



### RECONSIDERATION OF NCA 10-190

I, the undersigned, certify that the foregoing "Reconsideration of NCA 10-190" is a true extract from the October 30, 2010, Quarterly Session Journal of the Muscogee (Creek) National Council.

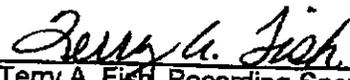
**AND THAT,** NCA 10-190 entitled, A LAW OF THE MUSCOGEE (CREEK) NATION, AMENDING MCNCA TITLE 27 ENTITLED, "Judicial Procedures" was presented to the National Council acting as a Council as a Whole and was approved in Quarterly Session on October 30, 2010, National Council by a vote of 17 in favor, 5 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;

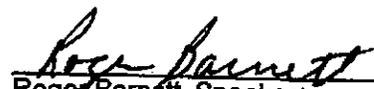
**AND THAT,** The record of vote reflects there were Twenty-five present with a vote of 20 in favor, 5 against;

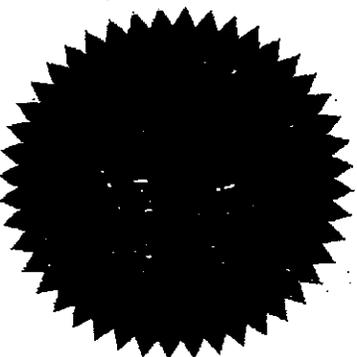
**THEREFORE, BE IT KNOWN,** under Article VI., Section 6. (a) of the Muscogee (Creek) Nation Constitution, NCA 10-190 is hereby recorded as a "VETO OVER-RIDE" on this 22<sup>nd</sup> day of November, 2010.

  
\_\_\_\_\_  
Terry A. Fisk, 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 10-190

**CLASSIFICATION: #27. JUDICIAL PROCEDURES**

**A LAW OF THE MUSCOGEE (CREEK) NATION AMENDING MCNCA TITLE 27 ENTITLED, "Judicial Procedures"**

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

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

A. NCA 10-189 establishes the inferior courts of the Muscogee (Creek) Nation which will consist of the Criminal Trial Court, the Civil Trial Court and the Family Trial Court because the current system of one District Court Judge presiding over one District Court has become problematic and inefficient.

B. This amendment to the Code will reflect the NCA 10-189 provisions of the Title 26 establishing new Trial Courts.

**SECTION TWO. AMENDMENT.** This amendment shall be codified in Title 27, of the Code of Laws of the Muscogee (Creek) Nation; provided that for purposes of codification of said amendment and its inclusion in pocket parts of 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 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 amendments, without further National Council approval:

**SECTION THREE. AMENDMENT.** MCNCA Title 27 is hereby amended to read as follows:

**CHAPTER 1. AUTHORITY, JURISDICTION AND APPLICABLE LAW**

**§ 1-101. Authority**

A. Basis of authority. The authority of the Muscogee Nation to adopt this title is based upon:

1. The inherent sovereignty of the Muscogee Nation and the Treaties and Agreements between the Muscogee Nation and the United States, including but not limited to the Treaty of 1790 and the Treaty of 1866.
2. The 1979 Constitution of the Muscogee Nation, adopted under the provisions of the Oklahoma Indian Welfare Act of 1936, including provisions which define the political jurisdiction of the Muscogee Nation, the powers of the Muscogee National Council, and the judicial powers of the Courts of the Muscogee Nation.

B. **District Trials** Court authority. Exclusive original jurisdiction over all matters described in Title 27, § 1-102 and not otherwise limited by tribal law is vested in the **District Trial** Court of the Muscogee Nation, ~~Okmulgee District~~.

C. Supreme Court authority. Exclusive appellate jurisdiction over all matters described in Title 27, § 1-102 is vested in the Supreme Court of the Muscogee Nation.

§ 1-102. Jurisdiction

A. Territorial jurisdiction. The territorial jurisdiction of the Muscogee Courts shall extend to all the territory defined in the 1866 Treaty with the United States, including without limitation any real property within the Nation's political jurisdiction as defined in Article I, Section 2 of the 1979 Muscogee Nation Constitution and which constitutes Muscogee Nation Indian country as follows; (1) property owned by any Muscogee citizen subject to federal restrictions against alienation or held in trust by the United States for the benefit of any Muscogee citizen or (2) property held in trust by the United States for the benefit of the Muscogee Nation or (3) any property owned by Muscogee Nation or (4) property which otherwise constitutes Indian country as that term is used in 18 U.S.C. § 1151.

B. Civil jurisdiction. The Muscogee Nation courts shall have general civil jurisdiction over all civil actions arising under the Constitution, laws, or treaties of the Muscogee Nation including the Muscogee or Yuchi Common Law, which arise within the Muscogee Nation Indian country, regardless of the Indian or non-Indian status of the parties. Personal jurisdiction shall exist over all defendants, regardless of the Indian or non-Indian status of said defendants, in cases arising from any action or event within the Muscogee Nation Indian country and in any other cases in which the defendant has established contacts with Muscogee Nation Indian country sufficient to establish personal jurisdiction over said defendant. Personal jurisdiction shall also exist over all persons consenting to such jurisdiction. Residing conducting business, using roadways

or engaging in any other activity within the Muscogee Nation Indian country is deemed consent to Muscogee Nation jurisdiction. All contracts between the Nation or its citizens and any other party entered into within the Muscogee Nation Indian country is deemed as consent to Muscogee Nation jurisdiction by the parties. The act of entry upon the Muscogee Nation Indian country by any extraterritorial seller or merchant, or their agent(s) shall be considered consent by the seller or merchant to the jurisdiction of Courts of the Muscogee Nation for any dispute arising out of any sale or commercial transaction regardless of where the sale or transaction was entered or took place. The Muscogee Courts shall have probate jurisdiction as described by law of the Muscogee Nation in Title 47 of the Code of Laws of the Muscogee Nation. The Muscogee Courts shall have jurisdiction over proceedings involving family relations, including without limitation, child custody and divorce proceedings, as described by law of the Muscogee Nation, including any such law codified in Title 6 of the Code of Laws of the Muscogee Nation. The Muscogee Courts shall exercise such other civil jurisdiction as described by any other law of the Muscogee Nation.

C. Criminal jurisdiction. The Muscogee Courts shall have original jurisdiction over all Indians alleged to have committed in Muscogee Nation Indian country a criminal offense enumerated and defined by any law or statute of the Muscogee Nation insofar as not prohibited by federal law. The Muscogee Courts shall also have original jurisdiction over all Indians alleged to have committed an offense involving the theft, misappropriation or misuse of Muscogee Nation property or funds, regardless of the geographical location of any specific act or omission involved or resulting in such theft, misappropriation or misuse.

D. Suits Against the Muscogee Nation. Nothing in this title shall be construed to be a waiver of the sovereign immunity of the Muscogee Nation, its officers, employees, agents, or political subdivisions or to be a consent to any suit except as expressly stated in this subsection D. The sovereign immunity of the Muscogee Nation is hereby waived in all actions limited to injunctive, declaratory or equitable relief; provided that such waiver extends only to actions filed in the Muscogee Nation courts and does not extend to any actions filed in a court of any other jurisdiction. The waiver of sovereign immunity in actions for injunctive, declaratory or equitable relief shall not be construed as granting a waiver for the purpose of obtaining any equitable relief requiring payment from, delivery of, or otherwise affecting funds in the Treasury of the Muscogee Nation, or any real property, personal property or chattels of the Muscogee Nation or any entities, agencies or political subdivisions of the Muscogee Nation, or any funds belonging to, or owed to, owned by, held in trust for, administered by or under the control of the Muscogee Nation or any entities, agencies or political subdivisions of the Muscogee Nation, except interpleader actions in disputes arising between the Nation and its political subdivisions or the Nation and other parties where financial institutions are holders of disputed funds. Nothing in this subsection D shall be construed as allowing any award of actual damages, punitive damages, exemplary damages or any other type of damages against the Muscogee Nation.

§ 1-103. Law Applicable

A. Constitution and laws of the Nation. In all cases, the Muscogee (Creek) Nation Courts shall apply the Constitution and duly enacted laws of the Muscogee Nation, the common law of the Muscogee people as established by customs and usage, and the Treaties and Agreements between the Muscogee Nation and the United States.

B. Federal law. The Muscogee (Creek) Nation Courts shall apply the Federal Indian Civil Rights Act, 25 U.S.C. §§ 1301 et seq. No other statutes and laws of the United States shall be applied by the Muscogee (Creek) Nation courts unless: (1) expressly made applicable by law of the Muscogee (Creek) Nation enacted by the National Council or (2) expressly made applicable by an agreement to which the Muscogee (Creek) Nation is a party and which has been approved by the National Council, or (3) expressly required to be applied by the Muscogee (Creek) Nation courts in specific circumstances by compact made between the Muscogee (Creek) Nation and the United States pursuant to the Indian Self-Determination and Education Assistance Act of 1978, as amended, with the approval of the National Council or (4) expressly made applicable to Indian tribes by duly enacted Federal statute.

C. Applicability of Oklahoma Law in limited circumstances.

1. Applicability of State Statutes Prohibited; Exceptions. The Muscogee (Creek) Nation Courts are not authorized to apply any statutes of the State of Oklahoma unless (1) expressly made applicable by law of the Muscogee (Creek) Nation duly enacted by the National Council or (2) expressly made applicable by an agreement to which the Muscogee (Creek) Nation is a party and which has been duly approved by the National Council; provided, that no law or contract that authorizes applicability of state laws shall be construed as a waiver of the Muscogee (Creek) Nation's sovereign immunity, absent an express waiver of sovereign immunity by National Council law or Tribal Resolution.
2. Divorce Proceedings.
  - a. Applicability. The Muscogee (Creek) Nation Courts are hereby authorized to apply the statutes of the State of Oklahoma pertaining to divorces and codified in 43 O.S. § 101 et seq. in divorce proceedings subject to the jurisdiction of the Muscogee (Creek) Nation and filed in Muscogee (Creek) Nation District Family Trial Court, subject to the requirements set forth in subparagraph b of this paragraph.

- b. Requirements. For purposes of the application of statutes of the State of Oklahoma authorized in subparagraph "a" of this paragraph, all references to Oklahoma State Court shall be treated as references to the Muscogee (Creek) Nation Courts. Nothing in this subsection C shall be construed to require the involvement of any state agency in divorce and protective order proceedings in the Muscogee (Creek) Nation Courts. The **District Trial** Court shall exercise discretion in the interpretation and application of the laws referenced in subparagraph "a" of this paragraph to ensure a practical, reasonable and fair interpretation and application of such laws to Muscogee (Creek) Nation divorce proceedings and protective order proceedings. In the event of any inconsistency between any law of the Muscogee (Creek) Nation and the state laws referenced in subparagraph "a" of this paragraph, the laws of the Muscogee (Creek) Nation shall be controlling.
3. Housing Proceedings.
    - a. Applicability. The Muscogee (Creek) Nation Courts are hereby authorized to apply the statutes of the State of Oklahoma involving contracts, as codified in 15 O.S. § 101 et seq., excluding 15 O.S. Chapter 21 in its entirety.
    - b. Requirements. For the purposes of the application of statutes of the State of Oklahoma authorized in subsection "a" of this section, all references to the Oklahoma State Court shall be treated as references to the Muscogee (Creek) Nation Courts. In the event of any inconsistency between any law of the Muscogee (Creek) Nation and the state laws referenced in this section, the laws of the Muscogee (Creek) Nation shall be controlling.

**§ 1-104. Counselors in matters of tribal common law**

Where any doubt arises as to the common law of the Muscogee people as established by custom and usage, the Court may request the advice of counselors familiar with these customs and usages.

**§ 1-105. Rules of Court**

Rules of Court prepared by the ~~District Trial~~ District Trial Court Judges and approved by the National Council may be promulgated to govern the procedures and appearances by parties and attorneys before the court.

