



### RECONSIDERATION OF NCA 10-189

I, the undersigned, certify that the foregoing "Reconsideration of NCA 10-189" is a true extract from the October 30, 2010, Quarterly Session Journal of the Muscogee (Creek) National Council.

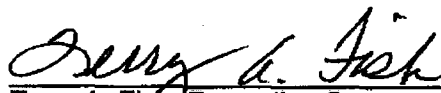
**AND THAT,** NCA 10-189 entitled, A LAW OF THE MUSCOGEE (CREEK) NATION, REPEALING TITLE 26 IN ITS ENTIRETY AND CREATING A NEW TITLE 26 ESTABLISHING THE CRIMINAL TRIAL COURT, CIVIL TRIAL COURT AND FAMILY TRIAL COURT WITHIN THE JUDICIAL BRANCH OF THE MUSCOGEE (CREEK) NATION was presented to the National Council acting as a Council as a Whole and was approved in Quarterly Session on October 30, 2010, National Council by a vote of 17 in favor, 5 against, 0 abstention.

**AND THAT,** Said legislation was returned as a Veto with objections by the Principal Chief on November 10, 2010 and said objections have been entered at large in the Journal of the Muscogee (Creek) National Council;

**AND THAT,** The National Council taking action reconsider the Bill to **OVER-RIDE** the Veto at the Regular Session on November 20, 2010, in accordance with the Constitution, Article VI, Section 6(a), requires a (2/3) vote of the full membership, which consists of Twenty-six members;

**AND THAT,** The record of vote reflects there were Twenty-five present with a vote of 18 in favor, 7 against;

**THEREFORE, BE IT KNOWN,** under Article VI., Section 6. (a) of the Muscogee (Creek) Nation Constitution, NCA 10-189 is hereby recorded as a "VETO OVER-RIDE" on this 22<sup>nd</sup> day of November, 2010.



Terry A. Fish, Recording Secretary  
National Council  
Muscogee (Creek) Nation

### CERTIFICATION OF APPROVAL

**IN WITNESS WHEREOF,** I, the Presiding Officer of the Muscogee (Creek) National Council have hereto attached my signature this 22<sup>nd</sup> day of November 2010.



Roger Barnett, Speaker  
National Council  
Muscogee (Creek) Nation



# VETO OVERRIDE



**NCA 10-189**

**CLASSIFICATION: #26. JUDICIAL BRANCH/COURTS**

**A LAW OF THE MUSCOGEE (CREEK) NATION REPEALING TITLE 26 IN ITS ENTIRETY AND CREATING A NEW TITLE 26 ESTABLISHING THE CRIMINAL TRIAL COURT, CIVIL TRIAL COURT AND FAMILY TRIAL COURT WITHIN THE JUDICIAL BRANCH OF THE MUSCOGEE (CREEK) NATION**

**Be it Enacted by the National Council of the Muscogee (Creek) Nation:**

**SECTION ONE. FINDINGS.** The National Council finds that:

A. Art. VII Section 1 of the Constitution of the Muscogee (Creek) Nation vests all judicial power in one Supreme Court and in such inferior courts as the National Council may from time to time ordain. Within two years of the adoption of our constitution, the National Council established a single District Court.

B. The establishment of a District Court provided a place for citizens to resolve their disputes. It also allowed a person accused of a crime to present his defenses in a proper forum here on the Nation's complex. The creation of a District Court enabled our citizens to address their grievances in a Tribal Court rather than a Federal CFR Court.

C. Since the establishment of a single District Court in 1981, the legal issues and complexities facing our citizens have changed and evolved. Our citizenship rolls have more than tripled since 1981. The Nation's financial and commercial transactions have significantly increased. Over the past three decades our Nation's social programs have reached out to many areas not previously serviced. The Lighthorse Administration has grown into a fully functioning law enforcement division. The progress of our Nation and citizens over the past three decades has placed new demands on our court system.

D. The Nation's growth requires a fair and efficient court system. All cases must be processed timely and efficiently. A citizen's right to speedy justice is guaranteed by Muscogee Nation Law. The National Council's constitutional duty to the health, safety and welfare of our citizens requires a revision of the Nation's District Court system.

E. The current system of one District Court Judge presiding over one District Court has become problematic and inefficient. Cases presented in this manner are

resulting in substantial delays in the appointment of Special Judges, to which there is no efficient legislative guidance. At present, if the single District Judge is unable to hear a case due to recusal or other reasons, cases have lay dormant for months without any movement for failure of the appointment of a Special Judge.

F. The Constitution of the Muscogee (Creek) Nation grants the National Council the power to establish inferior courts from time to time as ordained. The time has come for the National Council to ordain a new inferior court system.

