

B. In a case in which the Nation intends to offer evidence under this rule, the prosecutor shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen (15) days before the scheduled date of trial or at such later time as the court may allow for good cause.

C. This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

D. For purposes of this rule, "offense of sexual assault" means a crime under federal law or the laws of the Chickasaw Nation that involve:

1. Any conduct proscribed by Sections 17-404.1, 17-501.3, 17-501.4, 17-501.5, 17-504.1, 17-504.2, and 17-504.3 of Title 17; (PR39-007, 05/20/2022)

2. Contact, without consent, between any part of the defendant's body or an object and the genitals or anus of another person;

3. Contact, without consent, between the genitals or anus of the defendant and any part of another person's body;

4. Deriving sexual pleasure or gratification from the infliction of death, bodily injury, emotional distress, or physical pain on another person; or

5. An attempt or conspiracy to engage in conduct described in paragraphs 1 through 4 of this subsection.
(PR38-021, 5/24/2021)

SECTION 5-1304.14 EVIDENCE OF COMMISSION OF OTHER CHILD MOLESTATION OFFENSE - ADMISSIBILITY - DISCLOSURES BY PROSECUTOR.

A. In a criminal case in which the defendant is accused of an offense of child molestation, evidence of the defendant's commission of another offense or offenses of child

molestation is admissible, and may be considered for its bearing on any matter to which it is relevant.

B. In a case in which the Nation intends to offer evidence under this rule, the prosecutor shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen (15) days before the scheduled date of trial or at such later time as the court may allow for good cause.

C. This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

D. For purposes of this rule, "child" means a person below the age of sixteen (16), and "offense of child molestation" means a crime under federal law or the laws of the Chickasaw Nation that involve:

1. Any conduct proscribed by Sections 17-404.1, 17-501.3, 17-501.4, 17-501.5, 17-504.1, 17-504.2, and 17-504.3 of Title 17 that was committed in relation to a child;

(PR39-007, 05/20/2022)

2. Contact between any part of the defendant's body or an object and the genitals or anus of a child;

3. Contact between the genitals or anus of the defendant and any part of the body of a child;

4. Deriving sexual pleasure or gratification from the infliction of death, bodily injury, emotional distress, or physical pain on a child; or

5. An attempt or conspiracy to engage in conduct described in paragraphs through 4 of this subsection.

(PR38-021, 5/24/2021)

ARTICLE E
PRIVILEGES

Section 5-1305.1 Privileges Recognized Only as Provided.
Section 5-1305.2 Lawyer-Client Privilege.
Section 5-1305.3 Physician and Psychotherapist; Patient Privilege.
Section 5-1305.4 Spousal Privilege.

Section 5-1305.5 Religious Privilege.
Section 5-1305.6 Political Vote.
Section 5-1305.7 Trade Secrets.
Section 5-1305.8 Secrets of the Chickasaw Government and Other Official Information; Governmental Privileges.
Section 5-1305.9 Identity of Informer.
Section 5-1305.10 Waiver of Privilege by Voluntary Disclosure.
Section 5-1305.11 Privileged Matter Disclosed under Compulsion or Without Opportunity to Claim Privilege.
Section 5-1305.12 Comment Upon and Inference From Claim of Privilege; Instruction.

SECTION 5-1305.1 PRIVILEGES RECOGNIZED ONLY AS PROVIDED.

Except as otherwise provided by applicable federal law or law of the Chickasaw Nation, no person has a privilege to:

1. refuse to be a witness;

2. refuse to disclose any matter;

3. refuse to produce any object or writing; or

4. prevent another from being a witness or disclosing any matter or producing any object or writing.

(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 5-1305.2 LAWYER-CLIENT PRIVILEGE.

A. **Definitions.** As used in this Section:

1. A "Client" is a person, public officer, corporation, association, or other organization or entity, either public or private, who is rendered professional legal services

by a Lawyer, or who consults a Lawyer with a view to obtaining professional legal services from him.

2. A "Representative of the Client" or words to that effect means one having authority to obtain professional legal services, or to act on advice rendered pursuant thereto, on behalf of the Client.

3. A "Lawyer" is a person authorized, or reasonably believed by the Client to be authorized, to engage in the practice of law by any Indian tribe, state, or nation.

4. A "Representative of the Lawyer" or words to that effect is one employed by the Lawyer to assist the Lawyer in the rendering of professional legal services.

5. A communication is "Confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the retention of professional legal services to the Client or those reasonably necessary for the transmission of the communication, including close relatives who assist the Client in obtaining legal counsel and whom the Client requests to be present during discussions with the Lawyer for the purpose of obtaining representation.

B. **General rule of privilege.** A Client has a privilege to refuse to disclose and to prevent any other person from disclosing Confidential communications made for the purpose of facilitating the rendition of professional legal services to the Client:

1. between himself or his Representative and his Lawyer or his Lawyer's representative;

2. between his Lawyer and the Lawyer's representative;

3. by him or his Representative or his Lawyer or a Representative of the Lawyer to a Lawyer or a Representative of a Lawyer representing another party in a pending action and concerning a matter of common interest therein;

4. between Representatives of the Client or between the Client and a Representative of the Client; or

5. among Lawyers and their representatives representing the same Client.

C. **Who May Claim the Privilege.** The privilege may be claimed by the Client, his guardian or conservator or close relative who assists in obtaining legal representation, the

personal Representative of a deceased Client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the Lawyer or the Lawyer's Representative at the time of the communication is presumed to have authority to claim the privilege on behalf of the Client.

D. **Exceptions.** There is no privilege under this Section:

1. Furtherance of crime or fraud**.** If the services of the Lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the Client knew or reasonably should have known to be a crime or fraud;

2. Claimants through same deceased Client. As to a communication relevant to an issue between parties who claim through the same deceased Client, regardless of whether the claims are by testate or intestate succession or by *inter vivos* transaction;

3. Breach of duty by a Lawyer or Client. As to a communication relevant to an issue of breach of duty by the Lawyer to his Client or by the Client to his Lawyer;

4. Document attested by a Lawyer. As to a communication relevant to an issue concerning an attested document to which the Lawyer is an attesting witness;

5. Joint Clients. As to a communication relevant to a matter of common interest between or among two (2) or more Clients if the communication was made by any of them to a Lawyer retained or consulted in common, when offered in an action between or among any of the Clients; or

6. Public officer or agency. As to a communication between a public officer or agency and its Lawyers unless the communication concerns a pending or contemplated investigation, claim, or action and the Court determines that disclosure will seriously impair the ability of the public officer or agency to process the claim or conduct a pending investigation, litigation, or proceeding in the public interest.

(TL14-002, 4/18/97; PR15-030, 9/23/98; PR16-025, 8/23/99)

SECTION 5-1305.3 PHYSICIAN AND PSYCHOTHERAPIST; PATIENT PRIVILEGE.

A. **Definitions.** As used in this Section:

1. A "Patient" is a person who consults or is examined or interviewed by a physician or psychotherapist.

2. A "Physician" is a person authorized to practice medicine or the healing arts by any Indian tribe, or state, or nation, or reasonably believed by the patient so to be.

3. A "Psychotherapist" is:

a. a person authorized to practice medicine or the healing arts by any Indian tribe, or state, or nation, or reasonably believed by the

patient so to be, while engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction; or

b. a person licensed or certified as a Psychologist under the laws of any Indian tribe, or state, or nation, while similarly engaged.

4. A communication is "Confidential" if not intended to be disclosed to third persons, except persons present to further the interest of the Patient in the consultation, examination, or interview, persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the Physician or Psychotherapist, including members of the Patient's family.

B. **General Rule of Privilege.** A Patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of his physical, mental or emotional condition, including alcohol or drug addiction, among himself, his Physician or Psychotherapist, and persons who are participating in the diagnosis or treatment under the direction of the Physician or Psychotherapist, including members of the Patient's family.

C. **Who may claim the privilege.** The privilege may be claimed by the Patient, his guardian or conservator, or the personal representative of a deceased Patient. The person who was the Physician or Psychotherapist at the time of the communication, and any other persons directly involved in treatment sessions, are presumed to have authority to claim the privilege but only on behalf of the Patient.

D. **Exceptions.**

1. Proceeding for hospitalization. There is no privilege under this Section for communications relevant to an issue in proceedings to hospitalize the Patient for mental illness, if the Physician or Psychotherapist in the course of diagnosis or treatment has determined that the Patient is in need of hospitalization.

2. Examination by order of Court. If the Court orders an examination of the physical, mental or emotional condition of a Patient, whether a party or a witness, communications made in the course thereof are not privileged under this Section with respect to the particular purpose for which the examination is ordered unless the Court orders otherwise.

3. Condition an element of claim or defense. There is no privilege under this Section as to a communication relevant to an issue of the physical, mental or emotional condition of the patient in any proceeding in which he relies upon the condition as an element of his claim or defense or, after the Patient's death, in any proceeding in which any party relies upon the condition as an element of his claim or defense.