§ 1-106. Rules of Appellate Procedure

Rules of Appellate Procedure shall be codified as an Appendix to the Judicial Code. Litigants are required to check with the Supreme Court Clerk for the latest edition of the rules.

CHAPTER 2. ~~TRIBAL TRIAL~~ TRIBAL TRIAL COURT PROCEEDINGS

§ 2-101. Initiation of proceeding

A. All civil ~~District Trial~~ District Trial Court proceedings must be commenced by a petition or complaint.

B. The petition must be in writing and give the names of the Plaintiff and Defendant.

C. The petition must cite in customary form any applicable Muscogee (Creek) Nation law, rule, or regulation and include a brief summary of relevant facts.

D. Criminal proceedings shall be commenced pursuant to Title 14 of the Muscogee (Creek) Nation Code of Laws.

§2-102. Period of limitation prescribed

The period prescribed for commencement of civil actions, other than the recovery of real property, shall be within two (2) years from the date when plaintiff could first have filed suit in the ~~Tribal Trial~~ Tribal Trial Court.

§ 2-103. Docket

The Court Clerk of the ~~District Trial~~ District Trial Court shall keep an appearance docket, a trial docket, and such other records as may be ordered by the court or required by law.

§ 2-104. Appearance docket

A. On the appearance docket, the ~~District~~ District Court Clerk shall enter all actions in the order in which they are brought, the date of the summons, the time of the return thereof by the officer, and the return thereon, the time of filing the petition, and all subsequent pleadings and papers, and an abstract of all judgments and orders of the court.

B. An abstract shall contain a very brief description of the order or judgment rendered. It must not be encumbered with a detailed recital of the terms.

C. Proceedings other than those which culminated in an order or judgment shall not be abstracted into the appearance docket.

D. The ~~District~~ Court Clerk shall cause to be transcribed onto the appearance docket all minute entries made and all the electronically recorded abstracts.

§ 2-105. Evidence code

In the absence of any express Muscogee (Creek) Nation law governing evidence in any specific type of proceeding, including without limitation the admission of evidence and the competence and privileges of witnesses, the Muscogee (Creek) Nation **District Trial** Courts shall apply the Federal Rules of Evidence prescribed by 28 U.S.C. § 2072, except to the extent that such laws reference or make state laws applicable or reference or govern administrative appeals procedures relating to decisions by Federal entities or officials; provided that for purposes of such application, references to the United States shall be treated as references to the Muscogee (Creek) Nation; and provided further, that the **District Trial** Court shall exercise discretion in the interpretation of any such Federal Rules of Evidence to ensure a reasonable and fair application of such rules to Muscogee (Creek) Nation judicial procedures.

§ 2-106. Trials

A. The trial of cases shall be conducted by the **District Trial** Court or by such ~~associate **Special** Judge as designated, the **District Judge** shall designate.~~

B. The time and place for the trial of cases shall be designated by the **District Trial** Court Judge

§ 2-107. Trial of issues

A. Issues of law must be tried by the court, unless referred to a referee or a constitutional question is referred to the Supreme Court.

B. Issues of fact arising in actions for the recovery of money or specific real or personal property, **contempt**, or other civil actions, shall be tried by jury, unless a jury trial is waived, or a reference be ordered, as hereinafter provided.

C. All other issues of fact shall be tried by the court, subject to its power to order any issue or issues to be tried by a jury, or referred as provided by.

**§ 2-108. Formation of trial jury**

A. A jury of the trial shall consist of six (6) persons, but the parties may agree to a number less than six (6).

B. All enrolled citizens of the Muscogee Nation, 18 years of age or over residing within the boundaries of the Muscogee Nation, of sound mind and discretion, of good moral character, not Judges, sheriffs or deputies, physicians, attorneys, ministers, jailers or law enforcement officers, shall be compelled to serve as jurors. Provided, however, persons over 65 years of age and persons having custody of minor children may be excused.

C. Habitual drunkards, persons convicted of any felony, or persons who have served in any penitentiary shall not be eligible to serve as jurors.

D. Prospective trial jurors may be summoned by notifying each orally or by mail as to the time and place at which his attendance is required.

E. The judge shall question all trial jurors summoned for the trial of a case and shall determine if any may be challenged for any cause. All challenges for cause shall be made by the judge.

F. Each side shall be entitled to three (3) peremptory challenges.

G. For jury dockets, the ~~District Trial~~ Courts shall summon a jury panel of not less than 24 eligible jurors, to be paid \$240.00 per day from the Court fund until they shall be dismissed.

**§ 2-109. Verdict**

The verdict shall be returned by the jury in writing to the judge in open court and it shall be entered in the minutes.

**§ 2-110. Discharge of jury**

The jury shall not be discharged after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless for good cause the court sooner discharges them.

**§ 2-111. Rendering judgment**

A. Civil cases. The judgment shall be rendered in open court.

B. Criminal cases. The judgment shall be rendered as provided in the Muscogee (Creek) Nation Criminal Procedures Code contained in Title 14 of the Code of Laws of the Muscogee (Creek) Nation.

**§2- 112. Content of judgment**

A. In all civil cases the judgment shall consist of an order of the Court awarding money damages to be paid to a party, and/or directing the surrender of certain property to a party and/or the performance of some other act for the benefit of a party.

B. Where the injury inflicted was the result of carelessness of the defendant, the judgment shall fairly compensate the injured party for the loss he has suffered.

**§ 2-113. Costs in civil actions**

The Court may assess the costs of a civil action against the party or parties against whom judgment is given. Such costs shall consist of the expense of voluntary witnesses for which either party may be responsible and the fees of the jurors in those cases where a jury trial is had; and such further incidental expense connected with the proceedings before the Court as the Court may direct.

**§ 2-114. New trial**

A. Definitions and effect. A new trial is a re-examination of the issue in the same Court, before another jury, after a verdict or finding has been rendered and the granting of a new trial places the parties on the same position as if there had been no trial.

B. Motion for new trial.

1. Motions for new trial in criminal proceedings shall be governed by the Muscogee (Creek) Nation Criminal Procedure Code codified in Title 14 of the Code of Laws of the Muscogee (Creek) Nation.

2. Following a civil verdict, either party may move for a new trial in writing within thirty (30) days following a verdict. Reasonable notice of the motion shall be served upon the other party or parties to that case. The motion for a new trial shall specify the grounds therefore.

C. Alternative authority of Court on hearing motion for new trial. On hearing the motion for a new trial, if justified by law and the weight of the evidence, the Court may:

1. Deny the motion;

2. Grant a new trial; or
3. Modify or change the verdict.

**§ 2-115. Appeal**

A. All issues of law on appeal from the **District Trial Courts** shall be tried a new in the Supreme Court. The parties may appeal to the Supreme Court by giving written notice to the **District** Court Clerk of their intention to appeal within fifteen (15) days after judgment. Within forty-five (45) days the entire record of the **District Trial** Court proceedings shall be transferred to the Supreme Court or the appeal shall be dismissed. It shall be the duty of the parties to perfect the appeal.

B. What the Court May Review on an Appeal from a Judgment. Upon appeal from a judgment, the Supreme Court may review the verdict or decision, or any intermediate order or decision which involves the merits, or necessarily affects the judgment.

**§ 2-116. District Court Clerk may collect judgment and costs**

No Judicial order, judgment or decree shall direct the payment of attorney fees, child support, alimony, temporary support or any similar type payment through the office of the **District** Court Clerk, except in the case of necessity duly shown by evidence presented to the court. All such payments, when ordered to be paid through the office of the **District** Court Clerk, shall be made only by money order, government check, or cashier's check payable to the payee to receive such payment. The **District** Court Clerk shall make an entry of such payment on the appearance docket, then transmit the money order, government check or cashier's check to the payee.

**§ 2-117. Executions in civil cases**

Executions on judgments shall be deemed process of the court, and shall be issued by the **District** Court Clerk, and directed to the **Lighthouse** Chief of the **Lighthouse Police**. They may be directed to different districts at the same time.

**§ 2-118. Kinds of executions**

Executions are hereby limited to:

- A. Against the property of the judgment debtor.
- B. For the delivery of possession of real or personal property, with damages for withholding the same and costs.

- C. Executions in special cases.
- D. Criminal executions.

**§ 2-119. Exemptions from judgment and execution**

The following property shall be reserved to every person, exempt from attachment or execution and every other species of forced sale for the payment of debts except as herein provided:

- A. The home of such person or head of family. The homestead of the family shall consist of the home of the family and not more than five acres of land whether the title to the same be lodged in or owned by the husband or wife.
- B. All household and kitchen furniture.
- C. Any lot or lots in a cemetery held for the purpose of sepulcher.
- D. All implements of husbandry used upon the homestead.
- E. All tools, apparatus and books belonging to and used in any trade or profession.
- F. The family library and all family portraits and pictures, wearing apparel, and articles of antiquity of the Muscogee (Creek) Indian culture.
- G. Twenty milk or beef cows and their calves under six months old.
- H. One hundred (100) chickens.
- I. Two (2) horses, two (2) bridles and two (2) saddles,
- J. One (1) motor vehicle having an equity value not to exceed ten thousand dollars (\$10,000),
- K. One (1) gun,
- L. Ten (10) hogs,
- M. Twenty (20) head of sheep,
- N. All provisions and forage on hand, or growing for home consumption and for the use of exempt stock for one (1) year.

O. Seventy-five percent (75%) of all current wages or earnings for personal or professional services earned during the last ninety (90) days,

P. The restricted property of any enrolled Muscogee (Creek) Indian,  
§ 2-120. Writs of execution

A. When a judgment has not been paid or otherwise satisfied, the judgment creditor is entitled after entry of judgment and within ten (10) years thereafter, excluding any period during which execution is stayed or enjoined, to a writ of execution given to the Tribal police, the authority to satisfy the judgment out the personal or real property of the judgment debtor. A new writ of execution may be issued only when all prior writs of execution have been returned and filed.

B. If the judgment or other order prescribes the payment of the judgment in installment, a writ of execution may issue only upon the filing of a declaration by the judgment creditor showing the judgment debtor is in default on the installment payments, noting any part of the judgment that has been satisfied up to the time of default.

C. The judgment creditor may claim interest accruing after entry of judgment by filing with the clerk, at the time of his request for issuance of the writ of execution, a declaration or affidavit specifying the amount of such interest. In no event may the amount of interest claimed exceed ten (10%) per cent per year.

D. Upon request for issuance of the writ of execution, the clerk shall:

1. Make certain there are no outstanding writs of execution on the judgment.
2. Prepare the writ of the execution in an original and as many copies as are required by the tribal police, attaching to said writ any judgment debtor's claim of exemptions as approved by the court, if any, and a list of property of the judgment debtor, not exempt, which the judgment creditor has prepared and which he believes can be levied upon,
3. Instruct the judgment creditor to give the writ, with the attached papers as stated in paragraph 2 of this subsection to the Lighthorse Chief tribal Chief of Police for action.

E. After action has been taken upon the writ of execution, the Lighthorse Chief Manager of the Lighthorse Administration shall return the writ to the clerk of court, noting upon the writ whether it has been wholly unsatisfied, partially satisfied or wholly satisfied and noting the amount, if any, obtained in such satisfaction.

**§ 2-121. Records**

The Court shall be required to keep a record of all proceedings of the Court, which record shall reflect the case styles and case numbers of the cases, the names of the parties, all pleadings filed in the case, the names and addresses of all witness, the date of the hearing or trial, by whom conducted, the findings of the Court or jury, and the judgment, together with any facts or circumstances deemed of importance to the case.

**CHAPTER 3. APPELLATE PROCEDURE**

**§ 3-101. Appellate court**

The only court of appeal of the Muscogee (Creek) Nation shall be the Supreme Court. The Supreme Court is the appeals court for this Nation and shall not adjudicate a controversy on its own motion, but only when a case is presented to it in a proper pleading by adverse parties or a party requesting a declaratory judgment. The Supreme Court shall issue opinions and/or orders only in cases properly filed and at issue before the court. A judgment or decision of the Supreme Court requires the approval of a minimum of four justices. The administrative officer for the Supreme Court is the Chief Justice. Associate justices shall have no administrative authority and shall function only as appellate justices.

