

TABLED

**CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA**

Date: JUN 13 2019

ORDINANCE NO. 626 (2019)

WHEREAS, a bail bondsman is a person who charges a fee to a criminal defendant in exchange for acting as a surety for the defendant's bail, which is set by the Court, so the defendant can be released from jail after an arrest; and

WHEREAS, providing bail bonds to criminal defendants is big business throughout the United States and is heavily regulated in North Carolina law because the risk for abuse, financial and otherwise, is so high; and

WHEREAS, the Tribe recently passed its own law requiring bail bondsmen on Tribal lands to be licensed under C.C. § 87-1, which in turn relies on licensing by the State of North Carolina; and

WHEREAS, except for licensing, Tribal law does not regulate bail bondsmen or the practice of providing bail bonds, and it does not regulate when and how bail bonds are forfeited to the Tribe when a defendant violates the terms of their release on bail; and

WHEREAS, the lack of Tribal law allows bail bondsmen to conduct business with impunity and no risk of loss because the Cherokee Court has no mechanism for requiring forfeiture of the bonds to the Tribe if the defendant violates the terms of his or her release; and

WHEREAS, the Tribe should exercise its sovereign authority to protect our community and the integrity of the criminal justice system in Cherokee Court by adding a new chapter to the Cherokee Code to govern and regulate bail bondsmen, bail bonds and forfeitures of bail bonds.

NOW THEREFORE BE IT ORDAINED by the Eastern Band of Cherokee Indians in Tribal Council assembled, at which a quorum is present, that a new chapter shall be added to the Cherokee Code, to be identified as Chapter 58, to govern the licensing of bail bondsmen, the regulation of bail bonds, and the forfeiture of bail bonds in the Cherokee Court, to read as follows:

Chapter 58
Bondsmen, Bail bonds, and Forfeiture

Sec. 58-1. – Definitions.

(a) The following terms have these meanings when used in this Chapter, unless the context is clearly otherwise:

- (1) “Accommodation bondsman” means a person who shall not charge a premium or receive any consideration for action as surety and who endorses the bail bond after providing satisfactory evidences of ownership, value, and marketability of real or personal property to the extent necessary to reasonably satisfy the official taking bond that the real or personal property will in all respects be sufficient to assure that the full principal sum of the bond will be realized if there is a breach of the conditions of the bond.
- (2) “Bail” means the temporary release of a principal awaiting a court appearance and the conditions or collateral required for such temporary release.
- (3) “Bail bond” means an undertaking by the principal to appear in court as required upon penalty of forfeiting bail to the Tribe in a stated amount; and may include an unsecured appearance bond, a premium-secured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, and an appearance bond secured by at least one surety.
- (4) “Bail bondsman” or “bondsman” means a surety bondsman, professional bondsman, or an accommodation bondsman as defined in this Chapter.
- (5) “Cherokee trust land” means land held in trust by the United States of America for the benefit of the Eastern Band of Cherokee Indians.
- (6) “Clerk” means the Clerk of the Cherokee Court of the Eastern Band of Cherokee Indians.
- (7) “Consideration” means payment, collateral, or property, but does not include the legal rights of a surety against a principal by reason of breach of the conditions of a bail bond nor does it include collateral furnished to and securing the surety as long as the value of the surety's rights in the collateral do not exceed the principal's liability to the surety by reason of a breach in the conditions of the bail bond.
- (8) “Court” means the Cherokee Court of the Eastern Band of Cherokee Indians.
- (9) “Day” means a business day, which does not include weekends, tribal holidays, or other days in which the Clerk is not open for business.
- (10) “Defendant” or “Principal” means a person obligated to appear in the Cherokee Court as required upon penalty of forfeiting any amount required as bail.
- (11) “Immediate family” means spouse, parent, grandparent, child, grandchild, and sibling.
- (12) “Licensee” means a person possessing a bondsman license or runner license issued by the Clerk.
- (13) “Obligor” means a principal or surety on a bail bond.
- (14) “Premium” means the fee, compensation, or amount paid to a professional or surety bondsman for bondsman services in excess of the bail bond amount.
- (15) “Professional bondsman” means any person who is licensed by the Clerk and who pledges cash or approved securities with the Court as security for bail bonds written in connection with a judicial proceeding and who receives or is

1 promised money or other things of value as a premium in exchange for posting the
2 bail bonds.

