EASTERN BAND OF CHEROKEE INDIANS

RULES OF APPELLATE PROCEDURE
THE CHEROKEE SUPREME COURT

TABLE OF RULES

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Table of Rules

RULES OF APPELLATE PROCEDURE

Rule 1. Scope of Rules

(a) **Scope of rules.** These rules govern procedure in all appeals to the Supreme Court, and in applications to the Supreme Court for writs and other relief.

(b) **Rules do not affect jurisdiction.** These rules shall not be construed to extend or limit the jurisdiction of the courts.

Rule 2. Suspension of Rules

To prevent manifest injustice to a party, or to expedite decision in the public interest, the Supreme Court may, except as otherwise expressly provided by these rules, suspend or vary the requirements or provisions of any of these rules upon application of a party or upon its own initiative, and may order proceedings in accordance with its directions.

Rule 3. Appeal in cases- How and when taken

(a) **Filing the notice of appeal.** Any party entitled by law to appeal from a judgment or order of the Cherokee Court may take appeal by filing notice of appeal with the clerk of the Cherokee Court and serving copies thereof upon all other parties.

(b) **Time for taking appeal.** A party must file a notice of appeal within thirty days after the order or judgment appealed from has been filed in the office of the Clerk of the Cherokee Court. If timely notice of appeal is filed by a party, any other party may file and serve a notice of appeal within 10 days after the first notice of appeal was served on such party.

Rule 4. Joinder of parties on appeal

(a) **Appellants.** If two or more parties are entitled to appeal from a judgment, order or other determination and their interests are such as to make their joinder in appeal practicable, they may give a joint oral notice of appeal or file and serve a joint notice of appeal in accordance with Rule 3, or they may join in appeal after timely taking of separate appeals by filing notice of joinder in the office of the clerk and serving copies thereof upon all other parties.

(b) **Appellees.** Two or more appellees whose interests are such as to make their joinder on appeal practicable, may by filing notice of joinder in the office of the clerk and serving copies thereof upon all other parties, so join.

(c) **Procedure after joinder.** After joinder, the parties proceed as a single appellant or appellee.

Rule 5. Security for costs on appeal.

(a) **In regular course.** Except in pauper appeals an appellant in a civil action must provide adequate security for the costs of appeal by depositing with the Clerk of the Cherokee Court two hundred and fifty dollars ($250.00), or a consent to garnish tribal per capita distribution, within ten (10) days following the giving of notice of appeal.

(b) **In forma pauperis appeals.** An appellant in a civil action may be allowed to prosecute an appeal in forma pauperis without providing security for costs.

(c) **Dismissal for failure to file or defect in security.** For failure of the appellant to provide security as required by subdivision (a) or for a substantial defect or irregularity in any security provided, the appeal may on motion of an appellee be dismissed by the Supreme Court unless for good cause shown the court permits the security to be provided or the defect or irregularity to be corrected. When the motion to dismiss is made on the grounds of defect or irregularity, the appellant may as a matter or right correct the defect or irregularity by making proper deposit with the clerk within 10 days after service of the motion upon him or before the case is called for argument, whichever first occurs.

(d) **No security for costs in criminal appeals.** No security for costs is required upon appeal of criminal cases.

Rule 6. Preparation of the transcript.

(a) **Ordering the transcript.** Where notice of appeal is given orally in open court, the Clerk will record it in the court file. The appellant shall have ten (10) days after notice of appeal is given, within which to request a transcript of the court proceedings from the clerk. The appellant must deposit three hundred dollars ($300.00) with the clerk at the time the request for the transcript is made. When the transcript is delivered, the clerk will adjust the final cost of the transcript, the appellant paying any additional amount required, or receiving a partial refund of the deposit. The clerk will give the appellant a copy of this policy.

(b) **Indigent appellant.** If the court determines that the appellant is an indigent and unable to pay the costs for the preparation for the transcript, the transcript will be provided to the appellant.

(c) **Pick up of transcript.** After the transcript has been prepared the clerk will give notice to the appellant that the transcript is ready for delivery and notify the appellant to come to the clerk's office in Cherokee for the purpose of receiving a copy of the transcript and making the necessary adjustment as to the cost. If the appellant fails to pick up the transcript within fifteen (15) days after the clerk's notice is issued the appeal may be dismissed.

(d) **Transcript cost for appellee.** Appellee may obtain a copy of the transcript, or parts thereof, from the Clerk of the Cherokee Court upon payment of the costs of copying.