**§ 3-102. Jurisdiction**

The Supreme Court shall hear the appeal of all cases, civil and criminal including juvenile cases, appealed from the Tribal Courts, and shall have original jurisdiction to hear writs of Habeas Corpus.

**§ 3-103. Number of Justices hearing appeal**

There must be at least four (4) Justices sitting together as a body to hear any case appealed, including writs of Habeas Corpus.

**§ 3-104. Duties of Chief Justice**

The Chief Justice shall attend to the administration of the Supreme Court and select members of the court to set each and every appealed case.

**§ 3-105. Clerk of the Supreme Court**

The Justices of the Supreme Court shall appoint a clerk to act as the Clerk of the Supreme Court to perform all functional and administrative management duties required by law or directed by the Chief Justice.

**§ 3-106. Jury trial**

In any case in the Supreme Court wherein said court is exercising its original jurisdiction in which an issue of fact is triable for findable by a jury where either party to said cause demands a jury trial, or in cases of indirect contempt where the accused demands a jury trial, said Court shall grant a trial by a jury.

**§ 3-107. Bond for payment of witnesses**

Any person, or persons, instituting a jury trial before the Supreme Court of this Nation shall file a bond with sufficient security satisfactory to the Chief Justice, for the payment of such witnesses as he or she shall summon, and the defendant shall be required to file a bond of the same nature for the payment of such witnesses as he or she shall cause to be summoned.

**§ 3-108. Rules of Appellate Procedure**

The Supreme Court shall establish procedures for all cases and other matters before the Supreme Court. Such rules shall be transmitted, before their effective date, to the National Council, the **District Trial Courts**, and members of the Muscogee (Creek) Nation bar. Copies of the rules shall be made available to the public for a reasonable fee. Rules may be amended or rescinded by the Supreme Court at any time except that rules in effect at the time of filing of a matter in the original hearing body shall govern that matter until final resolution by the Supreme Court.

**§ 3-109. Cases involving constitutional questions where the Nation is not a party**

It shall be the duty of a party or counsel who challenges the constitutionality of any act of the Muscogee Nation in any suit or proceeding, civil or criminal, in the Supreme Court to which the Muscogee Nation, or any agency, authority, officer or employee thereof is not a party, to give immediate notice in writing to the Court of such a question, specifying the section of the Code or the Law and the article and section of the Constitution allegedly in conflict. The clerk shall certify such to be a fact to the National Council of the Muscogee Nation who may enter the case as an amicus curiae upon leave of the court.

**CHAPTER 4. REPOSSESSION OF PERSONAL PROPERTY**

**§ 4-101. Commencement of action**

Any creditor desiring to repossess any personal property as described above, from a person within the jurisdiction of the Muscogee Nation, unless such repossession is with the written consent of the resident-debtor, must file a complaint in the **District Trial Court**. The creditor may elect to either file a complaint asking for repossession of the property in question or may file a complaint asking for money damages due on such property, but he may not use both remedies for the same property.

**§ 4-102. Service of process**

The complaint as described in Title 27, § 4-101, together with a summons issued by the ~~Court Clerk of the District Court~~ shall be served upon the defendant, EXCEPT that the time for answering by the defendant may be shortened to not less than ten (10) days if the complaint demands repossession of property.

**§ 4-103. Request for jury trial**

A plaintiff-creditor and the defendant-debtor in any repossession action shall have the right to a jury trial upon request provided such request is made at least 10 days prior to the trial date.

**§ 4-104. Judgment**

A. After hearing on merits. Upon the joining of an issue or issues and the subsequent trial or hearing of the case on the merits of all the pleadings, the judge or the jury shall render judgment in favor of either the plaintiff or the defendant. If judgment is rendered in favor of the plaintiff it must state specifically whether it is for money damages or for return of the personal property in question to the plaintiff.

B. On default of defendant. If the defendant has been properly served with the summons and complaint and fails to appear and answer the plaintiff's complaint on file within the time prescribe by law without notifying the court to order the defendant in default:

1. If it appears to the satisfaction of the court that the defendant has failed to appear without excuse within the prescribed time period set out in the summons, the court will enter the default of the defendant and give judgment to the plaintiff, either in money damages or ordering return of the property in question to the plaintiff.
2. The court, in its discretion, may modify the prayer of the plaintiff in the judgment order if it appears to the Court that return of the property will unjustly enrich the plaintiff due to the amount of equity of the defendant in the property.
3. In any case, wherein the plaintiff has only asked for return of the property, the court may give judgment for money damages in the alternative in the amount owed by the defendant to the plaintiff on the property.

**§ 4-105. Assignments**

Assignments are allowed in a proceeding for repossession of personal property or money damages as an alternative remedy. If an assignment is alleged in the complaint, the assignee must set out the amount of money paid to the original creditor for the assignment of the claim. The amount set out in the pleading must appear to be fair in light of the value of the claim so assigned and no future agreement between assignee and assignor for a percentage of any recovery on the claim will operate to validate an assignment. The assignment must be completed before the filing of the complaint by the assignee with the sum certain paid for such assignment so stated and verified by the assignee. If an assignment is alleged without the required information set out above, the defendant may move to have the complaint amended to show the real party in interest and ask to have assignee dismissed as the plaintiff.

**§ 4-106. Supplementary proceedings**

If the judgment is rendered in favor of the plaintiff, the plaintiff has all the rights and remedies available to him under the Rules of Civil Procedure of this title if he elects a money judgment, including the right to have a Writ of Execution issued out of the **District Trial** Court against any property of the judgment debtor that is not exempt from execution.

**§ 4-107. Claim of exemption**

A. If the judgment rendered against the defendant in a repossession proceeding is for money damages, the defendant has the right to submit to the Court within ten (10) days after judgment, a Claim of Exemption, conforming to the Exemption Schedule set out in Title 27, §2-119. The Court Clerk of the District Court shall cause the Claim so filed to be served upon the judgment creditor. The judgment creditor then has five (5) days after service upon him of the claim, to protest anything included in the judgment debtor's claim. ~~If such protests is so filed in the District Court, the clerk shall set a hearing and the Court will determine which of the judgment debtor's claim.~~ If such protests is so filed in the District Trial Court, the clerk shall set a hearing and the Court will determine which of the judgment debtor's claim is debtor's property, if any, is exempt from execution. If the judgment creditor does not file a protest to the judgment debtor's Claim of Exemption, the Court shall allow such exemption, except that the court in its discretion, may raise or lower certain amounts contained in such claims.

B. Thereafter, any Claim of Exemption so approved by the Court shall be entered in the record of the case and no property listed in such claim may be executed upon.

**§ 4-108. Pre-judgment attachment, garnishment and repossession**

There shall be no pre-judgment attachment, garnishment or repossession in the **District Trial Courts** upon a claim filed under this chapter, with the exception that if the plaintiff-creditor can show to the court that certain property which is the subject matter of the complaint, is in imminent danger of leaving the jurisdiction or being destroyed, the court may order such property picked up and held in a neutral place under the care and custody of the **Lighthorse Chief Manager of the Lighthorse Administration** until such time as the issue concerning such property is settled. In order to show such danger to the property, the plaintiff-creditor must submit a written affidavit to the court stating the facts as he believes them. The court may then order the defendant to come into court to show cause why the property should not be picked up immediately. Any time after such immediate repossession occurs without giving the defendant benefit of a hearing, the defendant may request a hearing on the matter of this emergency repossession and the court must allow the defendant to appear with notice to the plaintiff of such hearing. If the defendant demonstrates to the satisfaction of the court that the property is in no danger, the court may order the **Lighthorse Chief Manager Lighthorse Administration** to release the property back into the possession of the defendant with attendant orders to the defendant that in the event the property is either destroyed or leaves the jurisdiction of the court, that the defendant will be held on criminal contempt charges.

§ 4-109. Repossession order

A. Upon judgment in favor of the plaintiff ordering that the property in dispute be returned to the possession of the plaintiff, the court shall prepare a judgment order stating that such property is to be returned to the possession of the plaintiff and cause such an order to be served upon the defendant.

B. The defendant has ten (10) days in which to comply with such order.

1. If the defendant has not returned the property to the judgment creditor within the time allowed, without filing an appeal, the court shall order the **Lighthorse Chief Manager of the Lighthorse Administration** to pick up said property and hold it for the judgment debtor.
2. If the judgment debtor appeals the decision of the **District Trial Court** within this ten (10) day period, the judgment of the **District Trial Court** shall be stayed pending such appeal.

§4-110. Appeal

A. Both the plaintiff and the defendant have the right to appeal the decision of the **District Trial Courts** to the Muscogee Nation Supreme Court within ten (10) days

after judgment is rendered by said court, unless the judgment is by default, in which case the defendant has no right of appeal.

B. If judgment is rendered against the defendant, he must deposit with the ~~Court Clerk of the Tribal Court~~ **Court** an amount of money equal to the money judgment against him or in the case of a repossession order, an amount of money equal to the present value of the personal property that is the subject of the judgment.

C. In the alternative, a defendant appellant may procure the signature of a surety or sureties on an undertaking on appeal. The surety or sureties must file an affidavit with the court stating that he is worth, over and above all his debts and liabilities and exemptions an amount equal to the money judgment plus costs on appeal, or to the present value of the property in question, that he is a resident of the Muscogee Nation, that in the event the judgment is affirmed or the appeal is dismissed and the judgment debtor fails to pay the judgment within twenty (20) days, either the money judgment or the present value of the property in question, after such dismissal or affirmance, the surety will pay the judgment together with any costs, disbursements interest and/or attorney's fees as the case may be.

D. In the event an appeal is dismissed, or the judgment is affirmed and the judgment debtor does not pay the judgment within the time period set out above, the judgment creditor may proceed against the surety or sureties for collection of the judgment.

E. In the event of a cash deposit, if the appeal is dismissed or the judgment affirmed, the judgment creditor may apply to the **District Trial** Court for payment of deposit made by the judgment debtor to satisfy the judgment. If the judgment creditor would prefer the personal property returned to him, he may move the court for such an order.

F. Upon appeal, if the judgment is for return of the personal property to the judgment creditor, the court shall order the judgment debtor to hold such property in abeyance and neither remove from the jurisdiction or destroy such property pending the outcome of the appeal.

G. If an appeal is not heard within six (6) months from the time of the application for appeal, the judgment creditor may move the court for an order vacating the appeal.

H. Upon the granting of such order, the judgment creditor may then proceed to satisfy the ~~District Trial Court's~~ **District Trial** Court's judgment.

§ 5-101. Recognition of foreign judgments

A. The Supreme Court of the Muscogee Nation shall have the authority to issue standards for extending full faith and credit to the records and judicial proceedings of any court of any federally recognized Indian nation, band or political subdivision thereof, including the Courts of Indian Offenses, which act as tribal courts for certain nations, and of any state, territory or other political subdivision of the United States of America.

B. In issuing any such standards, the Supreme Court of the Muscogee Nation may extend such recognition in whole or in part to same type or types of judgments of other jurisdictions that said courts of other jurisdictions agree to grant reciprocity of judgments of the courts of the Muscogee Nation, and may negotiate with other jurisdictions the degree of reciprocity to be given and received.

**CHAPTER 6. SECURITY TO KEEP PEACE**

§ 6-101. Short title

This chapter shall be known as "The Security to Keep Peace Act."

§ 6-102. Information of threat

Any information, verified by the oath of the complainant, may be laid before the **District Trial** Court that a person has threatened to commit an offense against the person or property of the complainant.

§6-103. Judge must issue warrant

If it appears from the information that there is just reason to fear the commission of the offenses threatened, by the person complained of, the Judge must issue a warrant, directed generally to the Lighthorse Police, reciting the substance of the information, and commanding the officer forthwith to arrest the person complained of, and bring him before the **District Trial** Court.

