

UNITED KEETOOWAH BAND OF
CHEROKEE INDIANS
IN OKLAHOMA

COURTS ACT of 2022

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CHAPTER 1

GENERAL PROVISIONS

Section 101. Authorization

There is hereby established, ordained, and activated pursuant to the powers vested in the Council by the Constitution of the United Keetoowah Band of Cherokee Indians in Oklahoma, the Judicial Branch of the Government of the United Keetoowah Band of Cherokee Indians in Oklahoma with a lower court known as the District Court and an upper court known as the Supreme Court.

Section 102. Definitions

The following words have the meanings given below when used in this Title, unless a different meaning is obvious from the context:

(a) “Cherokee Reservation” shall mean all land within the exterior boundaries of an area that was set aside by treaties with the federal government for the Cherokee people, including the predecessors of those Cherokees who Congress would later recognize as a separate tribe called the “Keetoowah Indians of the Cherokee Nation of Oklahoma,” and which would organize as the United Keetoowah Band of Cherokee Indians in Oklahoma, which includes all, or a portion, of fourteen counties in today’s eastern Oklahoma.

(b) “Common Law” shall mean judge-made law, which may be adopted from prior orders or opinions from the Tribe’s Courts, or in the absence of such precedent, from other jurisdictions.

(c) “Code” shall mean the Statutory laws of the Tribe.

(d) “Constitution” shall mean the Constitution of the Tribe.

(e) “Court Administrator” shall mean the top administrative position at the Tribal Court, who is responsible for budgeting, personnel, facilities, and management of the Tribal Courts.

(f) “District Court” shall mean the lower or general trial court operating within the Territorial Jurisdiction of the Tribe.

(g) “They,” “them,” and “theirs” shall mean the singular masculine, feminine, and neuter forms as appropriate unless a particular masculine, feminine or neuter form is necessary for the phrase to have meaning.

(h) “Traditional Law” shall mean standards or practices from tribal customs and usages.

(i) “Tribe” shall mean the United Keetoowah Band of Cherokee Indians in Oklahoma.

(j) “Tribal Jurisdiction” means all Indian Country as defined in 18 U.S.C. § 1151, whether within or outside of the Reservation, which is subject to the jurisdiction of the Tribe, but excluding all lands held by the United States in trust for the Cherokee Nation of Oklahoma, or owned in fee by the Cherokee Nation of Oklahoma.

(k) “Supreme Court” shall mean the Court of last resort to which appeals may be taken, as of right, from the District Court. The judicial decisions of the Supreme Court are final and are not subject to further appeal.

Section 103. Territorial Jurisdiction

The territorial jurisdiction of the Tribe and its Courts shall extend to all Indian Country, including, and within the Cherokee Reservation. The Tribe asserts exclusive tribal territorial jurisdiction over all lands within the Cherokee Reservation that are held by the United States in trust for the Tribe, as well as all lands within the Cherokee Reservation that are owned by the Tribe in any form, including by any arm of the Tribe.

Section 104. Civil Jurisdiction

The Courts shall have general jurisdiction over all civil actions arising under the Constitution, laws, or treaties of the Tribe, including the Tribe’s Traditional Law and Common Law, and which arise within, or have substantial effects within, the territorial jurisdiction of the Tribe. Personal jurisdiction shall exist over all defendants who reside or do business within the Territorial Jurisdiction of the Tribe; who are served within the Territorial Jurisdiction of the Tribe; and who may consent to such jurisdiction. The act of entry within the Territorial Jurisdiction of the Tribe shall be considered consent to the jurisdiction of the Courts with respect to any civil action arising out of such entry. The act of moving a product into, or causing a service to be provided in, the Territorial Jurisdiction by an extraterritorial seller, merchant, or their agent(s) shall be considered consent by the seller or merchant to the jurisdiction of this Court for any dispute arising out of any sale, commercial transaction, or service, or action arising out of the use or operation of the product sold, regardless of where the sale or transaction was entered into or took place.

Section 105. Criminal Jurisdiction

The Courts shall have original jurisdiction over criminal offenses enumerated and defined in any code adopted by the Tribe and not prohibited by federal law.

Section 106. Juvenile Jurisdiction

Except as otherwise provided by Tribal law, the District Court shall have jurisdiction in proceedings and matters affecting dependent or neglected children, children in need of supervision, or children under the age of eighteen (18) accused of crime, when such children are found within the territorial jurisdiction of the Tribe, or when jurisdiction is transferred to the Court pursuant to law. The Supreme Court shall hear appeals in juvenile cases as in other civil actions.

Section 108. Law to be Applied

The Courts shall apply the Tribal Constitution, and the provisions of all statutory law heretofore or hereafter adopted by the Tribe. In matters not covered by Tribal Statute, the Courts shall apply Traditional Law and Common Law. When in doubt as to the Traditional Laws, the Court may request the advice of counselors and tribal elders familiar with them. In any dispute not covered by the Tribal Constitution, Tribal Statute, Traditional Law, or Tribal Common Law, the Court may apply any laws of the United States or any State which would be cognizable in the court of general jurisdiction therein, and any regulation of the Department of the Interior which may be of general or specific applicability. Upon this Code becoming effective, neither Part 11 of Title 25 of the Code of Federal Regulations, except those sections which are effective when they pertain to funding from the Bureau of Indian Affairs, nor State law shall be binding upon the Court unless specifically incorporated into tribal law by Tribal Statute or by a decision of the Tribal Courts adopting some federal or state law as Tribal Common Law.

CHAPTER TWO

DISTRICT COURT

Section 201. Judges of the District Court

The District Court shall consist of a Chief Judge, and such other District Judges, Special Judges, as may be appointed by the Council. Judges may be either part-time or full-time, at the Council's discretion.

Section 202. Minimum qualifications of Judges of the District Court

(a) To be eligible for appointment as a Judge on the District Court, a person must be:

- (1) an enrolled citizen of the Tribe, or
- (2) the parent, child, or spouse of an enrolled citizen of the Tribe, or
- (3) domiciled within the Territorial Jurisdiction of the Tribe; and

(b) an attorney, or graduate of an American Bar Association approved law school; and

(c) have demonstrated moral integrity and fairness in business, public and private life; and

(d) have not been convicted of any felony in any jurisdiction or an offense punishable by banishment from the Tribe's Territorial Jurisdiction, whether or not actually imprisoned or banished, and have not been convicted of any offense, except traffic offenses, for a period of two (2) years preceding their appointment. The two-year period shall begin to run from the date the person was unconditionally released from supervision of any sort as a result of a conviction; and

(e) have regularly abstained from the excessive use of alcohol and any use whatsoever of illegal drugs under tribal law, or psychotoxic chemical solvents; and

(f) be not less than twenty five (25) years of age; and

(g) not be a member of Council, or the holder of any other elective Tribal Office of this Tribe, provided, that a candidate who is a member of Council, or the holder of some other elective Tribal Office, may be confirmed as a Judge subject to resignation from the other office.

Section 203. Manner of Selection of Justices and Judges

Upon a judicial vacancy occurring, or the Council's decision to open a new position, justices and judges of the Tribe shall be nominated by the Chief and confirmed by the Council in the following manner:

(a) Within thirty (30) days after a vacancy occurs, the Chief shall cause a notice of the vacancy, stating the minimum qualifications, salary, and any other pertinent information, to be published on the Tribe's website, in the Tribal newspaper, in at least one local newspaper, and in such online sources as the Chief shall direct. The notice shall direct that inquiries, nominations, and applications be directed to the Tribal Secretary who shall keep a permanent record of responses to such notices.

(b) No sooner than twenty (20), nor more than thirty (30) days after the date on which last notice was published or posted, the Secretary shall deliver the names and files of all persons nominated or applying for the judicial office to the Chief, who shall select no more than three qualified candidates for Judicial Office and place consideration of the candidate(s) they nominates on the agenda of the next regular or special meeting of the Council.

(c) The Council shall review the qualifications of the nominees and may interview nominees at its discretion. In making a selection, the Council shall give preference to those candidates who:

- (1) have more formal education and experience in the legal field,
- (2) by written examination conducted by the Supreme Court, or by interview, have shown they are familiar with the Constitution, codes, Traditional Law, and Common Law of the Tribe, and
- (3) have demonstrated decision-making ability.

(d) If a nominee for the judicial office is confirmed by the Council, the nominee shall be sworn into office by the Chief Justice, or the next senior available justice of the Supreme Court.

(e) If the nominee(s) is not confirmed, the Chief shall either republish the notice and establish a new list of eligible candidates, or they may reconsider the candidates on the list gathered from the previous notice. The nomination and confirmation process shall continue until a nominee has been confirmed.

(f) Not less than sixty (60) days prior to the date that is six (6) years after a judicial officer's confirmation, that judicial officer may file a request with the Secretary to be considered for confirmation to a new term at the next meeting of the Council at which a quorum is present. If the Council does not confirm the outgoing officer, they shall so declare and direct the Chief to begin the selection process.

Section 204. Term of Office

All Judges of the District Court shall serve terms of office that are approximately six (6) years long, beginning from the date of confirmation and lasting until their successor takes office, unless removed for cause, or by death or resignation.

Section 205. Oath of Officer

Before assuming office, each Judge or Special Judge shall take an oath to support and protect the Constitution of the Tribe and to administer justice in all causes coming before them, without regard to the person before them, such oath to be administered by the Chief Justice or the next senior available Justice of the Supreme Court, as soon after confirmation as may be practical.

Section 206. Duties and Powers of Judges

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

(a) Be responsible for creating and maintaining rules of the Court, not in conflict with the Tribal Code or the Rules of the Supreme Court, and regulating conduct in the District Court, for the orderly and efficient administration of justice. Such rules must be filed in the office of the Tribal Secretary and the Tribal Court Administrator before becoming effective.

(b) Issue administrative orders,

(c) Hold Court regularly, or as necessary, at a designated time and place,

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

(e) Hear and decide all cases properly brought before the Court,

(f) Enter all appropriate orders and judgments,

(g) Issue all appropriate warrants and subpoenas,

(h) Keep all Court and other records as may be required, and

(i) Perform the duties of the Tribal Court Administrator or Clerk in their absence.

Section 207. Presiding Judges

Unless otherwise specified in the applicable tribal code, all cases in the District Court shall be heard and decided by a single Presiding Judge, as assigned by the Chief Judge.

Section 208. Special Appointments

Whenever, due to vacancies in office, disqualification of Judges, or other cause, a trial panel cannot be convened from the available Judges, or an additional Judicial officer is needed to efficiently dispense with the business of the District Court due to vacancies in office,

disqualification of judges, or other cause, the Supreme Court may designate by Court order one or more duly qualified Justices to sit on the trial panel, or may make one or more special appointments from among the members of the Bar of the Court to act as a Special Judge to hear specific named cases or to act for a specified time. No special procedure need be followed in making such appointments and such Special Judges need not meet the qualification of Section 202 (a) or (g) of this Title. When a member of the Supreme Court sits on the trial panel, that Justice may not participate in any appeal of the case to the Supreme Court. Special Judges may be compensated from the Court fund in such reasonable amounts as the Supreme Court shall order.

Section 209. Compensation of Judges

(a) The compensation of all Judges of the District Court shall be set by resolution of the Council. No Judge shall have their compensation reduced during their term of office, except that if funds be unavailable for appropriation, the compensation of all judicial officers may be reduced proportionally to the availability of funds.

(b) Nothing in this Section shall prohibit the Tribal Council from contracting or agreeing with the Bureau of Indian Affairs or any other government, agency, or organization that such government, agency, or organization shall provide all or part of the compensation of a Judge or Magistrate of the District Court, and shall in return have control over the compensation of such Judges or Magistrate. In such situations the Council shall recommend to the funding party the compensation of District Judges and Magistrates.

(c) Subsection (a) of this Section shall not apply to Magistrates. The compensation of all Magistrates shall be set by order of the Supreme Court from available appropriated funds, or from funds made available pursuant to an agreement entered into according to Subsection (b) of this Section.

Section 210. Removal of Judges

The Judges of the District Court shall be removed only for cause by the Council upon the recommendation of the Supreme Court. Neither the Supreme Court, nor the Council, may remove a Judge of the District Court independently, but the Supreme Court must first recommend the removal, and the Council must then concur. The term “cause” shall include any reason sufficient for disbarment of an Attorney from the Bar of the Supreme Court, a serious violation of the Canons of Judicial Ethics promulgated by the American Bar Association, or a serious violation of the Canons of Judicial Ethics promulgated by the Supreme Court of the Tribe.

Section 211. Disqualifications. Conflict of Interest

(a) No Judge shall hear any case when they have a direct financial, personal, or other interest in the outcome of such case or is related by blood or marriage to one or both of the parties as: husband; wife; son; daughter, father, mother, brother, sister, grandfather, grandmother; or any legal dependent. A Judge should attempt to prevent even the appearance of partiality or impropriety,

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

(c) Any Judge otherwise disqualified because they are related to one or more of the parties, may hear a case if all parties are informed of the blood or marriage relationship on the record in open Court and of their right to have a different Judge hear the case, and consent to further action by that Judge in the case in open Court upon the record, or in a writing filed in the record, in spite of the conflict of interest.

Section 212. Decisions

(a) Each decision of the District Court at trial shall be recorded on a form approved by the Supreme Court for such purpose or embodied in written findings of fact and conclusions of law containing all the information required by the approved form. The form shall provide for recording the date of the decision, the case number, the names of all parties, the substance of the complaint, the relevant facts found by the Court to be true, the Court's decisions, and the conclusions of law supporting the Court's decisions.