(TL14-002, 4/18/97)

SECTION 5-1305.4 SPOUSAL PRIVILEGE.

A. **Definition.** A communication is "Confidential" if it is made privately by any person to his or her spouse and is not intended for disclosure to any other person.

B. **General Rule of Privilege.** An accused in a criminal proceeding has a privilege to prevent his or her spouse from testifying as to any Confidential communication between the accused and the spouse.

C. **Exceptions.** There is no privilege under this Section in a proceeding for legal separation or divorce between the parties when the communication is relevant to the issues in the action for separate maintenance or divorce, or in which one spouse is charged with a crime against the person or property of:

1. the other;

2. a Child of either;

3. a person residing in the household of either; or

4. a third person committed in the course of committing a crime against any of them.

Except in an action brought by the Chickasaw Nation to protect a Child subject to abuse, neglect, or other cause which is sufficient to maintain a juvenile court action, testimony received pursuant to this exception in an action for divorce or legal separation between the husband and wife may not be used or referred to in any other proceeding between either the husband or wife and third persons. In a criminal proceeding, any testimony by the spouse in the defendant's behalf will be deemed a waiver of this privilege.

(TL14-002, 4/18/97; PR15-030, 9/23/98; PR37-002, 01/17/2020)

SECTION 5-1305.5 RELIGIOUS PRIVILEGE.

A. **Definitions.** As used in this Section:

1. A "Clergyman" is a minister, priest, rabbi, accredited Christian Science Practitioner, Native American Church Roadman, properly authorized traditional band or society headsman, firekeeper or peace chief or other similar functionary of a religious organization of a recognized active traditional tribal religion, or an individual reasonably believed so to be by the person consulting him.

2. A communication is "Confidential" if made privately and not intended for further disclosure except to other persons present or to other persons to whom disclosure would be privileged under this Article E if the disclosure had been made directly to such other person in furtherance of the purpose of the communication.

B. **General Rule of Privilege.** A person has a privilege to refuse to disclose and to prevent another from disclosing a Confidential communication by the person to a clergyman in his professional character as spiritual advisor.

C. **Who May Claim the Privilege.** The privilege may be claimed by the person, by his guardian or conservator, or by his personal representative if he is deceased. The person who was the clergyman at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the communicant.

(TL14-002, 4/18/97)

SECTION 5-1305.6 POLITICAL VOTE.

A. **General Rule of Privilege.** Every person has a privilege to refuse to disclose the tenor of his vote at any political election conducted by secret ballot.

B. **Exceptions.** This privilege does not apply if the Court finds that the vote was cast illegally or determines that the disclosure should be compelled pursuant to the election laws of the Chickasaw Nation.

(TL14-002, 4/18/97)

SECTION 5-1305.7 TRADE SECRETS.

A person has a privilege, which may be claimed by him or his agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by him, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. If disclosure is directed, the Court shall take such protective measures as the interest of the holder of the privilege and of the parties and the interests of justice require. (TL14-002, 4/18/97)

SECTION 5-1305.8 SECRETS OF THE CHICKASAW GOVERNMENT AND OTHER OFFICIAL INFORMATION; GOVERNMENTAL PRIVILEGES.

A. If the law of the United States creates a governmental privilege that the courts of this Nation must recognize under the Constitution and statutes of the United States, the privilege may be claimed as provided by the law of the United States.

B. No other special governmental privilege is recognized except as created by the Constitution or statutes of the Chickasaw Nation, including this Article E.

C. **Privileges Recognized.** The following governmental privileges are recognized:

1. Elected members of the Chickasaw Legislature have a privilege against disclosure of their mental processes and reasoning in the casting of any vote by them at a duly constituted meeting of that body, except in cases where it is alleged that unlawful influence or bribery or attempted bribery was involved in that vote. This privilege may be claimed only by the member and is waived if the member testifies as to such matters;

2. Justices and Judges have a privilege against disclosure of their mental processes and reasoning in the determination of any matter before them in any proceeding collateral to that matter, except in a collateral proceeding where it is alleged that unlawful influence or bribery or attempted bribery was involved in the underlying matter. The explanation and reasons for the decision of Judges which should appear on the record shall be sufficient. This Section shall not preclude the Appellate Court from remanding an action to a Judge for further findings of fact or conclusions of law in order to obtain an adequate record for review or to determine all issues necessary to a decision in a case;

3. Elected Officers of the executive branch of the Chickasaw Nation have a privilege against disclosure of their mental processes and reasoning in the exercise of their discretion when administering the policies established by the Chickasaw Legislature or in the administration of any program of the Chickasaw Nation, except in cases where it is alleged that unlawful influence or bribery or attempted bribery was involved in such exercise of discretion. This privilege may be claimed only by the Officer and is waived if the Officer testifies as to such matters;

4. Chickasaw Officers charged with the institution of legal proceedings before any agency of the Chickasaw Nation or the Chickasaw courts to enforce Chickasaw law have a privilege against disclosure of their mental processes and

reasoning in the determination of any matter brought before them for a decision as to whether or not to institute such legal proceedings.

D. **Effect of Sustaining Claim.** If a claim of governmental privilege is sustained and it appears that a party is thereby deprived of material evidence, the Court shall make any further orders the interests of justice require, including striking the testimony of a witness, declaring a mistrial, finding against the government upon an issue as to which the evidence is relevant, or dismissing the action.

(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 5-1305.9 IDENTITY OF INFORMER.

A. **Rule of Privilege.** The Chickasaw Nation, other tribal sovereignty, the United States, or a state, or any political subdivision or agency of the above listed entities having police powers has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

B. **Who May Claim.** The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished.

C. **Exceptions:**

1. Voluntary disclosure; informer a witness. No privilege exists under this Section if the identity of the informer or his interest in the subject matter of his communication has been disclosed to those who would have cause to resent or be adversely affected by the communication by a holder of the privilege or by the informer's own action, or if the informer appears as a witness for the government.

2. Testimony on relevant issue. If it appears in the case that an informer may be able to give testimony relevant to any issue in a criminal case or to a fair determination of a material issue on the merits in a civil case to which a public entity is a party, and the informed public entity invokes the privilege, the Court shall give the public entity an opportunity to show in camera facts relevant to determining whether the informer can, in fact, supply that testimony. The showing will ordinarily be in the form of affidavits, but the Court may direct that testimony be taken if it finds that the matter cannot be resolved satisfactorily upon affidavit.

a. In criminal cases, if the courts find that there is a reasonable probability that the informer can give the testimony, and the public entity elects not to disclose his identity, the Court on motion of the defendant or on its own motion shall grant appropriate relief, which may include one or more of the following: requiring the prosecuting attorney to comply with a defense request for relevant information, granting the defendant additional time or a continuance, relieving the defendant from making disclosures otherwise required of him, prohibiting the prosecuting attorney from introducing specific evidence, and dismissing charges.

b. In civil cases, if the courts find that there is a reasonable probability that the informer can give the testimony, and the public entity elects not to disclose his identity, the Court may make any order the interests of justice require.

c. Evidence submitted to the Court *in camera* shall be sealed and preserved to be made available to the Supreme Court in the event of

an appeal, and the contents shall not otherwise be revealed without the consent of the informed public entity. All counsel and parties are permitted to be present at every stage of proceedings under this Subsection except a showing *in camera* at which no counsel or party shall be permitted to be present.

(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 5-1305.10 WAIVER OF PRIVILEGE BY VOLUNTARY DISCLOSURE.

A person upon whom this Article confers a privilege against disclosure waives the privilege if he or his predecessor, while holder of the privilege, voluntarily discloses or consents to disclosure of any significant part of the privileged matter. This Section does not apply if the disclosure itself is privileged. (TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 5-1305.11 PRIVILEGED MATTER DISCLOSED UNDER COMPULSION OR WITHOUT OPPORTUNITY TO CLAIM PRIVILEGE.

A claim of privilege is not defeated by a disclosure which was 1) compelled erroneously or 2) made without opportunity to claim the privilege. (TL14-002, 4/18/97)

SECTION 5-1305.12 COMMENT UPON AND INFERENCE FROM CLAIM OF PRIVILEGE; INSTRUCTION.

A. **Comment or Inference not Permitted.** The claim of a privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by Judge or counsel. No inference may be drawn therefrom.

B. **Claiming Privilege Without Knowledge of Jury.** In jury cases, proceedings shall be conducted, to the maximum extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the jury.