3 (16) "Runner" means a person employed by a bondsman for the purpose of
4 assisting the bondsman in presenting the defendant in court when required, assisting
5 in the apprehension and surrender of defendant to the court, keeping the defendant
6 under necessary surveillance, or executing bonds on behalf of the bondsman when
7 the person is listed on the bondsman license. "Runner" does not include a duly
8 licensed attorney-at-law or a law-enforcement officer assisting a bondsman.

9 (17) "Surety" means one who, with the principal, is liable for the amount of the
10 bail bond upon forfeiture of bail.

11 (18) "Surety bondsman" means any person who is licensed by the Clerk as a
12 surety bondsman under this Chapter, is appointed by an insurer by power of
13 attorney to execute or countersign bail bonds for the insurer in connection with
14 judicial proceedings, and who receives or is promised consideration for doing so.

15
16 **Sec. 58-2. – Qualifications of sureties on bail.**

17 (a) Every surety for the release of a principal on bail shall be qualified as a:

18 (1) professional bondsman;

19 (2) accommodation bondsman; or

20 (3) surety bondsman.

21
22 **Sec. 58-3. – Clerk to regulate bondsmen and runners.**

23 (a) The Clerk shall have full power and authority to regulate the application, licensing, and
24 discipline of bondsmen in the Court, subject to review by the Court.

25 (b) No person shall act in the capacity of a professional bondsman, surety bondsman, or runner
26 to perform any of the functions, duties, or powers prescribed for professional bondsmen,
27 surety bondsmen, or runners for the Court on upon Cherokee trust land unless that person
28 is licensed under this Chapter.

29 (c) Each license shall have a unique identifying number.

30
31 **Sec. 58-4. – Bondsman license.**

32 (a) No person shall act as a professional or surety bondsman in the Cherokee Court unless that
33 person holds a valid bondsman license from the Clerk.

34 (b) Licenses shall be issued only to natural persons.

35 (c) Each bondsman shall always carry and display their license identification issued by the
36 Clerk when acting within the scope of the license.

37 (d) All licenses shall be returned to the Clerk within 10 days after the license is no longer valid
38 for any reason.

39 (e) Bondsman licenses are non-transferrable.

40 (f) A person may act as an accommodation bondsman without a license from the Clerk. A
41 bondsman may employ a non-licensed person to perform normal office duties, but the non-
42 licensed person shall not have previously had a bondsman license revoked or disciplined
43 due to a violation of law or regulations governing bondsmen.

44
45 **Sec. 58-5. – Application and renewal of bondsman license.**

46 (a) To obtain a license from the Clerk, the applicant must:

- (1) Hold a valid bondsman license from the North Carolina Department of Insurance.
- (2) Be a resident of the state of North Carolina for a minimum of 24 months.
- (3) Complete a license application on the forms supplied by the Clerk.
- (4) Pay the license application fee of \$100.00.
- (5) Submit to a North Carolina, federal, and tribal criminal background search.
- (6) Provide the entire disciplinary history, with all documentation as applicable, regarding the applicant's license as a bondsman in North Carolina and any other jurisdiction.
- (7) Allow the Clerk continued and complete access to the applicant's disciplinary history in North Carolina and any other jurisdiction in which the applicant holds a bondsman license, and
- (8) Complete an acknowledgement and release allowing applicant's disciplinary history be shared with the North Carolina Department of Insurance.
- (b) The Clerk may propound any reasonable interrogatories to an applicant about the applicant's qualifications, residence, prospective place of business, and any other matters that the Clerk considers necessary to protect the public and ascertain the qualifications of the applicant. The Clerk may also conduct any reasonable inquiry or investigation relative to the determination of the applicant's fitness to be licensed. The Clerk may accept or deny the application in the Clerk's discretion.
- (c) The Clerk shall deny an application if the applicant has ever been convicted of a felony or banished from Cherokee trust lands.
- (d) Licenses are issued by the Clerk for a period of time not to exceed two (2) years from the date of issue.
- (e) Licenses may apply for license renewal within six (6) months of expiration of the license. Licensees shall include the information listed in subsection (a) with an application to renew a license.
- (f) An applicant shall be entitled to have notice of a denial of the application and may request in writing an opportunity to respond and present evidence at a hearing before Court within 30 days in defense of why the application should have been granted. The Clerk and the Office of the Attorney General shall have standing to participate in hearings under this section. Hearings under this section may be continued at the discretion of the Court.
- (g) The Court shall review the Clerk's decision for abuse of discretion. The Court may limit or prohibit the ability of the licensee to re-apply for a bondsman license at a later time. Review by the Court is civil in nature.
- (h) Unless limited by the Court, a person denied a license or license renewal may reapply after one (1) year from the denial.

Sec. 58-6. – Runner license.

- (a) A person may act as a runner for a bondsman if the person has a runner license and is listed on the bondsman's license. The runner is subject to the same requirements under this Chapter as the bondsman. If the bondsman license under which the runner license was issued becomes invalid, the runner license shall also become invalid.
- (b) Runner licenses shall be issued only to natural persons.
- (c) Each runner shall always carry and display their license identification issued by the Clerk when acting within the scope of the license.

- 1 (d) All licenses shall be returned to the Clerk within 10 days after the license is no longer valid
2 for any reason.
- 3 (e) Runner licenses are non-transferrable.
- 4 (f) To obtain a be runner license, a person must:
5 (1) Complete all the requirements for a bondsman license in section 58-5(a),
6 (2) Affirmation that the person will act on behalf of only one bondsman, and
7 (3) Endorsement by the bondsman on whose license the runner shall be listed,
8 including the bondsman's obligation to supervise the runner's activities.
- 9 (g) The procedures of section 58-5 are also applicable to runner licenses.

10
11 **Sec. 58-7. – Ending license activities.**

- 12 (a) A licensee shall give notice to the Clerk within 10 days if the licensee discontinues acting
13 under the license. The Clerk shall revoke the license.
- 14 (b) A license shall become invalid upon the death, incapacitation, or incompetence of the
15 licensee. The Clerk shall revoke the license if the licensee is deceased or is incapacitated
16 or incompetent for three (3) months or more.

17
18 **Sec. 58-8. – Bondsman discipline.**

- 19 (a) The license may be suspended, revoked, or not renewed by the Clerk for any of the
20 following reasons:
- 21 (1) For any cause sufficient to deny, suspend, or revoke the license under any other
22 provision of this Chapter.
- 23 (2) Material misstatement, misrepresentation, or fraud in involving the license.
- 24 (3) Misappropriation, conversion, or unlawful withholding of moneys belonging to
25 others and received in the conduct of business under the license.
- 26 (4) Fraudulent, coercive, or dishonest practices in the conduct of business or
27 demonstrating incompetence, untrustworthiness, or financial irresponsibility in the
28 conduct of business in the Court or any other jurisdiction.
- 29 (5) Conviction of a felony, violation of Cherokee Code Section 14-95, or any crime
30 involving dishonesty, breach of trust, or moral turpitude.
- 31 (6) Conviction of any crime committed in the course of dealings under the license.
- 32 (7) Failure to comply with or violation of the provisions of this Chapter or of any order,
33 subpoena, rule, or regulation of any authority regulating bondsmen.
- 34 (8) Failure to pay any judgment or decree rendered on any forfeited bond in the Court
35 or any other any court.
- 36 (9) Charging or receiving, as premium or compensation for the making of any deposit
37 or bail bond, any sum in excess of that permitted by this Chapter.
- 38 (10) Requiring, as a condition of executing a bail bond, that the principal agree
39 to engage the services of a specified attorney.
- 40 (11) Entering into any business association or agreement with any person who is
41 at that time found by the Clerk to be in violation of any of the bail bond laws, or
42 who has been in any manner disqualified under the bail bond laws of this
43 jurisdiction or any other jurisdiction, whereby the person has any direct or indirect
44 financial interest in the bail bond business of the licensee or applicant.
- 45 (12) Knowingly aiding or abetting others to evade or violate the provisions of
46 this Chapter.

