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Cherokee Council House  
Cherokee, North Carolina  
Date \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_(2026)

WHEREAS, the Tribal Council adopted Section 1-2(g) intending to create a process for claims against the Tribe arising out of negligence, tort, intentional harm to others and related claims where the Tribe maintained insurance coverage that would permit legal action against the Tribe up to the amount of any insurance coverage for these types of claims; and,

WHEREAS the Cherokee Supreme Court in August 2024 issued an opinion in the case Campos v. Eastern Band of Cherokee Indians, CSC 19-06 that invalidated the intent behind Section 1-2(g) and created a gap in the ability for members of the Tribe and other victims injured by the negligent or intentional bad actions of the Tribe and preventing any legal action against the Tribe, including actions where the Tribe maintained insurance coverage; and,

WHEREAS, the Tribal Council has the power and authority to amend the laws of the Tribe to provide a means for recovering damages for the negligent actions of the Tribe, its agents and employees; and,

WHEREAS, since the Supreme Court decision in Campos, the Tribe has continued to maintain and pay for insurance policies to cover negligent actions of the Tribe, its agents and employees, even though said policies are now invalidated by the Supreme Court decision; and,

WHEREAS, the Tribe has continually maintained and promoted the responsibility for covering damages arising from the negligent and bad actions of the Tribe, its agents, and employees and there is now no mechanism in place that would protect innocent victims of negligent or bad actions of the Tribe.

NOW THEREFORE BE IT RESOLVED by the Tribal Council of the Eastern Band of Cherokee Indians in annual council assembled where a quorum is present that Chapter 1 of the Cherokee Tribal Code is hereby amended as set out in exhibit A to reflect the intent of the Tribe to clearly and unequivocally waive sovereign immunity for any tortious or negligent actions caused by the Tribe, its agents or employees.

Submitted by Robert Osley Saunooke

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## Chapter 1 CIVIL PROCEDURE<sup>1</sup>

### ARTICLE I. IN GENERAL

#### Sec. 1-1. Reserved.

Editor's note(s)—Ord. No. 29, adopted April 1, 2000 completely repealed the provisions of this section which pertained to rules of the court and derived from the Code of 1992.

#### Sec. 1-2. Civil jurisdiction.

- (a) The Cherokee Court shall have jurisdiction over all persons, businesses, corporations or other legal entities in civil suits which arise on the Cherokee Indian Reservation or outside the exterior boundaries of the Reservation and included within the jurisdiction of the Tribe pursuant to federal or tribal law, including any person, corporation, businesses or other legal entities who personally or through their agents commit any act that threatens or has a direct or indirect affect on the political integrity, economic security, or the health or welfare of the Tribe and/or its members.
- (b) The Cherokee Court shall exercise jurisdiction over the domestic relations of all members of the Tribe, wherever located, whether residing outside of or individuals residing on Cherokee trust lands. Jurisdiction shall be exercised for cases including but not limited to child protection and child welfare, divorce, separation, child custody, support, alimony, adoption, guardianship, and paternity.
- (c) The Cherokee Court of Indian Offenses or any successor Cherokee Court shall exercise jurisdiction over tortious conduct of all persons where the conduct occurs on Indian trust land or occurs outside of the Reservation boundary and has a direct or indirect affect on the political integrity, economic security, or the health or welfare of the Tribe and/or its members.
- (d) The Cherokee Court of Indian Offenses or any successor Cherokee Court shall exercise jurisdiction over disputes involving any contract that is negotiated or executed on Indian trust land, or involves any interest in Cherokee trust lands and contractual right of the Tribe.
- (e) The Cherokee Court of Indian Offenses or any successor Court shall exercise jurisdiction over all persons, firms, corporations, partnerships or other legal business entities which conduct business on Cherokee trust lands. Such jurisdiction shall be limited to transactions involving or affecting individual Indians, Indian owned businesses, Tribal laws and policy or Indian property.
- (f) The enforcement of all eviction and foreclosure proceedings shall be in the Cherokee Court. The Cherokee Court shall have jurisdiction over all leasehold foreclosures of deeds of trust or mortgages on Cherokee trust lands. Valid deeds of trust or mortgages approved by the Tribe and Bureau of Indian Affairs shall constitute enforceable first liens against such leaseholds.

