

TABLED

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: OCT 13 2025

ORDINANCE NO. 6 (2025)

An ordinance amending the Judicial Code - Chapter 7 of the Cherokee Code

WHEREAS, it has been a longstanding policy and belief of the Tribe that a court system is an essential aspect of the Tribe's inherent sovereign authority, and a Tribal judiciary has existed and operated in different forms in accordance with the Tribe's exercise of its powers of self-government;

WHEREAS, the Judicial Branch in its current form was established in 2000 upon passage of Ordinance No. 29 (2000), which was codified as the Judicial Code in Chapter 7 of the Cherokee Code, and although various provisions have been amended since its codification, the Judicial Code must be amended to ensure consistency and harmony throughout Tribal law, to promote and facilitate the administration of justice and judicial efficiency, and to protect the interests of the Tribal community and the parties appearing before the courts;

WHEREAS, the Judicial Code in Chapter 7 of the Cherokee Code governing the Judicial Branch should be amended to clarify and add provisions controlling matters such as the structure and operation of the courts, the roles and powers of judicial officers, and the procedures ensuring independent and impartial judicial officers;

NOW THEREFORE BE IT ORDAINED by the Eastern Band of Cherokee Indians in Tribal Council assembled, at which a quorum is present and upon a vote of two-thirds of Tribal Council, that Chapter 7 is amended as set forth in Exhibit A:

1 **Exhibit A.**

2 **Chapter 7 JUDICIAL CODE**

3 **ARTICLE I. IN GENERAL**

4 **Sec. 7-1. Establishment; Composition of the Judicial Branch.**

- 5 (a) The Judicial Branch is established as a branch of government of the Eastern Band of Cherokee Indians. The
6 Judicial Branch shall be comprised of one Supreme Court, known as the "Cherokee Supreme Court", and one
7 Trial Court, known as the "Cherokee Court", and such other Trial Courts of Special Jurisdiction as established
8 by law. The Supreme Court shall be known as the "Cherokee Supreme Court" and the Trial Court shall be
9 known as the "Cherokee Court." Trial Courts of Special Jurisdiction shall be established by the Tribal Council
10 and named according to their function (e.g., Cherokee Juvenile Court). The Judicial Branch shall be located
11 within the Qualla Boundary, provided however that the Judicial Branch may sit and conduct hearings at
12 another location within the territory of the Eastern Band of Cherokee Indians in accordance with rules
13 established by the Judicial Branch for the conduct of hearings.
- 14 (b) The Cherokee Supreme Court shall be comprised of (i) one Chief Justice and two (ii) three Associate Justices.
15 The Trial Court shall be comprised on one Chief Judge and two Associate Judges, and other Associate Judges
16 of the Trial Courts of Special Jurisdiction. Cases and controversies shall be heard and determined by a panel
17 of no less than three justices. The Cherokee Supreme Court shall determine by rule a procedure for which
18 panels are randomly assigned, except that the Chief Justice shall preside over every panel unless disqualified,
19 recused, or unavailable. In the event that a panel cannot be assigned due to disqualification, recusal, or
20 unavailability, the Chief Justice may, in a random manner, designate a Judge to serve temporarily on a panel
21 as an Associate Justice pro tem, except that where the Cherokee Supreme Court is exercising appellate
22 jurisdiction, no Judge who presided over or participated in the case or controversy on appeal shall be eligible
23 for designation.
- 24 (c) The Cherokee Court shall be comprised of (i) one Chief Judge (ii) no less than two full-time Associate Judges
25 and (iii) such part-time Associate Judges as necessary to effectively administer the Cherokee Court. The
26 Cherokee Court may operate specialty divisions, however denominated, that are now existing or as may be
27 established or provided for by law or by the Judicial Branch. The Court shall maintain a list of temporary
28 justices, judges and magistrates available for assignment to particular cases or duties by the Chief Justice.
29 Prior to assignment by the Chief Justice, temporary justices, judges or magistrates must be nominated and
30 confirmed in accordance with C.C. §7-11.
- 31 (d) In the event of unavailability, disqualification, vacancy, or other cause which interferes with the timely
32 administration of justice, the Chief Judge may request that the Chief Justice designate an Associate Justice to
33 serve as an Associate Judge pro tem to preside over a given case or session, provided that the Associate
34 Justice shall be disqualified from participating in a review on appeal of any decision entered or case heard
35 while serving as an Associate Judge pro tem.
- 36 (e) For construction purposes in this Chapter and throughout Tribal law, unless stated otherwise, the term
37 "Justice" means and includes the Chief Justice of the Cherokee Supreme Court and Associate Justices, and
38 the term "Judge" means and includes the Chief Judge of the Cherokee Court, full-time Associate Judges, and
39 part-time Associate Judges, and the term "judicial officer" or "judicial official" means and includes Justices,
40 Judges, magistrates, and any clerk acting in a judicial or quasi-judicial capacity.
- 41 (f) For construction purposes in this Chapter, pro tem means for a specific time or temporary.
- 42 (g) Reserved.