Rule 7. Stay pending appeal

(a) **Stay in civil cases.** When appeal is taken in a civil action from a judgment, order, or other determination of a trial court, stay of execution or enforcement thereof pending disposition of the appeal must ordinarily first be sought by application to the trial court for a stay order. The court may require the deposit of security to guarantee compliance with the judgment as a condition of a stay order. After a stay order has been denied or vacated by a trial court, an appellant may apply to the Supreme Court for a writ of supersedeas in accordance with Rule 11. Application for a writ of supersedeas may be made to the Supreme Court in the first instance when extraordinary circumstances make it impracticable to obtain a stay by deposit of security or by application to the trial court for a stay order.

(b) **Stay in criminal cases.** When a defendant has given notice of appeal those portions of criminal sentences which impose fines or costs are automatically stayed. Stays of imprisonment must be pursued under Appellate Rule 11, Writ of Supersedeas.

Rule 8. The Record on appeal

(a) **Function: Composition of record.** In appeals review is solely upon the record on appeal and the verbatim transcript of proceedings, if one is designated.

(1) Composition of the record. The record on appeal shall consist of the entire record in the Cherokee Court together with all exhibits offered in evidence at the trial of the action, unless such exhibits by consent of all counsel or parties are eliminated, and assignments of error (see Rule 9). Also the trial transcript, if one is prepared, shall constitute a part of the record on appeal.

(2) Docketing Appeal with Supreme Court. Within ten (10) days after notice of appeal is given, the clerk shall transfer the entire record

in the Cherokee Court, and the transcript when filed, to the Chief Justice of the Supreme Court.

Rule 9. Assigning error on appeal.

(a) **Function in limiting scope of review.** Except as otherwise provided herein, the scope of review on appeal is confined to a consideration of those assignments of error set out in the record on appeal in accordance with this Rule 9. Provided, that upon any appeal duly taken from a final judgment any party to the appeal may present for review, by properly making them the basis of assignments of error, the questions whether the judgment is supported by the verdict or by the findings of fact and conclusions of law, whether the court had jurisdiction of the subject matter, and whether a criminal charge is sufficient in law.

(b) Preserving questions for appellate review.

(1) General. In order to preserve a question for appellate review, a party must have presented to the trial court a timely request, objection or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context. It is also necessary for the complaining party to obtain a ruling upon the party's request, objection or motion. Any such question which was properly preserved for review by action of counsel taken during the course of proceedings in the trial tribunal by objection noted or which by rule or law was deemed preserved or taken without any such action, may be made the basis of an assignment of error in the record on appeal.

(2) Jury instruction: findings and conclusions of judge. A party may not assign as error any portion of the jury charge or omission there from unless he objects thereto before the jury retires to consider its verdict, stating distinctly that to which he objects and the grounds of his objection; provided, that opportunity was given to the party to make the objection out of the hearing of the jury, and, on request of any party, out of the presence of the jury.

(3) Sufficiency of the evidence. A defendant in a criminal case may not assign as error the insufficiency of the evidence to prove the crime charged unless he moves to dismiss the action, or for judgment as in case of non-suit at trial. If a defendant makes such a motion after the Tribe has presented all its evidence and has rested its case and that motion is denied and the defendant then introduces evidence, his motion for dismissal or judgment in case of non-suit made at the close of Tribe's evidence is waived. Such a waiver precludes the defendant from urging the denial of such motion as a ground for appeal.

A defendant may make a motion to dismiss the action or judgment as in case of non-suit at the conclusion of all the evidence, irrespective of whether he made an earlier such motion. If the motion at the close of all the evidence is denied, the defendant may urge as ground for appeal the denial of his motion made at the conclusion of all the evidence. However, if a defendant fails to move to dismiss the action or for judgment as in case of non-suit at the close of all the evidence, he may not challenge on appeal the sufficiency of the evidence to prove the crime charged.

If a defendant's motion to dismiss the action or for judgment as in case of non-suit is allowed, or shall be sustained on appeal, it shall have the force and effect of a verdict of "not guilty" as to such defendant.

(c) Assignments of error.

(1) Form; record references. A listing of the assignments of error upon which an appeal is predicated shall be stated at the conclusion of the record on appeal, in short form without argument, and shall be separately numbered. Each assignment of error shall, so far as practicable, be confined to a single issue of law; and shall state plainly, concisely and without argumentation the legal basis upon which error is assigned. An assignment of error is sufficient if it directs the attention of the appellate court to the particular error about which the question is made, with clear and specific record or transcript references. Questions made as to several issues or findings relating to the one ground of recovery or defense may be combined in one assignment of error, if separate record or transcript references are made.