**SECTION TWO. REPEALER.** MCNCA TITLE 26 is hereby repealed in its entirety.

**SECTION THREE. NEW LAW.** The following new law shall be codified in Title 26 of the Code of Laws of the Muscogee (Creek) Nation; provided that for purposes of codification of said new law and its inclusion in pocket parts for the Code of Laws of the Muscogee (Creek) Nation, the Codification Committee is hereby authorized: (1) to approve any changes related to the manner in which sections, articles, chapters and sub-chapters are designated in this law in order to be consistent with the format in the Code of Laws published in 2003 by West Publishing Company; (2) to include footnoted references to the legislative history in said pocket parts to the Code of Laws; and (3) to note in said pocket parts any editorial correction of minor clerical or grammatical errors in the following new law:

## **TITLE 26. JUDICIAL BRANCH/COURTS**

### **CHAPTER 1.**

#### **§1-101. Authority**

Article VII Section 1 of the Muscogee (Creek) Nation Constitution authorizes the National Council to establish inferior courts of the Muscogee (Creek) Nation from time to time as ordained.

#### **§1-102. Establishment**

The inferior courts of the Muscogee (Creek) Nation are hereby established and shall consist of the Criminal Trial Court, the Civil Trial Court and the Family Trial Court and shall be appealable to the Supreme Court.

#### **§1-103. Jurisdiction**

The Criminal Trial Court, Civil Trial Court and Family Trial Court shall exercise jurisdiction over the territorial and political boundaries of the Muscogee (Creek) Nation which include:

Creek District	Hughes/Seminole(Tukvptce)District
McIntosh District	Muskogee District
Okfuskee/Seminole District	Okmulgee District
Tulsa District	Wagoner/Roger/Mayes District

**§1-104. Appeals**

All decisions of the Criminal Trial Court, Civil Trial Court and Family Trial Court shall be subject to appeal to the Supreme Court of the Muscogee (Creek) Nation.

**CHAPTER 2. TRIAL COURTS**

**SUBCHAPTER 1. CRIMINAL, CIVIL AND FAMILY COURTS**

**§2-101.** The Criminal Trial Court of the Muscogee (Creek) Nation shall have jurisdiction over all criminal cases, including juvenile delinquency cases and traffic tickets that are criminal in nature. In the event there is funding available through grants and other sources for a Drug Court for alternative sentencing or deferred prosecuting it shall be part of the Criminal Trial Court.

**§2-102.** The Civil Trial Court of the Muscogee (Creek) Nation shall have jurisdiction over all civil cases, at law and at equity, including traffic tickets that are civil in nature, but shall not have jurisdiction of cases that are within the jurisdiction of the Family Trial Court.

**§2-103.** The Family Trial Court of the Muscogee (Creek) Nation shall have jurisdiction over all family legal matters including but not limited to marriages, domestic violence, divorces, adoption, prenuptial agreements, child custody, child welfare and child in need of care cases. In the event there is funding available, through grants and other sources, for a Drug Court or Wellness Court for family stability and preservation, it shall be part of the Family Trial Court.

**SUBCHAPTER 2. JUDGES**

**§2-201. Trial Court Judges**

A. The Trial Court Judges are hereby created as Officers of the Trial Court and one shall be designated as the Administrative Officer of the Trial Courts collectively. Three separate Trial Court Judges are preferred to be appointed to the Trial Courts established under the law; however two Trial Court Judges shall hold office at all times.

B. Qualifications. Each Trial Court Judge shall be a full citizen of the Muscogee (Creek) Nation unless this requirement is specifically waived by a two-thirds (2/3) vote of the full National Council and possess the following educational and professional qualifications:

1. Must be a graduate of an accredited law school;
2. A member of the Muscogee (Creek) Nation Bar Association;
3. A member of a state bar association and admitted or be eligible to practice law before the federal courts in Oklahoma;
4. Shall have a minimum of four (4) years active trial and law practice experience;
5. Shall be required to maintain a minimum of twelve (12) hours of continuing legal education each year, one (1) hour of which must be legal ethics.

C. Nomination/Term. Trial Court Judges shall be nominated by the Principal Chief and confirmed by the National Council by Tribal Resolution. All nominations rejected by the full National Council at a Regular Council meeting shall be replaced by a new nomination within thirty (30) days.

Trial Court Judges will be appointed to serve staggered terms to ensure that there will always be a seated judge. To establish staggered terms, the term of the first Trial Court Judge shall begin upon confirmation and shall continue until December 31, 2011, the term of the second Trial Court Judge shall begin upon confirmation and shall continue until December 31, 2012, and the term of the third Trial Court Judge shall begin upon confirmation and shall continue until December 31, 2013.

Thereafter, all successive terms of appointment for a Trial Court Judge shall run for four (4) years which expire on December 31 of the respective years.

If a Trial Court Judge is nominated following the death, incapacitation, resignation or removal of a Trial Court Judge, the newly confirmed Judge shall serve out the remainder of the original term.

D. Compensation. Each Trial Court Judge is to be compensated in the amount of one thousand five hundred dollars (\$1,500) for 0-8 hours and then any time

over 8 hours shall be subject to a billable rate detailed in a contract approved by the National Council upon confirmation on qualifications, experience and tenure.

E. Removal. The Trial Court Judge shall be subject to removal from office for cause by Tribal Resolution of the National Council affirmatively approved with a two-thirds (2/3) vote of the full National Council.