(b) The decision form or the written findings of fact and conclusions of law shall be placed in the case file as an official document of the case.

Section 213. Records

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

(a) In all Court proceedings, the Court Reporter, which may be the Clerk in the absence of an official Court Reporter, shall record the proceedings of the Court by video, audio, electronic or stenographic means. The recording shall be identified by Case number. At the close of each hearing, or as otherwise specified, the Reporter shall cause a transcript to be made of the recording upon the request of any party or the Court as a permanent part of the case record. Court Reporters may be licensed by the Supreme Court and shall be allowed such fees from the Parties for their services as shall be set by Rule of the Supreme Court.

(b) The Clerk and the Tribal Secretary shall keep on separate systems electronic folders/files bearing the case name and every written document filed in each case.

(c) All Court records shall be public records except as otherwise provided by law or Court order.

(d) After ten (10) years, court records, except orders, opinions, and judgments, may be destroyed or deleted.

(e) The Supreme Court and the District Court may publish on the Tribal Court website, or in a similar fashion, all of their decisions and opinions in cases before them, for a period to be decided by the Court Administrator. The Court Administrator and the Tribal Secretary shall ensure that all

such decisions and opinions are permanently preserved in their separate case management systems. Unless directed otherwise by Court order or Council resolution, the Court Administrator may send such final decisions and opinions to outside libraries, clearinghouses, or legal databases for public viewing.

(f) Aside from the official record, no electronic, stenographic, or other mechanical aid may be used for the recording of any Court proceeding in the Courtroom or its environs, except as approved by the judge.

Section 214. Files

(a) The official Court files shall be organized and maintained under the direction and control of the Court Administrator. Such files may be kept electronically, as long as the electronic filing system is considered by industry professionals as safe and secure. Except as may be ordered by the Court or where tribal law requires the subject files to be sealed, the Court Administrator shall send a duplicate copy of each public file to the Tribal Secretary, who shall keep a separate file system that may also be electronic. Except as otherwise provided by law, such as in juvenile cases, Court files on a particular case are generally open to the public. Any person may inspect the records of a case and obtain copies of documents contained therein during normal business hours, so long as the record is not sealed.

(b) Any person desiring to inspect the records of a case or obtain copies thereof may inspect such files only during the ordinary working hours of the Clerk, Court Administrator, or a Judge. Under no circumstances shall anyone, except a Judge, licensed advocate, attorney, or Court personnel, take a file from the Clerk's office.

(c) An electronic copy of any document contained in such a file may be obtained from the Clerk or Court Administrator by any person, free-of-charge, if the person can supply an email address or other method of electronic transmission. A hardcopy of any document contained in such a file may be obtained from the Clerk or Court Administrator by any person for a reasonable print or copy fee, to be set by rule of the Supreme Court. The Clerk or Court Administrator are hereby authorized to certify under the seal of their respective office that such copies are accurate reproductions of those documents on file in the Court. The Supreme Court by rule may provide for such certification.

Section 215. Motion Day

The Judge presiding over any case, at any time or place, and on such notice, if any, as they consider reasonable, may make orders for the briefing, advancement, conduct, and hearing of actions, or, the Court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

Section 220. Practice Before the Tribal Court

(a) No person shall be denied the right to have a member of the Bar of the Court represent them and present their case before the Courts.

(b) The Supreme Court, after conferring with the District Court, shall make rules which shall govern who may practice law within the territorial jurisdiction of the Tribe, including before the District Court and the Supreme Court. Such rules shall be filed in the office of the Tribal Secretary and the office of the Clerk of the Supreme and District Court.

(c) The Clerk shall maintain a list of attorneys, with contact information, who are authorized to practice law within the territorial jurisdiction of the Tribe, including before the Tribal Courts. Such list may be published on a Tribal Court website and made available to any person who requests it.

Section 252. Tribal Court Administrator and Court Personnel

The Council shall appoint a Tribal Court Administrator, who is to manage the daily operations of the Tribal Court, including coordination with judges, attorneys, court staff, and law enforcement, and manage the staff and systems of the Tribal Court, manage the Tribal Court finances and budget, and ensure the calendaring, docketing, or other tracking of hearings, trials, sentencing, probation, and other Tribal Court functions.

The Tribal Court Administrator is a supervisory administrative position of the Judicial Branch of the Government of the Tribe with the same rank as Department Director. The Tribal Court Administrator shall be charged with the preparation of Court budgets, the acquisition of necessary supplies, the maintenance and upkeep of the Court's website and virtual law library, the custody, upkeep and maintenance of the records, papers, effects, and property of the Court, the appointment and supervision of Court personnel, and such other matters as shall be assigned to the Tribal Court Administrator by law or Court rule.

Section 253. Other Places of Sitting

The District Court and Supreme Court may sit at such places within the territorial jurisdiction of the Tribe, as shall be available and suitable for the convenience of the people.

CHAPTER THREE

SUPREME COURT

Section 301. General Provisions

The Supreme Court shall hear any properly filed appeals from final orders or judgments rendered by the District Court and tribal agencies from which an appeal to the Supreme Court is authorized, appeals of other orders of the District Court subject to interlocutory appeal, and such original actions as may be provided by tribal law. The Supreme Court shall render its decision in writing to the parties of interest, file a copy thereof in the Tribal Court Clerk's office and the Tribal Secretary's office. The decision of the Supreme Court shall be final and binding upon the parties.

Section 302. Composition of the Supreme Court

The Supreme Court shall consist of one (1) Chief Justice, and two (2) Associate Justices.

Section 303. Minimum qualifications of Justices

To be eligible for selection or confirmation as a Justice of the Supreme Court, a person shall:

(a) an attorney, and/or a graduate of an American Bar Association approved law school; and

(b) have demonstrated moral integrity and fairness in business, public, and private life, and

(c) have never been convicted of a felony or an offense punishable by banishment or involving moral turpitude whether or not actually imprisoned or banished, and have not been convicted of any offense, except traffic offenses, for a period of five years preceding their appointment. The five-year period shall begin to run from the date the person was conditionally released from supervision of any sort as result of a conviction, and

(d) abstain from the excessive use of alcohol and any use whatsoever of illegal drugs under tribal law, or psychotoxic chemical solvents, and

(e) be not less than thirty (30) years of age, and

(f) not be a member of the Council, or the holder of any other elective Tribal office of this Tribe, provided, that a candidate who is a member of the Council, or the holder of some other elective Tribal office, may be confirmed as a justice subject to resignation from office.

Section 304. Selection of Justices

Justices shall be selected in accordance with the provisions of Section 203 of this Title.

Section 305. Term of Office

All Justices of the Supreme Court shall serve approximately eight (8) year terms of office beginning from the date of their confirmation and until their successors take office, unless removed for cause, or by death or resignation.

Section 306. Oath of Office

Before assuming office, each Justice shall take an oath to support and protect the Constitution of the Tribe and to administer justice in all causes coming before the Supreme Court with integrity and fairness, and without regard to the person before them, such oath to be administered by the Chief Justice, the Chief Judge of the District Court, or the next most senior Justice of the Court.

Section 307. Duties and Power of Justices

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

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

(b) Hear appeals from the District Court at a designated time and place.

(c) Enter all appropriate orders and judgments.

(d) Keep all appropriate records as may be required.

(e) Perform any and all other duties as may be required for the operation of the Supreme Court and the District Court, including the issuance of administrative orders. The authority to issue administrative orders that affect only the District Courts may be delegated to the Presiding Judge of the District Courts.

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

(g) Perform any of the duties and powers of a District Judge in appropriate cases.

Section 308. Compensation of Justices

(a) The compensation of all Justices of the Supreme Court shall be set by resolution of the Council. No Justice shall have their compensation reduced during their term of office, except that

if funds be unavailable for appropriation, the compensation of all judicial officers may be reduced proportionally to the availability of funds.

(b) Nothing in this Section shall prohibit the Tribal Council from contracting or agreeing with the Bureau of Indian Affairs or any other government, agency, or organization that such government, agency, or organization shall provide all or part of the compensation of Justice(s) of the Supreme Court, and shall in return have control over the compensation of such Justice(s). In such situations the Council shall recommend to the funding party the compensation of Supreme Court Justices.

Section 309. Removal of Justices

Justices of the Supreme Court may not be removed from office except upon final conviction of a felony, or an offense punishable by banishment, or an offense involving moral turpitude, or upon proof of a violation of an ethical rule of the Court of such serious nature as would result in the disbarment of an attorney of the Court, in which case(s) the Supreme Court shall enter its order disbarring and expelling such Justice from the Court and declaring that judicial office vacant.

Section 310. Disqualifications. Conflict of Interest

(a) No Justice shall hear any case when they have a direct financial, personal, or other interest in the outcome of such case or is related by blood or marriage to one or both of the parties as: husband, wife, son, daughter, father, mother, brother, sister, grandfather, grandmother, or any other legal dependent. A Justice should attempt to prevent even the appearance of partiality or impropriety.

(b) Either party in interest in such case or the Justice may raise the question of conflict of interest. Upon decision by the Chief Justice of the Supreme Court that disqualification is appropriate, a Judge, Magistrate, or special Justice may be appointed to sit on the Supreme Court to hear the matter before the Court.

(c) Any Justice related to one or more of the parties in one of the relationships enumerated in Subsection (a) of this Section, may hear a case if all parties are informed of the blood or marriage relationship on the record in open Court and of their right to have the interested justice disqualified from the case, and consent in writing filed in the case, or upon the record in open court, to the conflict of interest. Normally, the Justice knowing of the conflict of interest should simply file an order recusing themselves from the action and stating their relationship with the parties. Thereafter, if the parties consent to that Justice hearing the action, they should file their written consent for such Justice to continue in the case. If all parties file such consents, the Justice may then enter their order withdrawing their recusal on grounds of the consent filed. A consent to the withdrawal of a Justice's recusal may not be withdrawn.

Section 311. Decisions

(a) All decisions and opinions of the Supreme Court shall be rendered in writing to the parties in interest, transmitted to the District Court in appellate cases, filed in the Tribal Court Clerk's

office and the Tribal Secretary's office, and recorded on a form approved by the Supreme Court for such purpose. The form shall provide for recording the date of the decision or opinion, the case number, the names of the parties before the Court, the issues presented of appeal or the substance of the complaint in an action within the Court's original jurisdiction, the relevant facts upon which the decision on appeal was made or as found by the Court to be true in an original action, the decision, and the legal principles and reasoning supporting the Court's decision. A written Court opinion containing the above information may be filed by the majority or dissent in lieu of the form.

(b) Each Justice shall record in writing their decision, or the reason they are not participating when they are disqualified, on each case decided by the Supreme Court as part of the permanent record.

(c) The decision form or Court opinion shall be placed in the file of the case on appeal as an official document of the case.

Section 312. Rules of the Court

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

(b) The Rules shall be filed in the Court Clerk's office and the office of the Tribal Secretary.

(c) The Court may require the observance of its Rules as a prerequisite before taking any action in a matter.

Section 313. Special Appointments

Whenever, due to vacancies in office, disqualification of Justices, or other cause, a minimum of three (3) Justices to hear and decide the merits of a case before the Court cannot be convened from the available Justices, the Court, including any disqualified Justices, may designate by Court Order one or more duly qualified Judges of the District Court or Magistrates, not having served on the trial of the case, or some member of the Bar of the Court to sit on the Supreme Court as a Special Justice for purposes of the appeal or the original action, or request the Council to make one or more special appointments to hear specific named cases, or cases filed prior to the date a minimum of three (3) Justices can be convened on such cases. No special procedure need be followed in making such appointments however, special appointments by the Council shall be made by formal action with notice to the parties in a case where appropriate.

Section 314. Supreme Court's Action on Appeals

In any appeal properly before it, the Supreme Court shall have full authority to affirm, reverse, modify, or vacate any action of the District Court or other entity from whom the appeal is taken as

authorized by law, and may enter such order as is just, or remand the case for the entry of a specified judgment, for a new trial, or for such further action in accordance with the Supreme Court's opinion or instructions as shall be just.

Section 315. Sitting of the Court

Both the Supreme Court and the District Court will be called into session when necessary to address a case. The Court administrator shall be responsible for informing the Courts there are cases pending and Court should be called into session. All trials shall be commenced at a designated date and time determined by the Court with reasonable notice given to the parties.

At any time, the Courts may implement a consistent schedule to hear cases, specifying dates and times that shall constitute a session.

Section 316. Court Fund

There is hereby authorized to be maintained by the Tribal Court Administrator under the supervision of the Court, a fund to be known as the "Court Fund" into which shall be deposited all fines, fees, penalties, costs, and other monies authorized or required by law to be paid to the Courts which are not to be distributed to any party to a case and for which no requirement is imposed by law for the deposit of such funds into a particular account. These funds shall be maintained by the Court and used exclusively for the purchase of supplies, materials, and personal property for the use of the Court, the maintenance of the Court law library, and such other applications as shall be specifically authorized by law. The Court Fund shall not be used for the payment of compensation for any Justices, Judges, or Court personnel.

CHAPTER FOUR

COURT CLERK

Section 401. Establishment

There is hereby established within the Tribal Court a Court Clerk's Office to be administered by one (1) Court Clerk and such Deputy Court Clerks as may be necessary. The Court Clerk shall be appointed and supervised by the Tribal Court Administrator.