C. **Jury Instruction.** Upon request, any party against whom the jury might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom. (TL14-002, 4/18/97)

ARTICLE F
WITNESSES

Section 5-1306.1 General Rules of Competency.
Section 5-1306.2 Lack of Personal Knowledge.
Section 5-1306.3 Oath or Affirmation.
Section 5-1306.4 Interpreters.
Section 5-1306.5 Competency of Judge as Witness.
Section 5-1306.6 Competency of Juror as Witness.
Section 5-1306.7 Who may Impeach.
Section 5-1306.8 Evidence of Character and Conduct of Witness.
Section 5-1306.9 Impeachment by Evidence of Conviction of Crime.
Section 5-1306.10 Religious Beliefs or Opinions.
Section 5-1306.11 Mode and Order of Interrogation and Presentation.
Section 5-1306.12 Writing Used to Refresh Memory.
Section 5-1306.13 Prior Statements of Witnesses.
Section 5-1306.14 Calling and Interrogation of Witnesses by Court.
Section 5-1306.15 Exclusion of Witnesses.
Section 5-1306.16 Procedures to Protect the Rights of Witnesses.

SECTION 5-1306.1 GENERAL RULES OF COMPETENCY.

Every person is competent to be a witness except as otherwise provided in this Article F or other relevant Chickasaw law. (TL14-002, 4/18/97)

SECTION 5-1306.2 LACK OF PERSONAL KNOWLEDGE.

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness himself. This Section is subject to the provisions of Section 5-1307.2 through 5-1307.7, relating to opinion testimony by expert witnesses. (TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 5-1306.3 OATH OR AFFIRMATION.

Before testifying, every witness shall be required to declare that he will testify truthfully, by oath or affirmation administered in a form calculated to awaken his conscience and impress his mind with his duty to do so. (TL14-002, 4/18/97)

SECTION 5-1306.4 INTERPRETERS.

An interpreter is subject to the provisions of this Article F relating to qualification as an expert and the administration of an oath or affirmation that he will make a true translation. (TL14-002, 4/18/97)

SECTION 5-1306.5 COMPETENCY OF JUDGE AS WITNESS.

The Judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point. (TL14-002, 4/18/97)

SECTION 5-1306.6 COMPETENCY OF JUROR AS WITNESS.

A. **At the Trial.** A member of the jury may not testify as a witness before that jury in the trial of the case in which he is sitting as a juror. If he is called to testify, the opposing party shall be afforded an opportunity to object out of presence of the jury.

B. **Inquiry into Validity of Verdict or Indictment.** Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or concerning his mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention, whether the jury determined the verdict, amount of damages, sentence or other matter relevant to a determination of the issues in the case by flipping a coin or other method determined purely by chance, or whether any outside influence was improperly brought to bear upon any juror. Nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received for these purposes.

(TL14-002, 4/18/97)

SECTION 5-1306.7 WHO MAY IMPEACH.

The credibility of a witness may be attacked by any party, including the party calling him.
(TL14-002, 4/18/97)

SECTION 5-1306.8 EVIDENCE OF CHARACTER AND CONDUCT OF WITNESS.

A. **Opinion and Reputation Evidence of Character.** The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations:

1. the evidence may refer only to character for truthfulness or untruthfulness; and

2. evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

B. **Specific Instances of Conduct.** Specific instances of the conduct of a witness, for the purpose of attacking or supporting his credibility, other than conviction of crime as provided in Section 5-1306.9, may not be proved by extrinsic evidence. Specific instances of conduct may, however, in the discretion of the Court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness:

1. concerning his character for truthfulness or untruthfulness; or

2. concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

C. **Special Rule for Criminal Cases.** The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of his privilege against self-incrimination when examined with respect to matters which relate only to credibility.
(TL14-002, 4/18/97)

SECTION 5-1306.9 IMPEACHMENT BY EVIDENCE OF CONVICTION OF CRIME.

A. **General Rule.** For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime shall be admitted if elicited from him or established by public record during cross-examination but only if the crime:

1. was punishable by death or imprisonment in excess of one (1) year under a federal or state law, under which he was convicted, and the Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the defendant (if it is the defendant in a criminal case whose credibility is being questioned);

2. involved dishonesty or false statement, regardless of the punishment or jurisdiction involved; or

3. was punishable by imprisonment for six (6) months or greater, or is otherwise classified as a serious offense under the laws of an Indian tribe in whose courts the conviction was obtained.

B. **Time Limit.** Evidence of a conviction under this Section is not admissible if a period of more than ten (10) years has lapsed since the date of the conviction or of the release of the witness from the confinement or other punishment imposed for that conviction, whichever is the later date, unless the Court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than ten (10) years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence. Subject to Subsection C of this Section and the discretion of the Court, such convictions are admissible if other admissible convictions not ten (10) years old as calculated herein have occurred since the conviction in question.

C. **Effect of Pardon, Annulment, or Certificate of Rehabilitation.** Evidence of a conviction is not admissible under this Section if:

1. the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which would be admissible under subparagraph A above; or

2. the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

D. **Juvenile Adjudications.** Evidence of juvenile adjudications is generally not admissible under this Section. The Court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness, other than the accused, if conviction of the offense would be admissible to attack the credibility of an adult and the Court is satisfied that admission in evidence is necessary for a fair determination of the issue of

guilt or innocence of the accused.

E. **Pendency of Appeal.** The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible when evidence of the underlying convictions in the case has been introduced. (TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 5-1306.10 RELIGIOUS BELIEFS OR OPINIONS.

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reasons of their nature his credibility is impaired or enhanced.
(TL14-002, 4/18/97)

SECTION 5-1306.11 MODE AND ORDER OF INTERROGATION AND PRESENTATION.

A. **Control by Court.** The Court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

1. make the interrogation and presentation effective for the ascertainment of the truth;

2. avoid needless consumption of time; and

3. protect witnesses from unnecessary harassment and undue embarrassment.

B. **Scope of Cross-examination.** Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The Court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

C. **Leading Questions.** A leading question is ordinarily a question which calls for a yes or no answer. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop his testimony.

Ordinarily leading questions should be permitted on cross-examination. When a party calls a Child of young age, or other person who may have significant trouble understanding questions due to age, infirmity, lack of understanding of the English language, or other cause, a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions at the Court's discretion. (TL14-002, 4/18/97)

SECTION 5-1306.12 WRITING USED TO REFRESH MEMORY.

A. If a witness uses a writing to refresh his memory either while testifying or before testifying, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness.

B. If it is claimed that the writing contains matters not related to the subject matter of the testimony, the Court shall examine the writing *in camera*, exercise any portions not so related and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the Appellate Court in the event of an appeal. If a writing is not produced or delivered pursuant to order of the Court under this Section, the Court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the Court may declare a mistrial. (TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 5-1306.13 PRIOR STATEMENTS OF WITNESSES.

A. **Examining Witness Concerning Prior Statements.** In examining a witness concerning a prior statement made by him, whether written or not, the statement need not be shown nor its contents disclosed to him at that time, but on request the same shall be shown or disclosed to opposing counsel.

B. **Extrinsic Evidence of Prior Inconsistent Statements of Witness.** Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposing party is afforded an opportunity to interrogate him thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party opponent. (TL14-002, 4/18/97)

SECTION 5-1306.14 CALLING AND INTERROGATION OF WITNESSES BY COURT.

A. **Calling by Court.** The Court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

B. **Interrogation by Court.** The Court may interrogate witnesses, whether called by itself or by a party.

C. **Objections.** Objections to calling of witnesses by the Court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present. Ordinarily, the Court should exercise its authority to call or question witnesses with great restraint in a jury trial.
(TL14-002, 4/18/97)

SECTION 5-1306.15 EXCLUSION OF WITNESSES.

At the request of a party the Court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This request may be made by a party by requesting that the Court "invoke the rule" or words of similar import. This rule does not authorize exclusion of:

1. a party who is a natural person;

2. an officer or employee of a party, designated as its representative by its attorney, when the party is not a natural person; or

3. a person whose presence is shown by a party to be essential to the presentation of his cause.
(TL14-002, 4/18/97)

SECTION 5-1306.16 PROCEDURES TO PROTECT THE RIGHTS OF WITNESSES.

A. The court shall employ usual court procedures to protect the rights of a witness, while ensuring the rights of a criminal defendant, the rights of the parties in a civil action, and the integrity of the judicial process.