- (13) Having any professional license denied, suspended, or revoked in this jurisdiction or any other jurisdiction for causes substantially similar to those listed in this subsection.
- (14) Violation of any law governing bail bonding or insurance in this jurisdiction or any other jurisdiction, or any rule of the Financial Industry Regulatory Authority (FINRA).
- (15) Failure to comply with an administrative order or court order imposing a child support obligation after entry of a final judgment or order finding the violation to have been willful.
- (16) Failure to pay State or federal income tax, tribal levy, or any liens that result from such failure to comply with any administrative or court order directing payment after entry of a final judgment or order.
- (17) Forging another's name to any document related to a bail bond transaction.
- (18) Performing bondsmen activities without a license from the North Carolina Department of Insurance.
- (19) Allowing the bondsman's runner or other agent to commit any act or omission from which the bondsman is personally prohibited.
- (20) Failure to notify the Clerk within 10 days of filing for protection under the United States Bankruptcy Code or becoming subject to any law of receivership.
- (21) Failure to notify the Clerk of any suspension, probation, revocation, nonrenewal, or any other disciplinary action in regard to the bondsman's North Carolina bondsman's license within 10 days of the action.
- (22) Failure to notify the Clerk within 10 days of being charged with any crime in any jurisdiction, infractions and minor traffic violations excepted.
- (23) Failure to notify the Clerk within 10 days of disposition of any criminal charge in any jurisdiction.
- (24) Committing any of the prohibited practices in section 58-9.
- (25) Any cause for which issuance of the license could have been refused had it then existed and been known to the Clerk at the time of issuance.
- (b) The license may be suspended or revoked after a hearing before the Court. The Clerk may temporarily suspend the license pending a hearing to occur before the Court within 10 days. Notice of the hearing and any temporary suspension shall be given to the licensee. Only the Clerk may initiate a hearing to suspend or revoke a license.
- (c) Hearings under this section are civil in nature and may be continued at the discretion of the Court. The licensee, Clerk, and the Office of the Attorney General shall have standing to participate in hearings under this section. The Court shall decide by the preponderance of the evidence whether or not there are grounds under this Chapter for the suspension or revocation of the license. Upon a final determination that the license is suspended or revoked, the licensee shall return the license to the Clerk within 10 days.

Sec. 58-9. – Prohibited practices.

- (a) No bondsman, runner, or other agent of a bondsman may:
- (1) act as power of attorney for any principal which is not a member of the bondsman's immediate family.
- (2) Pay a fee or rebate or give or promise anything of value, directly or indirectly, to a jailer, law-enforcement officer, committing magistrate, or any other person who

1 has power to arrest or hold in custody, or to any public official or public employee
2 in order to secure a settlement, compromise, remission, or reduction of the amount
3 of any bail bond or the forfeiture thereof, including the payment to law-enforcement
4 officers, directly or indirectly, for the arrest or apprehension of a principal or
5 principals who have caused or will cause a forfeiture.

6 (3) Pay a fee or rebate or give anything of value to an attorney in bail bond matters,
7 except in defense of any action on a bond.

8 (4) Pay a fee or rebate or give or promise anything of value to the principal or anyone
9 on his behalf.

10 (5) Participate in the capacity of an attorney at a trial or hearing of one on whose bond
11 the person is surety, nor suggest or advise the employment or retention of any
12 particular attorney to represent the principal.