Section 402. Clerk to Serve Supreme and District Courts

Until such time as the Supreme Court determines that separate Clerks are necessary to efficiently administer the business of the Courts and funding is available, the Court Clerk shall serve as the Clerk of the Supreme Court and the Clerk of the District Court. When serving the Supreme Court, the Clerk's title shall be "Clerk of the Supreme Court". When serving the District Court, the Clerk's title shall be "Clerk of the District Court."

Section 403. Powers and Duties

The Court Clerk shall have the following powers and duties:

(a) To undertake all duties and functions of the Tribal Court Administrator when the Tribal Court Administrator is unavailable to exercise a function that is necessary and proper and authorized by law.

(b) to collect all fines, fees, and costs authorized or required by law to be paid to the Court, to issue receipts therefore, and to deliver such monies to the Tribal Treasurer for deposit in the Court Fund.

(c) to accept monies for the payment of civil judgments and to pay same by check to the party entitled to them. For the purpose of taking such action, the Clerk is authorized to maintain a bank checking account subject to the oversight of the Tribal Court Administrator, Judges and Justices of the Court, as the case may be, and to deposit and withdraw funds therefore. This account shall be audited at least once each year by the Tribal Accounting Department or an independent Certified Public Accountant.

(d) to administer oaths, issue summons and subpoenas, certify a true copy of Court records, and to accurately keep each and every record of the Supreme and District Courts.

(e) to provide a record in the absence of a Court Reporter to accurately and completely record all proceedings and hearings of the Courts. If a Court Reporter is available, the Court Reporter shall have the authority to administer oaths and undertake such other Court functions as shall be provided by law or Court Rule.

(f) to provide stenographic and clerical services to the Court and the Attorney General or when requested

(g) to act as librarian, and to keep and maintain the Court's law library.

(h) undertake all duties assigned or delegated to the Clerk's Office by tribal law or Court rule.

Section 404. Seal

The Tribal Court Administrator and Court personnel are authorized to have and use a seal which shall be circular in form and contain the words, "District Court", and the name of the Tribe around the edge thereof, and the words "Official Seal" or the official Tribal emblem in its center. The Supreme Court's seal shall be circular in form and contain the words "Supreme Court" and the name of the Tribe around the edge thereof, and the words "Official Seal" or the Tribal emblem in the center. The seal shall be impressed upon all warrants, subpoenas, summons, certified copies of records, judgments, orders, decrees, and similar documents, as evidence of their authenticity.

Section 405. Certification of True Copies

The Court Clerk is authorized to certify that a copy of any record in the office is a true and accurate copy of the record on file by signed stamp or writing placed on such copy, sealed with the seal of the District Court, and in substantially the following form:

CERTIFICATE OF TRUE COPY

I hereby certify that the above and foregoing is a true, complete, accurate and exact copy of the original of same as it remains of record on file in my office.

(SEAL)

Clerk of the District Court [or Supreme Court]

Date

Copies of records certified as herein provided shall be admissible as evidence without further authentication in all judicial and administrative proceedings of this Tribe.

Section 406. Trials and Hearings - Order in Chambers

All trials upon the merits, except as specifically provided by law and in children's cases shall be conducted in open court, and so far as possible and convenient, in a regular courtroom. All other acts or proceedings may be done or conducted by a Judge in chambers, without the attendance of the clerk or other court officials and in any place either within or without the Tribe's territorial jurisdiction; but no hearing, other than one *ex parte*, shall be conducted outside the Tribe's territorial jurisdiction without the consent of all parties affected thereby, except when determined by the Court to be necessary or expedient in children's cases, or when the Tribe has entered into

an agreement with another government for the sharing of judicial officers and courtroom space in which case the Court may sit in any place authorized by such agreement.

Section 407. Clerk's Office and Orders by the Clerk

The Clerk's Office with the Clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, but the Court may provide by rule or order that the Clerk's Office shall be open for specified hours on Saturdays or particular legal holidays other than New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Indigenous Peoples' Day, Veterans Day, Thanksgiving Day, and Christmas Day. All motions and applications in the Clerk's Office for issuing mesne (intermediate) process, for issuing final process, to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the Court are grantable by the Clerk, except as may be provided otherwise by specific tribal law. The Clerk's action may be suspended, altered or rescinded by the Court upon cause shown.

Section 408. Notice of Orders or Judgments

Immediately upon the entry of an order or judgment, the Clerk shall serve a notice of the entry by mail or email upon each party or their attorney who is not in default for failure to appear, and shall make a note in the docket of the mailing. Such mailing is sufficient notice for all purposes where notice of the entry of an order is required by law, but any party may in addition serve a notice of such entry in the manner provided in the Civil Procedure Act for the service of papers. Lack of notice of the entry by the Clerk does not affect the time to appeal or relieve or authorize the Court to relieve a party for failure to appeal within the time allowed, except as permitted in the Civil Procedure Act.

Section 409. Judgment Docket

The judgment docket shall be kept in the form of an index in which the name of each person against whom judgment is rendered shall appear in alphabetical order, and it shall be the duty of the Clerk immediately after the rendition of a judgment to enter on said judgment docket a statement containing the names of the parties, the amount and nature of the judgment and costs, and the date of its rendition, and the date on which said judgment is entered on said judgment docket; and if the judgment be rendered against several persons, the entry shall be repeated under the name of each person against whom the judgment is rendered in alphabetical order.

Section 410. Execution Docket

The Clerk shall keep a record, called an execution docket, and enter all judgements, abstracts, and transcripts of judgements. It must include each party against whom a judgment is rendered or whose property is affected by the judgement. The entry shall contain the names of the parties, the date and amount of the judgment and costs, and the date of the execution. The Clerk shall also record in full the return of the Chief of the Tribal Police to each execution, and such record shall be evidence of such return, if the original be mislaid or lost. This shall be a public record and open during the Court's business hours to all people who wish to inspect it.

Section 411. Clerk may Collect Judgment and Costs

Where there is no execution outstanding, the Clerk of the Court may receive the amount of the judgment and costs, and receipt therefore, with the same effect as if the same had been paid to the Chief of the Tribal Police on an execution, and the Clerk shall be fined in the same manner and amount as the Chief of the Tribal Police for refusing to pay the same to the party entitled thereto, when requested, and shall also be liable on their official bond.

Section 412. Clerks to Issue Writs and Orders

All writs and orders for provisional remedies, and process of every kind shall be prepared by the party or their attorney who is seeking the issuance of such writ, order, or process and shall be issued by the Clerk. Except for summons and subpoenas, the Clerk shall not issue any such writs except upon order or allowance of the Court unless specific authorization for their issuing such document is found in the Tribal Code.

Section 413. Clerk to File and Preserve Papers

It is the duty of the Clerk to file together and carefully preserve all papers delivered to them for that purpose in every action or proceeding.

Section 414. Each Case to be Kept Separate

The papers in each case shall be kept in a separate file marked with the title and number of the case.

Section 415. Endorsements

The Clerk shall endorse upon every paper filed with them, the day of filing it, and upon every order for a provisional remedy, and upon every undertaking given under the same, the day of its return to their office.

Section 416. Entry on Return of Summons

The Clerk shall, upon the return of every summons, enter upon the appearance docket whether or not service has been made; and if the summons has been served, the name of the defendant or defendants summoned and the day and manner of the service upon each one. The entry shall be evidence in case of the loss of the summons.

Section 417. Material for Record

The record shall be made up from the complaint, the process, return, the pleadings subsequent thereto, reports, verdicts, orders, judgments, and all material acts and proceedings of the Court, but if the items of an account, or the copies of papers attached to the pleadings, be voluminous, the Court may order the record to be made by abbreviating the same, or inserting a pertinent description thereof, or by omitting them entirely. Evidence must not be recorded in the file or

appearance docket, provided that the transcript of testimony may be appended to the record when paid for by a party for the purpose of appeal.

Section 418. Memorializing Record

It is the duty of the Court to write out, sign, and record its orders, judgments, and decrees within a reasonable time after their rendition. To aid in the performance of this duty, the Court may direct the Court Clerk to prepare the written memorialization for its signature and, after it is signed, to file it in the case record, or the Court may direct the Clerk to prepare the written memorialization dictated by the Court and sign and file the same on the Court's behalf.

Section 419. Clerk to Keep Court Records. Books and Papers Statistical and Other Information

The Clerk shall keep the records, books and papers appertaining to the Court and record its proceedings, and exercise the powers and perform the duties imposed upon them by Tribal statute, order of the Court, or Court rule. The Clerk is directed to furnish annually, or at such times as shall be requested, without cost to the Supreme Court and to the Council, such statistical and other information as the Supreme Court or the Council may require, including, but without being limited to, the number and classification of cases:

- (a) Filed with the Court.
- (b) Disposed of by the Court, and the manner of such disposition.
- (c) The number of cases pending before the Court.

Section 420. Applicable to District and Supreme Court

The provisions of this Chapter shall apply to the Clerk of the Tribal District Court and the Tribal Supreme Court, insofar as they may be applicable.

Section 421. Bonds

The Court Clerk and each deputy Clerk shall be bonded by a position fidelity bond to guarantee the proper performance of their duties and their fidelity in the handling of the money and other property coming into their hands in the performance of their duties. The amount of such bond shall be set by the Council and the cost thereof shall be paid from Tribal funds.

CHAPTER FIVE

PROCESS

Section 501. Style of Process

The style of process shall be “The United Keetoowah Band To:” and all process shall be under the seal of the Court and shall be signed by the Court Clerk and dated the day it is issued.

Section 502. Appointment of Substitute for Tribal Police

The Court or a Judge thereof, or any Clerk in the absence of the Judge and upon their oral or written order, for good cause, may appoint a person to serve a particular process or order, who shall have the same power to execute it as the Chief of the Tribal Police. The person may be appointed on the application of the party obtaining the process or order, and the return must be verified by affidavit. The Clerk shall be entitled to the same fees allowed to the Chief of the Tribal Police for similar services.

Section 503. Tribal Police to Endorse Time of Receipt on Process

The Tribal Police shall endorse upon every summons, order of arrest, or for the delivery of property or of attachment or injunction, the day and hour it was received by them.

Section 504. Tribal Police to Execute and Return Process

The Tribal Police shall execute every summons, order, or other process, and return the same as required by law. However, whenever any party, their agent or attorney shall make and file with the Clerk of the Court an affidavit, stating that they believe that the Tribal Police will not, by reason of either partiality, prejudice, relation, or interest, faithfully perform their duties in any suit commenced in Court, the Clerk shall direct the original, or other process, in such suit to the Chief of the Tribe or their designate other than the Tribal Police who shall execute the same in like manner as the Tribal Police might or ought to have done, and who shall be subject to the same penalties as the Tribal Police if they fail to do so, unless they make it appear that they were prevented by evasion, impossibility, or inevitable accident from so doing

Section 506. Disposition of Fees

The Police fees allowed by the Court for the service of process and mileage shall be paid into the general miscellaneous account of the Tribal Police Department and may be transferred to another line item upon order of the Chief of the Tribal Police or used for any allowable expense or cost of the Tribal Police Department.

CHAPTER SIX

BONDS AND SURETIES

Section 601. Justification of Surety

A ministerial officer whose duty is to take security in any undertaking provided for by the Tribal Code shall require the person offered as surety, if not a qualified surety or bonding company, to make an affidavit of their qualifications, which affidavit may be made before such officer, and shall be endorsed upon or attached to the undertaking. If the undertaking is given by a qualified surety or bonding company, the credentials of the person making the undertaking shall be shown and attached thereto. The ministerial officer shall have the power to administer oaths for the purpose of making any affidavits required by this Chapter.

Section 602. Qualifications of Surety

The surety in every undertaking provided for by the Tribal Code, unless a surety or bonding company authorized to give their bond or undertaking by Tribal Law, irrevocably submits themselves to the jurisdiction of the Tribal Court for the purpose of enforcement of said bond or undertaking and must be worth double the sum to be secured, over and above all exemptions, debts, and liabilities. Where there are two or more sureties in the same undertaking, they must in the aggregate have the qualifications prescribed in this Section.

Section 603. Action by Tribe or Tribal Department - No Bond Required

Whenever an action is filed in the Court by the Tribe, or by direction of any department of the Tribe, its agencies, commissions, or political branches, no bond, including cost, replevin, attachment, garnishment, redelivery, injunction bonds, appeal bonds, or other obligations of security shall be required from such party either to prosecute said suit, answer, or appeal the same. In case of an adverse decision, such costs as by law are taxable against such party shall be paid out of the miscellaneous fund or other available fund of the party under whose direction the proceedings were instituted.

Section 604. Appearance Bond-Enforcement

(a) If a bench warrant or command to enforce a Court order by body attachment is issued in a case for divorce, legal separation, annulment, child support, or alimony, or in any civil proceeding in which a judgment debtor is summoned to answer as to assets, and the person arrested, pursuant to the authority of such process, makes a bond for their appearance at the time of trial or other proceeding in the case, the bond made shall be disbursed by the Court Clerk upon order of the Court to the party in the suit who has procured the bench warrant or command for body attachment rather than to the Tribe as the Court shall direct for the payment of any sums due. The penalty on the bond or any part thereof, shall, when recovered, first be applied to discharge the obligations adjudicated in the case in which the bond was posted and any excess shall be deposited in the Court fund. The party who is the obligee on such bond shall have the right to enforce its penalty

to the same extent and in the same manner as the Tribe may enforce the penalty or a forfeited bail bond.