§ 6-104. Proceedings when charge is controverted

When the person complained of is brought before the **District Trial** Court, if the charge be controverted, the **District Trial** Court must take testimony in relation thereto. The evidence must, on demand of the defendant, be reduced to writing, and subscribed by the witnesses.

§ 6-105. Discharge, when

Unless it appears from the evidence that there is just reason to fear the commission of the offense alleged to have been threatened, the person complained of must be discharged.

**§6-106. Bond required, when**

If, however, there be just reason to fear the commission of the offense the person complained of may be required to post a bond in such sum, not exceeding one thousand dollars (\$1,000.00), as the **District Trial** Court may direct, in the form of cash or with one or more sufficient sureties, to abide the order of the Court for the duration of the undertaking, and in the meantime to keep the peace toward the people of this Nation, and particularly toward the complainant.

**§6-107. When bond is or is not given**

If the undertaking required by Title 27, §6-106 be given, the party complained of may be discharged. If he does not give it, the **District Trial** Court must commit him to jail, specifying in the warrant the requirement to give security, the amount thereof, and the omission to give the same.

**§6-108. Discharge on giving bond**

If the person complained of be committed for not giving security he may be discharged by the **District Trial** Court, upon giving the same.

**§6-109. Duration of undertaking determined by **District Trial** Court**

The undertaking must remain in effect for a time not to exceed one year as determined by the court.

**§6-110. Assault or threat in presence of **District Trial** Court**

A person who, in the presence of a court, assaults or threatens to assault another, or commit an offense against his person or property, or who contends with another with angry words, may be ordered by the court to give security, as provided in Title 27, §6-106 or if he refuses to do so, he may be committed as provided in Title 27, §6-107.

**§6-111. Breach of bond, what constitutes**

An undertaking to keep the peace is broken on the failure of a person complained of to appear at the **District Trial** Court as provided in this chapter or upon his being convicted of a breach of the peace.

**§6-112. Prosecution on breach**

Upon the Attorney General producing evidence of a conviction of a breach of the peace as provided in Title 27, §6-111 to the ~~District Trial~~ Court to which the undertaking is returned, that court must order the undertaking to be prosecuted, and the Attorney General must thereupon commence an action upon it in the name of the Nation.

§6-113. Allegation and proof

In the action, the offense stated in the record of conviction must be alleged as the breach of the undertaking, and such record is conclusive evidence thereof.

§6-114. Limitation

Security to keep the peace or to be of good behavior cannot be required, except as prescribed in this chapter.

§6-115. Costs

In all cases of security to keep the peace under this chapter, the court in addition to the orders mentioned in said chapter shall tax the costs against the complainant or defendant, or both, as justice may require, and enter judgment therefor, which may be enforced as judgments for costs in criminal cases, and execution may issue therefor.

APPENDIX 1. RULES AND PROCEDURES OF THE MUSCOGEE (CREEK) NATION  
TRIAL TRIBAL COURTS

Rule 1. Rules of procedure; title

- A. The rules of procedure in proceedings in Muscogee (Creek) Nation Courts shall be as prescribed by ~~Tribal~~ Title 27 and Title 14 of the Muscogee (Creek) Nation Code of Laws and such Court Rules not inconsistent therewith as are approved by the National Council.
- B. The ~~District Trial Court~~ Judges may promulgate and publish Rules of Decorum and Dress for ~~District Trial~~ Court hearings and trials.
- C. These rules shall govern all proceedings brought into ~~Tribal Trial~~ Courts after they take effect. They shall also apply to all proceedings pending at the time they take effect, except to the extent that in the opinion of the Court the application thereof would not be feasible or would work injustice. These rules may be cited as Rules and Procedures of the Muscogee (Creek) Nation ~~Tribal Trial~~ Courts.
- D. The Trial Court Judge, in any Civil or Criminal case, may in his discretion waive the requirements of these rules when in his opinion the administration of justice requires such waiver.

**Rule 2. Title and seal of court**

A. The court adopts "In the District Trial Courts of the Muscogee (Creek) Nation, ~~Okmulgee, District~~"; and "In The Supreme Court of the Muscogee (Creek) Nation, Okmulgee, District" as the titles of the Tribal Courts.

B. The seal shall be of a circular design, with the word "SEAL" within the center, and "DISTRICT TRIAL COURTS MUSCOGEE CREEK NATION" in the outer edge. The seal for the Supreme Court shall be the same with the exception of the words, "SUPREME COURT OF THE MUSCOGEE CREEK NATION" in the outer edge.

**Rule 3. Terms and location of court**

A. The Muscogee (Creek) Nation District Trial Courts shall be in session each week. Special court hearings may be held on weekends or holidays in the event that a state of emergency arises; provided, that nothing herein shall be construed to prohibit the issuance of an ex parte order at times or on dates outside normal District Trial Court office hours if necessary for the protection of persons in criminal or juvenile matters pursuant to other applicable law of the Nation. The District Trial Court Room shall be in the Mound Building or other designated building, located at the Muscogee (Creek) Nation Complex in Okmulgee, Oklahoma. District Trial Courts may also be convened at any location within the Constitutional boundaries of the Muscogee (Creek) Nation.

B. All proceedings both civil and criminal shall be commenced at the District Court Clerk's office at the Muscogee (Creek) Nation Complex, and shall be maintained there unless and until transferred.

C. All pleadings filed and exhibits introduced hereof, shall be on file in the office of the District Court Clerk. No such file shall be removed except upon order of the District Trial Court and in that event, a receipt specifying the record or paper removed shall be given by the party obtaining it and recorded on the "File Check-out Log". If there is a transcript included with the file which has been made, and the party removing the file wishes a copy, such party shall be responsible for securing the transcript copy at his or her own expense from the court reporter who prepared the transcript (see request for Court Records). All Juvenile files are confidential and a request must be made to the District Trial Court Judge and the District Trial Court Judge's signed permission obtained before any file can be examined and copied; provided that the District Trial Court Judge may issue a standing order authorizing the Attorney General, attorneys of record and designated Muscogee (Creek) Nation Children and Family Services caseworkers to examine and copy such files.

**Rule 4. Attorneys**

A. Oath. The Bar of the Muscogee (Creek) Nation shall consist of those attorneys admitted to practice before the Courts, who have taken the oath prescribed and have been sworn in by the Chief Justice of the Supreme Court, any Justice of the Supreme Court, or ~~the District~~ Judge of the District Trial Courts.

B. Eligibility for admission. Attorney admission fees and annual dues shall be deposited into an escrow account maintained by the Controller in accordance with the Muscogee (Creek) Nation Accounting Policies and Procedures. ~~District Court Clerk in accordance with Judicial Branch Accounting Policies & Procedure and may be used for expenses of the Bar of the Muscogee (Creek) Nation. All expenditures require original invoices and shall be authorized and approved by the Chief Justice of the Supreme Court before payment.~~

C. List of attorneys. The Trial Courts of the Muscogee (Creek) Nation shall maintain a list of attorneys admitted to practice in the Muscogee (Creek) Nation Courts. The list shall be compiled from names of attorneys admitted, recognized, or licensed to practice law before the courts of the Muscogee (Creek) Nation, and shall be provided to the public upon request at no charge.

D. Licensed legal interns. Any legal intern who after proper application has been duly licensed by the Muscogee (Creek) Nation Supreme Court, and who has taken an official oath of office, may practice before the Muscogee (Creek) Nation District Trial Courts, provided that said legal intern is supervised by a duly licensed attorney in good standing with the Muscogee (Creek) Nation Bar. All pleadings must be signed by both the supervising attorney and the legal intern.

#### Rule 5. Costs and attorney fees

Upon the initiation of any civil action, suit or proceeding, the party initiating such action, except the Muscogee (Creek) Nation, shall pay to the Court Clerk a filing fee, except that in properly approved forma pauperis proceedings no filing fee will be required.

In appeals, in of civil cases or criminal cases, a party filing a notice of appeal shall pay to the Clerk a filing fee and ~~in addition~~ shall pay the fees provided by the Judicial Branch for making the transcript of record, except on behalf of the Muscogee (Creek) Nation or taken in forma pauperis.

In addition to the fees for services rendered in cases heretofore, the Court Clerk shall charge and collect fees for miscellaneous services performed by that office, as provided by this Rule. A fee schedule covering such service shall be maintained in the Office of the Court Clerk.

Any party entitled to and requesting attorney fees shall within ten (10) days of the entry of judgment or decree make application for such, together with an affidavit setting forth

all information the applicant wishes the Court to consider in determining such fees. All other parties shall file setting forth specific objections and any other matters they wish the Court to consider.

**Rule 6. Representation by attorneys**

Whenever certain substantial rights are being determined by the courts of the Muscogee (Creek) Nation, the parties have a right to be represented by counsel. In the following matters a person must be advised by the judge before whom he first appears, at the time of that first appearance, that counsel will be provided for him if he is indigent and desires counsel to be provided:

**A1.** Whenever a person's right to the custody of any minor child is challenged or disputed in action before the court, excluding the case of divorce;

**B2.** Whenever a party might lose Muscogee (Creek) Nation citizenship as a result of an action before the Court;

**C3.** Whenever a person may be subjected to official restraint as a result of an action before the Court.

**Rule 7. Process**

Service of process allowed by these rules shall be in accordance with NCA 82-30, Sections 206-207 1 as follows:

**Section 206. Filing and Service:**

**A.** Documents required or permitted to be filed must be placed in the custody of the clerk within the time fixed for filing. Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the papers are actually received within the time fixed for filing.

**B.** Service of all documents require copies of all documents, including any transcript, filed by any party and not required herein to be served by the clerk shall, at or before the time of filing, be served by the party or person acting for him or her on all other parties to the appeal. Service on a party represented by counsel may be made on the counsel.

**C.** Manner of Service. Service may be made by delivering a copy of the summons to the defendant personally or by leaving one at his usual place of residence with some member of his family over fifteen (15) years of age, at any time before the return day. Service may also be made by publications in those cases where defendant cannot be found.

D. Proof of Services. Documents presented for filing shall contain acknowledgment of service by the person served or proof of service in the return of services form or a statement of the date and manner of service and of the names of the person who made service. Proof of service may appear or be affixed to the document filed.

**Section 207. Publication-Manner and Requisites:**

Where service by publication upon a defendant is proper, no summons shall be issued for service upon said defendant, but a notice, signed by the clerk of the court, must be published one day a week for three (3) consecutive weeks in some newspaper authorized by law to publish legal notices printed in the district where the petition is filed, if there be any printed in such county, then in some such newspaper printed in this state of general circulation in that county, and once in the *Muscogee Nation News*. All defendants who cannot be found may be included in one notice. The notice shall state the court in which the petition is filed, the names of all the parties, or where unknown shall describe them as the unknown successors of such person or corporation and must notify the defendants thus to be served that he or they have been sued and must answer the petition filed by the plaintiff 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 jurisdiction of the court and any property or debts to be attached or garnished must be described.

**Rule 8. Publication notice and filing times**

A. Publication-manner and requisites. Where service by publication upon a defendant is proper, no summons shall be issued for service upon said defendant, but a notice, signed by ~~District~~ Court Clerk ~~of the court~~ must be published one day a week for three (3) consecutive weeks in some newspaper authorized by law to publish legal notices printed in the district where the petition is filed if there be any printed in such county, then in some such newspaper printed in this state of general circulation in that county, and once in the *Muscogee Nation News*. All defendants who cannot be found may be included in one notice. The notice shall state the court in which the petition is filed, the names of all the parties, or where unknown shall describe them as the unknown successors of such person or corporation and must notify the defendants thus to be served that he or they have been sued and must answer the petition filed by the plaintiff 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 jurisdiction of the court and any property or debts to be attached or garnished must be described.

B. Service of papers when required. The requirement of service shall be in accordance with ~~section 206~~ of this Title, unless otherwise expressly provided in these rules.