B. The court, upon motion of counsel, shall conduct a hearing to determine whether the testimony of a witness shall be closed to the public. In making the decision, the court shall consider:

1. The nature and seriousness of the issues in the proceeding;

2. The age of the witness;

3. The relationship, if any, of the witness to the defendant;

4. The extent to which the size of the community would preclude the anonymity of the witness;

5. The likelihood of public disgrace of the witness;

6. Whether there is an overriding public interest in having the testimony of the witness presented in open court;

7. The substantial risk that the identity of the witness would be disclosed to the public during the proceeding;

8. The substantial probability that the disclosure of the identity of the witness would cause serious harm to the witness;

9. Whether the witness has disclosed information concerning the case to the public in a manner which would preclude anonymity of the witness; and

10. Other factors the court may deem necessary to protect the interests of justice.

C. If the court determines that the testimony of the witness is to be closed to the public, the court shall in its order accordingly and set forth the persons who can be present during the taking of testimony of the witness, which shall include:

1. The parties to the proceeding and their counsel;

2. Any officer having custody of the witness;

3. Court personnel as may be necessary to conduct the hearing and maintain order, including but not limited to the judge, the court clerk, the bailiff, and the court reporter;

4. Jury members, if appropriate; and

5. The witness and a Support Person for the witness.

D. The testimony of the witness may be taken in the courtroom, in chambers, or in some other comfortable place. If the testimony of a witness is to be taken in a courtroom, the witness and Support Person shall be assembled in the court chambers prior to the taking of the testimony to meet for a reasonable period of time with the judge and counsel for the parties. At this meeting court procedures shall be explained to the witness, and counsel shall be given an opportunity to establish a rapport with the witness to facilitate taking the testimony of the witness at a later time. The facts involved in the proceeding shall not be discussed with the witness during this meeting.

E. A witness shall have the right to be accompanied by a Support Person while giving testimony in the proceeding, but the Support Person shall not discuss the testimony of the witness with any other witnesses or attempt to prompt or influence the testimony of the witness in any way. In lieu of a Support Person, a witness shall be afforded the opportunity to have a certified therapeutic dog accompanied by the handler of the certified therapeutic dog pursuant to the provisions set forth in Section 5-1312.9.

F. For purposes of this Section, "Support Person" means a parent, other relative, or a next friend chosen by the witness to accompany the witness to court proceedings.

(PR38-029, 6/18/2021)

ARTICLE G
OPINIONS AND EXPERT TESTIMONY

Section 5-1307.1 Opinion Testimony by Lay Witnesses.
Section 5-1307.2 Testimony by Experts.
Section 5-1307.3 Basis of Opinion Testimony by Experts.
Section 5-1307.4 Opinion on Ultimate Issue.
Section 5-1307.5 Disclosure of Facts or Data Underlying Expert Opinion.
Section 5-1307.6 Court appointed Experts.
Section 5-1307.7 Expert Testimony; Admissibility.

SECTION 5-1307.1 OPINION TESTIMONY BY LAY WITNESSES.

If the witness is not testifying as an expert, his testimony in the form of opinion or inferences is limited to those opinions or inferences which are:

1. rationally based on the perception of the witness;

2. helpful to a clear understanding of his testimony or the determination of a fact in issue; and

3. upon a subject which it is presumed that the general public has sufficient knowledge to reach a reasonable opinion, conclusion or inference.

(TL14-002, 4/18/97)

SECTION 5-1307.2 TESTIMONY BY EXPERTS.

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

(TL14-002, 4/18/97)

SECTION 5-1307.3 BASIS OF OPINION TESTIMONY BY EXPERTS.

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 5-1307.4 OPINION ON ULTIMATE ISSUE.

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

(TL14-002, 4/18/97)

SECTION 5-1307.5 DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION.

The expert may testify in terms of opinion or inference and give his reasons therefore without prior disclosure of the underlying facts or data, unless the Court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

(TL14-002, 4/18/97)

SECTION 5-1307.6 COURT APPOINTED EXPERTS.

A. **Appointment.** The Court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The Court may appoint any expert

witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the Court unless he consents to act. A witness so appointed shall be informed of his duties by the Court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of his findings, if any, his deposition may be taken by any party, and he may be called to testify by the Court or any party. He shall be subject to cross-examination by each party, including a party calling him as a witness.

B. **Compensation.** Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the Court may allow. The compensation thus fixed is payable from the court fund, said fund to be reimbursed by the parties in such proportion and at such time as the Court directs, and thereafter charged in like manner as other costs.

C. **Disclosure of Appointment.** In the exercise of its discretion, the Court may authorize disclosure to the jury of the fact that the Court appointed the expert

witness.

D. **Parties' Experts of Own Selection.** Nothing in this Section limits the parties in calling expert witnesses of their own selection.
(TL14-002, 4/18/97)

SECTION 5-1307.7 EXPERT TESTIMONY; ADMISSIBILITY.

In an action in a court of this Nation, if a party offers evidence of domestic abuse, testimony of an expert witness concerning the effects of such domestic abuse on the beliefs, behavior and perception of the person being abused shall be admissible as evidence. (TL14-002, 4/18/97)

ARTICLE H
HEARSAY

Section 5-1308.1 Definitions.
Section 5-1308.2 Hearsay Rule.
Section 5-1308.3 Hearsay Exceptions; Availability of Declarant Immaterial.
Section 5-1308.4 Hearsay Exceptions; Declarant Unavailable.
Section 5-1308.5 Hearsay Within Hearsay.
Section 5-1308.6 Attacking and Supporting Credibility of Declarant.

Section 5-1308.7 Hearsay Exception; Statement of Child Victim.

SECTION 5-1308.1 DEFINITIONS.

The following definitions apply under this Chapter:

1. Declarant. A "Declarant" is a person who makes a statement.

2. Hearsay. "Hearsay" is a Statement other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. This Section generally includes affidavits and notarized Statements unless made admissible by some one of these rules.

3. Statement. A "Statement" is:

a. An oral or written assertion; or

b. Non-verbal conduct of a person, if it is intended by him as an assertion.

4. Statements which are not Hearsay. A statement is not hearsay if:

a. Prior statement by witness. The Declarant testifies at the trial or hearing and is subject to cross-examination concerning the Statement and the Statement is:

I. inconsistent with his testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition;

ii. consistent with his testimony and is offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive; or

iii. one of identification of a person or object made after perceiving him or it.

b. Admission by party-opponent. The Statement is offered against a party and is:

I. his own Statement, in either his individual or a representative capacity;

ii. a Statement of which he has manifested his adoption or belief in its truth;

iii. a Statement by a person authorized by him to make a Statement concerning the subject;

iv. a Statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship; or

v. a Statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

(TL14-002, 4/18/97)

SECTION 5-1308.2 HEARSAY RULE.

Hearsay is not admissible except as provided by Chapter 13 of this Act or other Hearsay article. (TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 5-1308.3 HEARSAY EXCEPTIONS; AVAILABILITY OF DECLARANT IMMATERIAL.

A. The following are not excluded by the Hearsay rule, even though the Declarant is available as a witness:

1. Present sense impression. A Statement describing or explaining an event or condition made while the Declarant was perceiving the event or

condition or immediately thereafter.

2. Excited utterance. A Statement relating to a startling event or condition made while the Declarant was under the stress of excitement caused by the event or condition.

3. Then existing mental, emotional, or physical condition. A Statement of the Declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of Declarant's will.

4. Statements for purposes of medical diagnosis or treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

5. Recorded recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

6. Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, concerning acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted Business activity, and if it was the regular practice of that Business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "Business" as used in this paragraph includes Business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

7. Absence of entry in records kept in accordance with the provisions of Paragraph 6 above. Evidence that a matter is not included in the memoranda reports, records, or data compilations, in any form, kept in accordance with the provisions of Paragraph 6 above, to prove the non-occurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

8. Public records and reports. Records, reports, Statements, or data compilations, in any form, of public offices or agencies, setting forth:

a. the activities of the office or agency;

b. matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding in criminal cases, however, matters observed by police officers and other law enforcement personnel; or

c. in civil actions and proceedings and against the government in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

9. Records of vital statistics. Records or data compilations, in any form, of birth, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

10. Absence of public record or entry. To prove the absence of a record, report, Statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Section 5-1309.2, or testimony, that diligent search failed to disclose the record, report, Statement, or data compilation, or entry.

11. Records of religious organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood, marriage, or other similar acts of personal or family history, contained in a regularly kept record of a religious organization.

12. Marriage, baptismal, and similar certificates. Statements contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

13. Family records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

14. Records of documents affecting an interest in property. The record of a document purporting to establish or affect an interest in property, as

proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

15. Statements in documents affecting an interest in property. A Statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

16. Statements in ancient documents. Statements in a document in existence twenty (20) years or more the authenticity of which is established.

17. Market reports, commercial publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

18. Learned treatises. To the extent called to the attention of an expert witness upon cross-examination, or relied upon by him in direct examination, Statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or, established as a reliable authority by the testimony or admission of the witness or by other expert

witness or by judicial notice. If admitted, the Statements may be read into evidence but may not be received as exhibits.

19. Reputation concerning personal or family history. Reputation among members of his family by blood, adoption, or marriage, or among his associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of his personal or family history.

20. Reputation concerning boundaries or general history. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the Chickasaw or community or state or nation in which located.

21. Reputation as to character. Reputation of a person's character among his associates or in the community.

22. Judgment of previous conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of *nolo contendere*), adjudging a person guilty of a crime or offense, to prove any fact essential to sustain the judgment in the criminal case as against persons in any civil case, but not against the accused in a criminal case. The pendency of an appeal may be shown but does not affect admissibility.