(b) Upon forfeiture of a bond payable to the Tribe as ordered by the Court, including bail bonds, the Tribe may enforce the penalty on the bond upon motion filed in the case by any method authorized for the execution of civil judgments. All amounts received upon such forfeited bonds as penalty shall be deposited in the court fund. The Court may, for good cause shown, vacate an order of bond forfeiture.

CHAPTER SEVEN

MISCELLANEOUS

Section 701. Deputy May Perform Official Duties

Any duty enjoined by Tribal Code upon a ministerial officer, and any act permitted to be done by them, may be performed by their lawful deputy, unless otherwise specifically stated.

Section 702. Affirmation

Whenever an oath is required by the Tribal Code, the affirmation of a person, conscientiously scrupulous of taking an oath, shall have the same effect.

Section 703. Publications

Every daily or weekly newspaper published continuously for a period of two years in any county in which a portion of the tribal jurisdiction lies, or within or adjacent to the tribal jurisdiction, and the Tribal Newspaper and Tribal website shall be recognized and authorized to publish all publications and notices required or permitted to be published by the Tribal Code.

Section 704. Action on Official Bond

When an officer, executor, or administrator within the jurisdiction of the Tribe by misconduct or neglect of duty, forfeits their bond or renders their sureties liable, any person injured thereby, or who is, by law, entitled to the benefit of the security, may bring an action thereon in their own name, against the officer, executor, or administrator and their sureties, or may proceed in a proper case as provided in the Civil Procedure Act, to recover the amount to which they may be entitled by reason of delinquency.

Section 705. May be Several Actions on Same Security

A judgment in favor of a party for one delinquency does not preclude the same or another party from an action on the same security for another delinquency.

Section 706. Immaterial Errors to be Disregarded

The Court, in every stage of action, must disregard any error or defect in the pleadings, or proceedings, which does not affect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such immaterial or harmless error or defect.

Section 707. Payments Into Court for Minors and Incompetents

Where any amount of money not exceeding Five Hundred Dollars (\$500.00) shall be deposited and paid into Court by virtue of any judgment, order, settlement, distribution, or decree for the use and benefit of, and to the credit of, any minor or incompetent person having no legal guardian of

their estate appointed by the Court, and no person shall within ninety (90) days thereafter become the legal and qualified guardian of the estate of such minor or incompetent person, if it appears to the Court that such money is needed for the support of such minor or incompetent or that it is otherwise for the best interest of such minor or incompetent person, the Court may, in its discretion, order payment of such funds to be made to any proper and suitable person as trustee for such minor or incompetent person, with bond, as the Court may direct, to be expended for the support, use, and benefit of such minor or incompetent person. Such order may be made by the Court in the original cause in which the funds are credited upon the application of any interested person; and the Court may direct the Clerk of the Court to make payment of the same in installments or in one lump sum as may seem for the best interests of such minor or incompetent person. If a qualified guardian has been appointed by the Court with bond, the Court shall order the money paid to the guardian for the use of the minor or in subject to such restrictions and accounting as the Court may direct.

Section 708. Conserving Moneys obtained for Minors or Incompetent Persons

Moneys recovered in any court proceeding by a next friend or guardian ad litem for or on behalf of a person who is less than eighteen (18) years of age or incompetent in excess of Five Hundred Dollars (\$500.00) over sums sufficient for paying costs and expenses including medical bills and attorney's fees shall, by order of the Court, be deposited in a banking or savings and loan institution, approved by the Court. Until the person becomes eighteen (18) years of age, or competent to again handle their affairs, withdrawals of moneys from such account or accounts shall be solely pursuant to order of the Court made in the case in which recovery was had. When an application for the order is made by a person who is not represented by an attorney, the Judge of the Court shall prepare the order. This Section shall not apply in cases where a legal guardian has been appointed by the Court for the estate of the minor or incompetent person with adequate bond to secure any money released. In such cases, such money, or any portion thereof as the Court may direct, may be paid over to the guardian to be used exclusively for the support and education of such minor or incompetent person, subject to such restrictions and accounting as the court shall direct.

Section 709. Parties may Apply to Proceed *In Forma Pauperis*

In general: The Court shall use a rubric to determine who may qualify to proceed *in forma pauperis* and shall make the necessary motions available to the public. A party to an action in the Tribal District Court who wishes to proceed *in forma pauperis* shall file in the Tribal District Court a motion for leave so to proceed together with an affidavit showing, in detail, their inability to pay fees and costs or to give security. If the motion is granted, the party may proceed without prepayment of fees or costs in either Court or the giving of security. If the motion is denied, the Tribal District Court shall state in writing the reasons for the denial. Such process for appeals may be found in the Appellate Procedure Act.

Section 710. Sharing of Judicial Officers

Notwithstanding any other provision of this Title, the Council is hereby authorized to negotiate an agreement with the Bureau of Indian Affairs or other Indian Tribes for the shared use of

magistrates, trial judges, and appellate court justices. In addition to any other necessary or convenient provisions, such agreements may determine the method of selection and retention of shared judicial officers, their compensation, and required duties. When acting on behalf of the Tribe, such judges or justices shall have all the powers and authority vested in Judge, or Justice. Such judicial officers may be in addition to, in lieu of, or the same as, those Magistrates, Judges, and Justices authorized by this Title.

Section 711. Sharing of other Judicial Personnel

Notwithstanding any other provision of this Title, the Council is hereby authorized to negotiate an agreement with the Bureau of Indian Affairs or other Indian Tribes for the shared use of Court Clerks, District Attorneys, Bailiffs, Court Reporters, and other judicial or support personnel. In addition to any other necessary or convenient provision, such agreements may determine the method of selection and retention of shared personnel, their compensation, and required duties. When acting on behalf of the District and Supreme Courts, such personnel shall have all the powers and authority of the equivalent position in the Tribal Code. Such personnel may be the same as, in addition to, or in lieu of, tribal personnel in these positions.

Section 712. Sharing of Material Resources

Notwithstanding any other provision of Tribal Law, the Council is hereby authorized to negotiate an agreement with the Bureau of Indian Affairs, other Indian Tribes, or any other unit of government for the shared use of facilities, including courtrooms, offices, and jail space, equipment, and supplies necessary for the operation of the Court and law enforcement agencies of the Tribe.

Section 713. Sharing of Financial Resources

Provision may be made in the above-mentioned agreements for the allocation of fines, fees, and court costs to support the functions of the judicial system, provided, that the salaries of the magistrates, judges, justices, and District Attorney shall not be subject to, or contingent upon the assessment or collection of any such fines, fees, court costs, or penalties. Such agreements may also provide for certain monetary contributions by the participating Tribes or agencies to the funding of the Court and provide a formula therefore, and may designate any particular grant money for the use of the Court, or may designate the Court as a prime contractor, grantee, or similar designation to authorize the Court to apply directly to any funding source for any grant or contract funds available for the operation of the Court.

Section 714. Copies of Laws

(a) The Tribal Court Law Library shall be provided with copies of all Tribal laws and the regulations which may be applicable to the conduct of any persons within the territorial jurisdiction of the Tribe.

(b) Whenever the Court is in doubt as to the meaning of any law, treaty, or regulation, it may request the Attorney General to furnish an opinion on the point in question.

Section 715. Judicial Review of Legislative and Executive Actions

The District Court shall have the authority to review any final action by the Council, or any tribal department or agency, to determine whether that action, and the procedure or manner of taking that action, is constitutional under the Tribal Constitution, authorized by tribal law, and not prohibited by the Indian Civil Rights Act or any other federal law. If the Court finds such action, or the manner of its exercise, to be unlawful, it may enjoin the action, refuse to recognize an unlawful action or refuse to apply the law or statute in question. If the Court finds that the contemplated action is authorized by the Tribe's Constitution and Tribal Statutes enacted pursuant thereto, the Traditional Law, or the Common Law, and that the manner in which the authorized action is to be exercised is not prohibited by the Tribal Constitution, Tribal statutes enacted pursuant thereto, or federal law, the Court shall dismiss the case, or take such other action as is just. The Court shall not otherwise review the exercise of any authority committed to the discretion of a tribal officer, agency, agent, or employee by Tribal law unless some specific provision of law authorizes judicial review of the merits of the discretionary decision or action. The Supreme Court has appellate jurisdiction to review any final decision of the District Court under this Section.

Section 717. Action When No Procedure Provided

Whenever no specific procedure is provided in the Tribal Code, the Court may proceed in any lawful fashion.

Section 718. Publication of Tribal Codes

The Court shall ensure all tribal codes, regulations, and interpretive documents are published on the United Keetoowah Band Court Website and all updated versions or amendments are published within thirty (30) days of adoption. The Court shall maintain hard copies of the Codes and Regulations and allow members of the public to make copies.

CHAPTER EIGHT

HABEAS CORPUS

Section 801. Persons Who May Prosecute Writ

A writ may be filed by persons in custody or under restraint for a determination that such custody or restraint is, or will be, in violation of the laws of the Tribe and Indian Civil Rights Act; that the district court was without jurisdiction to impose such sentence; or that the sentence was illegal or in excess of the maximum authorized by law or is otherwise subject to collateral attack.

In order to protect infants and persons with a mental or physical disability, writs of habeas corpus shall be granted in favor of parents, guardians, spouses, or domestic partners, and next of kin; and to enforce the rights and for the protection of infants and incompetent or disabled persons; and the proceedings shall, in all such cases, conform to the provisions of this Chapter.

Section 802. Application of Writ

The petition shall contain the following required information:

(a) the petition shall clearly state whether:

- (1) the petition seeks to vacate, set aside, or correct the sentence or order of confinement, correct the Department of Corrections' interpretation or application of the sentence or order of confinement, or challenge the conviction; or
- (2) the petition challenges conditions of confinement or matters other than those set forth in Subparagraph (a)(1) of this rule,

(b) the respondent's name and title. The respondent shall be the petitioner's immediate custodian, who shall have the power to produce the body of the petitioner before the court and shall have the power to discharge the petitioner from custody or restraint if the petition is granted,

(c) a brief statement naming the place where the petitioner is confined or restrained,

(d) a brief statement of the steps taken to exhaust all other available remedies, including a statement of the name of the case, the docket number of the case, the court, administrative agency, or institutional grievance committee from which relief was sought, and the result of each judicial or administrative proceeding,

(e) a brief statement of whether an appeal or prior petitions for habeas corpus or other relief have been filed, including a statement of the case name, the docket number of the case, the grounds upon which relief was sought, the court from which relief was sought, the result of each

proceeding and, if appropriate, a statement of why the claim now being raised was not raised in such prior proceedings or how the claim now being raised differs from a claim raised in those proceedings,

(f) if the petitioner has previously filed a petition seeking relief under this rule, a brief statement explaining why the petition should not be dismissed under for the same reasons previous petitions were unsuccessful,

(g) a concise statement of the facts and law upon which the application is based, and

(h) a concise statement of the relief sought.

Section 803. Writ Granted

Writs of *habeas corpus* may be granted by any Judge of the Tribal District Court, either in open Court, or in chambers; and upon application the writ shall be heard within ten days of filing. Respondent may respond within that time period, or request an extension.

Section 804. Direction and Command of Writ

The writ shall be directed to the officer of the party or agency with control over the Petitioner's custody or restraint, and that officer will be ordered to come before the Court to show cause for the custody or restraint imposed upon the petitioner. The officer shall do whatever is ordered by the Court.

Section 805. Delivery to Tribal Police Chief

If the writ is directed to the Chief of the Tribal Police, the Clerk of Court shall deliver the writ.

Section 806. Service on Party other Than Tribal Police Chief

If the writ is directed to any other person, it shall be delivered to the Chief of the Tribal Police and who will then serve it on the intended party.

Section 807. Service When Person Not Found

If the respondent to whom the writ is directed cannot be found or refuses service, the writ may be served by leaving it at the residence of the respondent, or by affixing it on some conspicuous place, either the respondent's house or where the petitioner is confined.

Section 808. Return and Enforcement of writ

The Chief of the Tribal Police or other person to whom the writ is directed shall immediately return the writ, and if the respondent neglects or refuses, after due service, to return the writ, or neglects or refuses to obey the writ by producing the petitioner named in the writ, and no

sufficient excuse is shown for such neglect or refusal, the Court shall enforce obedience by attachment or contempt.

Section 809. Manner of Return

The return must be signed and verified by the person making it, who shall state:

- (a) The authority or cause of restraint of the party in custody,
- (b) If the authority is in writing, a copy of the authority shall be provided with the return and the original shall be produced at the hearing, and
- (c) If the respondent had the petitioner in custody or under restraint, and has transferred the Petitioner to another, the respondent shall state to whom, the time, the place, and the cause of the transfer.
- (d) The respondent shall produce the party at the hearing, unless prevented by sickness or infirmity or other good cause, which must be shown in the return.

Section 810. Proceedings in Case of Failure to Produce the Petitioner

If the Court finds good cause for not producing the petitioner, it may proceed to decide on the return, or the hearing may be adjourned until the petitioner can be produced. If the proceeding occurs without the petitioner, the petitioner may object to the sufficiency or truth of the return, or allege a new matter. The new matter shall be verified, except in cases of commitment on a criminal charge; the return and pleadings may be amended to include the new charge.

If the presence of the petitioner is required at a hearing the Court shall order transportation of the petitioner. It shall be the responsibility of the respondent to facilitate the transportation of the petitioner if needed.