1. A member of the Supreme Court, the Principal Chief, Attorney General or any member of the National Council may submit a resolution for the full National Council's consideration to remove the Trial Court Judge for cause for violations, including, but not limited to, abuse of power, financial impropriety, and violations of the Judicial Code of Ethics detailed in MCNCA Title 26, Chapter 4.
2. The National Council shall provide notice to the Trial Court Judge of any pending resolutions for removal and allow the Trial Court Judge the opportunity to speak and produce evidence in his/her defense.

#### **§2-202. Special Judge; Vacancies in Trial Courts**

A Special Judge shall be appointed using the following method and procedure:

A. If illness, conflict of interest, disqualification, recusal or other considerations prevent any Trial Court Judge from presiding over a specific case or matter, then the Supreme Court shall appoint from the other two Trial Court Judges a Special Judge for that specific case, no later than thirty (30) days after the receipt of a written request stating the reason preventing the Judge from hearing the case. In the event the other two cannot hear the case, then the Supreme Court shall appoint a Special Judge not currently employed in the trial court.

B. If illness, conflict of interest, disqualification or other considerations prevent a Judge from hearing cases for an extended period of time (not including any vacancy created by expiration of the term of a Trial Court Judge), then a Special Judge may be appointed after following the process of nomination by the National Council pursuant to §2-201 of this Subchapter.

C. Any appointment of the Supreme Court that appoints a Special Judge for more than one case, matter, civil action, or otherwise without following the same process of nomination by the National Council is null and void.

D. Any Special Judge appointed shall be a member of the Muscogee (Creek) Nation Bar Association in good standing.

E. The process for filling vacancies of Trial Court Judges contained in Title 27, App. 1, Rule 15A of this Code (Judicial Procedures) is hereby null and void and this Subsection shall control any and all appointments of any Special Judge.

**§2-203. Expired Terms**

A Trial Court Judge whose term of office has expired and who has not been reconfirmed by the National Council shall not be permitted to sit as a Judge and shall receive no compensation.

**§2-204. Sessions**

The Trial Court Judges shall meet in regular monthly sessions.

**§2-205. Record of Proceedings**

The Trial Court Judge shall insure that a record of proceedings is compiled in the following manner:

1. Trials. The Trial Court Judge shall employ a public Stenographer to act as Court Reporter. When necessary, the Trial Court Judge may employ a Translator to assist the Court Reporter with oral testimony given in the Muscogee (Creek) language.
2. Hearings, motions and all other matters. The Trial Court Judge shall request that a Secretary be assigned to record, take notes, and produce written minutes of the proceedings. All recordings shall be preserved by the Trial Court.

**§2-206. Identification of cases; Transfers of cases**

A. Within ten days of the effective date of this chapter, the Court Clerk of the Trial Courts of the Muscogee (Creek) Nation shall maintain an identification ~~(system)~~ numbering system for each court which shall include the type of the case, the year it was filed and the number in sequence of its filing. (CV-2010-01, CR-2010-01, FM-2010-01)

B. The Court Clerk shall close, transfer and assign all former District Court Cases that are currently open to the Criminal Trial Court, Civil Trial Court and Family Trial Court in accordance with its subject matter and jurisdiction. All transferred cases

assigned to the new identification number system shall be in chronological order from the day they were filed or reopened.

C. The Court Clerk shall order new date and time stamps and other identifying stamps to coincide with the Trial Courts established under this Chapter. Until new date and time stamps and other identification stamps can be purchased, the Court Clerk shall use the former District Court's equipment and strike out the "District Court" and write in the proper Court with Jurisdiction.

**§2-207. Current Employees.** All staff that is currently employed under the Muscogee (Creek) Nation District Court shall become employees of the Trial Courts established under this Law.

### **SUBCHAPTER 3. TRIAL COURTS COURT CLERK/PEACE OFFICERS/PUBLIC DEFENDERS**

#### **§2-301. Trial Courts Court Clerk and Staff**

A. The Trial Court Judges shall appoint a person to serve as the Court Clerk for all Courts established under this Code. The Court Clerk shall render assistance to the Trial Courts and to the Muscogee (Creek) Nation Lighthorse. It shall be the further duty of the Court Clerk or Deputy Court Clerk to attend and keep a written record of all proceedings of the Trial Courts to administer oaths to witness and jurymen, to collect fines paid and authorize the payment of all fees authorized by these laws, and to make an accounting thereof and forward on a monthly basis to the Controller of the Muscogee (Creek) Nation. The Court Clerk and Deputy Court Clerk(s) are to be bonded for not less than \$5,000.00.

B. The Court Clerk may hire necessary deputies, clerical assistants, and other staff as deemed necessary to accomplish the goal of this chapter as provided for by the Court budget approved by the National Council and the Principal Chief.

C. The Court Clerk or any employee shall not receive any compensation or emoluments through any office or position to which hired for other than that received as such Court Clerk, deputy or assistant.

#### **§2-302. Peace officers**

A. The Trial Court Judges are authorized to commission qualified persons as Peace Officers, with authority to maintain public order, safety, and health by enforcement of all laws, maintain order in the Courthouse and supervise those persons on probation.