C. Manner of service. Service of all papers requiring service under these rules may be made in accordance with ~~section 206~~ of this Title.

D. Proof of service of pleadings, motions, and other papers. Except as otherwise provided in accordance with this Title ~~27, Appendix 1, Rule 7~~, or by order of the ~~e~~Court proof of service of any pleading, motion or other paper to be served shall be made by the certificate of any attorney of record, or if made by any other person, the affidavit of such person. The certificate or affidavit of service shall be filed with the pleadings required to be served with the ~~District~~ Court Clerk.

E. Notice of actions. Every writing, pleading, or complaint, in every case, from initial petition or complaint onward, in the Trial Courts of the Muscogee (Creek) Nation, must be accompanied by a certificate of mailing or delivery stating that the pleading has been served by mailing or delivery to all interested parties other than the party certifying and naming the interested parties and setting out the addresses for them.

F. Filing times in original civil actions.

1. Whenever a petition or complaint is filed in the ~~District~~ Trial Court the defendant's answer, counterclaims and cross-claims shall be filed no later than thirty days from receipt of the plaintiff's petition by the defendant. Answers to cross claims made by defendant will be due no later than thirty (30) days from receipt of the defendant's cross-claim petition by the third party defendant Plaintiff's reply to any counter claim by defendant and answers to cross claims made by defendant will be due no later than thirty (30) days after receipt of defendant's answer. Hearing will be set for the next regular scheduled court day of the ~~District~~ Trial Court.
2. Written motions in all matters will be heard at the next regular scheduled court session after filing and service, but not sooner than five (5) days after filing and service. Hearings on injunctions, restraints, mandamus, will be heard within ten (10) days from filing and service.
3. Extension of time. At written request or pleading, more time may be granted in any matter, with the consent of all parties. At written request and without consent of all parties, more time may be granted in any matter for good cause shown. No additional time will be granted in any matter if the application for more time is not made

within the item prescribed in this section. No additional time will be granted in any matter wherein a minor child has been initially removed from the custody of a parent or custodian except on application or agreement of the parent or custodian.

**Rule 9. Filing of documents**

A. Filing of original and copies. All pleadings, motions, applications, and orders tendered to the ~~District~~ Court Clerk for filing shall include the original and such copies as may be required in these Rules, and all attached exhibits shall be clearly legible. The original and one copy of all criminal pleadings, motions, applications or orders shall be tendered for filing.

B. Original judgments, orders and decrees. There shall be tendered for filing with each final judgment, order or decree, and with any order affecting real or personal property, a copy of the original thereof to be used by the ~~District~~ Court Clerk in the preparation of the Court Journals. In addition thereto sufficient additional copies shall be tendered for each and all counsel of record in the case.

C. Discovery documents. Discovery may include depositions upon oral examination, interrogatories and the answers, with a thirty (30) questions limit. Requests for production or inspection and requests for admissions and the response thereto shall be served upon other counselor parties within forty-five (45) days. If relief is sought, concerning any interrogatories, requests for production or inspection, requests for admissions, answers to interrogatories or response to requests for admissions, copies of the portions of the interrogatories, requests, answers or responses in question must be filed contemporaneously with any motion filed. If depositions, interrogatories, requests, answers or responses are to be used at trial, the portions to be used shall be marked as exhibits prior to trial.

D. Attorney identification. The attorney signing a pleading shall cause his name, address and phone number to be typed thereunder.

E. Related cases. Attorneys for the defendants shall, on their initial pleading, advise the ~~District~~ Trial Court if there is a related case already filed involving, (1) common property; (2) common issue of fact or growing out of the same transaction, (3) validity or infringement of the same patent copyright or trademark, and advise the name of the Judge and the case number.

F. Non-compliance with filing requirements. Any pleading; motion; application or order tendered to the ~~District~~ Court Clerk for filing which is not in conformity with the Rules of this Court may be returned to the party tendering such pleading; motion; application or order.

**Rule 10. Time**

The computation of any period of time prescribed as allowed by these Rules shall be as follows: Subpoenas and notices of hearings in civil cases, not including juvenile proceedings, shall be sent from the ~~District~~ Court Clerk's office to allow the party receiving such notice ten (10) days, including weekends and holidays, to answer before the court date, unless otherwise prescribed by law. The filing of briefs in any case is computed to include only working days. If the ~~District~~ Court Clerk does not receive notice to send out subpoenas and notice of hearings within the above stated time frame, the case will be set for hearing at the next regular court session.

**Rule 11. Request for jury**

A. Request. Any party may request a trial by jury. The request may be filed separately or endorsed upon a pleading of the party. If so endorsed, the request shall be set forth separately, at the end of the pleading.

B. Settlement. Settlement or other disposition of a case other than by trial must be given to the ~~District~~ Court Clerk ~~of this Court~~ in writing no less than three (3) full days prior to the jury trial setting. Upon failure to give the required notice, the ~~District~~ Court Clerk will assess actual jury costs against the parties and counsel for each prospective juror reporting for service. Any monies collected as a result of said assessment shall be ~~paid~~ recorded by ~~to~~ the ~~District~~ Court Clerk for accounting purposes and forwarded on a monthly basis to the Controller of the Muscogee (Creek) Nation. for deposit in the District Court Fund.

**Rule 12. Jurors**

A. Jurors not to be interviewed. No attorney or any party to action or any other person shall himself or through any investigator or other person acting for him interview, examine or question any juror, relative, friend or associate thereof during the pendency of the trial or with respect to the deliberations or verdict of the jury in any action, except on leave of court granted upon good cause shown.

B. Voir dire. Requested voir dire will be conducted by the Court with additional voir dire to be conducted by attorney representing each party. Requested instruction must be presented in writing in advance of the arguments. Counsel for both sides will be given peremptory challenge, with each side having three (3) challenges.

C. Arguments. Argument to juries will be subject to limitations as to time and as to the number of attorneys participating.

**Rule 13. Selection of jurors**

The following is applicable to the Muscogee (Creek) Nation Trial Courts:

~~Adoption of plan. The following plan is hereby adopted by the District Court.~~

~~Applicability of plan. This plan is applicable to the Muscogee (Creek) Nation.~~

A. Policy. It is the policy of the Court that all litigants entitled to trial by jury shall have the right to jurors selected from a fair number of each of the communities that constitute the Muscogee (Creek) Nation of Oklahoma, and that all citizens shall have the opportunity to be considered for services on juries, and shall be obligated to serve as juror when summoned unless excused for valid reasons by the Court.

B. Supervision of jury selection. The ~~District Court Clerk of the District Court~~ shall manage the jury selection process with the assistance of the, the ~~District Trial Court Judges~~, the Election Board and the ~~Lighthorse Chief of the Lighthorse Police~~. The ~~District Court Clerk~~ shall receive, into the permanent records of the Court, the selection instructions and the affidavit of the computer operator certifying compliance with the same. Until they have been qualified in open Court, the names of persons summoned for Jury service shall not be made public unless the ~~District Trial Court~~ shall otherwise direct. The contents of records or papers used by the ~~District Court Clerk~~ in connection with the jury selection process shall not be disclosed, except upon Order of the Court.

C. Summons. The ~~District Court Clerk~~ shall issue summons directed to the persons so drawn for service by, First class mail Return Receipt Requested.

D. Random selection from citizenship rolls. The citizenship rolls list represents a fair selection of the communities within the Muscogee (Creek) Nation. The ~~District Court Clerk~~ shall make the random selection of names of: those citizens who are at least 18 years.

E. Formation of trial jury. The formation of a trial jury shall be in accordance with Title 27, § 2-108, subsections A thru E, of the Muscogee (Creek) Nation Code, as follows:

1. A jury of the trial shall consist of six (6) persons, but the parties may agree to a number less than six (6).
2. All enrolled citizens of the Muscogee (Creek) Nation, residing within the boundaries of the Muscogee (Creek) Nation, of sound mind and discretion, of good moral character, not Judges, sheriffs or deputies, physicians, attorneys, ministers, jailers or law

enforcement officers, shall be compelled to serve as jurors. Provided, however, persons over 65 years of age or under 18 years of age and persons having custody of minor children may be excused.

3. Habitual drunkards, persons convicted of any felony, or persons who have served in any penitentiary shall not be eligible to serve as jurors.
4. Prospective trial jurors may be summoned by notifying each orally or by mail as to the time and place at which his attendance is required.
5. For jury dockets, the ~~District~~ Trial Court shall summon a jury panel of not less than 24 eligible jurors, to be paid \$20.00 per day from the Court fund until they shall be dismissed.

F. Excuses on individual request. Excuses on individual requests allowed by these Rules shall be in accordance with Title 27, § 2-108 of the Muscogee (Creek) Nation Code.

G. H.

#### Rule 14. Filing fees

In any case filed in ~~the District~~ Trial Court after the effective date of this law, the ~~District~~ Court Clerk shall be required to collect, at the time of filing, the flat fee of \$84.00, none of which shall ever be refundable, and which shall be the only charge for the Court costs, except as is otherwise specifically provided below. The cost required to be collected by this part shall be used in total to compile a law library for the use of the Muscogee (Creek) Nation Judiciary and Court staff and such others as the ~~District~~ Court Clerk gives permission. Once compiled, \$84.00 of every fee collected at the time of filing will be used to maintain and update the law library and remaining excess funds collected at the time of filing will go into the Court fund to be used for the operation of the Muscogee (Creek) Nation Courts. In any case where the litigant claims he has just cause of action, and that by reason of poverty, he is unable to pay the fees and costs provided for affidavit in forma pauperis is executed before any officer authorized by law to administer oaths and upon satisfactory showing to the Court that said litigant has no means and is, therefore, unable to pay the applicable fees and costs, no fees or costs shall be required. In all such cases, the determination of the eligibility of the affiant to litigate without payment of fees or costs. Until a final order determining the ineligibility of such affiant has been entered, the ~~District~~ Court Clerk shall permit such affiant to litigate without payment for fees and costs.

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Civil action .....\$84.00

**FEES IN CIVIL ACTIONS IN ADDITION TO FLAT FEE OF \$84.00**

1. For posting notices and filing certificates required by law ..... \$10.00
2. For mailing by any type of mail writs, warrants, orders process, command, or notice for each person ..... \$7.00
3. For the actual cost of all postage in each case in excess of \$7.00 .....  
Actual cost
4. For serving or endeavoring to serve each writ, warrant order, process, command, or notice for each person in one or more counties ..... \$30.00
5. When a jury is requested ..... \$100.00
6. The costs of transcribing a record, other than on appeal ..... Actual cost
7. Copying an instrument of record or on file-first page ..... \$1.00  
for each subsequent page ..... \$.50  
certification of each instrument. . \$.50  
authentication of court record ..... \$5.00
8. For issuing summons ..... \$5.00
9. Pre-sentence investigation ..... \$5.00 to \$250.00
10. Probation fee ..... \$5.00 per month
11. Filing of bond in criminal cases ..... \$10.00
12. Marriage license \$25.00
13. Issuance of warrant \$5.00
14. Filing fee for process server license annually.... \$10.00
15. Filing fee for bail bondsman's license annually ..... \$10.00

**FEES IN PARTICULAR CASES:**

1. Any proceeding to modify or vacate divorce decree or prior order providing for custody for custody or support. . \$40.00
2. Guardianship ..... \$84.00

**FEES FOR FILING AN APPEAL:**

Notice of Appeal shall commence at the District Trial Court. The Court Clerk ~~of the District Court~~ shall charge the sum of \$75.00 for filing an Notice of Appeal to the Supreme Court.

The Court Clerk ~~of the District Court~~ shall charge the sum of \$100.00 for preparing, assembling, indexing and transmitting the record for appellate review. If more than one party to the action shall prosecute an appeal from the same judgment or order, the fee shall be paid by the party whose petition in error is determined by the District Trial Court or by the Supreme Court to commence the principal appeal. The fees collected shall be paid recorded by the Court Clerk for accounting purposes and forwarded on a

monthly basis to the Controller of the Muscogee (Creek) Nation, into the Court fund.