(2) Jury instructions. Where a question concerns instructions given to the jury, the party shall identify the specific portion of the jury charge in question by setting it within brackets or by any other clear means of reference in the record on appeal. A question of the failure to give particular instructions to the jury, or to make a particular finding of fact or conclusion of law which finding or conclusion was not specifically requested of the trial judge, shall identify the omitted instruction, finding or conclusion by setting out its substance in the assignments of error and referring to the place in the record where the omission occurred.

(3) Sufficiency of evidence. In civil cases, questions that the evidence is legally or factually insufficient to support a particular issue or finding, and challenges directed against any conclusions of law of the trial court based upon such issues or findings, may be combined under a single assignment of error raising both contentions if the record references and the argument under the point sufficiently directs the court's attention to the nature of the

question made regarding each such issue or finding or legal conclusion based thereon.

(4) Assigning plain error. In criminal cases, a question which was not preserved by objection noted at trial and which is not deemed preserved by rule or law without any such action, nevertheless may be made the basis of an assignment of error where the judicial action questioned is specifically and distinctly contended to be plain error.

(d) **Cross-assignments of error by appellee.** Without taking an appeal an appellee may cross-assign as error any action or omission of the trial court which was properly preserved for appellate review and which deprived the appellee of an alternative basis in law for supporting the judgment, order or other determination from which appeal has been taken. Portions of the record or transcript of proceedings necessary to an understanding of such cross-assignments or error may be included in the cross-assignments of error.

(e) **Filing deadlines.** Assignments of error must be filed by the appellant with the Clerk of the Cherokee Court within thirty (30) days after the filing of notice of appeal, or if a transcript is ordered, within thirty (30) days after the Clerk gives notice to the appellant that the transcript is ready for delivery.

Cross assignments of error, if any, must be filed by the appellee within twenty (20) days of the filing of assignments of error.

Rule 10. Scheduling Order.

Upon docketing the appeal with the Chief Justice Pursuant to Rule 8, the Chief Justice may issue a scheduling order setting the times for the filing of briefs with the Supreme Court, and for other proceedings as the Court deems appropriate.

Rule 11. Extraordinary Writs.

(a) **Certiorari**

(1) Scope of the writ.

(i) *Review of the judgments and orders of the Cherokee Court.* The writ of certiorari may be issued in appropriate circumstances by the Supreme Court to permit review of the judgments and orders of the Cherokee Court when the right to prosecute an appeal has been lost by failure to take timely action, or when no right of appeal from an interlocutory order exists, or for review of an order of the trial court denying a motion for appropriate relief.

(ii) *Same; Filing and service; Content.* The petition shall be filed without unreasonable delay and shall be accompanied by proof

of service upon all other parties. The petition shall contain a statement of the facts necessary to an understanding of the issues presented by the application; a statement of the reasons why the writ should issue; and certified copies of the judgment, order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition. The petition shall be verified by counsel for the petitioner. Upon the receipt of the prescribed docket fee, the clerk will docket the petition.

(iii) *Response;* Determination by court. Within 10 days after service upon him of the petition, any party may file a response thereto with supporting affidavits or certified portions of the record not filed with the petition. Filing shall be accompanied by proof of service upon all the parties. The Court for good cause shown may shorten the time for filing a response. Determination will be made on the basis of the petition, the response and any supporting papers. No briefs or oral argument will be received or allowed unless ordered by the court upon its own initiative.

(b) Mandamus and Prohibition

(1) *Petition for writ.* Applications for the writs of mandamus or prohibition shall be made by filing a petition therefor with the Supreme Court.

(2) *Same; Filing and service; Content.* The petition shall be filed without unreasonable delay after the judicial action sought to be prohibited or compelled has been undertaken, or has occurred, or has been refused, and shall be accompanied by proof of service on the respondent and on all other parties to the action. The petition shall contain a statement of the facts necessary to an understanding of the issues presented by the application; a statement of the issues presented and of the relief sought; a statement of the reasons why the writ should issue; and certified copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition. The petition shall be verified by counsel or the petitioner. Upon receipt of the prescribed docket fee, the clerk will docket the petition.

(3) *Response; Determination by the court.* Within 10 days after service upon him of the petition the respondent or any party may file a response thereto with supporting affidavits or certified portions of the record not filed with the petition. Filing shall be accompanied by proof of service upon all other parties. The Court for good cause shown may shorten the time for filing a response. Determination will be made on the basis of the petition, the response and any supporting papers. No briefs or oral argument

will be received or allowed unless ordered by the court upon its own initiative.