1 **Sec. 7-2. Jurisdiction of the Judicial Branch.**

2 (a) The jurisdiction of the Eastern Band of Cherokee Indians, including the Judicial Branch, extends to all
3 persons, activities, and property within the territory of the Eastern Band of Cherokee Indians based upon
4 inherent territorial or popular sovereignty. The territory of the Eastern Band of Cherokee Indians is
5 comprised of ~~all lands within the Qualla Boundary~~, all lands held in trust by the United States for the benefit
6 ~~of the Eastern Band or any member of the Eastern Band~~, and all other lands acquired owned by the Eastern
7 Band, ~~notwithstanding the issuance of any right-of-way~~. The territory includes all surface and sub-surface
8 lands, submerged lands under navigable or non-navigable waters, all air and water, and all natural resources.
9 ~~Every person who enters the territory shall, by entering, be deemed to have consented to the jurisdiction of~~
10 ~~the Eastern Band of Cherokee Indians.~~

11 (1) Notwithstanding that consent may otherwise be implied or expressly given, every person who
12 enters the territory of the Eastern Band of Cherokee Indians or who conducts business with or
13 enters consensual relationships with the Tribe, including any of its programs, enterprises,
14 authorities, officials, agents, or employees acting in their official capacities, any Tribally-owned
15 enterprises or businesses, or any of the Tribe's enrolled members, shall, by entering or engaging in
16 such conduct, be deemed to have consented to the jurisdiction of the Eastern Band of Cherokee
17 Indians.

18 (2) Nothing in this section shall be deemed to prevent or limit the exercise of jurisdiction by the Judicial
19 Branch for cases or claims arising outside of the territory of the Eastern Band of Cherokee Indians.

20 (b) The ~~Trial~~ Cherokee Court shall have original jurisdiction over all cases and controversies, both criminal and
21 civil, in law or in equity, arising under the Charter, laws, customs, and traditions of the Eastern Band of
22 Cherokee Indians, including cases in which the Eastern Band of Cherokee Indians, or its officials and
23 employees, shall be a party. Any such case or controversy arising within the territory of the Eastern Band of
24 Cherokee Indians shall be filed and exhausted in the Judicial Branch before it is filed in any other jurisdiction.
25 This grant of jurisdiction shall not be construed to be a waiver of sovereign immunity.

26 (c) The Judicial Branch shall not have jurisdiction over matters in which the exercise of jurisdiction has been
27 specifically prohibited by a binding decision of the United States Supreme Court, the United States Court of
28 Appeals for the Fourth Circuit or by an Act of Congress.

29 (d) In deciding cases and controversies ~~over which it has jurisdiction~~, the Judicial Branch shall be bound by the
30 laws, customs, traditions, and precedents of the Eastern Band of Cherokee Indians. If there is no applicable
31 Cherokee law, the Judicial Branch shall look next to Federal law, then to North Carolina law, and finally to the
32 law of other jurisdictions for guidance. Limitations on the authority of the ~~Cherokee Court~~ Judicial Branch to
33 grant certain types of relief, which are set forth in the Cherokee Code, shall remain in full force and effect,
34 unless they are specifically rescinded by the Tribal Council.