1. "Peace Officer" as used herein shall mean any duly appointed person who is charged with responsibility of maintaining public order, safety, and health by the enforcement of all laws or orders of this Nation and who is authorized to bear arms in election of his responsibilities.
2. "Qualified" as used herein shall mean certified as a Peace Officer by the Bureau of Indian Affairs, the Indian Police Academy, Oklahoma's Council on Law Enforcement Education and Training or some other comparable certifying school or agency for peace officers; and where a proper background investigation, with fingerprints to be taken and sent to the Federal Bureau of Investigation.

B. Trial Court Peace Officers serve under the direction of the Trial Courts and shall perform such services as are necessary, maintaining order and decorum in the Courthouse, including supervision of those persons on probation. The Trial Court peace officer shall maintain annual weapon proficiency as required by the Lighthorse Administration

#### **§2-303. Public Defenders**

Trial Court Judges shall be allowed to appoint Public Defenders to represent: criminal defendants who are unable to employ counsel, children, mothers and fathers, custodial relatives, and others in need of counsel and approved by the Supreme Court. All members of the Muscogee (Creek) Nation Bar Association shall have the opportunity to be listed and considered for Public Defenders appointments by informing the Court Clerk of the desire to accept such appointments.

#### **§2-304. Severability**

The provisions of this Subchapter shall be considered severable such that if any provision shall be held invalid by a court of competent jurisdiction, all other provisions shall continue to be valid and given full force and effect.

### **CHAPTER 3. SUPREME COURT**

#### **§3-101. Administrative Officer**

The Chief Justice of the Supreme Court shall be the Administrative Officer for the Supreme Court.

**§3-102. Supreme Court Justices**

A. **Submission of Nomination.** Ninety (90) days prior to expiration of the term of office of a Supreme Court Justice, the Principal Chief shall submit a nomination to the National Council.

B. **Vacancies.** In the event of a vacancy caused by resignation or death of a Supreme Court Justice, the Principal Chief shall submit a nomination within thirty (30) days of such vacancy.

C. **Full Citizenship Required.** The Supreme Court Justices shall be full citizens of the Muscogee (Creek) Nation unless waived by a two-thirds (2/3) vote of the full National Council.

D. **Compensation.** The Chief Justice of the Supreme Court shall be compensated at the rate of one thousand two hundred dollars (\$1,200.00) per month and the other Supreme Court Justices shall be compensated at the rate of one thousand dollars (\$1,000.00) per month. Compensation shall have F.I.C.A. and federal income taxes withheld in the same manner as any other employee.

**CHAPTER 4. JUDICIAL CODE OF ETHICS**

**§4-101. Judicial Rule 1. A Judge shall uphold the integrity and independence of the Judiciary**

A. An independent and honorable judiciary is indispensable to justice for the Muscogee (Creek) Nation. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

**§4-102. Judicial Rule 2. A Judge shall avoid impropriety and the appearance of impropriety in all of the Judge's activities**

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

B. A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

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

**§4-103. Judicial Rule 3. A Judge shall perform the duties of the judicial office impartially and diligently**

A. **Judicial Duties in General.** The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by Muscogee (Creek) Nation Law. In the performance of these duties, the following standards apply.

B. **Adjudicative Responsibilities.**

1. A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.
2. A judge shall be faithful to tribal law, custom, and ordinances and shall maintain professional legal competence.
3. A judge shall require order and decorum in proceedings before the judge.
4. A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.
5. A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.
6. A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others.
7. A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to Muscogee (Creek) Nation law.
8. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

- a. Where circumstances require ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:
    - i. the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and
    - ii. the judge promptly notifies all other parties or their lawyers of the substance of the ex parte communication and allows an opportunity to respond.
  - b. A judge may 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 the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.
  - c. A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.
  - d. A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.
  - e. A judge may initiate or consider any ex parte communications when expressly authorized by Muscogee (Creek) Nation law to do so.
9. A judge shall dispose of all judicial matters promptly, efficiently and fairly.
  10. A judge shall abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of the court personnel subject to the judge's control.
  11. A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.
  12. A judge shall not disclose or use, for any purpose unrelated to judicial duties nonpublic information acquired in a judicial capacity.

**C. Administrative Responsibilities.**

1. A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.
2. A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.
3. A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.
4. A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

**D. Disciplinary Responsibilities.**

1. A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having any knowledge that another judge has committed a violation of this Judicial Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.
2. A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Muscogee (Creek) Nation Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the Muscogee (Creek) Nation Bar Association and any state bar association in which the lawyer is a member.
3. No civil action may be instituted against a Muscogee (Creek) Nation judge when adhering to the required or permitted disciplinary judicial responsibilities of a Muscogee (Creek) Nation judge, as permitted by Sections 3D(1) and 3D(2).