(c) **Supersedeas.**

(1) *Pending review of trial tribunal judgments and orders.*

(i) *Application- When appropriate.* Application may be made to the Supreme Court for a writ of supersedeas to stay the execution or enforcement of any judgment, order or other determination of a trial tribunal which is not automatically stayed by the taking of appeal when an appeal has been taken or a petition for mandamus, prohibition, or certiorari has been filed to obtain review of judgment, order, or other determination; and (i) a stay order or entry has been sought by the applicant by deposit of security or by motion in the trial tribunal and such order or entry has been denied or vacated by the trial tribunal, or (ii) extraordinary circumstances make it impracticable to obtain a stay by deposit of security or by application to the trial tribunal for a stay order.

(ii) *Same.* Application for the writ is by petition which shall be docketed in the Supreme Court.

(iii) *Petition: Filing and service; Content.* The petition shall be filed with the Supreme Court, and shall be accompanied by proof of service upon all other parties. The petition shall be verified by counsel or the petitioner. Upon receipt of the required docket fee, the clerk will docket the petition.

For stays of the judgments of trial tribunals, the petition shall contain a statement that stay has been sought in the court to which issuance of the writ is sought and by that court denied or vacated, or of facts showing that it was impracticable to seek a stay. For stays of any judgment, the petition shall contain: (a) a statement of any facts necessary to an understanding of the basis upon which the writ is sought; and (b) a statement of reasons why the writ should issue in justice to the applicant. The petition may be accompanied by affidavits and by any certified portions of the record pertinent to its consideration. It may be included in a petition for discretionary review by the Supreme Court or in a petition for certiorari, mandamus or prohibition.

(iv) *Response: Determination by court.* Within 10 days after service upon him of the petition any party may file a response thereto with supporting affidavits or certified portions of the record not filed with the petition. Filing

shall be accompanied by proof of service upon all other parties. The court for good cause shown may shorten the time for filing a response. Determination will be made on the basis of the petition, the response, and any supporting papers. No briefs or oral arguments will be received or allowed unless ordered by the court upon its own initiative.

(v) *Temporary stay.* Upon the filing of a petition for supersedeas, the applicant may apply, either within the petition or by separate paper, for an order temporarily staying enforcement or execution of the judgment, order or other determination pending decision by the court upon the petition for supersedeas. If application is made by separate paper, it shall be filed and served in the manner in this rule. The court, for good cause shown in such a petition for temporary stay, may issue such an order ex parte.

Rule 12. Penalty for failure to comply with rules.

(a) **Failure of appellant to take timely action.** If after giving notice of appeal the appellant shall fail within the times allowed by these rules or by order of court to take any action required to present the appeal for decision, the appeal may on motion of any other party be dismissed. Prior to the filing of an appeal motions to dismiss are made to the court from which appeal has been taken; after an appeal has been filed motions to dismiss are made to the Supreme Court. Motions to dismiss shall be supported by affidavits or certified copies of docket entries which show the failure to take timely action or otherwise perfect the appeal, and shall be allowed unless compliance or a waiver thereof is shown on the record, or unless the appellee shall consent to action taken out of time, or unless the court for good cause shall permit the action to be taken out of time.

(b) **Sanctions for failure to comply with rules.** The Supreme Court may, on its own initiative or motion of a party, impose a sanction against a party or attorney or both when the court determines that such party or attorney or both substantially failed to comply with these appellate rules. The court may impose sanctions of the type and in the manner prescribed by the rule for frivolous appeals, RAP 21.

Rule 13. Filing and Service.

Filing. Papers required or permitted by those rules to be filed shall be filed with the clerk of the Cherokee Court. Filing may be accomplished by mail or by electronic means as set forth in this rule.

(a) **Filing by mail.** Filing may be accomplished by mail addressed to the clerk, but is not timely unless the papers are received by the clerk within the time fixed for filing, except that motions, responses to petitions, and briefs shall be deemed filed on the date of mailing, as evidenced by the proof of service, if first class mail is utilized. Responses and motions may be filed by facsimile machines, if a request for permission to do so has first been tendered to and approved by the clerk of court.
In all cases where a document has been filed by facsimile machine pursuant to this rule, counsel must forward the following items by first class mail, contemporaneously with the transmission: the original signed document, the electronic transmission fee, and the applicable filing fee for the document, if any. The party filing a document by electronic means shall be responsible for all costs of the transmission and such costs may not be recovered as costs of the appeal.

(b) **Service of all papers required.** Copies of all papers filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served on all other parties to the appeal.

(c) **Manner of service.** Service may be made in the manner provided for service and return of process in Rule 4 of the N.C. Rules of Civil Procedure and may be so made upon a party or upon his attorney of record. Service may also be made upon a party or upon his attorney of record by delivering a copy to either or by mailing it to either at his last known address, or if no address is known, by filing it in the office of the clerk with whom the original paper is filed. Delivery of a copy within this rule means handing it to the attorney or to the party, or leaving it at the attorney's office with a partner or employee. Service by mail is complete upon deposit of the paper enclosed in a postpaid, properly addressed wrapper in a Post Office or official depository under the exclusive care and custody of the United States Postal Office Department.