35 (e) The Cherokee Supreme Court shall have appellate jurisdiction to certify and decide any appeal from the ~~Trial~~
36 Cherokee Court. The Cherokee Supreme Court shall have original and exclusive jurisdiction to review a final
37 determination made by the Election Board in any election dispute.

38 (f) The Judicial Branch shall have, in a case of actual controversy within its jurisdiction, the authority to enter
39 such declaratory judgements or decrees, as provided for in Tribal law or as guided in the exercise of this
40 authority by the provisions of the Federal Declaratory Judgment Act.

41 **Sec. 7-3. Powers and Duties of the Judicial Branch.**

42 (a) The judicial power shall be vested in the Judicial Branch. The Judicial Branch shall have the power to interpret
43 and apply the Charter, laws, customs, and traditions of the Eastern Band of Cherokee Indians. ~~The Chief~~
44 ~~Justice of the Supreme Court shall administer the Judicial Branch.~~

(b) The ~~Judicial Branch~~ Cherokee Supreme Court shall develop a system of precedent based on the common law, customs, and traditions of the Eastern Band of Cherokee Indians. The Judicial Branch shall not adjudicate the same ~~matter~~ case twice. The Judicial Branch shall have the power to assess fees and costs in accordance with law, by general rule or by order in specific cases. The Judicial Branch is authorized to create an annual schedule for fees and costs to be charged and assessed in connection with judicial proceedings and enforcement of judicial process, including but not limited to filing fees, court-appointed attorney fees, detention costs, probation costs, and any other fees and costs deemed necessary as part of the ordinary costs of justice as ordered by the Judicial Branch.

~~(1) Detention costs.~~

(A) ~~Persons who are lawfully confined to the Cherokee Detention Center, whether they are awaiting trial, sentenced after conviction or upon a lawful plea, or are sentenced as part of a probationary sentence shall be liable to the Tribe in the sum of \$30.00 for each 24 hours' confinement, or fraction thereof, except that a person so confined shall not be liable for this cost if the case or proceeding against him is dismissed, or if acquitted, or if judgment is arrested, or if probable cause is not found, or if the grand jury fails to return a true bill.~~

(B1) The fees and costs set forth under an annual schedule in accordance with this section are not exclusive, but are in addition to any other legal costs or fees assessed or ordered by the Court Judicial Branch and nothing in this section do not prohibits the Cherokee dDetention eCenter or the Cherokee Probation Department from imposing charging costs or fees consistent with their respective policies for services or items sold from the within the facility or any other legal charges imposed under detention center policy.

(C2) The ~~dDetention costs~~ collected in accordance with this section shall be used to reimburse the Tribe for general expenses incurred for housing inmates in the Cherokee Detention Center tribal detention facility.

(D) ~~Changes to the costs or fees in this section apply to costs or fees assessed or collected on or after the effective date of the change.~~

~~(c) The Judicial Branch shall make projections of judicial revenues and propose an annual budget for the Judicial Branch. The Chief Justice shall have the power to administer funds appropriated by law for the Judicial Branch.~~

~~(d) With the exception of appointed Judges and Justices, Judicial Branch personnel shall be tribal employees who are subject to the Tribe's personnel policies and procedures.~~

Sec. 7-4. Powers of the Trial Court.

(a) The ~~Trial~~ Cherokee Court shall have the power to interpret and apply the Charter, laws, customs, and traditions of the Eastern Band of Cherokee Indians, and to make findings of fact and conclusions of law and issue all remedies in law and relief in equity.

(b) In a given case or controversy, the Cherokee Court shall have the power to declare any law void if such violates the Charter and Governing Document of the Eastern Band of Cherokee Indians, or any other governing foundational document hereinafter approved or amended by referendum.

(c) If any party seeks a declaration pursuant to subsection (b), then the party seeking such declaration shall serve the Office of the Attorney General with notice and the Attorney General or their designee shall be allowed to participate and be heard by the Court.

~~(d)~~ Orders of the ~~Trial~~ Cherokee Court shall be written and may be published.