23. Other exceptions. A Statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the Court determines that:

a. the Statement is offered as evidence of a material fact;

b. the Statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and

c. the general purposes of this Chapter and the interests of justice will best be served by admission of the Statement into evidence.

24. Tribal citizenship verification. A written statement from a federally recognized tribe signed by an authorized tribal official verifying citizenship of a person in that federally recognized tribe.
(PR 42-006, 5/16/2025)

B. A proponent of the admission of a statement pursuant to this Section must make it known to the adverse party in writing, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, of his intention to offer the Statement and the particulars of it, including the name and address of the Declarant.
(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 5-1308.4 HEARSAY EXCEPTIONS; DECLARANT UNAVAILABLE.

A. **Definition of Unavailability.** "Unavailability as a Witness" includes situations in which the Declarant:

1. is exempted by ruling of the Court on the ground of privilege from testifying concerning the subject matter of his Statement;

2. persists in refusing to testify concerning the subject matter of his Statement despite an order of the Court to do so;

3. testifies to a lack of memory of the subject matter of his Statement;

4. is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

5. is absent from the hearing and the proponent of his Statement has been unable to procure his attendance (or in the case of a Hearsay exception under Paragraphs B.2, B.3 or B.4 below, his attendance or testimony) by process or other reasonable means.

A Declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of his statement for the purpose of preventing the witness from attending or testifying.

B. **Hearsay Exceptions.** The following are not excluded by the Hearsay rule if the Declarant is unavailable as a witness:

1. **Former Testimony.** Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

2. **Statement Under Belief of Impending Death.** In a prosecution for homicide or in a civil action or proceeding, a Statement made by a Declarant while believing that his death was imminent, concerning the cause or circumstances of what he believed to be his impending death.

3. **Statement Against Interest.** A Statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject him to civil or criminal liability, or to render invalid a claim by him against another, that a reasonable man in his position would not have made the statement unless he believed it to be true. A Statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the Statement.

4. **Statement of Personal or Family History.**

a. Statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though Declarant had no means of acquiring personal knowledge of the matter stated; or

b. a Statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

5. Other exceptions. A Statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the Court determines that:

a. the Statement is offered as evidence of a material fact;

b. the Statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and

c. the general purpose of this Article H and the interest of justice will best be served by admission of the statement into evidence. However, a Statement may not be admitted under this exception unless the proponent of it makes known to the adverse party in writing sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the Statement and the particulars of it, including the name and address of the Declarant.

(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 5-1308.5 HEARSAY WITHIN HEARSAY.

Hearsay included within Hearsay is not excluded under the Hearsay rule if each part of the combined Statements conforms with an exception to the Hearsay rule provided in this Article H. (TL14-002, 4/18/97)

SECTION 5-1308.6 ATTACKING AND SUPPORTING CREDIBILITY OF DECLARANT.

When a Hearsay Statement, or a Statement defined in Section 5-1308.1.4.b.iii, iv or v has been admitted in evidence, the credibility of the Declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if Declarant had testified as a witness. Evidence of a Statement or conduct by the Declarant at any time, inconsistent with his Hearsay statement, is not subject to any requirement that he be afforded an opportunity to deny or explain. If the party against whom a Hearsay Statement has been admitted calls the Declarant as a witness, the party is entitled to examine him on the Statement as if under cross-examination.
(TL14-002, 4/18/97)

SECTION 5-1308.7 HEARSAY EXCEPTION; STATEMENT OF CHILD VICTIM.

A. Unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by a child victim under the age of sixteen (16) or a person under the age of eighteen
(18) with a physical, mental, emotional, or developmental age of sixteen (16) or less describing any act of child abuse or neglect, any act of sexual abuse against a child, the offense of child abuse, the offense of child neglect, any offense involving child pornography or other obscenity, or any offense involving an unlawful sexual act, contact, intrusion, or penetration performed in the presence of, with, by, or on the declarant child, not otherwise admissible, is admissible in evidence in any civil or criminal proceeding if:

1. The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability. In making its determination, the Court may consider the mental and physical age and maturity of the child, the nature and duration of the abuse or offense, the relationship of the child to the offender, the reliability of the assertion, the reliability of the child victim, and any other factor deemed appropriate; and

2. The child either:

   a. Testifies or is available to testify pursuant to Article L in this Chapter; or

   b. Is unavailable as a witness, provided there is other corroborative evidence of the abuse or offense. Unavailability shall include a finding by the court that the child's participation in the trial or proceeding would result in a substantial likelihood of severe emotional or mental harm.

B. In a criminal action, the Defendant shall be notified at least ten (10) days before trial that a statement which qualifies as a hearsay exception pursuant to this Section will be offered as evidence at trial. The notice shall include a written statement of the content of the child's statement, when the statement was made, the circumstances surrounding the statement which indicate its reliability, and such other relevant information as necessary to provide full disclosure of the statement and its context.

C. The court shall make specific findings of fact, on the record, as to the basis for its ruling under this subsection.
(PR 38-031, 7/16/2021).

ARTICLE I
AUTHENTICATION AND IDENTIFICATION

Section 5-1309.1 Requirement of Authentication or Identification.
Section 5-1309.2 Self-authentication.
Section 5-1309.3 Subscribing Witness' Testimony Unnecessary.

SECTION 5-1309.1 REQUIREMENT OF AUTHENTICATION OR IDENTIFICATION.

A. **General Provision.** The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

B. **Illustrations.** By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this Section:

1. Testimony of witness with knowledge. Testimony that a matter is what it is claimed to be.

2. Non-expert opinion on handwriting. Non-expert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

3. Comparison by trier or expert witness. Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

4. Distinctive characteristics and the like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

5. Voice identification. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstance connecting it with the alleged speaker.

6. Telephone conversations. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company

to a particular person or business, if:

a. in the case of a person, circumstances, including self-identification, show the person answering to be the one called; or

b. in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

7. Public records or reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

8. Ancient document or data compilation. Evidence that a document or data compilation, in any form:

a. is in such condition as to create no suspicion concerning its authenticity;

b. was in a place where, if authentic, it would likely be; and

c. has been in existence twenty (20) years or more at the time it is offered.

9. Methods provided by statute. Any method of authentication or identification provided by applicable law of the Chickasaw Nation.
(TL14-002, 4/18/97; PR16-025, 8/23/99)

SECTION 5-1309.2 SELF-AUTHENTICATION.

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

1. Domestic public documents under seal. A document bearing a seal purporting to be that of the United States, or of any Indian Tribe, state, district, commonwealth, territory, or insular possession thereof, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

2. Domestic public documents not under seal. A document purporting to bear the signature in his official capacity of an officer or employee of any entity included in Paragraph 1 hereof, having no seal, if a public officer having a seal and having official

duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

3. Foreign public documents. A document purporting to be executed or attested in his official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position:

a. of the executing or attesting person; or

b. of any foreign official whose certificate of genuineness of signature and official position related to the execution or attestation or is a chain of certificates of genuineness of signature and official position relating to the execution or attestation.

A final certification may be made by a secretary of embassy or legation, consul, general consul, vice consul, or consular agent of the United States, or a diplomatic or consular official or the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the Court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

4. Certified copies of public records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or

filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with Paragraph 1, 2 or 3 of this Section or complying with any act of the Chickasaw Legislature or rule prescribed by the courts of the Chickasaw Nation pursuant to statutory authority.

5. Official publications. Books, pamphlets, or other publications purporting to be issued by public authority.

6. Newspapers and periodicals. Printed materials purporting to be newspapers or periodicals.

7. Trade inscriptions and the like. Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control or origin.

8. Acknowledged documents. Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments or administer oaths.

9. Commercial paper and related documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

10. Presumptions under Acts or Ordinances. Any signature, document, or other matter declared by Act or Ordinance of the Chickasaw Legislature to be presumptively or prima facie genuine or authentic.

11. Tribal citizenship verification document. A written statement from a federally recognized tribe signed by an authorized tribal official verifying citizenship of a person in that federally recognized tribe.

(TL14-002, 4/18/97; PR15-030, 9/23/98; PR 42-006, 5/16/2025)

SECTION 5-1309.3 SUBSCRIBING WITNESS' TESTIMONY UNNECESSARY.

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

(TL14-002, 4/18/97)

ARTICLE J
CONTENTS OF WRITING, RECORDINGS, AND PHOTOGRAPHS

Section 5-1310.1 Definitions.
Section 5-1310.2 Requirement of Original.
Section 5-1310.3 Admissibility of Duplicates.
Section 5-1310.4 Admissibility of Other Evidence of Contents.
Section 5-1310.5 Public Records.
Section 5-1310.6 Summaries.
Section 5-1310.7 Testimony or Written Admission of Party.
Section 5-1310.8 Functions of Court and Jury.