(d) **Proof of service.** Papers presented for filing shall contain an acknowledgement of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Proof of service shall appear on or be affixed to the papers filed.

(e) **Joint appellants and appellees.** Any paper required by these rules to be served on a party is properly served upon all parties joined in the appeal by service upon any one of them.

(f) **Numerous parties to appeal proceeding separately.** When there are unusually large numbers of appellees or appellants proceeding separately, the trial tribunal upon motion of any party or on its own initiative, may

order that any papers required by these rules to be served by a party on all other parties need to be served only upon parties designated in the order, and that the filing of such a paper and service thereof upon the parties designated constitutes due notice of it to all other parties. A copy of every such order shall be served upon all parties to the action in such manner and form as the court directs.

(g) **Form of papers; Copies.** Papers presented for filing shall be letter size (8-1/2 x 11") with the exception of wills and exhibits. All printed matter must appear in at least 12-point type on unglazed white paper of 16-20 pound substance so as to produce a clear, black image, leaving a margin of approximately one inch on each side. The body of text shall be presented with double spacing between each line of text. The body of the document shall at its close bear the printed name, post office address, and telephone number of counsel of record, and in addition, at the appropriate place, the signature of counsel of record.

(h) **Electronic Filing.** Electronic filing may be allowed under rules of the clerk of the Cherokee Court or of the Cherokee Supreme Court.

Rule 14. Computation and extension of time.

(a) **Computation of time.** In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a legal holiday. A "legal holiday" is one recognized by the Eastern Band of Cherokee Indians.

(b) **Additional time after service by mail.** Whenever a party has the right to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three days shall be added to the prescribed period.

(c) **Extensions of time.** Except as herein provided, the Supreme Court for good cause shown may upon motion extend any of the times prescribed by these rules or by order of Court for doing any act required or allowed under these rules; or may permit an act to be done after the expiration of such time. Courts may not extend the time for taking an appeal or for filing a petition for discretionary review or a petition for rehearing or the responses thereto prescribed by these rules or by law.

(i) *Motions for extension of time in the Supreme Court; How determined.*

Motions for extension of time may be determined *ex parte,* but the moving party shall promptly serve on all other parties to the appeal to the appeal a copy of any order extending time. Provided that motions made after the expiration of the time allowed in these rules for the action sought to be extended must be in writing and with notice to all other parties and may be allowed only after all other parties have had opportunity to respond.

Rule 15. Briefs: Function and Content

(a) **Function.** The function of all briefs required or permitted by these rules is to define clearly the questions presented to the reviewing court and to present the arguments and authorities upon which the parties rely in support of their respective positions thereon. Review is limited to questions so presented in the several briefs. Questions raised by assignments of error in appeals from trial tribunals but not then presented and discussed in a party's brief, are deemed abandoned.

(b) **Content of Appellant's Brief.** An appellant's brief in any appeal shall contain, under appropriate headings, in the following order:

(1) A cover page, followed by a table of contents and table of authorities.

(2) A statement of the questions presented for review.

(3) A concise statement of the procedural history of the case. This shall indicate the nature of the case and summarize the course of proceedings up to the taking of the appeal before the court.

(4) A full and complete statement of the facts. This should be a non-argumentative summary of all material facts underlying the matter in controversy which are necessary to understand all questions presented for review, supported by references to pages in the transcript of proceedings, the record, or exhibits, as the case may be.

(5) An argument, to contain the contentions of the appellant with respect to each questions presented. Each question shall be separately stated. Immediately following each question shall be a reference to the assignments of error pertinent to the question, identified by their numbers and by the pages at which they appear. Assignments of error not set out in the appellant's brief, or in support of which no reason or argument is stated or authority cited, will be taken as abandoned.

The body of the argument shall contain citations of the authorities upon which the appellant relies. Evidence or other proceedings material to the question presented may be narrated or

quoted in the body of the argument, with appropriate reference to the record or the transcript of proceedings, or the exhibits.

(6) A short conclusion stating the precise relief sought.

(7) Identification of counsel by signature, typed name, office address and telephone number.

(8) The proof of service.

(9) The appendix.

(c) **Content of Appellee's Brief; Presentation of Additional Questions.** An appellee's brief in any appeal shall contain a table of contents and table of authorities, an argument, a conclusion, identification of counsel and proof of service and any appendix. It need not contain statement of the questions presented, statement of the procedural history of the case, or statement of the facts, unless the appellee disagrees with the appellant's statements and desires to make a restatement or unless the appellee desires to present questions in addition to those stated by the appellant.