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<sup>1</sup>Cross reference(s)—Exclusion powers of Tribe, ch. 2; juvenile code, ch. 7A; criminal procedure, ch. 15; limitations, ch. 22; judgement collection, ch. 25; arbitration ordinance, ch. 94; emergency commitment, ch. 108B; child support enforcement, ch. 110.

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- (g) The Cherokee Court of Indian Offenses or any successor Cherokee Court shall exercise jurisdiction over actions against the Eastern Band of Cherokee Indians seeking the following relief:
- (1) An injunction, writ of mandamus or a declaratory judgment concerning individual rights guaranteed by the Indian Civil Rights Act;
  - (2) Damages for condemnation by the Tribe **including inverse condemnation**;
  - (3) Damages **against the Tribe arising out of any for** tort claims where the Tribe maintains insurance coverage for such claims, with recovery not to exceed the amount of liability coverage maintained by the Tribe. **Evidence of the Tribe maintaining insurance coverage for any claims covered by any insurance policy maintained by the Tribe shall be considered a clear and unequivocal waiver of the Tribes sovereign immunity regardless of whether the contract or policy for insurance references any such waiver.**
- (h) The Cherokee Court of Indian Offenses or any successor Cherokee Court shall retain personal jurisdiction over persons or entities resident on Cherokee trust lands for a period of six months after such persons or entities move from Cherokee trust lands.
- (i) None of the foregoing language is intended to grant a waiver of sovereign immunity against the Eastern Band of Cherokee Indians so that a temporary restraining order or preliminary injunction may be entered against the Eastern Band of Cherokee Indians or any agent or official acting in their official capacity, ex parte or otherwise, unless said action is instituted by the Eastern Band of Cherokee Indians against said agent or employee or official.

(Ord. No. 168, 6-2-1994; Ord. No. 328, 1-13-1986; Res. No. 336, 1-3-1991; Ord. No. 369, 10-17-1996; Ord. No. 556, 4-24-1997; Ord. No. 524, 7-17-2015)

### **Sec. 1-3. Reserved.**

Editor's note(s)—Ord. No. 524, ratified July 17, 2015, repealed § 1-3 effective October 1, 2015. Former § 1-3 pertained to jurisdiction regarding juveniles, and derived from Res. No. 160, ratified June 17, 1980; and Ord. No. 818, ratified May 19, 2003.

### **Sec. 1-4. Reserved.**

Editor's note(s)—Ord. No. 29, adopted April 1, 2000 completely repealed the provisions of this section which pertained to rules of civil procedure and derived from the Code of 1992.

### **Sec. 1-5. Reserved.**

Editor's note(s)—Ord. No. 29, adopted April 1, 2000 completely repealed the provisions of this section which pertained to rules of evidence and derived from the Code of 1992.

### **Sec. 1-6. Imprisonment for debt.**

The Cherokee Court shall imprison no person for debt, except in cases of fraud. Application of this section shall not be inconsistent with the application and interpretation of Article I, Section 28 of the Constitution of North Carolina.

(Res. No. 176, 5-10-1984)

## ***ARTICLE II. STRUCTURE OF COURT***

### **Sec. 1-7. Reserved.**

Editor's note(s)—Ord. No. 29, adopted April 1, 2000 completely repealed the provisions of this section which pertained to divisions of court and derived from the Code of 1992.

### **Sec. 1-8. Reserved.**

Editor's note(s)—Ord. No. 29, adopted April 1, 2000 completely repealed the provisions of this section which pertained to the responsibilities of magistrate or judge and derived from the Code of 1992.

### **Sec. 1-9. Reserved.**

Editor's note(s)—Ord. No. 29, adopted April 1, 2000 completely repealed the provisions of this section which pertained to appeals and derived from the Code of 1992.

### **Sec. 1-10. Reserved.**

Editor's note(s)—Ord. No. 29, adopted April 1, 2000 completely repealed the provisions of this section which pertained to decisions of the appellate division and derived from the Code of 1992.