SECTION 5-1310.1 DEFINITIONS.

For the purpose of this Article J, the following definitions are applicable:

1. Writings and Recordings. "Writings" and "Recordings" consist of letters, words, or numbers or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

2. Photographs. "Photographs" include still photographs, X-rays, films, video tapes, and motion pictures.

3. Original. An "Original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An Original of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an Original.

4. Duplicate. A "Duplicate" is a counterpart produced by the same impression as the Original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original.

(TL14-002, 4/18/97)

SECTION 5-1310.2 REQUIREMENT OF ORIGINAL.

The Original Writing, Recording, or Photograph is required to provide proof of

content of such Writing, Recording, or Photograph, except as otherwise provided in this Chapter 13 or other applicable law of the Chickasaw Nation. (TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 5-1310.3 ADMISSIBILITY OF DUPLICATES.

A Duplicate is admissible to the same extent as an Original unless:

1. a genuine question is raised as to the authenticity of the Original; or

2. in the circumstances it would be unfair to admit the Duplicate in lieu of the Original.

(TL14-002, 4/18/97)

SECTION 5-1310.4 ADMISSIBILITY OF OTHER EVIDENCE OF CONTENTS.

The Original is not required, and other evidence of the contents of a Writing, Recording, or Photograph is admissible if:

1. Originals lost or destroyed. All Originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith;

2. Original not obtainable. No Original can be obtained by any available judicial process or procedure;

3. Original in possession of opponent. At a time when an Original was under the control of the party against whom offered, he was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and he does not produce the Original at the hearing; or

4. Collateral matters. The Writings, Recording, or Photograph is not closely related to a controlling issue.

(TL14-002, 4/18/97)

SECTION 5-1310.5 PUBLIC RECORDS.

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilation in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with Section 5-1309.2, or testified to be correct by a witness who has compared it with the Original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given. (TL14-002, 4/18/97)

SECTION 5-1310.6 SUMMARIES.

The contents of voluminous Writings, Recordings, or Photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The Originals, or Duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The Court may order that they be produced in court.
(TL14-002, 4/18/97)

SECTION 5-1310.7 TESTIMONY OR WRITTEN ADMISSION OF PARTY.

Contents of Writings, Recordings, or Photographs may be proved by the testimony or deposition of the party against whom offered or by his written admission, without accounting for the nonproduction of the Original. (TL14-002, 4/18/97)

SECTION 5-1310.8 FUNCTIONS OF COURT AND JURY.

When the admissibility of other evidence of contents of Writings, Recordings, or Photographs under this Article J depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the Court to determine in accordance with the provisions of Section 5-1310.4. However, when an issue is raised:

1. whether the asserted writing ever existed;

2. whether another Writing, Recording, or Photograph produced at the trial is the original; or

3. whether other evidence of contents correctly reflects the contents; the issue is for the trier of fact to determine as in the case of other issues of fact.

(TL14-002, 4/18/97)

ARTICLE K
MISCELLANEOUS RULES

Section 5-1311.1 Applicability of Rules.
Section 5-1311.2 Amendments.

SECTION 5-1311.1 APPLICABILITY OF RULES.

A. This Chapter 13 applies to all criminal and civil controversies arising from any transaction or occurrence occurring on land which lies within the territorial jurisdiction of the Nation and to all other criminal or civil controversies which are subject to the lawful jurisdiction of the courts of the Chickasaw Nation or the CFR Court when it sits as a court of the Chickasaw Nation.

B. This Chapter 13 applies generally to civil actions and proceedings, to criminal actions and proceedings and to contempt proceedings except those in which the Court may act summarily.

C. The Article with respect to privileges applies at all stages of all actions, cases, and proceedings.

D. This Chapter 13 (other than with respect to privileges) does not apply in the following situations:

1. when the Court must make preliminary findings of fact in order to rule on the admissibility of evidence under Section 5-1301.4; or

2. proceedings for extradition, preliminary examinations and arraignments in criminal cases, sentencing, granting or revoking parole or probation, issuance of warrants for arrest, criminal summonses, and search warrants, or the dispositional phase of juvenile proceedings, and proceedings with respect to release on bail or otherwise.

(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 5-1311.2 AMENDMENTS.

The Supreme Court shall have the power to request amendments to this Chapter 13 except with respect to any of these rules relating to privileges. As with any amendment, it is subject to passage by resolution of the Chickasaw Legislature and

concurrence by the Governor, and, as long as the Court of Indian Offenses will be responsible for enforcement, all amendments must be further approved by the Bureau of Indian Affairs.
(TL14-002, 4/18/97; PR15-030, 9/23/98; PR16-025, 8/23/99; PR17-028, 9/16/00)

ARTICLE L
CHILD WITNESS TESTIMONY BY ALTERNATIVE METHODS

Section 5-1312.1 Definitions.
Section 5-1312.2 Applicability.
Section 5-1312.3 Hearing Whether to Allow Testimony by Alternative Method.
Section 5-1312.4 Standards for Determining Whether a Child Witness's Testimony may be Presented by Alternative Method.
Section 5-1312.5 Factors for Determining Whether to Permit Alternative Method.
Section 5-1312.6 Order Regarding Testimony by Alternative Method.
Section 5-1312.7 Right of Parties to Examine a Child Witness.
Section 5-1312.8 Use of Testimony by Alternative Methods in Depositions.
Section 5-1312.9 Support of a Child Witness.

SECTION 5-1312.1 DEFINITIONS.

In this Article:

1. "Alternative Method" means a method by which a Child Witness testifies which does not include all of the following:

a. having the child present in person in an open forum;

b. having the child testify in the presence and full view of the finder of fact and presiding officer; and

c. allowing all of the parties to be present, to participate, and to view and be viewed by the child.

2. "Child Witness" means an individual under the age of thirteen (13) who has been or will be called to testify in a proceeding.

3. "Criminal Proceeding" means a trial or hearing before a court in a prosecution of a person charged with violating a criminal law of the Chickasaw Nation or a juvenile delinquency proceeding involving conduct that if engaged in by an adult would constitute a violation of the criminal law of the Chickasaw Nation.

4. "Noncriminal Proceeding" means a trial or hearing before a court or an administrative agency of the Chickasaw Nation having judicial or quasi-judicial powers, other than a Criminal Proceeding.

SECTION 5-1312.2 APPLICABILITY.

This Article governs the testimony of Child Witnesses in all Criminal and Noncriminal Proceedings. However, in a Noncriminal Proceeding, this Article does not preclude other procedures permitted by law for presentation of the testimony of a Child Witness.

SECTION 5-1312.3 HEARING WHETHER TO ALLOW TESTIMONY BY ALTERNATIVE METHOD.

A. The presiding officer of a Criminal or Noncriminal Proceeding may order a hearing to determine whether to allow presentation of the testimony of a Child Witness by an Alternative Method. The presiding officer, for good cause shown, shall order the hearing upon motion of a party, a Child Witness, or an individual determined by the presiding officer to have sufficient standing to act on behalf of the child.

B. A hearing to determine whether to allow presentation of the testimony of a Child Witness by an Alternative Method must be conducted on the record after reasonable notice to all parties, any nonparty movant, and any other person the presiding officer specifies. The child's presence is not required at the hearing unless ordered by the presiding officer. In conducting the hearing, the presiding officer is not bound by rules of evidence, except for the rules of privilege.

SECTION 5-1312.4 STANDARDS FOR DETERMINING WHETHER A CHILD WITNESS'S TESTIMONY MAY BE PRESENTED BY ALTERNATIVE METHOD.

A. In a Criminal Proceeding, the presiding officer may order the presentation of the testimony of a Child Witness by an Alternative Method only in the following situations:

1. A Child Witness's testimony may be taken other than in an open forum in the presence and full view of the finder of fact if the presiding officer finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child's ability to communicate with the finder of fact if required to testify in the open forum.

2. A Child Witness's testimony may be taken other than in a face-to-face confrontation between the child and a defendant if the presiding officer finds by clear and convincing evidence that the child would suffer serious emotional trauma that would

substantially impair the child's ability to communicate with the finder of fact if required to be confronted face-to-face by the defendant.

B. In a Criminal Proceeding, the Child Witness may have an advocate appointed by the court to monitor the potential for emotional trauma. The advocate shall be a professional social worker, psychologist, or psychiatrist.

C. In a Noncriminal Proceeding, the presiding officer may order the presentation of the testimony of a Child Witness by an Alternative Method if the presiding officer finds by a preponderance of the evidence that presenting the testimony of the child by an Alternative Method is necessary to serve the best interests of the child or enable the child to communicate with the finder of fact. In making this finding, the presiding officer shall consider:

1. the nature of the proceeding;

2. the age and maturity of the child;

3. the relationship of the child to the parties in the proceeding;

4. the nature and degree of emotional trauma that the child may suffer in testifying; and

5. any other relevant factor.