1 **Sec. 7-5. Powers of the Supreme Court.**

- 2 (a) The Cherokee Supreme Court shall have the power to interpret and apply the Charter, laws, customs, and
3 traditions of the Eastern Band of Cherokee Indians, and to make conclusions of law. The Cherokee Supreme
4 Court shall not have the power to make findings of fact.
- 5 (b) The Cherokee Supreme Court shall have the power to declare any law void if such violates the Charter and
6 Governing Document of the Eastern Band of Cherokee Indians, ~~enacted in 1986, as it may from time to time~~
7 ~~be amended~~ or any other governing foundational document hereinafter approved or amended by
8 referendum, and the power to review an appeal of a declaration of the Cherokee Court made pursuant to
9 Sec. 7-4(b).
- 10 (c) The Cherokee Supreme Court shall have the power to answer questions of Cherokee Constitutional law,
11 certified to it by the Cherokee Tribal Council, and shall expedite consideration of any certified questions of
12 law. In the exercise of sound discretion, the Cherokee Supreme Court may also decline to answer questions
13 certified by the Cherokee Tribal Council. The Cherokee Supreme Court may issue rules or administrative
14 orders appropriate to the processing and determination of certified questions of Cherokee Constitutional
15 law.
- 16
- 17 (d) The Cherokee Supreme Court shall have the power to establish written rules for the Judicial Branch,
18 including qualifications to practice law, provided such rules are consistent with law. No person shall be
19 permitted to practice law in any court of the Judicial Branch unless that person has a valid North Carolina law
20 license.
- 21 (e) Orders and opinions of the Cherokee Supreme Court shall be written and published.
- 22 (f) Orders and opinions of the Cherokee Supreme Court are final and shall not be subject to appeal to any other
23 body of the Eastern Band of Cherokee Indians.
- 24

25 ~~**Secs. 7-6. — 7-10. Reserved.**~~

26

27 **Sec. 7-6. Disqualification; recusal.**

- 28 (a) Nothing in this section shall be construed to limit the authority of a judicial officer to voluntarily recuse
29 themselves from a matter.
- 30 (b) A judicial officer shall be disqualified and shall recuse themselves in any proceeding in which they have a
31 direct personal, familial, or financial interest in the outcome of any matter.
- 32 (c) A party in a proceeding may file a verified motion for the disqualification of a presiding judicial officer or
33 officers based on the grounds in subsection (b). The motion shall include a certification that the motion is
34 being made in good faith, is not being made for the purpose of delay, and has a reasonable basis in law and
35 fact. The motion shall be filed within ten (10) days of the date the moving party first learned of the alleged
36 grounds for disqualification, except that no motion shall be filed later than five (5) days prior to the date of
37 the hearing or the trial absent extenuating circumstances that prevented knowledge of the alleged grounds
38 of disqualification. The motion shall be presented to the presiding judicial officer who may rule on the
39 sufficiency of the motion or forward the motion to another judicial officer for a decision as to whether a
40 different judicial officer should be assigned. An order may be entered upon the sufficiency of the motion
41 without a hearing, or a hearing may be convened.
- 42 (1) If a presiding judicial officer forwards a motion to another judicial officer for a decision as to
43 disqualification pursuant to subsection (c), the judicial officer who reviews the motion shall be
44 determined in the following manner:

- 1 (A) If the presiding judicial officer is a Justice, the motion shall be reviewed by another Justice.
2 (B) If the presiding judicial officer is a Judge, the motion shall be reviewed by another Judge.
3 (C) If the presiding judicial officer is a magistrate, the motion shall be reviewed by a Judge.
4 (D) If the presiding judicial officer is a clerk, the motion shall be reviewed by the Chief Justice.

5
6 (d) There shall be no right to an interlocutory appeal of an order issued under subsection (c).

7 (e) A judicial officer disqualified under subsection (b) may disclose on the record the basis of the judicial officer's
8 disqualification. Following such disclosure, the parties to a proceeding may waive disqualification provided
9 that such waiver is made by agreement of all parties and is incorporated into the record.