13 (6) Accept anything of value from a principal or from anyone on behalf of a principal
14 except the premium, which shall not exceed fifteen percent (15%) of the face
15 amount of the bond; provided that the bondsman shall be permitted to accept
16 collateral security or other indemnity from a principal or from anyone on behalf of
17 a principal. Such collateral security or other indemnity required by the bondsman
18 must be reasonable in relation to the amount of the bond and shall be returned
19 within 10 days after final termination of liability on the bond. All collateral
20 security, such as personal and real property, subject to be returned must be done so
21 under the same conditions as requested and received by the bail bondsman.

22 (7) Accept a premium less than \$75.00 or one percent (1%) of the face amount of the
23 bond, whichever is less.

24 (8) Solicit business in the Court or on the premises of any of the courts, in the office of
25 any magistrate and in or about any place where prisoners are confined. Loitering in
26 or about a magistrate's office or any place where prisoners are confined shall be
27 prima facie evidence of soliciting.

28 (9) Advise or assist the principal for the purpose of forfeiting bond;

29 (10) Impersonate a law-enforcement officer.

30 (11) Falsely represent that the bail bondsman or runner is in any way connected
31 with an agency of the federal government or of a state or local government;

32 (12) Failure of a professional bondsman to give the principal a receipt for the
33 collateral and any premium paid.

34 (13) Sign blank bail bonds.

35 (14) Execute bail bonds while a final judgment of forfeiture is owing in violation
36 of the Court's order.

37 (15) Failing to satisfy a final judgment of forfeiture within 120 days.

38 (16) Failing to inform the bondsman's surety of each bail bond executed.

39 (b) Any person who knowingly violates any provision of this section shall be guilty of
40 Prohibited Bond Practices. Each violation of this section shall be punishable by a fine not
41 to exceed \$5,000.00, a term of imprisonment not to exceed one year, or both.

42
43 **Sec. 58-10. – Persons prohibited from being runners or agents for bail bondsman.**

44 (a) No law-enforcement officer, judicial official, attorney, parole officer, probation officer,
45 jailer, assistant jailer, employee of the Court, nor other public employee assigned to duties
46 relating to the administration of criminal justice, nor the spouse of any such person, may

1 in any case become surety on a bail bond for any person. In addition, no person covered by
2 this section may act as a runner or agent for any bonding company or bail bondsman. No
3 such person may have an interest, directly or indirectly, in the financial affairs of any firm
4 or corporation whose principal business is acting as a bail bondsman. However, nothing in
5 this section prohibits any such person from being surety upon the bond of a member or his
6 or her immediate family.

7
8 **Sec. 58-11. – Bounty hunting.**

- 9 (a) Bounty hunting is prohibited on Cherokee trust lands.
10 (b) Arrest for purpose of surrender may be made only by an officer of the Cherokee Indian
11 Police Department.

12
13 **Sec. 58-12. – Out of Jurisdiction Bondsman.**

- 14 (a) Any person who has entered Cherokee trust land for the purpose of conducting bondsman
15 activities who is not licensed by the Clerk must notify the Cherokee Indian Police
16 Department and obtain a license from the Clerk before conducting any bondsman or
17 runner-related or similar activity.

18
19 **Sec. 58-13. – Receipts for collateral.**

- 20 (a) A bondsman shall give a written receipt when accepting collateral. The receipt shall give
21 in detail a full description of the collateral received. Collateral shall be held and maintained
22 in trust.
23 (b) When collateral is received in the form of cash, check, or other negotiable instrument, the
24 collateral shall be deposited within two banking days into a separate, non-interest-bearing
25 account in a bank operating and located in North Carolina.