SECTION 5-1312.5 FACTORS FOR DETERMINING WHETHER TO PERMIT ALTERNATIVE METHOD.

If the presiding officer determines that a standard hereunder has been met, the presiding officer shall determine whether to allow the presentation of the testimony of a Child Witness by an Alternative Method and in doing so shall consider:

1. Alternative Methods reasonably available;

2. available means for protecting the interests of or reducing emotional trauma to the child without resorting to an Alternative Method;

3. the nature of the case;

4. the relative rights of the parties;

5. the importance of the proposed testimony of the child;

6. the nature and degree of emotional trauma that the child may suffer if an Alternative Method is not used; and

7. any other relevant factor.

SECTION 5-1312.6 ORDER REGARDING TESTIMONY BY ALTERNATIVE METHOD.

A. An order allowing or disallowing the presentation of the testimony of a Child Witness by an Alternative Method must state the findings of fact and conclusions of law that support the presiding officer's determination.

B. An order allowing the presentation of the testimony of a Child Witness by an Alternative Method must state:

1. the method by which the testimony is to be presented;

2. a list, individually or by category, of the persons either allowed to be present or required to be excluded during the taking of the testimony of the child;

3. any special conditions necessary to facilitate a party's right to examine or cross-examine the child;

4. any condition or limitation upon the participation of persons present during the taking of the testimony of the child; and

5. any other condition necessary for taking or presenting the testimony.

C. The Alternative Method ordered by the presiding officer must be no more restrictive of the rights of the parties than is necessary under the circumstances to serve the purposes of the order.

SECTION 5-1312.7 RIGHT OF PARTIES TO EXAMINE A CHILD WITNESS.

An Alternative Method ordered by the presiding officer must permit a full and fair opportunity for examination and cross-examination of the Child Witness.

SECTION 5-1312.8 USE OF TESTIMONY BY ALTERNATIVE METHODS IN DEPOSITIONS.

If a deposition of any Child Witness is requested in a civil proceeding, either party, the Child Witness’s guardian *ad litem*, or the parent of a Child Witness may motion to the court that the Child Witness’s testimony be taken using the provisions for Noncriminal Proceedings under this Article.

SECTION 5-1312.9 SUPPORT OF A CHILD WITNESS.

A. This section recognizes the special circumstances and needs of a Child Witness during criminal court proceedings, and to protect the Child Witness from any unnecessary emotional discomfort or anguish.

B. In any Criminal Proceeding, a Child Witness shall have the right to be accompanied by a Support Person while giving testimony in the proceeding, but the Support Person shall not discuss the testimony of the Child Witness with any other witnesses or attempt to prompt or influence the testimony of the Child Witness.

C. The Child Witness shall be afforded the opportunity, if available, to have a Certified Therapeutic Dog accompanied by the handler of the Certified Therapeutic Dog in lieu of a Support Person.

D. As used in this section:

1. "Certified Therapeutic Dog" means a dog which has received the requisite training or certification from the American Kennel Club, Therapy Dogs Incorporated, or an equivalent organization to perform the duties associated with therapy dogs in places such as hospitals, nursing homes, and other facilities where the emotional benefits of therapy dogs are recognized. Prior to the use of a Certified Therapeutic Dog the court shall conduct a hearing to verify:

a. the credentials of the Certified Therapeutic Dog,

b. the Certified Therapeutic Dog is appropriately insured, and

c. a relationship has been established between the Child Witness and the Certified Therapeutic Dog in anticipation of testimony.

2. "Support person" means a parent, other relative, or a next friend chosen by the witness to accompany the witness to Criminal Proceedings.
(PR38-029, 6/18/2021)

CHAPTER 14
CHICKASAW NATION PEACEMAKING COURT
(Nanna alphi'sa ishtaa-asha ikbi)

Section 5-1401.1 Short Title.
Section 5-1401.2 Creation and Purpose.
Section 5-1401.3 Peacemaker of the Court.

Section 5-1401.4 Jurisdiction of the Peacemaking Court.
Section 5-1401.5 Use of Tribal Traditions and Customary Law.
Section 5-1401.6 Limitations of Peacemaker Authority.
Section 5-1401.7 Use of Tribal Traditions and Customary Law.
Section 5-1401.8 Procedures for Requesting to Transfer as an Existing Action to the Peacemaking Court.
Section 5-1401.9 General Provisions.
Section 5-1401.10 Procedure in Peacemaking Court.
Section 5-1401.11 Form of Agreements and Proposed Orders.
Section 5-1401.12 Enforcement of Orders.
Section 5-1401.13 Admissibility of Statements Made in Peacemaking Court.
Section 5-1401.14 Conduct of a Peacemaker.
Section 5-1401.15 Protective Orders.
Section 5-1401.16 Method; Basic Rights.
Section 5-1401.17 Miscellaneous.

SECTION 5-1401.1 SHORT TITLE.

This Title 5, Chapter 14 shall be cited as the "Peacemaking Court Act of 2003" ("Act"). (PR20-019, 6/18/2003)

SECTION 5-1401.2 CREATION AND PURPOSE.

A. Pursuant to Amendment V of the Constitution of the Chickasaw Nation, there is hereby established a Chickasaw Nation Peacemaking Court which shall be a division of the Chickasaw Nation District Court and which shall operate in accordance with the provisions of the customary and traditional law of the Nation.

B. The purpose of the Peacemaking Court is to provide a forum for the use of traditional Chickasaw Nation methods of peacemaking to resolve disputes in a fair, informal, and inexpensive manner. Any ambiguity in this Code shall be liberally construed to carry out its purpose of encouraging traditional Chickasaw Nation methods of dispute resolution without formal court proceedings.

C. The Chickasaw Nation District Court shall have the authority to assign cases to and supervise the activities of the Peacemaking Court and any Peacemaker appointed pursuant to this Act.

SECTION 5-1401.3 PEACEMAKER OF THE COURT.

A. A Peacemaker shall meet the following qualifications:

1. has never been convicted of a felony;

2. is of good moral character and integrity;

3. is familiar with the provisions of this Act, Chickasaw Nation court procedures and federal law applicable to the Chickasaw Nation; and

4. is proficient in oral and written communications and is capable of preparing the papers and reports incidental to the office of Peacemaker.

B. The District Court shall be responsible for assigning cases to a particular Peacemaker who shall in turn be responsible for assisting the involved parties in resolving their dispute through traditional methods of peacemaking.

C. Peacemakers shall be selected by the Chickasaw Nation Supreme Court and must agree in writing and by oath to serve under the authority of the District Court. The Clerk of the District Court shall maintain a roster of persons approved as Peacemakers.

D. A person may be removed from the Peacemaker roster for cause after the person has been afforded a hearing before a District Court Judge. A person removed

from the roster for cause, after said hearing, may appeal his removal to the Supreme Court whose decision shall be final. A Peacemaker shall not be subject to the personnel policies including grievance procedures.

E. The parties to any dispute may agree to a certain individual listed on the roster described in Subsection C above as a Peacemaker for the resolution of their dispute. In such cases, the Peacemaker must be agreed to by all parties in the dispute.

F. Peacemakers are officers of the District Court and shall have the same immunities as do Judges of other Chickasaw Nation courts.
(PR31-006, 7/15/14)

SECTION 5-1401.4 JURISDICTION OF THE PEACEMAKING COURT.

The Peacemaking Court shall have jurisdiction over any matter referred to it by the District Court and upon the agreement of both parties who shall also agree to be bound by the decision of the Peacemaking Court as endorsed by the District Court. If a Peacemaker determines that the peacemaking process cannot produce an agreed resolution of the matter, the Peacemaker shall transfer the case back to the District Court which shall resume jurisdiction over the case**.** The Peacemaking Court shall not have

jurisdiction over any matter before the District Court pursuant to the Special Domestic Violence Criminal Jurisdiction described in Title 5, Chapter 4 of the Chickasaw Nation Code.

SECTION 5-1401.5 USE OF TRIBAL TRADITIONS AND CUSTOMARY LAW.

A Peacemaker shall have authority to use tribal cultural teachings and customs, including present day religious teachings, in the peacemaking process if the Peacemaker reasonably believes that such will further the objective of voluntarily resolving a dispute. Peacemakers shall have the authority to consult with tribal elders regarding tribal customs and traditions.

SECTION 5-1401.6 LIMITATIONS OF PEACEMAKER AUTHORITY.

A Peacemaker shall not have the authority to force any parties to resolve a

disputed matter, nor shall a Peacemaker have authority to adjudicate a matter which the parties cannot resolve through voluntary agreement.

SECTION 5-1401.7 USE OF TRIBAL TRADITIONS AND CUSTOMARY LAW.