Without having taken appeal, an appellee may present for review, by stating them in his brief, any questions raised by cross-assignments of error. Without having taken appeal or made cross-assignments of error, an appellee may present the question, by statement and argument in his brief, whether a new trial should be granted to the appellee rather than a judgment n.o.v. awarded to the appellant when the latter relief is sought on appeal by the appellant.

If the appellee is entitled to present questions in addition to those stated by the appellant, the appellee's brief must contain a full, non-argumentative summary of all material facts necessary to understand the new questions supported by references to pages in the record on appeal, the transcript of proceedings, or the appendices, as appropriate.

(d) **Appendices to Briefs**

(1) *When Appendices to Appellant's Brief are Required.* Except as is provided in Rule 2, the appellant must reproduce as appendices to its brief:

(i) those portions of the transcript of proceedings which must be reproduced verbatim in order to understand any question presented in the brief;

(ii) those portions of the transcript showing the pertinent questions and answers when a question presented in the brief involves the admission or exclusion of evidence;

(iii) relevant portions of statues, rules or regulations, the study of which is required to determine questions presented in the brief.

(2) When Appendices to Appellant's Brief Are Not Required

(i) whenever the portion of the transcript necessary to understand a question presented in the brief is reproduced verbatim in the body of the brief;

(ii) to show the absence of insufficiency of evidence unless there are discrete portions of the transcript where the subject matter of the alleged insufficiency of the evidence is located; or

(iii) to show the general nature of the evidence necessary to understand a question presented in the brief if such evidence has been fully summarized.

(3) *When Appendices to Appellee's Brief Are Required.* Appellee must reproduce appendices to his brief in the following circumstances;

(i) Whenever the appellee believes that appellant's appendices do not include portions of the transcript required, the appellee shall reproduce those portions of the transcript he believes to be necessary to understand the question.

(ii) Whenever the appellee presents a new or additional question in his brief as permitted the appellee shall reproduce portions of the transcript a if he were the appellant with respect to each such new or additional question.

(4) *Format of Appendices.* The appendices to the briefs of any party shall consist of clear photocopies of transcript pages that have been deemed necessary for inclusion in the appendix under this rule. The pages of the appendix shall be consecutively numbered and an index to the appendix shall be placed at its beginning.

(d) ***References in Briefs to the Record.*** References in the briefs to assignments of error shall be by their numbers and to the pages of the record or of the transcript of proceedings, or both, as the case may be, at which they appear. Reference to parts of the record on appeal and to the parts of the verbatim transcript or documentary exhibits shall be to the pages where the parts appear.

(e) ***Joinder of Multiple Parties in Briefs.*** Any number of appellants or appellees in a single cause or in causes consolidated for appeal may join in a single brief although they are not formally joined on the appeal. Any party to any appeal may adopt by reference portions of the briefs of others.

(f) ***Additional Authorities.*** Additional authorities discovered by a party after filing his brief may be brought to the attention of the court by filing a memorandum thereof with the clerk of the court and serving copies upon all other parties. The memorandum may not be used as a reply brief or for

additional argument, but shall simply state the issue to which the additional authority applies and provide a full citation of the authority. Authorities not cited in the briefs nor in such a memorandum may not be cited and discussed in oral argument.

(h) ***Reply Briefs.*** Unless the court, upon its own initiative, orders a reply brief to be filed and served, none will be received or considered by the court, except as herein provided:

(1) If the appellee has presented in its brief new or additional questions as permitted by Rule 15 (c), an appellant may, within 14 days after service of such brief, file and serve a reply brief limited to those new or additional questions.

(2) If the parties are notified that the case will be submitted without oral argument on the record and briefs, an appellant may, within 14 days after service on such notification, file and serve a reply brief limited to a concise rebuttal to arguments set out in the brief of the appellee which were not addressed in the appellant's principle brief.

(i) ***Amicus Curiae Briefs.*** A brief of an amicus curiae may be filed by leave of the Supreme Court, or in response to a request made by that Court on its own initiative.

A person desiring to file an amicus curiae brief shall present to the Court a motion for leave to file, served upon all parties. The motion shall state concisely the nature of the applicant's interest, the reasons why an amicus curiae brief is believed desirable, the questions of law to be addressed in the amicus curiae brief and the applicant's position on those questions. The proposed amicus curiae brief may be conditionally filed with the motion for leave. Unless otherwise ordered by the Court, the application for leave will be determined solely upon the motion, and without responses thereto or oral argument.