**JUROR'S FEES:**

Jurors shall be paid the following fees out of the court cash fund: For each day's attendance before any court of record, \$20.00; for each mile necessarily traveled in going to or returning from the place of attendance, at the prevailing Muscogee (Creek) Nation rate as established by the Controller and such mileage shall be allowed each day that said mileage is incurred.

The Creek Nation nor any of its branches, departments, officers, agents or agencies shall have to pay the fees specified herein to obtain access to the Tribe's Courts in order to pursue or defend the Tribe's interests and rights. ~~All fees collected pursuant to this Judicial code shall be deposited into the court fund to defray the expenses of the operation of the Tribe's Courts.~~

**IN FORMA PAUPERIS IN MUSCOGEE (CREEK) NATION COURT:**

In any case where the litigant claims he has a just cause of action, and that be reason by poverty, he is unable to pay the fees and costs provided for in this section and upon the filing of an affidavit in forma pauperis executed before any officer authorized by law to administer oaths and upon satisfactory by law to administer oaths said litigant has no means and is, therefore, unable to pay the applicable fees and costs, no fees or costs shall be required. In all in forma pauperis cases, the District Trial Court shall promptly set for hearing the determination the eligibility of the affiant to litigate without payment of fees or costs. Until a final order determining the ineligibility of such affiant has been entered, the District Court Clerk shall permit such affiant to litigate without payment for fees and costs.

**Rule 15A. Vacancies in District Trial Court and Supreme Court**

If illness or other considerations prevent a judge or justice from hearing cases on a scheduled date, or there exists a conflict of interest, or for some other reason a judge or justice is disqualified, then a temporary judge or justice shall be appointed by the Chief, Speaker of the National Council, and Chief Justice of the Supreme Court acting jointly. Said temporary appointment shall only be for the single case or conflicting issue and no other.

**Rule 15B. Review, lending and copying of court files**

- A. Review procedures for court files.

1. Public records; exceptions. All files are public record and are subject to review by any interested party with the following exceptions;
  - a. Juvenile matters. Juvenile records are confidential and may be reviewed only by order of the court.
  - b. Guardianships. Guardianship records are confidential and may be reviewed only by permission of the court.
  - c. Adoption matters. Adoption records are confidential and may be reviewed only by order by the court; except that pursuant to the Indian Child Welfare Act of 1978, any adopted person over the age 18 may review his/her adoption records.
2. Presence of ~~District~~ Court Clerk. All file reviews are to be conducted in the presence of the ~~District~~ Court Clerk or his or her designee and the ~~District~~ Court Clerk may not allow en masse perusal through Court files by anyone. The interested party must specifically request the file to be reviewed by citing the name of the case.

B. File lending procedures. Files shall not be removed from the office of the ~~District~~ Court Clerk, except in accordance with Rule 3.

C. Copying procedures. Copies of all court documents are to be provided to elected officials of the Muscogee (Creek) Nation, at their request, for official Tribal use, free of charge; provided, that confidential Court documents relating to juvenile proceedings, including guardianships, deprived actions, juvenile delinquency proceedings and adoptions, not otherwise available to the public shall not be made available to elected officials. All other persons requesting copies are to be charged as: See Rule 14, No 7.

## APPENDIX 2. MUSCOGEE (CREEK) NATION SUPREME COURT RULES OF APPELLATE PROCEDURE

Rule 1. Name; authority; title

A. Citation: These rules shall be cited as the MCN Rules of Appellate Procedure (MCN RAP).

B. Applicability: These rules shall apply to the appellate proceedings conducted by the Supreme Court of the Muscogee (Creek) Nation.

C. **Authority:** The Supreme Court was created by Article VII of the Constitution and has appellate jurisdiction over all cases and controversies, civil and criminal, arising within the Nation. These Appellate Procedures are required by Article VII Section 3 of the Constitution.

D. **Jurisdiction not limited:** These rules shall not be construed to limit the jurisdiction of the Judicial Branch of the Muscogee (Creek) Nation as stated in Title 27, § 1-102, as amended.

E. **Construction:** These rules shall be liberally construed in every appeal to insure that the appellant receives due process of law and prompt and speedy relief.

F. **Customs:** Matters and proceedings not specifically set forth herein shall be handled in accordance with reasonable justice, as determined by the rules of procedure for other Tribes or the United States may be used as a guide, so long as these guideline rules are not inconsistent with existing rules of procedure, laws, or the customs of the Nation.

#### Rule 2. Commencement of appeal

A. **Right to appeal, civil:** A final judgment or final order of any original hearing body or **District Trial e**Court of the Muscogee (Creek) Nation may be appealed to the Supreme Court as a matter of right unless otherwise expressly provided by law.

B. **Right to appeal, criminal:** An appeal may be taken by a defendant only from a final judgment of conviction, orders after judgment which affect the substantial rights of the defendant, or from a denial of a motion to dismiss the charges against the defendants.

C. **Form:** An appeal shall be commenced with the completion and filing in the Supreme Court of the Notice of Intent to Appeal form (Notice of Appeal). The original hearing body shall be served with a copy of the Notice of Appeal.

D. **Fee:** A filing fee of \$75.00 must accompany the Notice of Appeal, or this fee may be waived by order of the Court upon a showing that the appellant is indigent and unable to pay the fee.

E. **Time:** A party has fifteen (15) days from the receipt of the **District Trial** Court decision to file a Notice of Appeal. If the Muscogee (Creek) Nation or an officer thereof is a party in their official capacity, the Notice of Appeal shall be filed within twenty five (25) days. Where another law of the Nation provides a different timeframe to file an appeal, that law shall be binding.

F. Additional information: The following information shall be provided in or with the filing of the Notice of Appeal:

1. A copy of the written decision of the original hearing body.
2. A short statement explaining what relief is sought by the appellant.
3. A short statement explaining the legal grounds for seeking the appeal and justification for the relief requested.
4. A short statement or statements outlining the hearing bodies and/or agencies where the appellant has sought a remedy.
5. Name, address and phone numbers of all parties, including respondents.
6. Name, address and phone number of all parties' advocates, if known.

G. Filing deficiencies. If the appellant fails to pay the filing fee or obtain a waiver from the Court, or any required documents or materials, the appellant shall be so notified of any filing deficiencies within five (5) days and shall have five (5) days from receipt of this notice to perfect the filing. Failure to perfect the filing within five (5) days shall result in the non-acceptance of the appeal.

H. Notice to respondent(s): Within five (5) business days of filing of a perfected Notice of Appeal, the Clerk of the Supreme Court shall serve notice of the Supreme Court's docketing of the of appeal.

### Rule 3. Interlocutory appeals

A. Granted by permission: A non-final judgment or order not appealable as a right under Rule 2 may be appealed via an interlocutory appeal to the Supreme Court prior to a final judgment or order upon leave granted by the Supreme Court if the original hearing Body determines that an interlocutory appeal will (or may):

1. Materially advance the termination of the litigation or clarify further proceedings in the litigation;
2. Protect the petitioner from substantial or irreparable injury; or
3. Clarify an issue of general importance in the administration of justice.

B. Time: The timeframes for interlocutory appeals shall be accelerated to minimize any delay in the proceedings before the original hearing body. The following times shall be used in order to file and resolve an interlocutory appeal quickly:

1. A party aggrieved of an intermediate ruling, judgment or order during an original hearing, who wishes to seek intermediate relief, shall file an interlocutory appeal with the Supreme Court within five (5) days of the receipt of the ruling, judgment, or order in question.
2. Initial review of the interlocutory appeal shall be conducted by the Chief Justice within five (5) days of the filing.
3. If the interlocutory appeal is accepted for review, the respondent shall have five (5) days to file a response brief to the interlocutory appeal.
4. Upon receipt of the respondent's brief, a panel of three judicial officers shall deliberate within five (5) days time and issue a decision.

C. Rights saved: Issues not raised or decided in an interlocutory appeal may be considered in an appeal after the final judgment or order.

**Rule 4. Filing and service**

A. Filing methods: In person or mail filing are the only acceptable methods of officially filing documents related to cases pending before the Supreme Court.

1. By mail: A party to a pending case may file papers by the U.S. Postal Service or other reliable mailing service, with cover documents to be addressed to the Supreme Court Clerk. Mailed documents must be received by the Clerk prior to the close of business on or before the day that the filing is due. The party filing shall supply the Supreme Court with an original, eight (8) copies of all documents together with an affidavit showing service on opposing counsel. If the filing party desires a file stamped copy by return mail, an additional copy must be sent with a postage paid addressed envelope. Filing shall not be completed upon mailing, but only upon receipt.
2. In person: A party to a pending case, or the party's advocate or authorized agent may file papers in person before the Clerk of the Supreme Court. Filing must be complete prior to thirty (30) minutes before the close of business on the day that any filing is due. The

party filing shall supply the Supreme Court with an original, and eight (8) copies of all documents together with an affidavit showing service on opposing counsel.

C. Service methods: Service may be made by delivering a copy of the document to the other party personally or by leaving the copy at the party's usual place of residence with some member of the family over fifteen (15) years of age.

D. Proof of service: Documents presented for filing shall contain acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons who made service. Proof of service shall be filed with the document filed.

E. Parties with counsel: The following rule shall apply where a party is represented by counsel, whether advocate, paralegal or attorney. Only counsel need be served papers. Service to a party is assumed to be completed upon service to the party's counsel.

#### Rule 5. Time

A. Calendar days: All reference to days in these rules of appellate procedure shall refer to the use of calendar days.

B. Deadline computation: Days are counted by designating the day after notice is received as day one. If notice is mailed, then three dates shall be added to the normal due date in order to determine the due date. Computation involving calendar days shall include intermediate holidays and weekend days. Computation involving business days shall not include intermediate weekend days. If the last day of the period falls on a Saturday, Sunday or legal holiday, then the next business day shall be the due date. All papers to be filed with the Supreme Court are due no later than 30 minutes before the closing of the office on the last day of the time period.

C. Extension of time: The Chief Justice may, upon the petition or motion by a party showing good cause, extend any time period set forth herein for any required act or submission. Motions for an extension of time shall be submitted no less than two days prior to the due date.

D. Time to complete: Unless time is extended by the Supreme Court, the time from the filing of the Notice of Appeal subsequent to the entry of the final written decision of the ~~District~~ Trial Court shall not exceed six months.

#### Rule 6. Parties to the appeal; multiple appeals

A. Appellant: The person or persons filing the appeal is the appellant to the case. If the person filing the appeal is the agent or other representative of an agency, department or other Tribal entity, then the full name of the agency shall be listed as the appellant, followed by the filing person's name.

B. Respondent: The person or persons against whom appellate relief is sought shall be named as the respondent(s) to the case. If the appellant is seeking relief from an agency action or decision, then that agency, along with the agency's representative shall be named as the respondent.

C. Joint appeals: If two or more people are each entitled to appeal from the same judgment or order entered in the same action or proceeding before the original hearing body and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may, after filing separate notices of appeal proceed as a single appellant, upon order of the Court.

D. Co-appeals: If the parties do not file a joint appeal or elect to proceed as a single appellant, or if joinder is impracticable, they shall be known as appellant and co-appellant, with identical procedural rights and obligations as any single appellant. The appellant shall be that person who has the earlier filing date or time of filing where the people file on the same date.

E. Cross appeals: A respondent who seeks modification of the judgment order appealed from or of another judgment or order entered in the same action or proceeding shall file a notice of a cross appeal by an appellant within the time established for the filing of a notice of appeal or ten (10) days after the receipt of the notice of appeal, whichever is later. The respondent shall be listed as the respondent and cross appellant. A cross appellant has the same rights and obligations as an appellant under these rules.

F. Consolidation of separate appeals: The appellate court may consolidate separate appeals in separate actions or proceedings in the trial court upon its own motion, motion of a party, or stipulation of the parties.