Section 811. Hearings and Discharge

The Court shall not require a formal hearing to hear and determine the cause, and if no legal cause is shown for the restraint or for the continuance, shall discharge the petitioner.

Section 812. Limits on Inquiry

The Court shall not inquire into the legality of any judgment or process, or discharge the petitioner under these circumstances:

- (a) The sentence issued by a court outside this jurisdiction except if the petition alleges that rights guaranteed to the Petitioner by the Constitution, the Indian Civil Rights Act, or the United Keetoowah Band have been violated, or
- (b) For criminal contempt, or

(c) Upon a warrant or commitment issued from the Tribal District Court, or any other Court of competent Jurisdiction, upon indictment or information.

Section 813. Writ Upon Temporary Commitment

No person shall be discharged from an order of temporary commitment issued by any judicial or peace officer for want of bail, or when bail is not granted, on account of any defect in the charge or process, or for alleged want of probable cause; but in all such cases, the Court shall summon the prosecuting witnesses, investigate the criminal charge, and discharge, set bail, or recommit the prisoner, as may be just and legal, and recognize witnesses when proper.

Section 814. Writ May Issue to Admit to Bail

The writ may be issued for the purpose of setting bail in a criminal action.

Section 815. Notice to Interested Persons

Any person who has an interest in the detention shall be notified before the petitioner is discharged.

Section 816. Powers of Court

The Court shall have power to require and compel attendance of witnesses and to do all other acts necessary to determine the case.

Section 817. Officers Not Liable for Obeying Orders

A tribal police officer or other officer shall not be liable to a civil action for obeying any writ of habeas corpus, or order to discharge, or other Court order issued from these proceedings.

Section 818. Issuance of Warrant of Attachment

If an affidavit indicates that anyone is illegally held in custody or restraint, and there is good reason to believe that the petitioner will be removed from the Court's jurisdiction, or will suffer some irreparable injury before compliance with the writ can be enforced, the Court may issue a Warrant of Attachment, reciting the facts, and directed to the Tribal Police, and will order the Police to bring the petitioner before the Court.

Section 819. Arrest of Party Causing Restraint

The Court may include in the Warrant of Attachment an order for the arrest of the person charged with causing the illegal restraint.

Section 820. Temporary Orders

The Court may make any temporary orders in the cause or disposition of the party during the progress of the proceedings that justice may require. The custody of any party restrained may be changed from one person to another, by order of the Court.

Section 821. Issuance and Service on Sunday

Any writ, warrant, or process authorized by this Chapter may be issued and served, in case of emergency on any day including Saturday, Sundays, and holidays.

Section 822. Issue of Process

All writs and other process, authorized by the provisions of this Chapter may be issued by the Clerk of the Court upon direction of a Judge, and except summons, sealed with the seal of the Court and shall be served and returned as soon as possible, unless the Court or Judge shall specify a particular time for any such return. And no writ or other process shall be disregarded for any defect, if enough is shown to notify the officer or person of the purpose of the process. Amendments and temporary commitments may be allowed, when necessary.

Section 823. Security for Costs Not Required

No deposit or security for costs shall be required of an applicant for a writ of *habeas corpus*.

Section 824. Waiver of Fees—Service of Writ of Habeas Corpus Issued for Return of a Child

The Tribal Police may waive fees associated with service of a writ of *habeas corpus* that was issued for the return of a child when the person who was granted the writ is, by reason of poverty, unable to pay the cost of service.

CHAPTER NINE

MANDAMUS

Section 901. Functions of Mandamus

The writ of *mandamus* may be issued by the Tribal District Court or the Supreme Court, or any District Court or Supreme Court justice or judge to any inferior tribunal, corporation, board, or person, to compel the performance of any act which the law compels as a duty, resulting from an office, trust, or station, but though it may require an inferior tribunal or officer to exercise its judgment or proceed to the discharge of any of its functions, it cannot control judicial discretion, or discretion held by a Tribal Agency by law unless exercised in violation of law.

Section 902. Writ Not Issued Where Remedy at Law

This writ may not be issued in any case where there is a plain and adequate remedy in the ordinary course of the law. It may be issued on the information of the party beneficially interested.

Section 903. Forms and Contents of Writs

The writ is either alternative or peremptory. The alternative writ must state, concisely, the obligation of the Defendant to perform the act, and the omission to perform it, and command the Defendant that immediately upon the receipt of the writ, or at some other specified time, the Defendant must do the act required or show cause why the act was not performed. At the show cause hearing, the Defendant must return the writ with a certificate showing the act was performed. The peremptory writ must be in a similar form, except that the words requiring the Defendant to show cause why they have not done as commanded must be omitted.

Section 904. When Peremptory Writ to Issue

When the right to require the performance of the act is clear, and it is apparent that no valid excuse can be given for not performing it, a peremptory *mandamus* may be allowed in the first instance; in all other cases, the alternative writ must be issued. The peremptory writ should not be issued if there is any doubt that a valid excuse may exist.

Section 905. Petition Upon Affidavit

The petition for the writ must be made upon affidavit and the Court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

Section 906. Allowance and Service of Writ

The allowance of the writ must be endorsed on the writ itself, signed by the judge of the court granting it, and the writ must be served personally upon the defendant. If the defendant is properly served and neglects to return the writ, the Court shall initiate contempt proceedings.

Section 907. Answer

On the return day of the alternative writ or day specified by the Court, the defendant may show cause by answer made in the same manner as an answer to a complaint in a civil action.

Section 908. Failure to Answer

If no answer is made, a peremptory mandamus must be allowed against the defendant. If an answer is made containing a new matter, the answer alleging a new matter shall not prevent the plaintiff from using any valid objection to its sufficiency, at trial or any other proceeding.

Section 909. Similarity to Civil Action

No other pleading or written allegation is allowed besides the writ and the answer. These are the pleadings of the case, and have the same effect and are construed and may be amended in the same manner as pleadings in a civil action. The issues must be tried and any further proceedings shall be done in the same manner as a civil action.

Section 910. Recovery by Plaintiff

If judgement is in the plaintiff's favor, a peremptory mandamus shall immediately be granted to the plaintiff. In addition, the plaintiff shall recover any damages sustained as ascertained by the Court or referee, as in a civil action, and costs.

Section 911. Damages Bar Further Actions

A recovery of damages in this Chapter is a bar to any other action against the named defendant.

Section 912. Penalty for Refusal or Neglect to Perform

(a) If the Court finds that a public officer, body, or board has refused or neglected to follow a peremptory mandamus commanding the performance of any public duty commanded by law, without good cause, as ordered by the Court, the Court may impose a fine up to five hundred dollars (\$500.00) upon every officer or member of the body or board. The fine shall be paid into the Tribal Treasury.

(b) If the Court finds that a private person has refused or neglected to follow a peremptory mandamus commanding the performance of any private duty specifically commanded by law, without good cause, as ordered by the Court, the Court may impose a fine up to five hundred

dollars (\$500.00) upon the defendant and may commit the defendant to the custody of the Tribal Police for a term of sixty (60) days or until the person agrees to perform the duty or otherwise show compliance. The Court may, in an appropriate case, order the Chief of Tribal Police to perform the act required which will have the same effect as if performed by the defendant named in the peremptory writ.

CHAPTER TEN

SEIZURE AND FORFEITURE

Section 1001. Applicability and General Provisions

(a) The provisions of this chapter shall apply to:

- (1) Subject property expressly identified in this chapter; and
- (2) Forfeiture in civil proceedings.

(b) If any provision of this chapter is found to conflict with or be inconsistent with a provision of another section of the United Keetoowah Band Tribal Code, the provisions of this chapter shall control.

(c) For purposes of this chapter, “days” means judicial days unless otherwise noted.

Section 1002. Subject Property

The following shall be subject to forfeiture to the United Keetoowah Band and no property right shall exist in them:

(a) All controlled substances or listed chemicals which have been manufactured, distributed, dispensed, acquired, transported, or possessed in violation of any section of the Crimes and Punishments Act or Controlled Substances Act,

(b) All raw materials, plants, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance or listed chemical in violation of the Crimes and Punishment Act or Controlled Substances Act,

(c) All property which is used, or intended for use, as a container for property described in Subsection (a) or (b) of this Section,

(d) Any drug paraphernalia as defined in the Crimes and Punishments Act or Controlled Substances Act,

(e) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport or in any manner to facilitate the transportation, sale, receipt, possession, or concealment or property described in Subsection (a) or (b) of this Section, or any used in violation of the Crimes and Punishments Act or Controlled Substances Act, except that no conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this Section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to the conduct giving rise to the forfeiture action,

(f) All books, records, microfilm, tapes, electronic devices, digital storage media, and research, including formulas and data, which are used, or intended for use, in violation of the Crimes and Punishment Act or Controlled Substances Act,

(g) All monies, negotiable instruments, securities, or other things of value furnished or received, or intended to be furnished or received, all proceeds traceable to such an exchange, and all monies, negotiable instruments, and securities used or intended to be used to facilitate such an exchange by any person in violation of the Crimes and Punishment Act or Controlled Substances Act.

(h) Any weapon, as defined by the Crimes and Punishment Act or Controlled Substances Act:

- (1) Used, intended to be used, or possessed to facilitate the transportation, sale, receipt, possession, or concealment of property described in violation of the Crimes and Punishment Act or Controlled Substances Act.
- (2) Used, intended to be used, or possessed during the commission of any crime or other violation of United Keetoowah Band Tribal law.

(i) Any property expressly subject to seizure or forfeiture under any other provision of United Keetoowah Band Tribal law that adopts this chapter by reference.

Section 1003. Contraband

All controlled substances defined in The Crimes and Punishment Act and the Controlled Substances Act that are possessed, transferred, sold, or offered for sale in violation of the provisions of United Keetoowah Band Tribal law; all dangerous, toxic, or hazardous raw materials or products subject to forfeiture under this chapter; and any equipment, container, paraphernalia, or other property subject to forfeiture under this chapter which cannot be separated safely from such substances, raw materials or products, are hereby classified as contraband and shall be seized and summarily forfeited to the United Keetoowah Band.

Section 1004. Seizure Procedures

Any property subject to forfeiture to the United Keetoowah Band under this chapter may be seized by an officer under a search warrant. Seizure without a warrant may be made if:

- (a) The seizure is incident to an arrest, or a search warrant issued for another purpose,
- (b) The property subject to seizure has been the subject of a prior judgment in favor of the United Keetoowah Band in a criminal proceeding or a forfeiture proceeding based on this chapter,
- (c) The officer has probable cause to believe that the property is directly or indirectly dangerous to the health or safety of any person or the public at large, or

(d) The officer has probable cause to believe that the property was used or is intended to be used in violation of United Keetoowah Band Tribal law.

Section 1005. Custody of United Keetoowah Band

Property taken or detained under this chapter shall be deemed to be in the legal custody of the United Keetoowah Band, subject only to the orders and decrees of the United Keetoowah Band Tribal Court. Whenever property is seized under any of the provisions of this chapter, the Tribe may:

(a) Place the property under seal,

(b) Remove the property to a designated place to be preserved for purposes of discovery and use as evidence in a proceeding under this chapter or in any criminal proceeding, or

(c) Remove it, if practicable, to an appropriate location for disposition in accordance with an order of the Tribal Court.

Section 1006. Summary forfeiture

(a) Any property seized pursuant to Section 1002 (a), (b), (c), (d), or (i) is subject to summary forfeiture, but shall be preserved for purposes of discovery and use by the parties in potentially related proceedings until such time as the Court issues an order disposing of such proceeding or proceedings.

(b) Prior to disposing of any property seized pursuant to Section (b), (d), or (i) that is not classified as contraband under Section 1003,

(1) The United Keetoowah Band shall provide notice of the seizure and intent to forfeit the property to the owner of the property, if known. The notice must:

(i) Describe the property seized;

(ii) State the time, cause, and place of seizure; and

(iii) Provide the owner thirty (30) calendar days to file a claim with the Tribe's Prosecuting Attorney contesting the seizure and forfeiture.

(2) The notice required under Subsection (b)(1) of this Section shall be served:

(i) At the time of seizure; or

(ii) By personal service on any owner whose name and address is known to the United Keetoowah Band.

- (iii) If service at the time of seizure or personal service cannot be made for any reason, the notice may be served by publication by its posting on a United Keetoowah Ban official government web site for at least thirty (30) consecutive calendar days.
- (3) If an owner files a claim to any property subject to this section, the United Keetoowah Band shall initiate a nonsummary forfeiture action as provided in Section 1007.

Section 1007. Nonsummary Forfeiture

Any property seized pursuant to Section 1002 (e), (f), (g), (i) and any property for which a claim is filed pursuant to Section 1006 (b)(3), is subject to the following forfeiture procedures.

(a) Petition and Summons.

- (1) Within forty five (45) days of the seizure or the filing of a claim pursuant to Section (b)(3), the United Keetoowah Band shall file a petition and request for summons to institute forfeiture proceedings with the Court. The petitioner shall notify the Court of the identity and address of all known parties in interest. The Clerk shall issue the summons requested by the petitioner within ten (10) days of the filing of the petition.
- (2) The petition shall include the following:
 - (i) A description of the property seized;
 - (ii) The time, date, and location of the seizure;
 - (iii) The relevant provisions of the United Keetoowah Band Code that subject the property to seizure and forfeiture;
 - (iv) The name and address if known of the person or persons from whom the property was seized;
 - (v) The names and addresses of any other persons whom the petitioner knows or has reason to believe have or may assert a property interest in the property seized; and
 - (vi) If, as provided in Subsection (b)(3) of this Section, service by notice at the time of seizure is to be relied upon in lieu of service of the petition and summons, a sworn declaration establishing that service by notice at the time of seizure was in fact accomplished.