The clerk will forthwith notify the applicant and all parties of the court's action upon the application. Unless other time limits are set out in the order of the Court permitting the brief, the amicus curiae shall file the brief within the time allowed for the filing of the brief of the party supported or, if in support of neither party, within the time allowed for filing appellant's brief. Reply briefs of the parties to an amicus curiae brief will be limited to points or authorities presented in the amicus curiae brief which are not presented in the main briefs of the parties. No reply brief of an amicus curiae will be received.

A motion of an amicus curiae to participate in oral argument will be allowed only for extraordinary reasons.

Rule 16. Sessions of Courts; Calendar of Hearings

(a) ***Sessions of Court.***

(1) *Supreme Court.* The Supreme Court shall be in continuous session for the transaction of business.

(b) ***Calendaring of Cases for Hearing.*** The Supreme Court will calendar the hearing of all appeals docketed in the court. The clerk will give reasonable notice to all counsel of record of the setting of an appeal for hearing by mailing a copy of the calendar.

Rule 17. Oral Argument

(a) ***Order and Content of Argument.*** The appellant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case. Oral arguments should complement the written briefs, and counsel will therefore not be permitted to read at length from briefs, records, and authorities.

(b) Time Allowed for Argument

(1) *In General.* Ordinarily a total of thirty minutes will be allowed all appellants and a total of thirty minutes will be allowed all appellees for oral argument. Upon written or oral application of any party, the court for good cause shown may extend the times limited for argument. Among other causes, the existence of adverse interests between multiple appellants or between multiple appellees may be suggested as good cause for such an extension. The court of its own initiative may direct argument on specific points outside the time allowed, and the court may terminate argument whenever it considers further argument unnecessary.

(2) *Numerous Counsel.* Any number of counsel representing individual appellants or appellees proceeding separately or jointly may be heard in argument within the times herein limited or allowed by order of court. When more than one counsel is heard, duplication or supplementation of argument on the same points shall be avoided unless specifically directed by the court.

(c) **Non-appearance of Parties.** If counsel for any party fails to appear to present oral argument, the court will hear argument from opposing counsel. If no counsel appears, the court will decide the case on the written brief(s) unless it orders otherwise.

(d) **Submission on Written Briefs.** By agreement of the parties, a case may be submitted for decision on the written briefs; but the court may nevertheless order oral argument prior to deciding the case.

Rule 18. Petition for Rehearing.

(a) ***Time for Filing; Content.*** A petition for rehearing may be filed in a civil action within 15 days after the mandate of the court has been issued. The petition shall state with particularity the points of fact or law which, in the opinion of the petitioner, the court has overlooked or misapprehended, and shall contain such argument in support of the petition as petitioner desires to present. It shall be accompanied by a certificate of at least two attorneys who for periods of at leave five years respectively, shall have been members of the bar of North Carolina and who have no interest in the subject of the action and have not been counsel for any party to the action, that they have carefully examined the appeal and the authorities cited in the decision, and that they consider the decision in error on points specifically and concisely identified. Oral argument in support of the petition will not be permitted.

(b) ***How Addressed; Filed.*** A petition for rehearing shall be addressed to the Supreme Court. Two copies thereof shall be filed with the court.

(c) ***How Determined.*** Within 30 days after the petition is filed, the court will either grant or deny the petition. Determination to grant or deny will be made solely upon the written petition; no written response will be received from the opposing party; and no oral argument by any party will be heard. Determination by the court is final. The rehearing may be granted as to all or less than all points suggested in the petition. When the petition is denied the clerk shall forthwith notify all parties.

(d) ***Procedure When Granted.*** Upon grant of the petition the clerk shall forthwith notify the parties that the petition has been granted. The case will be reconsidered solely upon the record on appeal, the petition to rehear, new briefs of both parties, and the oral argument if one has been ordered by the court. The briefs shall be addressed solely to the points specified in the order granting the petition to rehear. The petitioner's brief shall be filed within 30 days after the case is certified for rehearing, and the opposing party's brief, within 30 days after petitioner's brief is served upon him. No reply brief shall be received on rehearing. If the court has ordered oral argument, the clerk shall give notice of the time set therefor, which time shall be not less than 30 days after the filing of the petitioner's brief on rehearing.

(e) ***Stay of Execution.*** When a petition for rehearing is filed, the petitioner may obtain a stay of execution in the trial court to which the mandate of the appellate court has been issued.

(f) ***No Petition in Criminal Cases.*** The court will not entertain petitions for rehearing in criminal actions.

Rule 19. Mandates of the Courts

(a) ***In General.*** Unless the Supreme Court directs that a formal mandate shall issue, the mandate of the court consists of certified copies of its judgment and of its opinion and any direction of its clerk as to costs. The mandate is issued by its transmittal from the clerk of the issuing court to the clerk or comparable officer of the tribunal from which appeal was taken to the issuing court.