10
11 **Secs. 7-7. – 7-10. Reserved.**
12

13 **ARTICLE II. JUSTICES AND JUDGES**

14 **Sec. 7-11. Appointment; Oath.**

15 (a) A vacancy for any Justice or Judge shall be filled by nomination by ~~t~~The Principal Chief shall appoint all justices
16 and judges with confirmation by the Tribal Council. Tribal Council shall hold confirmation hearings in
17 accordance with C.C. Chapter 117, Article III-A.

18 (b) Upon confirmation, and prior to entering the duties of office, all Justices and Judges shall take the following
19 oath:

20 "I do solemnly swear (or affirm) that I will faithfully execute the duties of the office (Chief
21 Justice, Associate Justice, Chief Judge, Associate Judge) of the Eastern Band of Cherokees and will to the
22 best of my ability, preserve, protect and defend the charter and governing document, laws confirmed and
23 ratified by the enrolled members of the Eastern Band of Cherokee Indians, and the customs, traditions,
24 and precedents of the Eastern Band of Cherokee Indians. I do solemnly swear (or affirm) that I have not
25 obtained my election or appointment to Tribal office by bribery or any undue or unlawful means or fraud,
26 and that in all measures which may come before me I will so conduct myself as in my judgment shall
27 appear most conducive to the interest and prosperity of the Eastern Band of Cherokees and the Tribal
28 Court."

29 **Sec. 7-12. Terms of office.**

30 (a) The Chief Justice, of the Cherokee Supreme Court and the Chief Judge, of the Cherokee Court and Associate
31 Judges for Trial Courts of Special Jurisdiction shall each serve terms of six years, or until their successors have
32 been sworn into office, and shall be eligible for reappointment.

33 (b) Associate Justices of the Cherokee Supreme Court and Associate Judges of the Trial Cherokee Court shall
34 serve terms of four years, or until their successors have been sworn into office, and shall be eligible for
35 reappointment.

36 (c) In no event shall a Justice or Judge be authorized to serve more than one (1) year after the expiration of their
37 term, except to the extent that such service is deemed by the Chief Justice to be required for the timely
38 administration of cases or matters under the supervision of such Justice or Judge.

39 **Sec. 7-13. Compensation.**

40 (a) The Justices and Judges shall be paid reasonable compensation as established by law which shall not be
41 decreased during a term of office. The Chief Justice of the Cherokee Supreme Court shall be paid an annual
42 salary. The Associate Justices of the Supreme Court shall be paid on a per case basis. The Chief Judge and full-

1 time Associate Judges of the Trial Cherokee Court shall be paid an annual salary. Associate Judges for Trial
2 Courts of Special Jurisdiction shall be paid on a per case basis.

3 (b) The Chief Justice has authority to enter Memorandum of Agreements with Associate Justices and part-time
4 Associate Judges for which compensation shall be set at an hourly rate for cases and/or duties as assigned.

5 **Sec. 7-14. Judicial qualifications.**

6 (a) The Chief Justice of the Supreme Court and the Chief Judge of the Trial Court shall be attorneys licensed by
7 the North Carolina State Bar and members in good standing of the practicing bar of the Eastern Band of
8 Cherokee Indians. No person shall serve as a Justice or Judge who has ever been convicted of a felony or
9 other crime of moral turpitude in any jurisdiction, convicted of any crime involving embezzlement, fraud,
10 bribery or theft against the Eastern Band of Cherokee Indians, removed by impeachment from any office, or
11 resigned from any office while under official investigation for impeachment.

12 (b) All persons appointed as associate Justices of the Cherokee Supreme Court and as associate Judges of the
13 Cherokee Tribal Court shall also:

14 (1) be attorneys licensed by and in good standing with the North Carolina State Bar;

15 (2) be members in good standing of the practicing bar of the Eastern Band of Cherokee Indians; and

16 (3) have strong analytical and communicative legal writing skills. This subsection shall not apply to
17 persons appointed and confirmed before the effective date of this amendment.

18 (c) The Chief Justice shall meet all judicial qualifications as set forth in this section and shall also have sufficient
19 legal or judicial experience commensurate with the responsibilities of the position and significant experience
20 or knowledge of federal Indian law and Tribal law. In appointing a person to serve as Chief Justice,
21 preference shall be given to enrolled members of the Eastern Band of Cherokee Indians.