**Rule 7. Intervention and amicus curiae**

**A. Intervention:**

1. A person may, upon a timely motion and with the permission of the appellate court, intervene and be treated in all respects as a party to an appeal where;
  - a. The movant claims an interest relating to the property or transaction which is the subject of the appeal; and

- b. The movant is so situated that the disposition of the appeal may as a practical matter impair or impede the movant's ability to protect that interest, and
  - c. The movant's interest is not adequately represented by the existing parties.
2. A person may, upon the timely motion and with the permission of the appellate court, intervene in an appeal when the movant's claim or defense and the main appeal have a question of law or fact in common.
  3. A person desiring to intervene shall serve a motion to intervene upon the parties to the main action. This motion shall state the grounds upon which intervention is sought and shall be accompanied by a brief setting forth the arguments for which intervention is sought.

B. Amicus curiae (friend of the court): A person who is not a party to a case but has some interest in the outcome of an appellate case may, upon a timely motion and with permission of the appellate court, submit an amicus curiae brief in support of one party to the action or to supplement the arguments of a party. See also Rule 16.

C. Time: A person wishing to intervene or file an amicus curiae brief in an appeal shall file a motion to intervene within fifteen (15) days of the entry of the initial review decision accepting the appeal. Parties shall have fifteen (15) days from receipt of the person's motion to file a response brief to the motion to intervene.

#### Rule 8. Costs

Copy charge: Parties who fail to supply a sufficient number of copies for use by the Supreme Court and opposing parties shall be assessed a fee per page copied by the Supreme Court Clerk.

#### Rule 9. Motions

A. Procedure; A party seeking an order or other relief in a docketed appeal shall file a motion for the order or other relief.

1. The motion must state specifically the order or relief sought and the grounds on which the motion is based and may include a statement of the positions of other parties as to the granting of the motion.

2. If a motion is supported by brief, affidavit or other paper, then these shall be attached and filed with the motion and designated as exhibits or supporting memoranda.
3. Parties to the case may file a response to the motion within ten (10) days of the receipt of the motion, after which time the appellate court will deliberate upon the arguments/positions of the parties, and render a decision which will grant or deny the motion.

**B. Exceptions:**

1. A motion for procedural orders may be granted or denied by the Chief Justice, without notice to the opposing party. A party adversely affected by a procedural order may request reconsideration of the order by the full appellate court within five (5) days of receipt of notice of the decision by the lead judicial officer.
2. The Chief Justice, upon receipt of a motion by a party, may order that the opposing party's response be made within five (5) days for procedural motions or motions where the relief requested requires a decision within the normal ten (10) day response period.

**Rule 10. Form of motions**

A. Caption: Every motion shall contain a caption heading, "In the Muscogee (Creek) Nation Supreme Court," names of all of the parties to the action, the docket number (if known), a designation as to the purpose or type of motion it is, and the name, address, phone number and other contact information such as an e-mail address of the person responsible for the Brief. Example;

**IN THE MUSCOGEE (CREEK) NATION SUPREME COURT**

Name of Appellant )  
Appellant )  
v. ) SC 2000-\_\_\_\_\_  
Name of Respondent )  
Respondent )  
Brief of Appellant

Appeal from the ~~District Trial~~ Court of the Muscogee (Creek) Nation  
~~Okmulgee District~~, Case No. CV 2000-xx

Name of Appellant or Attorney  
Address

Phone  
e-mail

B. Content: All motions shall be organized in sections containing a clear designation, which shall include but not be limited to;

1. The facts, events or occurrences which make a specific motion for relief necessary.
2. The specific relief requested by the moving party.
3. The applicable law or laws which are applicable to the motion at hand.
4. The grounds upon which the relief is sought.

**Rule 11. Form of briefs**

A. Caption: Every brief shall contain a caption heading, "In the Muscogee (Creek) Nation Supreme Court," names of all of the parties to the action, the docket number (if known), a designation as to the purpose or type of brief it is, and the name, address, phone number and other contact information such as an e-mail address of the person responsible for preparing the Brief. See example in Rule 10.

B. Format: Briefs shall be double spaced, typed or computer generated, and on 8.5 x 11 inch paper. Type shall be 12 to 14 point readable typefaces such as Helvetica or Arial. Margins shall be at least 1 inch on all sides. Each page shall be numbered at the bottom. Pages shall be printed on one side only. Each copy shall be securely bound such that it lays flat and no words are obscured by the binding. A corner staple is acceptable for short documents. Questions about the acceptability of a document should be addressed to the Supreme Court Clerk before filing. A sample page is available from the Clerk. After filing the court may request reproduction in acceptable form.

C. Subscription and verification: Briefs shall be signed by the party or the party's advocate, if represented. Signing indicates that to the best of the signer's knowledge, information and belief, the person signing knows that the matters communicated to the court are true and not frivolous, scandalous or indecent.

**Rule 12. Appellant's brief**

A. Time: The appellant shall file a brief within thirty days of the filing of the Notice of Appeal.

**B. Content:** The appellant's brief must contain the following information:

1. A table of contents with page references to the portions of the brief, including headings of each section of the argument.
2. A table of cases cited in the brief, arranged alphabetically, with a page reference to where the case is cited in the brief.
3. A statement of the issues presented for review by the appellate court.
4. A statement of the case which should include: the nature of the case; the course of the proceedings to date, and the cases disposition at the trial court or original hearing level, and the facts relevant to the issues presented for review, with appropriate references to the record of the trial court proceedings.
5. The argument, which may be preceded by a summary. The argument shall contain the positions of the appellant with respect to each of the issues presented for review, with the reasons for these positions and citations to applicable laws, authorities, and parts of the record relied upon by the appellant. The argument of the appellant should be separately identified for each issue presented to the appellate court.
6. A short conclusion stating the precise relief sought.
7. All rules, regulations, laws, authorities, and portions of the record cited by the appellant shall be attached as an addendum unless previously filed with the appellate court.
8. The appellant's brief may incorporate by clear and specific reference, portions of other documents or material previously submitted to the appellate court in the case at hand.

**C. Length:** The brief shall be no more than twenty pages in length, not including any addendums, appendices, attachments, table of contents or list of authorities.

**Rule 13. Respondent's brief**

**A. Time:** The respondent shall file a brief in response to the appellant's brief within thirty days of the filing of the appellant's brief,

B. Content: The respondent's brief shall comply with the content requirements of Rule 12 B. above.

1. The respondent's brief shall address each issue and argument presented by the appellant in the appellant's brief.
2. The respondent's brief may present additional issues, with the respondent's positions and arguments on these issues.

C. Length: The respondent's brief shall be no more than fifteen pages in length, not including any addendums, appendices, attachments, or the tables of contents and authorities.

**Rule 14. Appellant's reply brief**

A. Time: The appellant may submit a reply brief within fifteen (15) days of filing of the respondent's brief.

B. Content: The reply brief shall be organized in accordance with Rule 12 B. The brief shall address only those additional issues presented in the respondent's brief which have not previously been argued by the appellant.

C. Length: The reply brief shall be no more than five pages in length, not including any addendums, appendices, attachments, or tables of contents and authorities.

**Rule 15. Miscellaneous briefs**

A. Consolidated/joint appeals: Each appellant in a consolidated appeal or a joint appeal and each co-appellant may file a separate brief or a joint brief with another appellant or co-appellant. A joint brief must comply with Rules 12, 13 and 15 above related to appellants' briefs and may not exceed the page limit for a single appellant.

B. Cross appeal: The parties in a cross appeal have the same rights as a party in an appeal and may file separate cross appellant's and cross respondent's briefs in accordance with the Rules 12 thru 15 above related to parties' briefs.

C. Amicus curiae briefs: A person not a party to an action may by motion request permission to file a brief. The motion shall identify the interest of the person and state why a brief filed by that person desirable or necessary.

1. Permission may be granted by the Chief Justice.

2. If permission to file a brief is granted, the non-party brief shall be due fifteen (15) days after permission has been granted.
3. The non-party brief shall comply with the content and form rules of a respondent's brief, Rules 12 and 14.
4. Each party shall have fifteen (15) days to file a response brief to the non-party brief. Such briefs shall comply with the content and form requirements of Rules 12 and 15.

**Rule 16. Relief pending appeal**

A. **Effect of appeal:** An appeal from a decision, final or interlocutory, of an original hearing body or the **District Trial** Court does not stay the enforcement of the order or judgment appealed from except as provided in these rules, or other Tribal laws.

B. **Stay upon appeal:** A party may file a motion asking the Supreme Court for a stay of enforcement of the original hearing body order or **District Trial** Court judgment pending the final adjudication of the appeal. The Supreme Court may issue such an order upon its own motion where justice requires.

C. **Bond or other security:** The stay of enforcement may be conditioned upon the posting of a bond or other appropriate security by the moving party, except that where the Tribe or a Tribal entity is the appellant, no bond shall be necessary.

D. **Remedies:** During the pendency of an appeal, the appellate court may;

1. Stay the execution or enforcement of a judgment or order;
2. Suspend, modify, restore, or grant an injunction; or
3. Make any order appropriate to preserve the existing state of affairs or the effectiveness of the judgment.

E. **Criminal judgment:**

1. **Imprisonment:** If a defendant is sentenced to time in jail by the **District Trial** Court and makes a timely application for appeal, the jail sentence is stayed pending the outcome of the appeal. The **Supreme Court Tribal Judge** may continue the bail as originally set upon the defendant for the charge appealed from or may either lower the amount of the bail or release the defendant upon his own recognizance according to the bail procedure set down by the **District Trial** Court, pending the appeal.

2. Fine: If a defendant is fined and makes a timely appeal, the sentence to pay a fine or other costs shall be stayed by the **District Trial** Court pending the outcome of the appeal.
3. Probation: If an appeal is taken and the defendant was admitted to probation, he or she shall remain on probation pending the outcome of the appeal or else shall post bail.
4. Suspended sentence: If the defendant was given a suspended sentence by the **District Trial** Court, such sentence shall be suspended pending the outcome of the appeal.
5. Defense verdict: An appeal taken by the Nation in no way affects or stays the operation of the judgment, decision or order in favor of the defendant until the judgment, decision or order is reversed by the Supreme Court.

**Rule 17. Record**

A. General: The record shall consist of all papers filed with the original hearing body, whether or not admitted for consideration, the exhibits viewed, the transcript or recording of the proceedings, if any, the final decision of the original hearing body, and a certified copy of the entries prepared by the Clerk of the **District Trial** Court.

B. Disputes about record: If any dispute arises as to whether the record on appeal truly tells what occurred in the **District Trial** Court, the dispute shall be submitted to and settled by that Court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident, or is misstated therein, the parties by stipulation, or the **District Trial** Court, either before or after the record is transmitted to the Supreme Court, on proper suggestion or of its own initiative, shall direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the Supreme Court.

C. Open record: The record compiled by the Supreme Court for a completed case is Tribal record and open to the public for viewing subject to the following exceptions and conditions:

1. Any person viewing the record of any completed case may purchase copies of the entire record or parts thereof from the Supreme Court Clerk.

2. Juvenile and guardianship: Records of cases involving juveniles and guardianships shall remain confidential and shall only be viewed by justices, the parties and their counsel, court staff assigned to the case, those other persons who first obtain a written release from a party to view specific material in the record, or by order of the Chief Justice of the Supreme Court.
3. Adoption: Adoption files are confidential and may be viewed only by order of the Court. Any adopted person over the age of 18 may review his/her adoption records.
4. Sealed files: Where a case involves the review and consideration of material or evidence that would normally be considered confidential, such as trade secrets, attorney/client privilege, etc., the appellate court may order that portion of the record sealed and such portion shall be available for viewing only by Supreme Court personnel assigned to the case, the parties and those agents or representatives specifically authorized by the parties to view the material.
5. Permissive viewing: Any person who can prove a legitimate interest in a particular confidential case may review said matter after receiving written permission from the Chief Justice. The original written permission document is to be filed in the case by the Chief Justice and a copy shall be sent to the applicant. The Supreme Court Clerk shall document the date and time at which the person actually viewed the file.
6. Deliberations of the Supreme Court are confidential, are not part of the appellate record, and are not subject to reproduction. Opinions or votes of individual Justices may be published in the Final Order.