(b) ***Time of Issuance.*** Unless a court orders otherwise, its clerk shall enter judgment and issue the mandate of the court within 20 days after the written opinion of the court has been filed with the clerk.

Rule 20. Attorneys

(a) ***Appearances.*** An attorney will not be recognized as appearing in any case unless he is entered as counsel of record therein. The signature of an attorney on a record on appeal, motion, brief, or other document permitted by these rules to be filed in the Supreme Court constitutes entry of the attorney as counsel of record for the parties designated and certification that he represents such parties. The signature of a member or associate in a firm's name constitutes entry of the firm as counsel of record for the parties designated. Counsel of record may not withdraw from a case except by leave of court. Only those counsel of record who have personally signed the brief prior to oral argument may be heard in argument.

(b) ***Agreements.*** Only those agreements of counsel which appear in the record on appeal or which are filed in the court where an appeal is docketed will be recognized by that court.

Rule 21. Frivolous Appeals; Sanctions

(a) The Supreme Court may, on its own initiative or motion of a party, impose a sanction against a party or attorney or both when the court determines that an appeal or any proceeding in an appeal was frivolous because of one or more of the following:

(1) the appeal was not well grounded in fact or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(2) the appeal was taken or continued for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(3) a petition, motion, brief, record, or other paper filed in the appeal was grossly lacking in the requirements of propriety, violated appellate court rules, or grossly disregarded the requirements of a fair presentation of the issues to the appellate court.

(4) A party or counsel violates a Rule of Appellate Procedure.

(b) The Supreme Court may impose one or more of the following sanctions:

(1) dismissal of the appeal;

(2) monetary damages including, but not limited to,

i. single or double costs,

ii. damages occasioned by delay,

iii. reasonable expenses, including reasonable attorney fees, incurred because of the frivolous appeal or proceeding.

(3) any other sanction deemed just and proper.

(c) The Supreme Court may remand the case to the Cherokee Court for a hearing to determine one or more of the sanctions under (b) (2) or (b) (3) of this rule.

(d) If the Supreme Court remands the case to the Cherokee Court for a hearing to determine a sanction under (c) of this rule, the person subject to sanction shall be entitled to be heard on that determination in the Cherokee Court.

Rule 22. Motions in Supreme Court

(a) ***Time; Content of Motions; Responses.*** An application to the Supreme Court for an order or for other relief available under these rules may be made by filing a motion for such order or other relief with the clerk of court, with service on all other parties. Unless another time is expressly provided by these rules, the motion may be filed and served at any time before the case is called for oral argument. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion and shall state with particularity the grounds on which it is based and the order or relief sought. If a motion is supported by affidavits, briefs, or other papers, these shall be served and filed with the motion. Within 10 days after a motion is served upon him or until the appeal is called for oral argument, whichever period is shorter, a party may file and serve copies of a response in opposition to the motion, which may be supported by affidavits, briefs, or other papers in the same manner as motions. The court may shorten or extend the time for responding to any motion.

(b) ***The Determination.*** A motion may be acted upon at any time, despite the absence of notice to all parties, and without awaiting a response thereto. A party who has not received actual notice of such a motion or who has not filed a response at the time such action is taken, and who is adversely

affected by the action may request reconsideration, vacation or modification thereof. Motions will be determined without argument, unless the court orders otherwise.

Rule 23. Costs

(a) **To Whom Allowed.** Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the court; if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered by the court; if a judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a judgment is affirmed in part, reversed in part, or modified in any way, costs shall be allowed as directed by the court.

(b) **Direction as to Costs in Mandate.** The clerk shall include in the mandate of the court an itemized statement of costs taxed in the Supreme Court and designate the party against whom taxed.

(c) **Costs of Appeal Taxable in Trial Tribunals.** Any costs of an appeal which are assessable in the trial tribunal shall upon receipt of the mandate be taxed as directed therein, and may be collected by execution of the trial tribunal.

(d) **Execution to Collect Costs in Supreme Court.** Costs taxed in the Supreme Court may be made the subject of execution issuing from the Supreme Court or the Cherokee Court.

The Cherokee Supreme Court

Eastern Band of Cherokee Indians

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Marcelina Long, Clerk of Court

The Rules of Appellate Procedure for the Cherokee Supreme Court of the Eastern Band of Cherokee Nation are hereby promulgated effective October 1, 2005, pursuant to the inherent power of the Court , and Chapter 7 of the Cherokee Code.

This 25th of August 2005.

The Cherokee Supreme Court

Martin, Chief Justice

Martin, Chief Justice
For the Court