### **Sec. 1-11. Small claims actions.**

- (a) For purposes of this section, a small claims action includes any lawsuit:
  - (1) Seeking money damages in which the amount claimed does not exceed \$5,000.00, excluding interest and costs;
  - (2) Seeking a domestic violence protective order under Chapter 50B, or other relief in a family law matter provided any amount claimed does not exceed \$5,000.00, excluding interest and costs;
  - (3) Seeking eviction from a residential dwelling regardless of the amount in controversy;
  - (4) Seeking repossession under section 25-9 regardless of the amount in controversy; or
  - (5) Actions in forfeiture commenced by the Tribe under section 14-100 et seq., regardless of the amount in controversy.
- (b) The Cherokee Court shall prepare or adopt standard forms which may be used by the parties in small claims actions.
- (c) All plaintiffs shall pay court costs at the time of filing a small claim complaint. Any judge shall have authority to permit a pauper's affidavit to be accepted in lieu of court costs. Court costs shall be waived for Actions in Forfeiture filed by the Tribe.
- (d) Defendants may file a written answer, including counterclaims if any, and shall serve a copy with the clerk and the plaintiff no later than the date and time set for trial. If written answer is not filed, the allegations of the complaint shall be deemed denied.

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- (e) All parties making claims or counterclaims must prove such claims or counterclaims by the greater weight of the evidence.
  - (f) Appeals from a small claims judgment shall be filed with the Cherokee Supreme Court.
  - (g) Notwithstanding any other provision of law, in a small claims action:
    - (1) Individuals shall have the right, as they do in every case, to represent themselves. Businesses, agencies, and other organizational entities shall be permitted to have an owner, officer, or employee, but not an independent contractor, present their claims or defenses in court without legal counsel.
    - (2) Any party may be represented in court by an advocate who is a law school graduate or paralegal, provided that the advocate is employed by an indigent legal services program, a licensed attorney assumes responsibility for the advocate's work, and no fee is charged by the attorney or advocate for the representation.
    - (3) Nothing in this section shall be construed to grant any party the right to be represented by court-appointed counsel in a small claims action or any other civil action.
  - (h) No person shall have a right to a jury trial in a small claims action filed pursuant to this section.
  - (i) Application will not be retroactive, therefore, will not apply to cases filed after August 20, 2007.
- (Res. No. 176, 5-10-1984; Ord. No. 371, 8-9-2000; Ord. No. 841, 8-20-2007)

### **ARTICLE III. APPELLATE PROCEEDINGS**

#### **Sec. 1-12. Reserved.**

Editor's note(s)—Ord. No. 29, adopted April 1, 2000 completely repealed the provisions of this section which pertained to the jurisdiction of the appellate division and derived from Res. No. 176, adopted May 1, 1984.

#### **Sec. 1-13. Reserved.**

Editor's note(s)—Ord. No. 29, adopted April 1, 2000 completely repealed the provisions of this section which pertained to procedures on appeal and derived from the Code of 1992.

#### **Sec. 1-14. Judgment against surety.**

Any surety to a bond submits himself or herself to the jurisdiction of the Court of Indian Offenses and irrevocably appoints the Clerk of Court as his or her agent upon whom any paper affecting his or her liability on the bond may be served.

#### **Sec. 1-15. Reserved.**

Editor's note(s)—Ord. No. 29, adopted April 1, 2000 completely repealed the provisions of this section which pertained to certification of a record on appeal and derived from the Code of 1992.

#### **Sec. 1-16. Reserved.**

Editor's note(s)—Ord. No. 29, adopted April 1, 2000 completely repealed the provisions of this section which pertained to briefs and memoranda and derived from the Code of 1992.



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**Sec. 1-17. Reserved.**

Editor's note(s)—Ord. No. 29, adopted April 1, 2000 completely repealed the provisions of this section which pertained to oral argument and derived from the Code of 1992.

**Sec. 1-18. Reserved.**

Editor's note(s)—Ord. No. 29, adopted April 1, 2000 completely repealed the provisions of this section which pertained to rules of court and derived from the Code of 1992.

**ARTICLE IV. PARTICULAR PROCEEDINGS**

**Sec. 1-19. Comparative negligence.**

- (a) In all actions hereunder brought in the Cherokee Court for personal injuries, wrongful death, or for injury to property, the fact that the person injured, or the owner of the property, or person having control over the property, may not have exercised due care shall not bar a recovery, but damages shall be diminished by the finder of fact in proportion to the percentage of negligence attributable to the person injured, or the owner of the property or the person having control over the property.
- (b) In determining the percentage of fault, the trier of fact shall consider both the nature of the conduct of each party at fault and the extent of the causal relation between the conduct and the damages claimed.
- (c) A claim and counterclaim shall be set off and only the difference between them is recoverable through a judgment.
- (d) The negligence of one spouse shall not be imputed to the other spouse of the marriage so as to bar recovery in an action by the other spouse to the marriage, or his or her legal representative, to recover damages from a third party caused by negligence resulting in death or in injury to the person.
- (e) This act shall become effective January 1, 1983, and shall apply to claims for relief arising on and after that date.