**E. Disqualification.**

1. A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:
  - a. the judge has a personal bias or prejudice concerning a party or a party's lawyer, or first-hand knowledge of disputed evidentiary facts concerning the proceeding;
  - b. the judge served as a lawyer, advocate, or personal representative in the matter before the Court or a person with whom the Judge has been associated in a professional capacity served as a lawyer, advocate or personal representative concerning the matter;
  - c. the judge knows that the judge, individually or as a fiduciary, or the judge's extended family, wherever residing, or any other person residing in the judge's household has a financial interest in the subject matter in controversy, is a party to the proceeding or has any other interest that could be substantially affected by the outcome of the proceeding.
  - d. the judge, the judge's spouse, or the judge's extended family, wherever residing, or any other person residing in the judge's household:
    - 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
    - ii. is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding; or
    - iv. is to the judge's knowledge, likely to be a material witness in the proceeding;
  - e. the judge, while a judge, has made a public statement that commits, or appears to commit, the judge with respect to:
    - i. an issue in the proceeding; or
    - ii. the controversy in the proceeding.
2. A judge shall keep informed about the judge's personal and fiduciary economic interests, and make reasonable efforts to keep informed about the personal economic interests of the judge's extended family, wherever residing.

F. Waiver of Disqualification. A judge disqualified by the terms of Judicial Rule 3E may, instead of withdrawing from the proceeding, disclose on the record the

basis of his/her qualifications. If, based on such disclosure, the parties and lawyer, independently of the judge's participation, all agree in writing that the judge's relationship is immaterial or that his/her financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.

**§4-104. Judicial Rule 4. A Judge may engage in activities to improve the law, the legal system and the administration of justice**

A. A Judge may engage in activities to improve the law, the legal system of the Tribe, and the administration of justice; so long as they do not:

1. cast reasonable doubt on the judge's capacity to act impartially as a judge;
2. demean the judicial office; or
3. interfere with the proper performance of judicial duties.

B. A Judge may speak, write, lecture, teach and participate in other activities concerning the law and Tribal custom, the legal system of the Tribe, and the administration of justice.

C. **Governmental Activities.**

1. A judge shall not accept appointment to a governmental committee or commission or other governmental 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.

D. **Civic or Charitable Activities.**

1. 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. A judge may serve as an officer, director, trustee or non-legal advisor of an educational, religious, charitable, fraternal or civic organization not conducted for profit, provided that the judge does not participate if it is likely that the organization will be involved in proceedings which would ordinarily come before the judge or would be involved in adversarial proceedings in any Muscogee (Creek) Nation Court.
2. A judge may assist an organization in raising funds, may participate in the management and investment, but should not personally participate in public fund raising activities. A judge may make

recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice. A judge shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

3. A judge may not serve as a member, officer, or director of any other tribal government department, program, commission, committee or entity concerning Muscogee (Creek) Nation.

**E. Financial Activities.**

1. A judge should avoid financial and business dealings that:
  - a. may reasonably be perceived to exploit the judge's judicial position, or
  - b. involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.
2. A judge may, subject to the requirements of the Muscogee (Creek) Nation Judicial Rules, hold and manage investments of the judge and members of the judge's family, including real estate, and engage in other remunerative activity.
3. A judge shall not serve as an officer, director, manager, general partner, advisor or employee of any business entity except that a judge may, subject to the requirements of the Muscogee (Creek) Nation Judicial Rules, manage and participate in:
  - a. a business closely held by the judge or members of the judge's family, or
  - b. a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.
4. A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.
5. A judge shall not accept, and shall urge members of the judge's family residing in the judge's household not to accept, a gift, bequest, favor or loan from anyone except that a judge may accept:



- a. gifts incident to a public testimonial to the judge, books supplied by publishers on a complimentary basis of official use or invitations to the judge to attend law-related functions or activities related to the improvement of the law, the legal system or the administration of justice;
- b. ordinary social hospitality; gifts, bequests, favors or loans from relatives; gifts from friends for wedding, birthday or other personal occasions; loans from lending institutions in the regular course of business on terms generally available to persons who are not judges; or scholarships, fellowships or grants awarded on terms applied to other applicants,
- c. any other gift, bequest, favor or loan only if the donor is not a party or other person whose interests have come or a likely to come before the judge.
- d. any other gift, bequest, favor or loan that could be perceived as intended to influence the judge in the performance of judicial duties.

**F. Fiduciary Activities.**

1. A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.
2. A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.
3. The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

**G. Service as Arbitrator or Mediator.** A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

**H. Compensation, Reimbursement and Reporting.**

1. **Compensation and Reimbursement.** A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's

performance of judicial duties or otherwise give the appearance of impropriety.

- a. compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.
  - b. expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.
2. Public Reports. A judge shall make a written record and report the date, place and nature of any activity for which the judge received compensation, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. The judge's report shall be made at least annually and shall be filed as a public document in the office of the clerk of the court on which the judge serves or other office designated by law.
1. Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in the Muscogee (Creek) Nation Judicial Rules, or as otherwise required by law.

**§4-105. Judicial Rule 5. A Judge shall refrain from inappropriate political activity**

**A. Judges shall not:**

1. Engage in any tribal political activity unless authorized by tribal law except on behalf measures to improve the law, the tribal justice system or the administration of justice.
2. Authorize any public official, judicial employee, or other person who is subject to the judge's direction or control to do anything that a judge may not do as provided in the Muscogee (Creek) Nation Judicial Rules or do on the judge's behalf anything that the judge may not do under the Muscogee (Creek) Nation Judicial Rules.
3. Make speeches for political organization or candidate or publicly endorse a candidate for a public office.
4. Solicit funds for, pay an assessment to or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions.