22 (d) Justices and Judges shall, within eighteen (18) months upon appointment and confirmation, complete
23 training for new judicial officers with a preference for training on federal Indian law, the judiciary, and the
24 history, customs, and traditions of the Eastern Band of Cherokee Indians.

25 **Sec. 7-15. Conflict of interest.**

26 Any Justice or Judge with a direct personal or financial interest in the outcome of any matter shall
27 recuse himself or herself, and failure to recuse shall constitute grounds for impeachment and removal from
28 office.

30 **Sec. 7-15. Chief Justice.**

31 (a) The Chief Justice of the Cherokee Supreme Court is the presiding Justice of the Cherokee Supreme Court and
32 the administrative head of the Judicial Branch. To administer the Judicial Branch, the Chief Justice shall
33 exercise administrative and supervisory authority over the courts consistent with applicable provisions of law
34 and any rules promulgated by the Tribe or the Judicial Branch. To facilitate exercise of such administrative
35 and supervisory authority, the Chief Justice may:

36 (1) Make rules and issue orders appropriate to that exercise to ensure judicial and procedural efficiency.

37 (2) Establish time standards for dispositions of cases.

38 (3) Consistent with the Code of Ethics for Judicial Officers as adopted by the Cherokee Supreme Court,
39 establish personnel rules and policies for judicial officers.

(4) Discipline Judges or Justices by issuing a letter of caution, private reprimand, or suspension with pay. Any discipline shall be commensurate with the nature and degree of the act and shall not interfere with the timely and efficient administration of justice.

(5) Take other action appropriate to the exercise of the powers in this section and elsewhere in law, and appropriate to the exercise of the Chief Justice's administrative and supervisory authority.

(b) Judicial officers and employees of the Judicial Branch shall comply with rules made and orders issued by the Chief Justice in accordance with this section.

(c) The Judicial Branch shall make projections of judicial revenue and propose an annual budget for the Judicial Branch. The Chief Justice shall have the power to administer funds appropriated by law for the Judicial Branch and shall have the authority to enter into Memorandums of Agreement with Associate Justices and part-time Associate Judges for payment of assignments and/or duties.

(d) Notwithstanding any provision to the contrary, the Chief Justice may delegate the exercise of any of the powers specified in this section to the Chief Judge of the Cherokee Court, and may delegate any administrative power specified in this section to the Administrative Officer of the Court.

Sec. 7-16. Removal by impeachment. Chief Judge.

The Chief Judge of the Cherokee Court shall be the administrative head of the Cherokee Court and shall be responsible and accountable to the Chief Justice of the Cherokee Supreme Court in the exercise of their administrative and supervisory authority.

Sec. 7-17. Vacancies in the Judicial Branch. Removal by impeachment.

(a) Tribal Council expressly finds that an impartial and independent Judicial Branch is an essential exercise of sovereignty and in the Tribe's best interest, and the making or issuance of an unpopular or unfavorable decision is not a sufficient ground for discipline or impeachment. Justices and Judges shall be subject to impeachment and removal from office for violations of oath of office, violations of the Code of Ethics for Judicial Officers adopted by the Cherokee Supreme Court, and convictions of a felony or other crime of moral turpitude, or any crime involving embezzlement, fraud, bribery or theft against the Eastern Band of Cherokee Indians.

(a**b**) The Ethics Commission shall have the sole power to remove Judges and Justices by impeachment, and shall have the authority to investigate, hear evidence, levy Articles of Impeachment, and issue all service of process for the purpose of carrying out a impeachment proceeding as set forth in this section. ~~and any other power delegated by law.~~ The Ethics Commission shall be comprised of five members, who shall be the Principal Chief, Vice-Chief, Chairperson of the Tribal Council, Vice Chairperson of the Tribal Council, and the Chairperson of the Community Club Council. ~~A judge or justice subject to impeachment proceedings shall be given reasonable notice of the charges and shall address the Ethics Commission in a public hearing. An affirmative vote of four members of the Ethics Commission shall be required to initiate an impeachment proceeding and for removal~~ by impeachment under this section.