(Res. No. 10, 10-19-1982)

**Sec. 1-20. Criminal contempt.**

- (a) Criminal contempt shall include any of the following:
  - (1) Willful behavior committed during the sitting of a court and directly tending to interrupt its proceedings.
  - (2) Willful behavior committed during the sitting of a court in its immediate view and presence and directly tending to impair the respect due its authority.
  - (3) Willful disobedience of, resistance to, or interference with a court's lawful process, order, directive, or instruction or its execution.
  - (4) Willful refusal to be sworn or affirmed as a witness, or, when so sworn or affirmed, willful refusal to answer any legal and proper question when the refusal is not legally justified.
  - (5) Willful publication of a report of the proceedings in a court that is grossly inaccurate and presents a clear and present danger of imminent and serious threat to the administration of justice, made with

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knowledge that it was false or with reckless disregard of whether it was false. No person, however, may be punished for publishing a truthful report of proceedings in a court.

- (6) Willful or grossly negligent failure by an officer of the court to perform his duties in an official transaction.
- (7) Willful or grossly negligent failure to comply with schedules and practices of the court resulting in substantial interference with the business of the court.
- (8) Willful refusal to testify or produce other information upon the order of a judge when such person has been granted immunity from criminal prosecution.
- (9) Willful communication with a juror in an improper attempt to influence his deliberations.
- (b) No person may be held in contempt on the basis of the content of any broadcast, publication or other communication unless it presents a clear and present danger of an imminent and serious threat to the administration of criminal justice.

(Ord. No. 514, 6-18-85)

### **Sec. 1-21. Punishment for criminal contempt.**

- (a) A person who commits criminal contempt, whether direct or indirect, is subject to imprisonment up to 30 days, fine not to exceed \$500.00, or both.
- (b) Except for contempt under section 1-20(a)(5) or 1-20(a)(9), fine or imprisonment may not be imposed for criminal contempt, whether direct or indirect, unless:
  - (1) The act or omission was willfully contemptuous; or
  - (2) The act or omission was preceded by a clear warning by the court that the conduct is improper.
- (c) The judicial official who finds a person in contempt may at any time withdraw, terminate or reduce a sentence of imprisonment, or remit or reduce a fine imposed as punishment for contempt, if warranted by the conduct of the contempt or by the ends of justice.
- (d) A person held in criminal contempt may nevertheless be found in civil contempt for the same conduct. If a person is found in both civil contempt and criminal contempt for the same conduct, the total period of imprisonment is limited as provided in section 1-27(c).

(Ord. No. 514, 6-18-85)

### **Sec. 1-22. Direct and indirect criminal contempt.**

- (a) Criminal contempt is direct criminal contempt when the act:
  - (1) Is committed within the sight or hearing of a presiding judicial official; and
  - (2) Is committed in, or in the immediate proximity to, the room where proceedings are being held before the court; and
  - (3) Is likely to interrupt or interfere with matters then before the court.

The presiding judicial official may punish summarily for direct criminal contempt or may defer adjudication and sentencing. If proceedings for direct criminal contempt are deferred, the judicial official must, immediately following the conduct, inform the person of his intentions to institute contempt proceedings.

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- (b) Any criminal contempt other than direct criminal contempt is indirect criminal contempt and is punishable only after proceedings in accordance with the procedure outlined in section 1-24.

(Ord. No. 514, 6-18-85)

#### **Sec. 1-23. Summary proceedings for contempt.**

- (a) The presiding judicial official may summarily impose measures in response to direct criminal contempt when necessary to restore order or to maintain the dignity and authority of the court and when the measures are imposed substantially contemporaneously with the contempt.
- (b) Before imposing measures under this section, the judicial official must give the person charged with contempt summary notice of the charges and a summary opportunity to respond and must find facts supporting the summary imposition of measures in response to contempt. The facts must be established beyond a reasonable doubt.