5. Jeopardize the political impartiality of the judicial branch of the Muscogee (Creek) Nation.

B. A judge shall resign from judicial office upon becoming a candidate for a non-judicial office either in a primary or in a general election.

C. Misrepresentation, Pledges, or Promises:

1. A judge shall not:

- a. misrepresent the judge's identity, qualifications, present position, education, experience or other fact;
- b. make pledges or promises of conduct in office that could inhibit or compromise the faithful, impartial and diligent performance of the duties of the office;
- c. seek support for the judge or invite opposition to another judicial candidate because of membership by either candidate in a political organization, or
- d. publicly identify the judge, for the purpose of appointment, as a member of a political party other than by registering to vote.

D. A successful candidate is subject to judicial discipline for his or her campaign conduct; A lawyer who is a candidate for judicial office is subject to Rule 8.2(b) of the ABA Model Rules of Professional Conduct.

E. Time for compliance. A person to whom this Muscogee (Creek) Nation Judicial Rule becomes applicable shall comply immediately with all provisions of this Rule.

#### **CHAPTER 5. ACCOUNTING/BUDGET & FINANCE/TRAVEL**

##### **§5-101. Accounting policies and procedures**

The Trial Courts and Supreme Court shall adhere to the Muscogee (Creek) Nation Accounting Policies and Procedures.

##### **§5-102. Judicial Branch Finances and Budget**

The Controller shall be directly responsible for all financial management activities of the Trial Courts and the Supreme Court and shall have sole disbursement authority over all monies of the Trial Courts and the Supreme Court. The Controller shall maintain the budget and all monies in accordance with the laws of the Nation. The budget for the

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Trial Courts and the Supreme Court shall not be considered a separate budget of the Nation. No funds shall be disbursed to the Trial Courts or Supreme Court for expenditure by the Trial Courts or Supreme Court. The Trial Courts and Supreme Court and the Justices and Judges are prohibited from issuing or executing checks, financial instruments, disbursing funds, debiting any accounts, or causing a debt or obligation from any funds or assets of the Muscogee (Creek) Nation including the funds or assets of the Trial Courts or Supreme Court.

**§5-103. Preparation of budget**

A. The Trial Courts and the Supreme Court shall prepare a budget with specific line items.

B. The Supreme Court Clerk shall be responsible for the annual preparation of the Supreme Court Budget with input from the Chief Justice and Associate Justices.

C. The Court Clerk shall be responsible for the annual preparation of the Court Budget with input from the Trial Court Judges.

D. The Chief Justice and the Trial Court Judges shall approve the final overall budget before submission to the Principal Chief and the National Council.

**§5-104. Budget modifications**

All modifications to line item appropriations shall be made in writing and in accordance with requirements set forth in the Nation's Comprehensive Annual Budget.

**§5-105. Federal regulations**

The Supreme Court and Trial Courts shall follow OMB Circular A87, a-102, and the Common Rule Administration Requirements currently in effect as they apply to Indian Tribal Governments, provided the Controller of the Muscogee (Creek) Nation shall have administrative oversight of all Judicial Branch funds.

**§5-106. Fees**

A. Process Service Fees. The Trial Courts and the Supreme Court shall reimburse the Lighthorse Administration for any process service fees collected by the Judicial Branch. Such fees shall immediately be forwarded to the Controller to be deposited into the Lighthorse Administration Revolving Account in accordance with MCNCA Title 37, §2-213.

B. Court Fees. Court Costs and Fines shall be forwarded to the Controller on a monthly basis. The Controller shall maintain said monies in accordance with the Muscogee (Creek) Nation Accounting Policies and Procedures. All monies shall be deposited into the tribal treasury and made available for appropriation by the National Council according to tribal law.

**§5-107. Temporary Court Deposits Revolving Fund**

A revolving fund is hereby created entitled the "Temporary Court Deposits Fund." This fund is non-appropriated and does not contain any tax or license or gaming revenues of the Muscogee (Creek) Nation, nor any funds coming from or belonging to the United States of America. The revolving fund shall be used to deposit monies which are held by the Court on a temporary basis with the potential to be refunded to private parties. Deposits into the account include but are not limited to bonds posted in cases involving injunctive relief, appearance bonds, and escrow monies that will be potentially returned to litigants. Only upon a judicial determination that funds are forfeited to the Nation will money be transferred from the Temporary Court Deposits Revolving Fund to the Nation's treasury or other Court funds.

**§5-108. The Court Costs and Publication Fee Revolving Fund**

There is hereby created The Court Costs and Publication Fee Revolving Fund. The Fund shall be established with a monetary ceiling of ten thousand dollars (\$10,000.00) to be used to pay for services and expenses for the citizen client who is indigent or unable to afford or pay, service of process fees, court reporter fees, guardian ad litem fees, costs and publication expenses. This Revolving Fund shall be held in escrow by the, Office of the Controller who shall only make expenditures in accordance with the above mentioned guidelines and in compliance with the Muscogee (Creek) Nation Accounting Policies and Procedures. Whenever this revolving fund contains less than one thousand dollars (\$1,000.00), the Controller shall notify the Speaker and the National Council may address a supplemental appropriation to replenish the Revolving Fund to ten thousand dollars (\$10,000.00).