Parties to a dispute may file a written request with the District Court asking that their dispute be heard in the Peacemaking Court. The request may be made either on a form provided by the Court or in any written form which provides the following information:

1. the name, address and phone number of the person requesting the peacemaking;

2. the names of the parties involved in the dispute and their mailing address and place of residence;

3. a short statement of the type of dispute involved in the action;

4. the reason the party desires the action to be heard in the Peacemaking Court;

5. the names and addresses of any persons other than the named parties that the requesting party believes might have information useful to a Peacemaker resolving the action; and

6. if known, information as to whether each party is non-Indian or Indian, and, if Indian, the party's tribal affiliation and membership.

SECTION 5-1401.8 PROCEDURES FOR REQUESTING TO TRANSFER AS AN EXISTING ACTION TO THE PEACEMAKING COURT.

Any person to an action in the District Court may request that the Court refer the case to the Peacemaking Court by filing a written Motion for Referral. The Motion for Referral must comply with the requirements of the District Court and Section 5-1401.7 above.

SECTION 5-1401.9 GENERAL PROVISIONS.

A. Non-Indians who are injured, hurt or aggrieved may voluntarily agree to participated in and be bound by the peacemaking process.

B. If a Motion for Referral to Peacemaking Court is made by a party, the moving party shall mail a copy of said Motion, by certified mail, return receipt requested, to the other parties. The District Court may decline to approve such referral if the Court, for good cause, determines that the Motion was made mainly for delay. After a party files a Motion for Referral to Peacemaking Court, any other party may object to the Motion or may consent to the Motion by filing a written objection or consent with the Court within fifteen (15) working days of receipt of the Motion. A failure to respond by a party to a Motion for Referral to Peacemaking Court shall be considered an objection to the motion.

C. The District Court shall grant a Joint Motion for Referral to Peacemaking Court filed by all parties to the dispute indicating that all parties consent to the referral of their dispute to Peacemaking Court.

D. The District Court may also, upon its own motion, refer an action to Peacemaking Court if the Court finds that the action, in light of the totality of circumstances concerning the action known then by the Court, is the type of action that may be resolved through peacemaking and all parties consent to the referral of their dispute to the Peacemaking Court.

E. Once a matter is referred to Peacemaking Court, a party may not request the matter be removed from Peacemaking Court back to the District Court unless such request is pursuant to a Motion for a Protective Order.

F. Except as provided in Subsection D above, non-parties can neither request nor prevent the referral of matters to the Peacemaking Court.

G. The District Court shall indicate all referrals to the Peacemaking Court in an Order of the Court.

SECTION 5-1401.10 PROCEDURE IN PEACEMAKING COURT.

A. Upon referral of a matter to Peacemaking Court, the District Court shall notify a Peacemaker of his selection and appointment by mailing the Peacemaker a copy of the District Court's referral order and copies of all documents filed in the case. If the appointment is accepted, the Peacemaker is responsible to advise the parties of his appointment in writing. The copy of the referral order shall serve as evidence of the Peacemaker's authority in the matter. If the appointment is declined, the District Court shall select another Peacemaker and the foregoing procedure shall again be followed.

B. The Peacemaker shall meet with the parties to resolve the dispute at a time and place agreed to by the Peacemaker. The venue may be where the parties reside, in the community where the moving party resides, or a convenient place for the parties when they reside in separate communities; provided, such venue shall be within the territorial jurisdiction of the Chickasaw Nation. The Peacemaker may schedule additional meetings if reasonably necessary to resolve the dispute.

C. Neither the Chickasaw Nation Rules of Civil Procedure, the Chickasaw Nation Rules of Criminal Procedure nor the Chickasaw Nation Rules of Evidence shall apply in Peacemaking Court. A Peacemaker may not meet alone with one party unless the other parties have notice and are given the opportunity to appear at said meeting. Legal counsel for a party or witness shall not have the right to participate in the peacemaking proceedings, but may assist in writing a complaint or motion to the Peacemaking Court to advise their client as to any enforcement of judgments or privilege that might apply.

D. If the parties reach agreement or resolution through the peacemaking process, the Peacemaker will assist the parties in drafting a written agreement to be signed by all parties and the Peacemaker. The Peacemaker will present a copy of the agreement and a proposed dismissal order to the District Court. The District Court shall review the agreement and proposed order to insure that those documents meet the requirements of the Court. If the agreement and proposed order are sufficient, the

Court shall endorse the order and file the agreement and order in the case as a final, non-appealable, order. The District Court shall send a copy of the entered agreement and order to each of the parties and to the Peacemaker.

E. If the agreement and/or order does not meet the requirements of the District Court, the Court shall send the agreement and/or order back to the Peacemaker with suggested revisions. If the parties sign another agreement incorporating the suggested revisions, the Peacemaker shall then present the new agreement to the District Court and the procedure described in Subsection D above shall be followed.

F. If the parties cannot reach an agreement to resolve their disputes, the Peacemaker shall certify in writing to the District Court that such is the case. The Court may then refer the matter to another Peacemaker or enter an order referring the matter back to the District Court for further proceedings.

G. Notwithstanding any other provision of this Chapter 14, the Peacemaker or District Court may enter an order referring any matter in Peacemaking Court back to the District Court if the parties have not reached an agreement resolving the matter after sixty (60) days from the date of the order from the District Court referring the matter to Peacemaking Court.

H. Notwithstanding any other provision of this Chapter 14, no matter may be referred to Peacemaking Court more than one (1) time by the District Court unless all of the parties to the matter consent**.**

SECTION 5-1401.11 FORM OF AGREEMENTS AND PROPOSED ORDERS.

A. No agreement referred to in Section 5-1401.10 above shall be approved by a Peacemaker unless:

1. the agreement contains a provision stating that the agreement resolves all issues between the parties involved in the legal action;

2. the agreement contains a statement that all parties have voluntarily signed the agreement and consent to the proposed order; and

3. the Peacemaker, upon review of the agreement in its entirety, finds that the agreement contains the complete agreement of the parties and contains sufficient information for the parties to understand their respective mutual obligations under the agreement and proposed order.

B. A Peacemaker may enter an agreement and proposed order only when the following conditions have been met:

1. the court has jurisdiction over the parties and the subject matter of the agreement;

2. all parties have voluntarily signed the agreement and consented to the proposed order;

3. the order contains sufficient information regarding the full agreement so a dispute as to the order is not likely to rise in the future; and

4. the agreement and proposed order is otherwise proper and enforceable by the District Court.

C. All orders shall set forth the names of the parties, the fact that the matter has been resolved by participation in the Peacemaking Court and a statement that the parties have reached an agreement to resolve their dispute.

SECTION 5-1401.12 ENFORCEMENT OF ORDERS.

An order entered pursuant to this Chapter shall be enforceable in the same manner as other orders of the Chickasaw District Court.

SECTION 5-1401.13 ADMISSIBILITY OF STATEMENTS MADE IN PEACEMAKING COURT.

Statements made by any party in Peacemaking Court during the peacemaking process shall be considered statements made during settlement negotiations and shall not be admissible in any later court proceedings.

SECTION 5-1401.14 CONDUCT OF A PEACEMAKER.

A Peacemaker shall not participate as a Peacemaker in any matter:

1. in which he has a monetary or property interest;

2. in which he is or has been a material witness; or

3. in which he is related by blood or marriage within the second degree to any of the parties.

SECTION 5-1401.15 PROTECTIVE ORDERS.

A. Any party or witness involved in peacemaking in the Peacemaking Court may move the Peacemaking Court or the District Court for a protective order ending or placing limitations on the peacemaking process. The grounds for such protective order shall be:

1. harassment by the Peacemaker or another which is not properly handled by the Peacemaker;

2. invasion of personal privacy by the Peacemaker to an unreasonable extent;

3. conduct of the Peacemaker which is degrading, inhumane, dangerous, assaultive, or otherwise violative of individual rights;

4. conduct by the Peacemaker in violation of Section 5-1401.14;

5. the assertion of any privilege recognized by law but not respected by the Peacemaker; and

6. the assertion of any right guaranteed by tribal or federal law but not recognized by the Peacemaker.

B. A Motion for a Protective Order shall be made in writing to the District Court. Upon receipt of such a Motion, the District Court shall conduct a hearing on the Motion. The Court may grant or deny the Motion in whole or in part. The Court may order any remedy it finds reasonably appropriate, even if such remedy was not requested by the party or witness filing the Motion.

SECTION 5-1401.16 METHOD; BASIC RIGHTS.

A Peacemaker is permitted to use any reasonable method of working with people to solve their problems, as long as there is no force, violence, or violations of an individual's basic rights.

SECTION 5-1401.17 MISCELLANEOUS.

A Peacemaker may adopt standard forms for the implementation of these rules. The District Court may publish information and/or explanation of the Peacemaking Court peacemaking process in the Chickasaw language and/or English. The provisions

of this Chapter shall prevail over any inconsistencies between the provisions of this Chapter and any information and/or explanation that may be published.