(Ord. No. 514, 6-18-85)

#### **Sec. 1-24. Plenary proceedings for contempt.**

- (a) When a judicial official chooses not to proceed summarily against a person charged with direct criminal contempt or when he may not proceed summarily, he may proceed by an order directing the person to appear before a judge at a reasonable time specified in the order and show cause why he should not be held in contempt of court. A copy of the order must be furnished to the person charged. If criminal contempt is based upon acts before a judge which so involve him that his objectivity may reasonably be questioned, the order must be returned before a different judge.
- (b) The person ordered to show cause may move to dismiss the order.
- (c) The judge is the trier of facts at the show cause hearing.
- (d) The person charged with contempt may not be compelled to be a witness against himself or herself in the hearing.
- (e) At the conclusion of the hearing, the judge must enter a finding of guilty or not guilty. If a person is found to be in contempt, the judge must make findings of fact and enter judgment. The facts must be established beyond a reasonable doubt.
- (f) The judge presiding over the hearing may appoint a prosecutor or, in the event of an apparent conflict of interest, some other member of the bar to represent the court in hearings for criminal contempt.

(Ord. No. 514, 6-18-85)

#### **Sec. 1-25. Custody.**

- (a) A judicial official may orally order that a person he is charging with direct criminal contempt be taken into custody and restrained to the extent necessary to assure his presence for summary proceedings or notice of plenary proceedings.
- (b) If a judicial official who initiates plenary proceedings for contempt finds, based on sworn statement or affidavit, probable cause to believe the person ordered to appear will not appear in response to the order, he may issue an order for arrest of the person. A person arrested under this subsection is entitled to release under bail.



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- (b) The person ordered to show cause may move to dismiss the order.
  - (c) The judicial official is the trier of facts at the show cause hearing.
  - (d) At the conclusion of the hearing, the judicial official must enter a finding for or against the alleged contemptnor. If civil contempt is found, the judicial official must enter an order finding the facts constituting contempt and specifying the action which the contemptnor must take to purge himself of the contempt.
  - (e) A person with an interest in enforcing the order may present the case for a finding of civil contempt for failure to comply with an order.
  - (f) A judge conducting a hearing to determine if a person is in civil contempt may at the hearing, upon making the required findings, find the person in criminal contempt for the same conduct, regardless of whether imprisonment for civil contempt is proper in the case.

(Ord. No. 514, 6-18-85)

### **Sec. 1-30. Appeals.**

A person found in civil contempt may appeal in the manner provided for in appeals in civil actions.

Ord. No. 514, 6-18-1985)

### **Sec. 1-31. Jury list.**

- (a) Jury composition. In each odd year, the Cherokee Court shall prepare a current list of eligible jurors to be comprised of all members of the community of the Eastern Band of Cherokee Indians.
- (b) Eligible jurors shall be 18 years of age or older, shall not have served as jurors during the preceding year, shall be physically and mentally competent, shall be able to understand the English language, and shall not have been convicted of a felony (unless their citizenship has been restored pursuant to applicable law). Notwithstanding any other law of the Eastern Band of Cherokee Indians, or any of the tribe's agencies, eligible jurors shall be chosen from all individuals residing within the boundaries of the Eastern Band of Cherokee Indians trust lands regardless of race or tribal citizenship or tribal affiliation and not excluding any distinctive group in the community, including non-Indians.
- (c) Any eligible juror summoned for jury service who is 65 years of age or older shall not be compelled to serve but may serve at his or her choice.
- (d) Any person summoned for jury duty who fails to report as required may be held in contempt of court and sentenced to up to 30 days, fined up to \$500.00 or any combination of these penalties.
- (e) Jury size. A jury consists of six persons, unless this section provides otherwise.
  - (1) *Stipulation for a smaller jury.* At any time before the verdict, the parties may, with the approval of the court stipulate that:
    - (A) The jury may consist of fewer than six persons; or
    - (B) A jury of fewer than six persons may return a verdict if the Court finds it necessary to excuse a juror for good cause after the trial begins.
  - (2) *Court order for a jury of five.* After the jury has retired to deliberate, the Court may permit a jury of five persons to return a verdict, even without a stipulation by the parties, if the Court finds good cause to excuse a juror.
- (f) Trial jurors.