(b) Service of Petition and Summons.

- (1) Within twenty (20) days from the date the Court issues the summons, the petitioner shall cause the petition and summons to be served upon all known owners or claimants of the property by personal service or certified mail.
- (2) Where the identity or the mailing address of an owner or claimant is not known, the petition and summons may be served by publication by posting them on a United Keetoowah Band official government website for at least thirty (30) consecutive calendar days.
- (3) Service by Notice at the Time of Seizure. The requirement for service of the petition and summons shall be deemed satisfied as to any person if:
 - (i) The person was provided notice at the time of seizure identifying the property seized and informing the person of:
 - (A) The United Keetoowah Band's intent to forfeit the property;
 - (B) The legal basis for the seizure and forfeiture; and
 - (C) The procedure for contesting the seizure and forfeiture; and
 - (ii) The petition and summons are published in accord with Subsection (b)(2) of this Section.
- (4) Petitioner shall file proof of service with the Court no later than five (5) days after the petition and summons have been served, except that when service is made by notice at the time of seizure, no proof of service beyond the sworn declaration that accompanies the petition shall be required.

(c) Failure to Timely Proceed.

- (1) If the United Keetoowah Band fails to file a petition within the time frame allowed or fails to file proof of service within the time frame allowed, the Band shall promptly release noncontraband property to the owner or person from whom it was seized, and may not take any further action to affect the civil forfeiture of such property in connection with the underlying offense. If there are multiple owners or claimants and service has been perfected as to at least one of the owners or claimants, then the forfeiture action may proceed on the condition that the Court provide such additional process, remedy, or relief as necessary to protect the interests of any owner or claimant who was not timely served.

- (2) If the Court fails to issue a summons within the time frame allowed, a claimant's time to file a response shall be extended by the number of days the Court delayed issuance of the summons, unless the claimant was served pursuant to Subsection (b)(3) of this Section.

(d) Response.

- (1) Within thirty (30) days after the service of the petition and summons, the owner or claimant of the seized property (hereinafter "respondent") shall file a response to the petition to institute forfeiture proceedings. The Court shall not extend the time for filing a response absent a showing of extraordinary circumstances.
- (2) The response:
 - (i) Must include the respondent's name and a legal address for purposes of service,
 - (ii) Must identify the specific property being claimed,
 - (iii) Must state the respondent's interest in the property being claimed,
 - (iv) Must provide the name and address of any other person the respondent knows or has reason to believe has or might assert an ownership interest in the property,
 - (v) Must set forth the facts establishing the ownership of the property,
 - (vi) May set forth all defenses to be asserted to the petition,
 - (vii) May include declarations and documentary evidence to be offered in support of the assertions made in the response,
 - (viii) May include a motion for a hearing, and
 - (ix) Must be made under oath, subject to penalty of perjury.

(e) Service of Response.

- (1) In addition to being filed with the Court, the response must be served on the petitioner within five (5) days of the date it is filed with the Court by providing a copy by mail or by personal service to the United Keetoowah Band's Prosecuting Attorney.
- (2) Respondent shall file proof of service with the Court within five (5) days after the response has been served.

(f) Failure to Timely Respond. If a response is not filed within thirty (30) days after the service of the petition and summons, if the response is not timely served on the Tribe's Prosecuting Attorney, or if proof of service of the response is not timely filed with the Court, the Tribes shall file a declaration of forfeiture with the Court, and the Court shall thereupon issue an order forfeiting the property to the Tribe.

(g) Requests for an Evidentiary Hearing.

- (1) Petitioner may file a motion for an evidentiary hearing at any time prior to ten (10) days following the filing of a response, and the Court shall not deny such a motion. The Court shall promptly issue an order granting a request for an evidentiary hearing made by the petitioner.
- (2) A respondent may only request an evidentiary hearing as provided for in Subsection (d) of this Section. No other motion or form of request for an evidentiary hearing by a respondent is allowed. If a respondent does request an evidentiary hearing as provided for in Subsection (d) of this Section, the Court shall promptly issue an order granting that request.

(h) Trial by Declaration. If a response is timely filed and served, the response does not request an evidentiary hearing, and the petitioner does not file a motion for an evidentiary hearing within the time allowed in Subsection (g)(1) of this Section, then the matter shall be decided by a trial by declaration as set forth.

- (1) Within ten (10) days of receipt of service of a response, the petitioner shall file a legal memorandum supported by a declaration presenting all the evidence petitioner intends to rely upon with the Court. Petitioner shall serve copies of its legal memorandum, declaration, and evidence on each respondent by certified mail on or before the date petitioner files them with the Court. Petitioner must file proof of service with the Court at the time it files its memorandum, declaration, and evidence.
- (2) Within ten (10) days of receipt of service of petitioner's legal memorandum, declaration and evidence, each respondent may file with the Court a legal memorandum supported by a declaration presenting any evidence the respondent intends to rely upon that was not filed with the response. Each respondent shall serve copies of its legal memorandum, declaration and evidence on petitioner and each of the other respondents, if any, by certified mail on or before the date respondent files them with the Court. Each respondent must file proof of service with the Court at the time it files its memorandum, declaration, and evidence.
- (3) Within ten (10) days of receipt of service of any legal memorandum, declaration, and evidence filed by any respondent, petitioner may file a reply presenting additional legal argument, additional evidence, or both.

- (4) No hearing of live witness testimony or examination, and no oral argument on the merits or on any motion, shall be allowed.
- (5) The Court shall timely issue a written decision resolving all claims based exclusively on the petition, response, reply, and any legal memoranda, declarations and evidence filed in conformance with these rules.

(i) Forfeiture Hearing. If a response is timely filed and served and includes a request for an evidentiary hearing, or the petitioner timely files a request for an evidentiary hearing, the Court shall set the matter for a hearing no later than forty five (45) days from the date the Court received the request for hearing. The hearing, including notice, service, discovery, motions, and any other procedural matters, shall be conducted according to the civil rules, except where the civil rules conflict with any provision within this chapter, including the following:

- (1) No jury shall be allowed.
- (2) Discovery may be had without leave of Court in regard to physical and documentary evidence, witness lists, and requests for admission.
- (3) Interrogatories, depositions, and other forms of discovery shall be had only by leave of the Court.

(j) Burden of Proof. In any action brought under this Section:

- (1) The burden of proof is on the petitioner to establish, by a preponderance of the evidence, that the property is subject to forfeiture; and
- (2) The petitioner may use evidence gathered after the filing of a petition for forfeiture to establish that the property is subject to forfeiture.

(k) Innocent Owner Defense.

- (1) An innocent owner's interest in property shall not be forfeited. The respondent shall have the burden of proving that the respondent is an innocent owner by a preponderance of the evidence.
- (2) The term "innocent owner" means an owner who:
 - (i) Did not know of the conduct giving rise to forfeiture; or
 - (ii) Upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property.
- (3) For the purposes of establishing an innocent owner defense, ways in which a person may show that such person did all that reasonably could be

expected may include demonstrating that such person, to the extent permitted by law:

- (i) Gave timely notice to an appropriate law enforcement agency of information that led the person to know the conduct giving rise to a forfeiture would occur or has occurred; and
 - (ii) In a timely fashion revoked or made a good faith attempt to revoke permission for those engaging in such conduct to use the property or took reasonable actions in consultation with a law enforcement agency to discourage or prevent the illegal use of the property.
- (4) For the purposes of establishing an innocent owner defense, a person is not required to take steps that the person reasonably believes would be likely to subject any person (other than a person whose conduct gave rise to the forfeiture) to physical danger.

Section 1008. Additional Authority of the Court

Upon application of the Tribe, and findings by the Court that the Court has jurisdiction over the subject property, there is probable cause to believe the property is subject to forfeiture to the Band, and good cause exists to grant the relief requested in the application, the Court may enter a restraining order or injunction; require the execution of satisfactory performance bonds; create receiverships; appoint conservators, custodians, appraisers, accountants, or trustees; issue a writ of entry; or take any other action to seize, secure, maintain, or preserve the availability of property subject to civil forfeiture or protect public health, welfare, or safety.

Section 1009. Release of Seized Noncontraband Property

Noncontraband property may be released to a respondent prior to forfeiture by order of the Court.

(a) A respondent seeking release of noncontraband property must file a request for release of the property with the Court within thirty (30) calendar days of respondent's receipt of notice of the seizure or service of the petition for forfeiture. The request for release of noncontraband property must be served on petitioner on or before the date the request is filed with the Court, and proof of service must be filed with the request.

(b) The Court shall hold a hearing on the request for release within fourteen (14) days. Notice of the hearing shall be provided to the petitioner and every respondent.

(c) The Court shall deny the request for release if the seized property:

- (1) Is contraband, currency, other monetary instrument, or electronic funds, unless such currency or other monetary instrument or electronic funds constitutes the assets of a legitimate business which has been seized;

- (2) Is to be used as evidence in any proceeding;
- (3) By reason of design or other characteristic, is particularly suited for use in illegal activities;
- (4) Is likely to be used to commit additional violations of the law if returned to the respondent; or
- (5) Is likely to harm or prejudice the interests of another respondent claiming an ownership interest in the property.

(d) The Court shall grant a request for release of noncontraband property only if the Court expressly finds:

- (1) The respondent has a possessory interest in the property,
- (2) The respondent has sufficient ties to the community to provide assurance that the property will be available at any time the Court deems necessary,
- (3) In the case of weapons, the person requesting release is not a threat to any known individual or to the safety or welfare of the public at large. In the case of weapons removed pursuant to a charge or conviction of domestic violence, the Court shall hear from the victim regarding the victim's position and require the prosecutor to create a safety plan,
- (4) The continued possession by the United Keetoowah Band pending the final disposition of forfeiture proceedings will cause substantial hardship to the respondent, such as preventing the functioning of a business, preventing an individual from working or attending school, preventing an individual from making a subsistence living, or leaving an individual homeless, and
- (5) The respondent's likely hardship from the continued possession by the Band of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is released to the respondent during the pendency of the proceeding.

(e) The Court may require the posting of a bond and impose any other condition on the release of noncontraband property that the Court determines in its discretion may be necessary to preserve and secure the property.

(f) Release of property pursuant to this Section shall in no way affect the Tribe's authority to forfeit the property under this chapter.

Section 1010. Special Rules Regarding Seizure and Forfeiture of Real Property

(a) Except as provided in this Section:

- (1) Real property that is the subject of a civil forfeiture action shall not be seized before entry of an order of forfeiture, and
- (2) The owners or occupants of the real property shall not be evicted from, or otherwise deprived of the use and enjoyment of, real property that is the subject of a pending forfeiture action.

(b) The filing of a formal notice and the execution of a writ of entry for the purpose of conducting an inspection and inventory of the property shall not be considered a seizure under this Section.

(c) The Tribe shall initiate a civil forfeiture action against real property by:

- (1) Filing a petition for forfeiture and request for summons pursuant to Section 1006,
- (2) Posting a notice of the petition on the property,
- (3) Serving notice on the property owner, along with a copy of the petition and summons, and
- (4) Filing a formal notice to the public.

(d) Service may be made by publication, by posting the notice, petition and summons on the Band's official government forfeiture website for at least thirty (30) consecutive calendar days if the property owner cannot be served with the notice under Subsection (3) of this Section because the owner:

- (1) Is a fugitive,
- (2) Resides outside the exterior boundaries of the Cherokee Reservation and efforts at service pursuant to this chapter are unavailing, or
- (3) Cannot be located despite the exercise of due diligence.

(e) If real property has been posted in accordance with this subsection, it shall not be necessary for the Court to issue an arrest warrant in rem, or to take any other action to establish in rem jurisdiction over the property.

(f) Real property may be seized prior to the entry of an order of forfeiture if:

- (1) The Tribe files a notice with the Court that it intends to seize the property before trial, the Tribe serves the notice as provided in this section, and the Court conducts a hearing in which the property owner has a meaningful opportunity to be heard, or
- (2) The Tribe files a notice with the Court that it intends to seize the property before trial and the Court makes an *ex parte* determination that there is probable cause for the forfeiture and that there are exigent circumstances that permit the Tribes to seize the property without prior notice and an opportunity for the property owner to be heard.
- (3) For purposes of Subsection (f)(2) of this Section, to establish exigent circumstances, the Tribe shall show that less restrictive measures such as a formal notice, restraining order, or bond would not suffice to protect the Tribe's interests in preventing the sale, destruction, or continued unlawful use of the real property.
- (4) If the Court authorizes a seizure of real property under Subsection (f)(3) of this Section, it shall conduct a prompt post-seizure hearing during which the property owner shall have an opportunity to contest the basis for the seizure.
- (5) Seizure prior to trial is only permissible if the Tribe establishes by a preponderance of the evidence that seizure is necessary to preserve the property pending final judgment.

(g) This Section:

- (1) Applies only to civil forfeitures of real property and interests in real property,
- (2) Does not apply to forfeitures of the proceeds of the sale of such property or interests, or of money or other assets intended to be used to acquire such property or interests, and
- (3) Shall not affect the authority of the Court to enter a restraining order relating to real property.