**§5-109. Travel**

A. All Supreme Court travel requests must be made in writing and approved by the Chief Justice and processed through the Muscogee (Creek) Nation Controller's Office.

B. All Trial Court travel requests must be made in writing and approved by the Administrative Officer of the Court and processed through the Muscogee (Creek) Nation Controller's Office.

C. The Supreme Court Clerk or the Trial Courts Court Clerk shall be responsible for the preparation of all Justice, Judge, and court employee travel documentation, thus ensuring all federal government and Muscogee (Creek) Nation travel regulations in effect are complied with and the Muscogee (Creek) Nation Accounting Policies and Procedures are strictly adhered to and followed.

**§5-110. Mileage and Travel Expenses**

The Supreme Court Justices, Trial Court Judges, and Special Judge shall receive mileage and/or travel expenses while on judicial business in the amount per mile set out by Federal Travel Regulations for government employees not to exceed a total of five hundred dollars (\$500.00) per month, unless provided for in a resolution of the National Council based on special circumstances

**CHAPTER 6. CONTRACT OR GRANT FUNDS**

**§6-101. Approval of proposals**

All proposals and applications for grant funds shall be approved by the Supreme Court Justices and the Trial Courts' Administrative Officer, respectively. All grant funds received must be expended according to tribal law and with the approval of the National Council.

**§6-102. Approval of agreements**

All agreements shall require majority approval of the Muscogee (Creek) Nation Judges and Justices within the specific court provided that said agreement shall not waive the sovereign immunity of the Nation.

**§6-103. Expenditures**

Expenditures shall follow the usual accounting procedures as set out by the laws of this Nation.

**§6-104. Annual audit**

All contract and grant funds received by the Trial Courts and the Supreme Court shall be included in the annual audit of the Muscogee (Creek) Nation.

**§6-105. Management procedures**


All contract and grant funds shall be managed according to Generally Accepted Accounting Procedures (GAAP).

**SECTION FOUR.** The words or phrases "District Court" or "Tribal Court", when used anywhere in the Muscogee (Creek) Nation Codes Annotated, shall mean the Court of proper jurisdiction as established by this Chapter.

**SECTION FIVE. EFFECTIVE DATE.** This Act shall become effective immediately upon proper approval and execution in accordance with the requirements of the Muscogee (Creek) Nation Constitution.

**ENACTED** by the Muscogee (Creek) National Council on this 30th day of October 2010.

**IN WITNESS WHEREOF**, the Speaker of the Muscogee (Creek) National Council has hereto attached his signature.

  
\_\_\_\_\_  
Roger Barnett, Speaker  
National Council  
Muscogee (Creek) Nation

**CERTIFICATION**

I, the undersigned, certify that the foregoing is a true extract from the minutes of the Muscogee (Creek) National Council comprised of twenty-six members with **Twenty-Four** members attending this meeting on the 30th day of October 2010, and that the above is in conformity with the provisions therein adopted by a vote of 17 in favor, 5 against, 1 abstention, and that said Law has not been rescinded or amended in any way and the above is the signature of the Speaker of the National Council.

  
\_\_\_\_\_  
Terry A. Fish, Recording Secretary  
Muscogee (Creek) National Council

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**APPROVAL**

I, the Principal Chief of the Muscogee (Creek) Nation, hereby affix my signature this \_\_\_\_\_ day of \_\_\_\_\_, 2010, to the above Law, **NCA 10-189** authorizing it to become a Law under Article VI., Section VI., of the Constitution of the Muscogee (Creek) Nation.

\_\_\_\_\_  
A. D. Ellis, Principal Chief  
Muscogee (Creek) Nation





## *Muscogee (Creek) Nation*

PRINCIPAL CHIEF

*A.D. Ellis*

SECOND CHIEF

*Alfred Berryhill*

OFFICE OF THE PRINCIPAL CHIEF

PO Box 580

(HWY 75, Loop 56)

Okmulgee, OK 74447

918.732.7600

November 10, 2010

Muscogee (Creek) National Council  
Honorable Speaker Barnett

Dear Speaker Barnett:

I am returning NCA 10-189 herewith:

**RECEIVED**

*RD*

NOV 12 2010

11-12-10A08:43 RCVD

**National Council Office**

### **A MESSAGE OF THE PRINCIPAL CHIEF RETURNING NCA 10-189 TO THE NATIONAL COUNCIL AS A VETO WITH OBJECTIONS**

In accordance with the Constitution of the Muscogee (Creek) Nation, I, A.D. Ellis, Principal Chief of the Muscogee (Creek) Nation, do hereby return NCA 10-189, entitled "**A LAW OF THE MUSCOGEE (CREEK) NATION REPEALING TITLE 26 IN ITS ENTIRETY AND CREATING A NEW TITLE 26 ESTABLISHING THE CRIMINAL TRIAL COURT, CIVIL TRIAL COURT AND FAMILY TRIAL COURT WITHIN THE JUDICIAL BRANCH OF THE MUSCOGEE (CREEK) NATION**" as a VETO with the following objections:

**OBJECTION ONE:** The proposed NCA 10-189 violates the principle of separation of powers and threatens the independence of the Judicial Branch of the Muscogee (Creek) Nation, since it attempts to improperly inject the opinions and influence of the National Council into the functions and internal affairs of the Judicial Branch, which is an independent and co-equal branch of the tribal government. By way of illustration and not by way of limitation, proposed NCA 10-189 in § 5-102 subjects the Judicial Branch to the oversight of the Controller, resulting in a violation of the principle of separation of powers, as well as a threat to the independence of the Judicial Branch, which must be in a position to serve as an independent and unbiased referee between the Executive and Legislative Branches in order for the government of the Muscogee (Creek) Nation to function effectively for the benefit of the Muscogee people.

**OBJECTION TWO:** The proposed NCA 10-189 is additionally in violation of Article VII, Section 3 of the Constitution of the Muscogee (Creek) Nation, which provides that the "Supreme Court shall, with the approval of the Muscogee (Creek) National Council establish procedures to insure that the appellant receives due process of law and prompt and speedy relief." The proposed NCA 10-189 has been passed unilaterally by the National Council, with no collaboration or consultation of any sort with the Justices of the Supreme Court. The National Council does not have the constitutional authority to promulgate Judicial Rules on behalf of the Supreme Court. As such, proposed NCA 10-189 is an unconstitutional infringement on the powers of the Supreme Court and the Judicial Branch by the National Council. The National Council has not allowed the Supreme Court to formulate these revisions of judicial procedures as required by the Constitution and as necessary for good policy and effective operation of the tribal government.

**OBJECTION THREE** The proposed NCA 10-189 violates the provisions of the Constitution of the Muscogee (Creek) Nation, which provides that only the Offices of Principal Chief, Second Chief and Representative in the Muscogee (Creek) National Council are restricted offices within the Muscogee (Creek) Nation, in those cases to full citizens. See Article III, Section 4; Article V, Section 1(b); and Article VI, Section 2(c) of the Constitution of the Muscogee (Creek) Nation. Although restrictions to full citizens are set forth in Section 3-205 of the current Title 26 for the District Judge and the Supreme Court Justices, the Constitution itself does not contain any such restrictions. In fact, Article III, Section 4 guarantees non-full citizens "all rights and entitlements as members of the Muscogee (Creek) Nation except the right to hold office." That includes the right to hold office as Judge or Justice within the Nation. Additionally, the provisions of the proposed NCA 10-189 which allow the waiver of the full citizenship requirement by a two-thirds vote of the National Council is an unwarranted and unwise intrusion of the full National Council into the inner workings of the Judicial Branch.

**OBJECTION FOUR:** The provisions of NCA 10-189 are vague, unwieldy and improperly prevent the Judicial Branch from acting in the best interests of the citizens of the Muscogee (Creek) Nation. By way of illustration, and not by way of limitation, through its confirmation of Special Judges, presently left to the Supreme Court Justices, the National Council could improperly influence independent decisions by the Judicial Branch, which should remain an independent and coequal branch of the tribal government.

**OBJECTION FIVE:** The Constitution of the Muscogee (Creek) Nation and the judicial decisions of the Muscogee (Creek) Nation Supreme Court support the proposition that the powers of the National Council are limited to passing laws, appropriating money and providing legitimate advice and consent. By way of illustration and not by way of limitation, the provisions of NCA 10-189 exceed the boundaries of legitimate National Council actions by unnecessarily burdening the Judicial Branch with provisions such as the National Council's appointment of Special Judges, in a thinly veiled attempt to influence and intimidate the Judicial Branch, thereby going beyond normal advice and consent, as envisioned by the Constitution of the Muscogee (Creek) Nation. NCA 10-

189 is the latest example of the National Council's ongoing attempts to usurp the legitimate authority of other branches of the tribal government and to ignore the controlling judicial decisions of the Muscogee (Creek) Nation Supreme Court.

**OBJECTION SIX:** The Principal Chief believes that the amendments contained in NCA 10-189 are not necessary in that the current statutory provisions adequately provide for the organization and effective operation of the Judicial Branch in a way that does not compromise its integrity and independence.

**OBJECTION SEVEN:** As a general matter, the Principal Chief owes a duty to the citizens of the Muscogee (Creek) Nation to oversee the tribal budget and the tribal government in a fiscally prudent manner, especially during trying economic conditions such as those currently affecting the Muscogee (Creek) Nation, the State of Oklahoma and the United States in general. By way of example, the additional tribal governmental personnel needed to implement Title 26, as proposed, are not necessary at this time, and therefore would constitute a wasteful and unnecessary use of scarce tribal revenues and resources. Therefore, the Principal Chief is additionally compelled to veto NCA 10-189 as a matter of general fiscal responsibility in order to protect the Tribal Treasury for the benefit of all of the citizens of the Muscogee (Creek) Nation.

For the reasons outlined above, NCA 10-189 is hereby returned as a VETO.

Sincerely,



A. D. Ellis, Principal Chief  
Muscogee (Creek) Nation

**DATED: November 10, 2010**

ADE/ldy