(b**c**) The Ethics Commission shall choose from among its own members an officer to preside over an impeachment of a judge or justice. Impeachment proceedings shall be open to the public. Impeachment proceedings may be initiated upon a written verified complaint alleging the existence of one or more of the grounds of impeachment set forth in subsection (a). The Ethics Commission shall determine if there is evidence admissible under the Rules of Evidence and if the evidence establishes probable cause to initiate an impeachment proceeding. The Ethics Commission shall commence an impeachment proceeding upon an affirmative vote of four members of Articles of Impeachment containing a charge of probable cause of one or more of the grounds for removal in subsection (a). The Ethics Commission shall dismiss the complaint if there is no legal or factual basis for impeachment. ~~A resignation tendered by a person subject to pending~~

impeachment proceedings shall be deemed an affirmative judgment for removal by impeachment. Judgment to remove by impeachment shall be final and not subject to judicial review.

(ed) A judgment to remove by impeachment rendered by the Ethics Commission shall include disqualification to hold future office, disqualification to be employed in any governmental capacity by the Eastern Band of Cherokee Indians, and may include denial of certain rights, benefits, or privileges as an enrolled member of the Eastern Band of Cherokee Indians. A judgment to remove by impeachment shall be final and jeopardy shall not attach so that an impeached official may be bound over for prosecution, trial, conviction, and sentencing in a court of law. The Eastern Band of Cherokee Indians may initiate a civil action in the Judicial Branch to seek restitution of any funds wrongfully acquired by an individual removed by impeachment. The Articles of Impeachment shall contain, at a minimum, sufficient information to inform the Judge or Justice of the charges against them and the rights accorded to them under this section and shall include a fixed time and place for the impeachment proceeding. A Judge or Justice subject to an impeachment proceeding shall be given at least thirty (30) days notice of the charges, and shall have the right to present witnesses, confront the witnesses against them, be represented by a spokesperson or counsel at their own expense, and be given an opportunity to respond.

(e) Following the impeachment proceeding, the Ethics Commission shall vote to enter a judgment on whether to remove the Judge or Justice from office based on the testimony and evidence presented of the charges listed in the Articles of Impeachment. Judgments shall be final and not subject to judicial review. A judgment of acquittal shall be entered if the Judge or Justice is found not guilty of the charges in the Article of Impeachment. A judgment to remove by impeachment shall immediately remove the impeached Judge or Justice from office and be sent to the Office of the Attorney General for any and all further action including criminal or civil action as appropriate.

Sec. 7-17. Vacancies in the Judicial Branch.

A vacancy in any judicial office shall be filled by appointment in accordance with Section 7-1 above.

Secs. 7-18—7-20. Reserved.

ARTICLE III. OTHER OFFICERS MISCELLANEOUS

Sec. 7-18. Judicial Branch Personnel.

- (a) All Judicial Branch personnel shall be Tribal employees and subject to the Tribe's personnel policies and procedures, except to the extent that Judges and Justices shall be treated as political appointees for such policies and procedures and subject to the exemptions and exceptions therein.
- (b) Notwithstanding subsection (a), judicial officers shall be bound by applicable law and rules and shall be subject to Sec. 7-6 governing disqualification and the Code of Ethics for Judicial Officers. No discipline shall be made pursuant to the Tribe's personnel policies and procedures solely on the basis of an unpopular or unfavorable decision.

Sec. 7-19. Magistrates.

- (a) Magistrates shall be neutral and detached judicial officers of the Cherokee Court.
- (b) Magistrates shall impartially administer justice and discharge all duties imposed upon them.
- (c) Magistrates shall have all powers, authority, jurisdiction, and duties conferred or imposed upon them by law and by the Cherokee Rules of Criminal Procedure. In addition to such powers, authority, jurisdiction, and duties assigned by law or rule, magistrates shall have the power to:
- (1) Issue oaths and affirmations and take acknowledgements and affidavits;

- 1 (2) Enforce their lawful orders in a manner consistent with law;
2 (3) Issue subpoenas;
3 (4) Accept cash bonds.
4 (d) Magistrates shall be subject to applicable rules and the Code of Ethics for Judicial Officers as adopted by the
5 Cherokee Supreme Court and shall be subject to Sec. 7-6 governing disqualification.
6