26
27 **Sec. 58-14. – Financial responsibility of professional bondsman.**

- 28 (a) Each professional bondsman shall maintain a deposit of at least fifteen thousand dollars
29 (\$15,000.00) or fair market value of at least one-tenth (1/10) of the amount of all bonds
30 issued by the bondsman, whichever is greater.
31 (b) Each professional bondsman shall supply to the Clerk a monthly report of all bond
32 liabilities they have in the State of North Carolina. This information may be shared with
33 the North Carolina Department of Insurance to maintain an accurate total obligation each
34 professional bondsman has occurred under their total deposited funds.
35 (c) Each professional bondsman shall reconcile the deposits and liabilities on a monthly basis.
36 A professional bondsman shall produce proof of reconciliation within 10 days of request
37 made by the Clerk.
38 (d) Any person who knowingly violates this section shall be guilty of Bail Fraud. Bail Fraud
39 shall be punishable by a fine not to exceed \$15,000.00, a term of imprisonment not to
40 exceed three years, a period of exclusion not to exceed ten years, or any combination
41 thereof.

42
43 **Sec. 58-15. – Records by the Clerk.**

- 44 (a) The Clerk or Court shall maintain records of the following information:
45 (1) Each individual bonded,
46 (2) Date each bond was issued,

- (3) Principal sum of each bond.
- (4) All sureties on the bond, including their license numbers.
- (5) All premiums charged for each bond.

Sec. 58-16. – Premium Affidavit.

- (a) Professional bondsmen, surety bondsmen, and runners shall file with the Clerk an affidavit on a form provided by the Clerk. The affidavit shall include, but is not limited to:
 - (1) If applicable, a statement that the bondsman has not, nor has anyone for the bondsman's use, been promised or received any collateral, security, or premium for executing the bond.
 - (2) If promised a premium, the amount of the premium promised and the due date.
 - (3) If the bondsman has received a premium, the amount of the premium received.
 - (4) If given collateral, the name of the person from whom it is received and the nature and amount of the collateral listed in detail.

Sec. 58-17. – Bail amount.

- (a) The amount to be posted and conditions required to obtain bail shall be in the discretion of the Court.

Sec. 58-18. – No return of premium; bond reduction.

- (a) If, after an agreement has been entered into between a principal and bondsman and a bond has been posted, the bail is reduced by the Court, the bondsman shall not be required to return any portion of the premium to the principal.

Sec. 58-19. – Surrender by bondsman.

- (a) At any time before there has been a breach of the bail agreement, the bondsman may surrender the principal to the Cherokee Indian Police Department and return the premium within 72 hours.
- (b) The principal may be surrendered without returning the premium if the principal does any of the following:
 - (1) Fails to pay the premium or fails to make a premium payment;
 - (2) Changes his or her residence without first notifying the bondsman;
 - (3) Physically hides from the bondsman;
 - (4) Leaves Cherokee trust land without the permission of the bondsman;
 - (5) Violates any order of the Court;
 - (6) Fails to disclose information or provides false information regarding any failure to appear in a court, any previous convictions in the last 10 years, or any charges pending in any court; or
 - (7) Knowingly provides the bondsman with incorrect personal identification or uses a false name or alias.
- (c) A surety may apply to the Court for a writ to surrender the defendant to the Cherokee Court from the detention facility in which the defendant is currently incarcerated.

Sec. 58-20. – Arrest for purpose of surrender.

1 (a) For purposes of surrendering the principal, the bondsman shall provide written authority
2 endorsed on a certified copy of the bail agreement to request that the Court issue an order
3 for arrest of the principal.

4 (b) Arrest for purpose of surrender may be made only by an officer of the Cherokee Indian
5 Police Department.

6
7 **Sec. 58-21. – Deposit for principal admitted to bail.**

8 (a) When the defendant has been admitted to bail, the defendant or another in his behalf, may
9 deposit with an official authorized to take bail, a sum of money, or nonregistered bonds of
10 the United States, or of the State, or of any county, city or town within the State, equal in
11 market value to the amount of such bail, together with his personal undertaking, and an
12 undertaking of such other person, if the money or bonds are deposited by another. Upon
13 delivery to the official in whose custody the defendant is of a certificate of such deposit,
14 he shall be discharged from custody in the cause.

15 (b) When bail other than a deposit of money or bonds has been given, the defendant or the
16 surety may, at any time before a breach of the undertaking, deposit the sum mentioned in
17 the undertaking, and upon such deposit being made, accompanied by a new undertaking,
18 the original undertaking shall be canceled.