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- (1) *Examinations.* The Court may examine prospective jurors and may permit the parties to do so.
  - (2) *Peremptory challenges.* Each side is entitled to three peremptory challenges. The Court may, in its discretion, allow additional peremptory challenges.
  - (3) *Alternate jurors.* The Court may empanel up to two alternate jurors to replace any jurors who are either unable to perform or disqualified from performing their duties.
    - (A) *Procedure.* Alternate jurors are selected in the same manner as other jurors. The prosecution and defense are allotted one additional peremptory challenge each for use in selecting alternate jurors.
    - (B) *Replacement.* Alternate jurors replace jurors in the order in which the alternate jurors were selected. Alternate jurors have the same powers and responsibilities as other jurors.
  - (g) *Judges.* Any Cherokee Court Judge may complete a jury trial if:
    - (1) The Judge before whom the trial began cannot complete the trial because of death, sickness, other disability or because the Judge is unavailable; and
    - (2) The Judge completing the trial certifies that he or she is familiar with the record.

After a verdict or finding of guilt, any Cherokee Court Judge may complete the Court's duties, including issuing judgment, if the Judge who presided over the trial cannot perform those duties because of absence, death, sickness, and other disability or because the Judge is unavailable. Alternatively, the successor Judge may order a new trial.

- (h) *Taking testimony.* In every trial, the testimony of the witnesses must be taken in open Court, unless otherwise ordered by a Judge.
- (i) *Mistrial.* Before declaring a mistrial, the Court must give each party an opportunity to comment on the propriety of such a declaration, to state whether the party consents or objects and allow each party to suggest alternatives.

(Res. No. 122, 5-1-1980; Ord. No. 971, 10-13-2005; Ord. No. 110, 4-6-2008; Ord. No. 526, 6-8-2015)

### **Sec. 1-32. Reserved.**

Ord. No. 302, adopted Dec. 9, 2020, repealed former § 1-32 in its entirety which pertained to involuntary commitment and derived from Res. No. 106, 11-19-1981; Ord. No. 655, 9-8-1999; Ord. No. 72, 1-13-2000.

### **Sec. 1-33. Limitations on authority of Cherokee Court.**

The Cherokee Court of Indian Offenses or any successor Cherokee Court, shall not have authority, in deciding any case within its lawful jurisdiction, to:

- (a) Grant, approve or assign a possessory interest in any Cherokee trust lands to any person; or
- (b) Grant, approve or assign a life estate in any Cherokee trust land or any improvements located thereon, to a nonmember of the Eastern Band of Cherokee Indians; or
- (c) Grant, approve or assign a writ of possession in any Cherokee trust lands or any improvements thereon, to a nonmember of the Eastern Band of Cherokee Indians unless such property shall be used as a residence for children of enrolled members.
  - (1) Such writ of possession shall not extend beyond the 18th birthday of the youngest child of an enrolled member actually residing in a home located on such lands; but

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- (2) Such writ of possession may extend beyond the 18th birthday of a child of an enrolled member actually residing in such house if said child is not physically or mentally capable of caring for himself or herself upon reaching the age of 18.
  - (d) A writ of possession entered by the Cherokee Court shall automatically expire on the date the youngest member of an enrolled member living in the home located on trust lands reaches the age of 18 years. A writ of possession may be extended beyond such date only if a petition is filed with the Cherokee Court showing the minor child of an enrolled member then living in such house is physically or mentally incapable of caring for themselves.

(Ord. No. 66, 12-5-1991)

## **ARTICLE V. LONG ARM LAW**

### **Sec. 1-34. Subject matter jurisdiction.**

The Cherokee Court having jurisdiction of the subject matter may exercise jurisdiction in rem or quasi in rem on the grounds stated in this section. Jurisdiction in rem or quasi in rem may be involved in any of the following cases:

- (a) When the subject of the action is real or personal property located on Cherokee Indian trust lands and the defendant has or claims any lien or interest therein, or the relief demanded consists wholly or partially in excluding the defendant from any interest or lien therein. This subsection shall apply whether any such defendant is known or unknown.
- (b) When the action is to foreclose, redeem from or satisfy a leasehold deed of trust, mortgage or lien upon real or personal property located on Cherokee trust lands.
- (c) When the action is for a divorce or annulment of marriage of an enrolled member or a spouse of an enrolled member, either of whom is a resident of Cherokee trust lands at the date of separation and both spouses resided on Cherokee trust lands prior to separation.
- (d) In any other action in which in rem or quasi in rem jurisdiction may be lawfully exercised under Tribal law or federal law applicable to Federal Indian Tribes. Such jurisdiction shall not be exercised over any subject matter which would be inconsistent with federal prohibition against alienation (25 U.S.C. 177) or any other federal law restricting the use or conveyance of Indian lands, property or legal rights.