Section 1011. Civil Fine for Frivolous Claim

In any civil forfeiture proceeding in which the Tribe prevails, if the Court finds that a respondent's or claimant's assertion of an interest in the property was frivolous, the Court may impose a civil fine on the respondent or claimant of an amount equal to ten percent (10%) of the value of the forfeited property, but in no event shall the fine be less than two hundred fifty dollars (\$250.00) or greater than five thousand dollars (\$5,000).

Section 1012. Motion to Set Aside Forfeiture

(a) Any person entitled to written notice under this chapter who does not receive such notice may file a motion to set aside an order of forfeiture with respect to that person's interest in the property, which motion shall be granted if:

- (1) The Tribes knew, or reasonably should have known, of the moving party's interest and failed to take reasonable steps to provide such party with notice, and
- (2) The moving party did not know or have reason to know of the seizure within sufficient time to file a timely claim or response.

(b) Notwithstanding the expiration of any applicable statute of limitations, if the Court grants a motion under Subsection (a) of this Section, the Court shall set aside the order of forfeiture as to the interest of the moving party without prejudice to the right of the Tribe to commence a subsequent forfeiture proceeding as to the interest of the moving party.

(c) Any proceeding described in Subsection (b) of this Section shall be commenced within forty five (45) days of the entry of the order granting the motion.

(d) A motion under Subsection (a) of this Section may be filed not later than three (3) years after the date of final order of forfeiture.

(e) If, at the time a motion made under Subsection (a) of this Section is granted, the forfeited property has been disposed of by the Tribe in accordance with law, the Tribe may institute proceedings against a substitute sum of money equal to the value of the moving party's interest in the property at the time the property was disposed of.

(f) A motion filed under this Section shall be the exclusive remedy for seeking to set aside an order of forfeiture under this chapter.

Section 1013. Disposition of Forfeited Property

(a) Whenever property is forfeited under this chapter, the United Keetoowah Band may:

- (1) Retain the property for official use,
- (2) Sell, by public sale or any other commercially feasible means, any forfeited property which is not required to be destroyed by law and which is not harmful to the public,
- (3) Take custody of the property and dispose of it in accordance with law,

- (4) If in the possession of a United Keetoowah Band entity other than the Lighthorse Police Department, forward it to the Lighthorse Department for disposition or destruction, or
- (5) Transfer the forfeited personal property or the proceeds of the sale of any forfeited personal or real property, or a portion thereof, to any other jurisdiction which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer:
 - (i) Has been agreed to by the Tribe, or
 - (ii) Is authorized in an agreement between the Tribe and the other jurisdiction.

(b) The United Keetoowah Band, in compliance with Section 1006, may direct the destruction of all contraband in such manner, time, and place as the Tribe deems appropriate.

(c) The proceeds from any sale under Subsection (a)(2) of this Section and any monies forfeited under this chapter shall be used in the following order of priority:

- (1) To pay all property expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and Court costs;
- (2) To pay restitution to any victim of the offense giving rise to the forfeiture;
or
- (3) To be deposited for future use in any fund that may be established by the United Keetoowah Band to support law enforcement efforts or the United Keetoowah justice system.

Section 1014. Vesting of Title in the United Keetoowah Band

All right, title, and interest in property described in Section 1002 shall vest in the United Keetoowah Band upon commission of the act giving rise to forfeiture under this section, but the property shall be preserved for purposes of discovery and use by the parties in the forfeiture proceeding and any related proceedings until such time as the Court issues an order of disposition.

Section 1015. Stay of Civil Forfeiture Proceedings

(a) Upon the motion of the United Keetoowah Band, the Court shall stay the civil forfeiture proceeding if the Court determines that civil discovery will adversely affect the ability of the United Keetoowah Band to conduct a related criminal investigation or the prosecution of a related criminal case.

(b) Upon the motion of a respondent, the Court shall stay the civil forfeiture proceeding with respect to that respondent if the Court determines that:

- (1) The respondent is the subject of a related criminal investigation or case,
- (2) The respondent has standing to assert a claim in the civil forfeiture proceeding, and
- (3) Continuation of the forfeiture proceeding will burden the right of the respondent against self-incrimination in the related investigation or case.

(c) With respect to the impact of civil discovery described in Subsections (a) and (b) of this Section, the Court may determine that a stay is unnecessary if a protective order limiting discovery would protect the interest of one party without unfairly limiting the ability of the opposing party to pursue the civil case. In no case, however, shall the Court impose a protective order as an alternative to a stay if the effect of such protective order would be to allow one party to pursue discovery while the other party is substantially unable to do so.

(d) In this Section, the terms “related criminal case” and “related criminal investigation” mean an actual prosecution or investigation in progress at the time at which the request for the stay, or any subsequent motion to lift the stay, is made. In determining whether a criminal case or investigation is “related” to a civil forfeiture proceeding, the Court shall consider the degree of similarity between the parties, witnesses, facts, and circumstances involved in the two proceedings, without requiring an identity with respect to any one or more factors.

(e) In requesting a stay under Subsection (a) of this Section, the United Keetoowah Band may, in appropriate cases, submit evidence *ex parte* and *in camera* in order to avoid disclosing any matter that may adversely affect an ongoing criminal investigation or pending criminal trial and the Court may take appropriate action.

(f) Whenever a civil forfeiture proceeding is stayed pursuant to this Subsection, the Court shall enter any order necessary to preserve the value of the property or to protect the rights of lienholders or other persons with an interest in the property while the stay is in effect or make such other orders for compensation as may be required in the interests of justice.

(g) A determination by the Court that the respondent has standing to request a stay pursuant to Subsection (b) of this Section shall apply only to this Section and shall not preclude the United Keetoowah Band from objecting to the standing of the respondent by dispositive motion or at the time of trial.

(h) Any stay issued under this Subsection shall automatically expire thirty (30) days after a final judgment is entered in the related criminal case unless a motion for continued stay pending appeal is filed. If the Court grants a continued stay pending appeal, the stay shall automatically expire thirty (30) days following entry of a final order on the appeal.

CHAPTER ELEVEN

ATTORNEYS AND THE BAR

Rule 1101. Admission to the Bar

(a) Roll of Attorneys. The Bar of this Court shall consist of those attorneys authorized to practice before this Court, who have taken the oath prescribed by the rules in force at the time they were admitted or the oath prescribed by this rule.

(b) Procedure for Admission.

- (1) Attorneys. Every attorney applicant for admission shall file with the Clerk, on a form prescribed by the Court, a petition for admission. The attorney shall submit copies of their valid bar card or letter of admission in jurisdictions in which they are admitted to practice, as well as any disciplinary records. The attorney shall submit an application fee by check or money order set by the Chief Judge and written on the Bar Application. Once these documents have been submitted the Court Clerk shall refer the application to the Chief Judge or designee for approval.

Any member in good standing of the Bar of the Supreme Court of the United States, or of any United States Court of Appeals, or of any District Court of the United States, or any person appointed as Tribal Justice, Judge, or a member in good standing of the Bar of the highest Court of any Indian Tribe or State of the United States, is eligible for admission to the Bar of this Court.

An applicant for admission, who has qualified for admission, may, upon request, be admitted by an order of the Court after having filed an oath of attorney without appearing in Court. Any applicant for admission, who has qualified for admission, may appear at any session of Court during its term and be admitted by taking the oath of attorney in open Court or as administered by a Judge upon motion of any member of the Bar of this Court.

Individual Justices may, from time to time, in emergent situations upon special request admit individual lawyers who have been approved by the Committee. Before being admitted as a member of the Bar of this Court each applicant shall take and subscribe to the Oath of Attorney.

Attorneys admitted to the bar shall pay an annual renewal fee set by the Chief Judge. The renewal fee is due by January 1st of each year. A check or money order can be sent to the Court Clerk at the United Keetoowah Band Courthouse. At any time that it becomes necessary, attorneys shall submit any disciplinary action from any bar in which

they are licensed as soon as possible.

- (2) Training on United Keetoowah Band Laws and Court Rules. It is desired that the procedure for admission include a Tribal practice program which is designed to acquaint the applicants with pertinent aspects of practice in this Court, emphasizing the Tribal law and Tribal Court Rules of the United Keetoowah Band. It is anticipated that this program would be held in the Courthouse, and would include presentations by Court officials and judicial officers. The Court will endeavor to create such a program which should be attended by those expecting to be admitted during that term unless such attendance would create a hardship for the prospective admittee.

(c) Reciprocity. Any attorney who shall have been admitted to practice in any Federal Court within this State, any Federally recognized Indian Tribe, Band, or Nation, or any State may be admitted to practice in this Court upon the motion of a member of the Bar, in open Court, and the filing of a written application and application fee.

(d) Attorneys for the United States. Attorneys who are employed or retained by the United States or its agencies may practice in this Court in all cases or proceedings in which they represent the United States or such agencies.

(e) Temporary Admission. Any attorney who appears eligible for admission to the Bar of this Court may in the discretion of a Judge of the District Court or Justice of the Supreme Court be granted temporary admission to practice in a pending case.

(f) Withdrawal from Case. In any action in which appearance is made through counsel, there shall be no withdrawal by counsel except by leave of Court and upon reasonable notice to the client and all other parties who have appeared in the case who have not also withdrawn. Withdrawal of counsel may be granted subject to the condition that subsequent papers may continue to be served upon the counsel for forwarding purposes or upon the Clerk of the Court, as the Court may direct, unless and until the client appears by with new counsel or enters their appearance, and any notice to the client shall so state and any filed consent of the client shall so acknowledge.

(g) Discipline. Any member of the Bar of this Court guilty of a violation of the prescribed oath of office, or of a violation of the disciplinary rules set forth in the code of Professional Responsibility of the American Bar Association, or of any conduct unbecoming a member of the Bar of this Court, shall be subject to reprimand, suspension, disbarment, or such other disciplinary action as the Court deems appropriate.

(h) Summary Discipline. For misconduct in the presence of the Court, an order may issue administering such discipline as the Court deems appropriate, including a fine not to exceed five hundred dollars (\$500.00) or confinement not to exceed ten (10) days, but summary discipline shall not include the right of the Court to suspend or disbar the offending lawyer from practicing in this Court. An attorney summarily disciplined as herein provided may appeal any punishment

imposed to the Supreme Court, or if summary discipline is administered by a Justice, to the remaining Justices of the Court sitting *en banc*. The Justice or Judge administering the discipline shall not sit in the hearing of such an appeal. In order to allow such an appeal, the discipline imposed will, upon request of the attorney, and by their posting a supersedeas bond in a reasonable amount to be fixed by the Court, be stayed for seven (7) days to allow such attorney to perfect an appeal. If no written appeal be filed within seven (7) days, the punishment so imposed shall be administered unless in the interim the Judge or Justice imposing the punishment rescinds or modifies the original action. Nothing herein provided is intended to preclude the right to the disciplined attorney to appeal directly to the Supreme Court.

(i) Conviction, Discipline in Other Courts. Any member of the Bar of this Court convicted in either Federal, State, or tribal Court of a felony or other crime punishable by banishment or involving moral turpitude, and any member disbarred or suspended from practice in any Court of competent jurisdiction, shall be suspended automatically from practice in this Court and may be reinstated only on written application showing cause why they should be reinstated. In the event the discipline imposed in the other jurisdiction has been stayed, the discipline imposed in this Court shall likewise be deferred until such stay expires in the other jurisdiction. However, in the event a member of the Bar of this Court is disciplined in some other jurisdiction and this Court determines upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:

- (1) That the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
- (2) That there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistent with its duty, accept as final the conclusion on that subject; or
- (3) that the imposition of the same discipline by the Court would result in grave justice; or
- (4) that the misconduct established is deemed by the Court to warrant substantially different discipline,

then the attorney shall not be automatically similarly disciplined in this Court.

An attorney of this Bar who is under investigation for misconduct, or who is facing disbarment proceedings in any Court of competent jurisdiction, who resigns from the Bar of the investigating jurisdiction, or who voluntarily permits their license to practice to terminate, shall be, by this Court, deemed to have been disbarred in the other jurisdiction and shall be disbarred from practicing in this Court.

(j) Disciplinary Procedures. Proceedings to discipline a member of the Bar of this Court, except as set forth in Subsections (g) and (h), shall be upon an order to show cause issued by the non-presiding judge of the case which originated the complaint, reciting the charges and fixing notice of the date of hearing (which shall not be less than thirty (30) days from the date of the

notice), and reciting the place of the hearing and such hearing procedures as may be reasonable and consistent with due process. Notice to the attorney shall be made by personal service or by registered or certified mail, addressed to the respondent-attorney at their last known address.

The Court may, in its discretion, refer any Bar disciplinary matter to the UKB Bar Disciplinary Committee for proper investigation and recommendation to the Court, either before or after issuance of an order to show cause. The recommendation of the Committee, if it suggests disbarment or suspension, shall not be adopted until the procedure set forth above has been followed. Any attorney disbarred or suspended pursuant to these rules may apply to the Court for leave to petition for reinstatement. The UKB Bar Disciplinary Committee shall be composed of the Attorney General, the Court Administrator, and a member from the Tribal Council.

Rule 1102. Appearance of Counsel and Withdrawal of Counsel

(a) Appearance. Any attorney appearing for a party in a civil or criminal case shall enter their appearance by signing and filing a pleading or by entry of appearance on a form prescribed by the Clerk of this Court. In the event a party should change counsel or add additional counsel, the new or additional counsel for such party shall enter their appearance on a form to be provided by the Clerk for that purpose. Counsel of record in any case shall be permitted to withdraw in conformance with Rule 1101 only by order of the judge to whom the case is assigned.