**Rule 18. Remedial powers of Supreme Court**

A. Civil appeals: Upon appeal from a judgment or order from an original hearing body decision, the Supreme Court may:

1. Reverse, affirm, or modify the judgment or order as to any or all parties;
2. Remand the matter and order a new trial/hearing on any or all issues presented;

3. If the appeal is from a part of a judgment or order, may reverse, affirm, or modify as to the part which is appealed;
4. Direct the entry of an appropriate judgment or order; or
5. Require such other action or further proceedings as may be appropriate to each individual action.

B. Criminal appeals: The Supreme Court may take any action in section A and/or:

1. Set aside, affirm or modify any or all of the proceedings subsequent to or dependent upon the judgment or order from which the appeal is taken;
2. Reduce the degree of the offense of which the appellant was convicted;
3. Reduce or raise the punishment within the limits of the particular statute, imposed by the District Trial Court, or
4. Order a new trial if justice so requires.

**Rule 19. Oral argument**

A. When: If, after a review of the briefs the appellate court finds that issues of fact or law remain unclear, oral arguments may be scheduled by the appellate court. An amicus curiae may be granted leave to participate in oral argument.

B. Procedure: The following procedure shall apply when conducting oral arguments:

1. Parties will be given at least ten (10) days notice of the scheduled date.
2. Each party shall have twenty (20) minutes to present arguments. Each party may reserve up to five (5) minutes for the purposes of rebuttal of the opposing party's arguments.
3. The appellant shall present that party's argument first. The argument shall consist of the appellant's position or positions on the issues presented in appeal.

4. The respondent shall present that party's argument after the appellant's presentation. The argument shall consist of the respondent's position(s) on the issues presented in the appeal.
5. The appellant, if any time was reserved for rebuttal, may present rebuttal arguments addressing the respondent's positions.
6. The respondent, if any time was reserved for surrebuttal, may present surrebuttal arguments addressing the appellant's positions.
7. Judicial officers may ask questions of any party at any time during the presentation. Time may be extended by the Chief Justice.

C. If a party or his counsel fails to appear for oral argument, the Court will hear the argument of the party who is present and the case will be decided upon the briefs, if any, the oral argument made and the notice and record of appeal.

#### Rule 20. Penalties

A. **Frivolous claims:** If an appeal or cross-appeal is found by the appellate court to be taken without substantial or reasonable grounds, the court may award to the prevailing party costs and attorney's fees.

1. Costs may be assessed against the appellant or cross-appellant, their advocate, or both jointly.
2. A finding of a frivolous appeal or cross-appeal will be made if one or more of the following elements are found by the appellate court:
  - a. The appeal or cross-appeal was filed, used, or continued bad faith, solely for the purposes of harassing or injuring the opposing party; or
  - b. The party or party's advocate knew, or should have known, that the appeal or cross-appeal was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

B. **Delay:** If the appellate court finds that an appeal or cross-appeal was taken for the purpose of delay, it may award one or more of the following to the opposing party:

1. Double costs;

2. A penalty of additional interest not exceeding 10% on the award amount affirmed;
3. Damages occasioned by the delay;
4. Attorney's fees.

C. Non-compliance with rules: Failure of a party to comply with a requirement of these rules or an order of the appellate court, does not affect the jurisdiction of the appellate court over the appeal but may be grounds for one or more of the following:

1. Dismissal of the appeal;
2. Summary reversal of the original hearing body decision;
3. Striking of a paper, document or memorandum submitted by a party;
4. Imposition of a penalty or costs on a party or party's advocate;
5. A finding of contempt against the party in non-compliance.
6. Other action as the appellate court considers appropriate.

#### **Rule 21. Subpoenas**

A. Issuance: Subpoenas may be ordered by the Supreme Court and issued by the clerk to compel the submission of specific documents or information to be used for consideration in the case.

1. Parties may submit a motion to the appellate court for the issuance of a subpoena upon a showing that an adverse party or witness is refusing to submit relevant documents, property, or other evidence for discovery or is refusing to appear before the Supreme Court.
2. A response from said adverse party or witness may be submitted to explain such a refusal.

B. Service: May be made following the requirements of service above or by any person not a party to the action, over the age of eighteen (18) years.

C. Endorsement: The person serving a subpoena shall endorse upon the copy served the person's name, title and the time, date and place of service.

D. Return to clerk: The person serving shall sign a return statement before the clerk stating the name of the case, the name of the person served, the place, date and time of service.

E. Failure to appear or submit: Failure to appear by a person properly served a subpoena or failure to submit required papers by order of subpoena may be deemed by the appellate court to be contempt on the part of the failing person.

F. Subpoena not needed: A person present before the appellate court may be required to testify in the same manner as if such presence had been compelled by a subpoena.

**Rule 22. Deliberations**

A. Motions: The appellate court may deliberate and deny or otherwise dismiss a motion by a party prior to the opposing party's receipt of the motion. Otherwise, the appellate court shall delay deliberation on any motion or until after a response brief has been filed or the due date for receipt of the response brief has expired,

B. Merits: The appellate court shall not deliberate upon the merits of any appeal until after receipt of the appellant's brief, respondent's brief, and appellant's rebuttal brief, or until after the expiration of the due date for the filing of such documents.

C. Judgment/Decision. A judgment or decision of the Supreme Court requires the approval of a minimum of four justices.

**Rule 23. Decision of the Supreme Court**

A. Time: Within ten (10) days after the hearing of the case, the Supreme Court will render a decision, render a preliminary decision but reserve time to issue a written opinion, or inform the parties that additional time will be required.

B. Final procedure: This decision shall be in writing, signed by the Justices sitting on the case who agree with the decision and filed with the Clerk of the Supreme Court. The Clerk of the Supreme Court shall then send a copy of the decision to each party and the Clerk of the ~~District Trial~~ District Trial Court. Upon receipt of the decision, the Clerk of the ~~District Trial~~ District Trial Court shall report the decision to the Trial Court Tribal Judge for appropriate action.

**Rule 24. Petition for rehearing**

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**NCA 10-190**

A. Time: A petition for a rehearing before the Supreme Court may be filed within ten (10) days after the decision of the Court has been rendered and the adverse party shall have seven (7) days thereafter in which to serve and file objections thereto.

B. Grounds: A petition for rehearing may be presented on the following grounds and no others:

1. That some facts, material to the decision, or some question decisive of the case submitted by counsel, was overlooked by the Court, or
2. That the decision is in conflict with an express statute or controlling decision to which the attention of the Court was not directed.

C. Procedure: The rehearing may be held with or without oral argument and will be decided only upon the petition and the objections thereto.

**Rule 25. Substantial and insubstantial errors on appeal**

A. Any defect, irregularity or variance which does not affect substantial rights shall be disregarded.

B. Defects affecting jurisdictional or constitutional rights may be noticed although they were not brought to the attention of the **District Trial** Court sitting as the **District Trial** Court.

**Rule 26. Indigent appeal**

A. Petition: Upon imposition of any sentence in a criminal case a defendant may file in the **District Trial** Court a petition requesting that he or she be furnished with a transcript of the proceeding at his or her trial and that the filing fee for the notice of appeal, the transmission fee of the record on appeal and the transcript fee be waived because of the defendant's indigence.

B. Verification: The petition shall be verified by the defendant and shall state facts showing that he or she is at the time of the filing of the petition without financial means to pay the filing fees and the cost of the transcript. If the trial judge who imposed sentence or in his or her absence any judge of the **District Trial** Court finds that the defendant is without financial means with which to pay the filing fees or the transcript fee, he shall order the Clerk of the **District Trial** Court to produce the transcript and waive the filing fee for the notice of appeal and the transmission of the record on appeal.

C. Appeal: If the petition provided for the subsection "A" above is denied by the **District Trial** Court, a petition so to proceed may be filed in the Supreme Court within ten (10) days after entry of the denial. The petition shall be accompanied by a copy of the verified petition filed in the **District Trial** Court and of the statements of reasons for denial given by the **District Trial** Court.

Rule 27. Habeas corpus

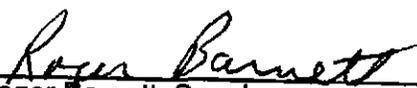
A. Filing the writ: A writ of habeas corpus may be filed by any person who is detained in the Nation's custody before any hearing on the merits of the charges against him or her. The writ may be made by the prisoner alone, or if requested by the prisoner, the Clerk of the **District Trial** Court must make such a writ on behalf of the prisoner. The writ shall state the reasons why the prisoner feels he or she is being wrongfully detained and shall immediately be served upon the Chief Justice of the Supreme Court.

B. Hearing: The Chief Justice upon receipt of such writ must call a hearing on the writ within one (1) day after receipt thereof, unless on a weekend or holiday, in which case the hearing shall be called the next day after a weekend or holiday. Three Justices must sit at the hearing and the prisoner and/or his counsel may be present to present oral arguments on the merits of the writ. The Supreme Court may also summon tribal officials and request a record of the charge to be presented by the Clerk of the **District Trial** Court. If the Justices find that the prisoner has been unlawfully detained and jailed they may proceed affirmatively upon the writ of habeas corpus. The writ of habeas corpus in no way affects the charge against the defendant and the Tribe may proceed to charge the defendant under the legal methods and procedures provided under this Code.

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

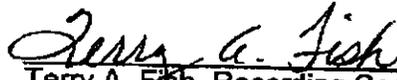
**ENACTED** by the Muscogee (Creek) National Council on this 30th day of October 2010.

**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**

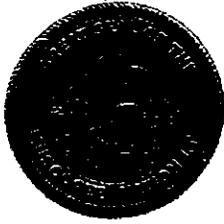
I, the undersigned, certify that the foregoing is a true extract from the minutes of the Muscogee (Creek) National Council comprised of twenty-six members with **Twenty-Four** members attending this meeting on the **30th day of October 2010**, and that the above is in conformity with the provisions therein 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

**APPROVAL**

I, the Principal Chief of the Muscogee (Creek) Nation, hereby affix my signature this \_\_\_\_\_ day of \_\_\_\_\_, 2010, to the above Law, **NCA 10-190** 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 10-190 herewith:

**RECEIVED**

*RD*

NOV 12 2010

11-12-10A00:43 RCVD

**National Council Office**

## **A MESSAGE OF THE PRINCIPAL CHIEF RETURNING NCA 10-190 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 10-190, entitled "A LAW OF THE MUSCOGEE (CREEK) NATION AMENDING MCNCA TITLE 27 ENTITLED, 'Judicial Procedures'" as a VETO with the following objections:

**OBJECTION ONE:** The proposed NCA 10-190 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 10-190 in Appendix 1, Rule 4.B., Rule 11.B. and Rule 14 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 10-190 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

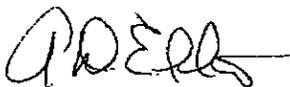
establish procedures to insure that the appellant receives due process of law and prompt and speedy relief." The proposed NCA 10-190 has been passed unilaterally by the National Council, with no collaboration or consultation of any sort with the Justices of the Supreme Court. The National Council does not have the constitutional authority to promulgate rules of the Supreme Court. As such, proposed NCA 10-190 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 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 10-190 exceed the boundaries of legitimate National Council actions by unnecessarily burdening the Judicial Branch with provisions such as requiring oversight of Judicial Branch budgets by the Controller 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 10-190 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 FOUR:** The Principal Chief believes that the amendments contained in NCA 10-190 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. In any event, such amendments are not necessary given the veto of NCA 10-189.

For the reasons outlined above, NCA 10-190 is hereby returned as a VETO.

Sincerely,



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

**DATED: November 10, 2010**

ADE/ldy