(Ord. No. 285, 11-5-1992)

### **Sec. 1-35. Service; interlocutory orders.**

The Cherokee Court, in exercising jurisdiction in rem or quasi in rem may affect the interests of a defendant in such an action only if process has been served upon the defendant in accordance with the provisions of Rule 4(k) of the Rules of Civil Procedure, as adopted by the Cherokee Code or by the Cherokee Court, but nothing herein shall prevent the court from making interlocutory orders for the protection of the parties, children or property while the action is pending.

(Ord. No. 285, 11-5-1992)

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### **Sec. 1-36. Proof of service of process.**

When the defendant appears in the action and challenges the service of the summons upon him, proof of the service of process shall be as follows:

- (a) *Personal service or substituted personal service.*
  - (1) If served by Cherokee Police Department or a lawful process officer under Tribal law, by the officer's certificate thereof, showing place, time and manner of service; and
  - (2) If served by any other person, his affidavit thereof, showing the place, time and manner of service; his qualifications to make service under Rule 4(a) or Rule 4(j)(3) of the Rules of Civil Procedure; that he knew the person served to be the party mentioned in the summons and delivered to and left with him a copy; and if the defendant was not personally served, he shall state in such affidavit when, where and with whom such copy was left. If such service is made outside the confines of Cherokee trust lands, the proof thereof may in the alternative be made in accordance with the law of the place where such service is made.
- (b) *Service by publication.* In the case of publication, by the affidavit of the publisher or printer, or his foreman or principal clerk, showing the date and specifying the date of the first and last publication, and an affidavit of mailing of a copy of the complaint or notice, as the case may require, made by the person who mailed the same.
- (c) *Written admission of defendant.* The written admission of the defendant, whose signature or the subscription of whose name to such admission shall be presumptive evidence of genuineness.
- (d) *Service by registered or certified mail.* In the case of service by registered or certified mail, by affidavit of the serving party averring:
  - (1) That a copy of the summons and complaint was deposited in the post office for mailing by registered or certified mail, return receipt requested;
  - (2) That it was in fact received as evidenced by the attached registry receipt or other evidence satisfactory to the court of delivery to the addressee; and
  - (3) That the genuine receipt or other evidence of delivery is attached.

(Ord. No. 285, 11-5-1992)

### **Sec. 1-37. Default judgments.**

Where a defendant fails to appear in an action within the appropriate time, the court shall, before entering a judgment against such defendant, require proof of service of the summons in the manner required by section 1-36 above and, in addition, shall require further proof as follows:

- (a) Where a personal claim is made against the defendant, the court shall require proof by affidavit or other evidence to be made and filed, of the existence of any fact not shown by verified complaint which is needed to establish grounds for personal jurisdiction over the defendant. The court may require such additional proof as the interests of justice require.
- (b) Where no personal claim is made against the defendant, the court shall require such proofs, by affidavit or otherwise, as are necessary to show that the court's jurisdiction has been invoked over the status, property, or thing which is the subject of the action. The court may require such additional proof as the interests of justice require.

(Ord. No. 285, 11-5-1992)

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**Sec. 1-38. Stay of proceeding to permit trial in another jurisdiction.**

- (a) If, in any action pending in any other court, with lawful jurisdiction over the parties or subject matter, the judge shall find that it would work substantial injustice for the action to be tried in the Cherokee Court, the judge on motion of any party may enter an order to stay further proceedings in the action in the Cherokee Court. A moving party under this section must stipulate their consent to suit in another jurisdiction found by the judge to provide a convenient, reasonable and fair place of trial.
- (b) In a proceeding in which a stay has been ordered under this section, jurisdiction of the court continues for a period of five years from the entry of the last order affecting the stay; and the court may, on motion and notice to the parties, modify the stay order and take such action as the interests of justice require. When jurisdiction of the court terminates by reason of the lapse of five years, the clerk shall enter an order dismissing the action.
- (c) Whenever a motion for a stay made pursuant to this section is granted, any nonmoving party shall have the right of immediate appeal. Whenever such a motion is denied, the movant may seek review by means of a writ of certiorari and failure to do so shall constitute a waiver of any error the judge may have committed in denying the motion.