(b) Certificate of Familiarity with Local Court Rules. Every person, upon entering an appearance in any case or proceeding in this Court, or upon first tendering for filing any pleading or paper therein, shall be required to certify that such person has received, read and is familiar with the current Rules of this Court, specifically including all of the most recent published amendments to them.

Such certification shall be required before any such entry of appearance, pleading or paper shall be filed by the clerk, provided however, for good cause shown, the Clerk may in their discretion receive and file any such matter on condition that the required certificate be filed within ten (10) days thereafter, failing in which the matter so filed shall be stricken.

The same certification shall also be required of every other person thereafter participating in such cause or proceeding.

The Clerk shall keep a master file of all such certificates. Once a person has so certified their familiarity, they shall not be required to do so in subsequent cases unless required by order of the Court. A Judge of this Court may authorize the Clerk to waive the requirement as to certain persons or categories of persons when such will best serve the administration of justice.

Rule 1103. Courtroom Decorum

(a) The Canon of Professional Ethics were adopted by the American Bar Association and this Court as a general guide, because as Stated in the preamble of the American Bar Association Canons, "No code or set of rules can be framed, which will particularize all the duties of the lawyer in the varying phases of litigation or in all the relations of professional life." The preamble

further admonishes that “the enumeration of particular duties should not be construed as a denial of the existence of others equally imperative, though not specifically mentioned.” In that spirit, all lawyers should become familiar with their duties and obligations as defined and classified generally in the Canons, the common law decisions, the statutes and the usages, customs, and practice of the bar of this Court. These Canons, and the statutes and common law of the Tribe relating to attorney conduct, are applicable to all attorneys and lay advocates who practice before this Court.

(b) The purpose of this rule is to emphasize, not to supplant, certain portions of those ethical principles applicable to the lawyer’s conduct in the Courtroom. In addition to all other requirements, therefore, lawyers appearing in this Court shall:

- (1) Be punctual in attendance at Court.
- (2) Refrain from addressing one another in Court by their first names.
- (3) Refrain from leaving the Courtroom while Court is in session, unless it is absolutely necessary, and then only if the Court’s permission has been first obtained.
- (4) See that only one of them is on their feet at a time unless an objection is being made.
- (5) Refrain from approaching jurors who have completed a case unless authorized by the Court.
- (6) Avoid approaching the bench as much as possible. In this connection, counsel should try to anticipate questions which will arise during the trial, and take them up with the Court and opposing counsel in chambers. If however, it becomes necessary for an attorney to confer with the Court at the bench, the Court’s permission should be obtained, and opposing counsel should be openly invited to accompany them.
- (7) Refrain from employing dilatory tactics.
- (8) Deliver jury arguments from the lectern placed in a proper position facing the jury. If it is necessary to argue from an exhibit, the Court will, upon request, grant permission to do so.
- (9) Hand all papers intended for the Court to see to the Clerk, who, in turn will pass them up to the judge.
- (10) Hand to the Bailiff, any exhibits to be marked which have not previously been identified.
- (11) Advise clients, witnesses, and other interested persons concerning rules of

decorum to be observed in Court.

- (12) Stand and use the lectern when interrogating witnesses, unless otherwise instructed by the Court. However, when interrogating a witness concerning an exhibit the Court may, upon request, grant permission to approach the witness stand or the exhibit, as the case may be, for that purpose.
- (13) Never conduct or engage in experiments involving any use of their own person or bodies except to illustrate in argument which has been previously admitted in evidence.
- (14) Not conduct a trial when they know, prior thereto, that they will be necessary witnesses, other than as to merely formal matters such as identification or custody of a document or the like. If, during the trial, they discover that the ends of justice require their testimony, they should from that point on, if feasible and not prejudicial to their client's case, leave further conduct of the trial to other counsel. If circumstances do not permit withdrawal from the conduct of the trial, lawyers should not argue the credibility of their own testimony.
- (15) Avoid disparaging person remarks or acrimony toward opposing counsel and remain wholly uninfluenced by any ill-feeling between the respective clients. They should abstain from any allusion to personal peculiarities and idiosyncrasies of opposing counsel.
- (16) Rise when addressing or being addressed by the Court.
- (17) Refrain from assuming an undignified posture. They should always be attired in a proper and dignified manner as befits an officer of the Tribal Court, and should abstain from any apparel or ornament calculated to attract attention to themselves.
- (18) Comply, along with all other persons in the Courtroom, with the following:
 - (i) No tobacco in any form will be permitted at any time.
 - (ii) No propping of feet on tables or chairs will be permitted at any time.
 - (iii) No bottles, beverage containers, paper cups or edibles should be brought into the Courtroom, except with permission of the Judge.
 - (iv) No gum chewing or reading of newspapers or magazines (except as a part of the evidence in a case) will be permitted while Court is in session.

- (v) No talking or other unnecessary noises will be permitted while Court is in session.
- (vi) Everyone must rise when instructed to do so, upon opening, closing, or declaring recesses of Court.
- (vii) Any attorney who appears in Court intoxicated or under the influence of intoxicants, drugs or narcotics may be summarily held in contempt.

Rule 1104. Attorney Conference with Respect to Discovery Motions

With respect to all motion or objections relating to discovery, the Tribal District Court shall refuse to hear any such motion or objection unless counsel for the movant shall first advise the Court in writing that they have conferred in good faith with opposing counsel, but that, after a sincere attempt to resolve differences has been made, the attorneys have been unable to reach an accord.

Rule 1105. Free Press - Fair Trial

(a) It is the duty of the lawyer or law firm not to release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by any means of public communication, in connection with pending or imminent criminal litigation with which a lawyer or a law firm is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

(b) With respect to a pending investigation of any criminal matter, a lawyer participating in or associated with the investigation shall refrain from making any extra judicial statement which a reasonable person would expect to be disseminated, by any means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation.

(c) From the time of arrest, issuance of an arrest warrant or the filing of a criminal complaint in any criminal matter until the commencement of trial or disposition without trial, a lawyer or law firm associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement which a reasonable person would expect to be disseminated by any means of public communication, relating to that matter and concerning:

- (1) The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence, occupation, and family status and, if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in their apprehension or to warn the

public of any dangers they may present;

- (2) The existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;
- (3) The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;
- (4) The identity, testimony, or credibility of prospective witnesses, except that the lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;
- (5) The possibility of a plea of guilty to the offense charged or a lesser offense;
- (6) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

(d) The foregoing shall not be construed to preclude the lawyer or law firm during this period, in the proper discharge of their or its official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission or Statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the Court in the case: from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence: or from announcing without further comment that the accused denies the charges made against them.

(e) During a jury trial on any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extrajudicial Statement or interview relating to the trial or the parties or issues in the trial, which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial, except that the lawyer or law firm may quote from or refer without comment to public record of the Court in the case.

(f) Nothing in this Rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearing or the lawful issuance of reports by legislative, administrative, or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against them.

(g) All Court supporting personnel, including among others, Tribal and Bureau of Indian

Affairs Police and their deputies, marshals, deputy marshals, Court clerks, deputy Court clerks, bailiffs, Court reporters and employees or subcontractors retained by the Court appointed official reporters, are hereby prohibited from disclosing to any person, without authorization by the Court, information relating to a pending criminal case that is not a part of the public records of the Court. Such personnel are also forbidden from divulging information concerning incamera arguments and hearing held in chambers or otherwise outside the presence of the public.

(h) In a widely publicized or sensational civil or criminal case, the Court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the Courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the Court may deem appropriate for inclusion in such an order.

Such a special order may be addressed to some or all of the following subjects:

- (1) A proscription of extrajudicial statements by participants in the trial (including lawyers, parties, witnesses, jurors, and Court officials) which might divulge prejudicial matter not of public record in the case.
- (2) Specific directives regarding the clearing of entrances to and hallways in the Courthouse and respecting the management of the jury and witnesses during the course of the trial, to avoid their mingling with or being in the proximity of reporters, photographers, parties, lawyers, and others, both in entering and leaving the Courtroom or Courthouse and during recesses in the trial.
- (3) A specific direction that the jurors refrain from reading, listening to, or watching news reports concerning the case, and that they similarly refrain from discussing the case with anyone during the trial and from communicating with others in any manner during their deliberations.
- (4) Sequestration of the jury on motion of either party or by the Court, without disclosure of the identity of the movant.
- (5) Direction that the names and addresses of jurors or prospective jurors not be publicly released except as required by the Tribal Court, and that no photograph be taken or sketch made of any juror within the environs of the Court.
- (6) Insulation of witnesses during the trial.
- (7) Specific provisions regarding the seating of spectators and representatives of news media, including:
 - (i) An order that no member of the public or news media

representative be at any time permitted within the bar railing;

(ii) The allocation of seats to news media representatives in cases where there is an excess of requests, taking into account any pooling arrangement that they may have been agreed to among the press.

(i) The taking of photographs and operation of tape recorders in the Courtroom or its environs and radio or television broadcasting from the Courtroom or its environs during the progress of or in connection with judicial proceedings, including proceedings before a Tribal judge, whether or not Court is actually in session, is prohibited. A Judge may, however, permit the use of electronic or photographic means for the presentation of evidence or the perpetuation of a record, (2) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or similar proceedings, and (3) the use of electronic or photographic equipment including recording apparatus by trial officers or employees in the regular course of their business within their normal area of operation within the Courthouse when such will not interfere with the trial of the case.

(j) As used in this Rule the term “environs” means any place in or near the Courtroom, or within the building in which the Courtroom is situated.

Rule 1106. Plan of the Tribal Court for the Representation of Indigent Parties

(a) For Whom Appointed. As designated and provided by the Tribal Court when such persons are found to be financially unable to obtain adequate representation, and free representation is available, or when the Court has adequate funds, not otherwise obligated, to pay for such representation for (1) adult criminal defendants; (2) all juvenile defendants/delinquents under the age of eighteen (18), regardless of financial means; (3) parents charged in abuse/neglect/deprived cases; and (4) children in abuse/neglect/deprived cases, regardless of financial means.

(b) Appointment Panel. Private attorneys will be appointed by the Judges of this Court. Said appointments shall be made on a rotational basis, subject to the Court’s discretion to make exceptions due to the nature and complexity of the case, an attorney’s experience, and geographical considerations. Periodically as necessary, the panel will be republished by the Judges of this Court. If sufficient attorneys volunteer to be placed on this panel to satisfy the needs of the Court for representation of indigent persons and children, other attorneys may be excused from service on the panel, provided, that the Court may still request the assistance of such attorneys if necessary or useful to the Court.

(c) Pay. Appointees may be compensated at a rate determined by the Chief Judge or their designee, do so in addition to reasonable expenses as the Court budget and Court fund will allow. The Court may set a flat rate or maximum amount including all representation before the Supreme Court through appeal of a case. Compensation in post-conviction cases, probation and parole revocation hearings and material witness matters may also have a flat rate or maximum amount set. In all events, the compensation paid shall be in that amount approved by a Judge of this Court.

(d) Claims. Standard forms shall be used throughout and claims for legal compensation and expenses and for services other than counsel shall be submitted within forty five (45) days after services are completed.

(e) Obligation of Court-Appointed Counsel to Disclose Client's Assets. If at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with their representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the Court.

(f) Refusal to Represent Indigents. An attorney who neglects or refuses to serve as counsel for an indigent or child in this Court when duly appointed to do so by a Judge may have their name removed from the list of those admitted to practice law in this Court, provided, that no attorney shall be required, without their consent, to represent more than one person each calendar year without receiving compensation therefore as provided in paragraph (c) of this rule. For good cause shown, the Court may excuse an attorney from an appointment although such action is not favored. No Government attorney shall be appointed in any such case.

(g) Person Obligated to Refund Court Fund for Attorney Fees or Pay Attorneys. Every indigent person, and the parents of every child, for whom a Court appointed attorney is obtained, shall be liable to the Tribe for all sums paid to their Court appointed counsel as fees and expenses in the action, or all sums which the Court, upon motion of appointed counsel, taxes against that person as the fair costs of such representation at the conclusion of the case, which amount shall not exceed the amount which the Court would have paid from the Court fund or Court budget if funds for payment had been available. This liability may be enforced, by motion filed in the case by the parties' attorney, the Tribal Attorney, or Tribal District Attorney, at any time after the amount of such attorney's fees and costs have been set by the Court, and process may be issued as in civil, cases to enforce this liability. All amount recovered shall be repaid into the Court fund or Court budget, and if the attorney has not received payment for their fees and costs, the Clerk of the Court shall forthwith pay over to the attorney such amounts as they are entitled to pursuant to the order of the Court setting the attorney fees and costs.

OATH OF ATTORNEY

I do solemnly swear:

I will support the Constitution of the United States, and the Constitution of the United Keetoowah Band. I will maintain the respect due to Court of justice and judicial officers.

I will be bound by the Code of Professional Responsibility of the American Bar Association and will conduct myself in compliance therewith at all times.

I will not counselor maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law.

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false Statement of fact or law.

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with a client's business except from the client or with the client's knowledge and approval.

I will abstain from all offensive personalities, and advance no facts prejudicial to the honor or reputation of a party or a witness, unless required by the justice of the cause with which I am charged.

I will never reject, for any consideration personal to myself, the cause of the defenseless or oppressed, or delay any person's cause for lucre or malice. So help me God.