19
20 **Sec. 58-22. – Identifying information on the bond.**

21 (a) The following information shall be entered on each bail bond:

22 (1) The name and mailing address of the defendant.

23 (2) The name and mailing address of any accommodation bondsman executing the
24 bond as a surety.

25 (3) The name, mailing address, and license number of any bondsman executing the
26 bond as a surety and the name of any runner executing the bond on behalf of the
27 bondsman.

28 (4) The name and mailing address of all sureties on the bond.

29 (5) The date, time, and place of defendant's next required court appearance secured by
30 the bail bond.

31 (6) The criminal record/docket number of each charge for which the bond is being
32 obtained.

33 (b) If a defendant is released upon execution of a bail bond that does not contain all the
34 information required by subsection (a) of this section, the defendant's order of pretrial
35 release may be revoked by the Court.

36
37 **Sec. 58-23. – Forfeiture jurisdiction.**

38 (a) The Court shall have jurisdiction over forfeiture of bail bonds issued in the Court.

39 (b) By executing a bail bond the defendant and each surety submit to the jurisdiction of the
40 Court and irrevocably consent to be bound by any notice given in compliance with this
41 Chapter. The liability of the defendant and each surety may be enforced as provided in the
42 Cherokee Code, without the necessity of an independent action.

43
44 **Sec. 58-24. – Entry of forfeiture.**

45 (a) If a defendant who was released upon execution of a bail bond fails on any occasion to
46 appear before the Court as required, the Court shall enter a forfeiture for the amount of that

1 bail bond in favor of the Tribe against the defendant and against each surety on the bail
2 bond.

3 (b) The forfeiture shall contain the following information:

4 (1) The name and address of the defendant.

5 (2) The file number of each case in which the defendant's appearance is secured by the
6 bail bond.

7 (3) The amount of the bail bond.

8 (4) The date on which the bail bond was executed.

9 (5) The name and address of each surety on the bail bond.

10 (6) The date on which the forfeiture is entered.

11 (7) The date on which the forfeiture will become a final judgment if not set aside by
12 that date.

13 (8) The following notice:

14 (i) "TO THE DEFENDANT AND EACH SURETY NAMED ABOVE: The
15 defendant named above has failed to appear as required before the Court in
16 the case(s) identified above. A forfeiture for the amount of the bail bond
17 shown above was entered in favor of the Tribe against the defendant and
18 each surety named above on the date of forfeiture shown above. This
19 forfeiture will be set aside if, on or before the final judgment date shown
20 above, satisfactory evidence is presented to the court that one of the
21 following events has occurred: (i) the defendant is deceased, (ii) the
22 defendant was in the custody of a law enforcement or government entity at
23 the time the Court entered an order for the defendant's arrest, (iii) the order
24 for arrest has been stricken, (iv) the defendant was arrested pursuant to the
25 Court's order for arrest, (v) each case against the defendant for which the
26 bail bond was executed was dismissed, (vi) the defendant was surrendered
27 by a surety. The forfeiture will not be set aside for any other reason. If this
28 forfeiture is not set aside on or before the final judgment date shown above,
29 and if no motion to set it aside is pending on that date, the forfeiture will
30 become a final judgment on that date. The final judgment will be enforceable
31 by execution against the defendant and any accommodation bondsman and
32 professional bondsman on the bond. Further, no surety will be allowed to
33 execute any bail bond in the Cherokee Court until the final judgment is satisfied
34 in full."

35
36 **Sec. 58-25. – Notice of forfeiture.**

37 (a) The Court shall give notice of the entry of forfeiture by mailing a copy of the forfeiture to the
38 defendant and to each surety whose name appears on the bail bond.

39 (b) The notice shall be sent by first-class mail to the defendant and to each surety named on the
40 bond at the surety's address of record.

41 (c) Notice given under this section is effective when the notice is mailed.