(Ord. No. 285, 11-5-1992)

**Sec. 1-39. Acceptance of privileges; department of motor vehicles as attorney for service of process.**

The acceptance by a nonresident of the rights and privileges conferred by the laws of the Eastern Band of Cherokee Indians, as they are established or set forth in section 1-2 of the Cherokee Code, as evidenced by the nonresident having engaged in any of the lawful civil activities set forth or covered in section 1-2, or by their operation of a motor vehicle on the public highways and roadways within the confines of Cherokee trust lands, shall be deemed equivalent to the jurisdiction of the Cherokee Courts.

- (a) Operation of motor vehicles within Cherokee trust lands shall be deemed to be equivalent to the appointment by such nonresident of the Commissioner of Motor Vehicles, as set forth in N.C.G.S. 1-105, to be his lawful attorney for purposes of service of process, which may be effected in the manner and form established under North Carolina law in N.C.G.S. 1-105.
- (b) The provisions of N.C.G.S. 1-105.1 are hereby adopted and made applicable to the Cherokee Courts for those residents who establish residence outside the State of North Carolina or who depart from Cherokee trust lands and the State of North Carolina.

(Ord. No. 285, 11-5-1992)

**Sec. 1-40. Application of the Indian Civil Rights Act.**

All provisions of the Indian Civil Rights Act, 25 U.S.C. 1301—1303, shall apply in all court proceedings before the Cherokee Court.

(Ord. No. 407, 11-21-1996)

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## **Sec. 1-41. Transitional provisions for the Cherokee Court.**

- (a) After transfer of authority from the CFR Court of Indian Offenses to the Cherokee Court pursuant to the Indian Self Determination Act contract between the United States and the Eastern Band of Cherokee Indians, any cases over which the CFR Court was exercising continuing jurisdiction prior to the transfer of authority shall be transferred to the Cherokee Court, on the motion of any party or on the Court's own motion.
- (b) No transferred case shall abate or be dismissed solely on the ground that it was filed in the CFR Court prior to the transfer of authority to the Cherokee Court. The Cherokee Court shall have jurisdiction over all cases properly filed in the CFR Court and transferred pursuant to this section.
- (c) The Cherokee Court's jurisdiction shall not be limited by restrictions set forth in the Code of Federal Regulations, and shall extend to all cases for which jurisdiction is granted by the Cherokee Code. In a case transferred from the CFR Court, whenever the Cherokee Court can exercise jurisdiction over a non-Indian defendant over whom the CFR Court could not exercise jurisdiction under 25 C.F.R. § 11.103(a), the non-Indian defendant shall be joined as a party to the transferred action upon proper service of process, provided that the defendant shall be permitted to present any available defense regardless of the stage of the case when the defendant is joined.
- (d) When the interest of justice so requires, a judge of the Cherokee Court shall have the authority to convene a session of the CFR Court to hear a case that was filed with the CFR Court and not transferred to the Cherokee Court, so long as the Eastern Band of Cherokee Indians remains listed in 25 C.F.R. § 11.100. No new case shall be filed in the CFR Court after the transfer of authority to the Cherokee Court.
- (e) After the transfer of authority to the Cherokee Court, the Cherokee Supreme Court shall have jurisdiction over all appeals, including those pending when authority is transferred, regardless of whether the trial was held in the CFR Court or the Cherokee Court.
- (f) The statute of limitations shall be tolled, and shall not be a defense to any claim filed in the Cherokee Court, provided that the same claim was timely filed in the CFR Court; the claim was not the subject of a final judgment or order in the CFR Court; and the claim is filed in the Cherokee Court within 90 days after the transfer of authority to the Cherokee Court.
- (g) On the motion of any party or the Court's own motion, the Cherokee Court shall give full faith and credit to all judgments and orders entered by the CFR Court that were properly within the jurisdiction of the CFR Court and not stayed by a pending appeal at the time of the transfer of authority, and shall enforce such judgments and orders as its own.
- (h) The Cherokee Court shall maintain and protect all the files and records of the CFR Court.
- (i) This section shall apply to all cases whether denominated as civil, criminal, special proceeding, estate or any other category.
- (j) The Cherokee Court shall have jurisdiction to adjudicate criminal charges filed under the criminal provisions applicable at the time the alleged crime was committed, whether the source of those criminal provisions is the Code of Federal Regulations, the Cherokee Code, or other applicable law.

(Ord. No. 117, 3-3-2000; Ord. No. 291, 7-6-2000)