7 **Sec. 7-20. Clerk of Court. - Reserved.**
8

9 **ARTICLE IV. - MISCELLANEOUS**

10 **Sec. 7-21. Annual report.**

11 The Chief Justice shall make an annual report to the Tribal Council at the Annual Council concerning the following
12 issues:

- 13 (1) Recommended clarifications, changes or additions to the rules of procedure and evidence governing
14 litigation in the Judicial Branch;
15 (2) Suggested clarifications, changes or additions, if any, to the Cherokee Code to facilitate the
16 administration of justice;
17 (3) Statistics concerning the general nature and character of disputes heard or resolved by the Judicial
18 Branch over the preceding year;
19 (4) Budgetary and financial matters related to the Judicial Branch; and
20 (5) Such other matters as the Chief Justice deems appropriate.

21 **Sec. 7-22. Sovereign immunity.**

22 Nothing in this chapter shall be construed as a waiver of the sovereign immunity of the Eastern Band of
23 Cherokee Indians. The Judicial Branch shall dismiss any claim or cause of action against the Eastern Band of
24 Cherokee Indians, or any of its programs, enterprises, authorities, officials, agents, or employees acting in their
25 official capacities, unless the complaining party demonstrates that the Cherokee Tribal Council or the United States
26 Congress has expressly and unequivocally waived the Eastern Band's sovereign immunity for such a claim in a
27 written ordinance, law, or contract.

28 **Sec. 7-23. Rules of procedure and evidence.**

- 29 (a) The Cherokee Supreme Court shall adopt Local Rules of Practice and Procedure, Rules for Alternative Dispute
30 Resolution, Code of Ethics for Judicial Officers, Rules of Appellate Procedure, and Rules governing the
31 conduct of attorneys and advocates admitted to practice and appearing in the Judicial Branch. Unless
32 superseded by Tribal law or rules promulgated by the Judicial Branch, p~~Proceedings in the courts of the~~
33 Judicial Branch shall be governed by the North Carolina Rules of Civil Procedure ~~and~~ the North Carolina Rules
34 of Evidence, ~~and the North Carolina Rules of Appellate Procedure.~~ The Cherokee Tribal Council adopts these
35 North Carolina rules as a matter of comity to promote respect for the Cherokee Courts and to facilitate the
36 practice of law in the Cherokee Courts.
37 (b) All documents to be filed with the courts shall be filed in-person, or electronically in accordance with rules
38 promulgated by the Judicial Branch, at the Cherokee Courthouse, ~~Acquoni Road, Cherokee, Qualla Boundary~~
39 ~~(North Carolina).~~

(c) This section shall not be construed as a waiver of the Tribe's inherent sovereign authority to make its own laws and rules. ~~The Supreme Court may propose amendments to specific rules for approval by the Tribal Council. Such rules shall not take effect until so approved and published in the Cherokee Code.~~

Sec. 7-24. Severability.

If any section of this chapter is found to be inconsistent with a specific provision of the Charter or Governing Document of the Eastern Band of Cherokee Indians, then the Charter shall supersede that section, but all other sections of this chapter shall remain in full force and effect.

Sec. 7-25. Amendment.

To protect the independence of the Judicial Branch, this Chapter may only be amended by ordinance passed by a vote of two-thirds of the Cherokee Tribal Council and ~~ratification~~ ratified by the Principal Chief.

Sec. 7-26. Repeal of prior law.

The following sections of Chapter 1 are hereby rescinded, effective upon the implementation of the self-determination contract with the Bureau of Indian Affairs: Sections 1-1, 1-4, 1-5, 1-7, 1-8, 1-9, 1-10, 1-12, 1-13, 1-15, 1-16, 1-17, and 1-18. All other provisions of Chapter 1 shall remain in effect.

Sec. 7-27. Remote Hearings, Technology. - Reserved.

BE IT FINALLY ORDAINED that all ordinances that are inconsistent with this ordinance are rescinded, and that this ordinance shall become effective when ratified by the Principal Chief and Vice-Chief.

Submitted by: Chief Justice Bradley Letts