42 (d) Notice under this section shall be mailed no later than 10 days after the forfeiture is entered.
43

44 **Sec. 58-26. – Setting aside forfeiture.**

45 (a) There shall be no relief from a forfeiture except as provided in this section.

46 (b) A forfeiture shall be set aside for any one of the following reasons:

47 (1) the defendant is deceased.

- 1 (2) the defendant was in the custody of a law enforcement or government entity at the
2 time the Court entered an order for the defendant's arrest.
3 (3) the order for defendant's arrest has been stricken.
4 (4) the defendant was arrested pursuant to the Court's order for arrest.
5 (5) each case against the defendant for which the bail bond was executed was
6 dismissed, or
7 (6) the defendant was surrendered by a surety.
8 (c) If the Court enters an order striking the defendant's failure to appear and recalling any order
9 for arrest issued for that failure to appear, that Court may simultaneously enter an order setting
10 aside any forfeiture of that bail bond. When an order setting aside a forfeiture is entered, the
11 defendant's further appearances shall continue to be secured by that bail bond unless the Court
12 orders otherwise.
13 (d) If the forfeiture is not set aside under subsection (b) or (c) of this section, the only procedure
14 for setting it aside is as follows:
15 (1) At any time before the expiration of 30 days after the date on which the notice of
16 forfeiture was given under C.C. 58-25, the defendant or any surety on the bail bond
17 may make a written motion to the Court that the forfeiture be set aside. The written
18 motion shall state the reason for why the forfeiture should be set aside.
19 (2) No more than one motion to set aside a specific forfeiture may be considered by
20 the Court.
21 (3) The Office of the Attorney General may object to the motion by filing a written
22 objection and serving a copy on the moving party.
23 (4) A hearing on the motion shall be held within 10 days after the motion is filed. The
24 hearing may be continued at the discretion of the Court.
25 (5) The movant shall bear the burden to prove one of the criteria setting aside a
26 forfeiture in section 58-26(b) by the preponderance of the evidence.
27 (6) If at the hearing the Court allows the motion, the Court shall enter an order setting aside
28 the forfeiture. If a forfeiture is set aside under this section, the forfeiture shall not
29 thereafter ever become a final judgment of forfeiture or be enforced.
30 (7) If at the hearing the Court does not enter an order setting aside the forfeiture, the
31 forfeiture shall become a final judgment of forfeiture.
32 (8) An order on a motion to set aside a forfeiture is a final order or judgment of the Court
33 for purposes of appeal. Appeal is the same as provided for appeals in civil actions.
34

35 **Sec. 58-27. – Final judgment of forfeiture.**

- 36 (a) A forfeiture becomes a final judgment of forfeiture without further action by the Court and
37 may be enforced on the 31st day after notice is given, if
38 (1) No order setting aside the forfeiture is entered on or before that date; and
39 (2) No motion to set aside the forfeiture is pending on that date.
40 (b) An order under this section a final order or judgment of the Court for purposes of appeal.
41 Appeal is the same as provided for appeals in civil actions.
42

43 **Sec. 58-28. – Enforcement of final judgment of forfeiture.**

- 44 (a) When a forfeiture has become a final judgment, the Clerk shall docket the judgment as a civil
45 judgment against the defendant and against each surety named in the judgment.
46 (b) After a final judgment is docketed as provided in this section, no surety named in the judgment
47 shall become a surety on any bail bond until the judgment is satisfied in full.

1 (c) If the judgment is not satisfied in full within 120 days, the Clerk shall revoke the bondsman's
2 license and make a report to the North Carolina Department of Insurance.

3
4 **Section 58-29. – Notice to the Clerk.**

5 (a) Any notice required or permitted in this Chapter to be given to the Clerk shall be in writing.

6 (b) The Clerk may require specific forms be used for any required or permitted notice.
7

8
9 BE IT FINALLY ORDAINED that all ordinances that are inconsistent with this ordinance are
10 rescinded, and that this ordinance shall become effective when ratified by the
11 Principal Chief.
12

13
14 *Submitted by the Office of the Attorney General*