

THE LOCAL RULES OF

PRACTICE AND PROCEDURE

FILED

of the

CHEROKEE COURTS

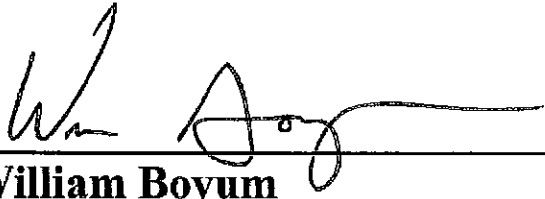
EASTERN BAND OF CHEROKEE INDIANS

QUALLA BOUNDARY

CHEROKEE, NORTH CAROLINA

are hereby promulgated effective this the 25th day of  
AUGUST, 2010 pursuant to the inherent power of the Court,  
and Chapter 7 of the Cherokee Code.

This 25<sup>th</sup> day of AUGUST, 2010

  
\_\_\_\_\_  
William Boyum  
Chief Justice For the Court

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## **LR 1.1 - GENERAL RULES**

### **(a) Scope and Purpose.**

These Local Rules govern practice in the Cherokee Courts for the Eastern Band of Cherokee Indians (EBCI). These Rules shall be interpreted and applied to promote the just and prompt determination of all proceedings.

### **(b) Matters not covered in these Rules.**

It is recognized that these Rules are not complete in every respect and will not cover all situations which may arise. In the event that an issue arises that these rules fail to address, the Cherokee Court and the Cherokee Supreme Court have the inherent power to resolve any such issues.

### **(c) Notice of these Rules.**

The Clerk of the Cherokee Court ("Clerk") shall distribute a copy of these Rules to each member of the Bar of The Cherokee Court upon initial adoption and each subsequent amendment. Additionally, an updated copy of the Local Rules shall be maintained in the Clerk's office.

### **(d) Citation.**

These Rules may be cited as LR \_\_\_\_ (e.g., LR 16.1).

## **LR 5.1 - ADDITIONAL COPIES FOR COURT USE**

The Clerk's copier is for use by the Clerk's staff. An additional paper copy of any briefs, proposed orders and requests for jury instructions shall be delivered by counsel to the Clerk for use by the Court at the time the original is filed.

## **LR 5.2 - FILINGS WITHIN THREE DAYS OF SCHEDULED HEARINGS**

A party who files documents which relate to a matter noticed for hearing within the next three business days shall so advise the Clerk.

## **LR 5.3 - ELECTRONIC FILING OF DOCUMENTS**

[Reserved for later use.]

## **LR 5.4 - SERVICE OF ELECTRONICALLY FILED DOCUMENTS**

[Reserved for later use.]

## **LR 6.1 - EXTENSIONS OF TIME AND CONTINUANCES OF HEARINGS**

### **(a) Motions for an Extension of Time to Perform an Act.**

All motions in civil cases for an extension of time to perform an act required or allowed to be done within a specified time must comply with N.C. Rules of Civil Procedure 6(b).

### **(b) Motions for Continuance.**

- (1) All motions to continue a pretrial conference, hearing on a motion, or the trial of an action should be filed at least five (5) days in advance of the hearing date and should reflect the views of opposing counsel concerning the continuance.
- (2) Any engagement in another Court as a reason for a continuance of a jury trial must state the case number, the Court in which the other case is pending, its position on that calendar, date of trial, and name of Presiding Judge.
- (3) Motions for continuance should be heard at the calendar call of that particular session unless a continuance has been granted by the Presiding Judge. If it is important that the motion for continuance be heard before the beginning of the session, the Presiding Judge will try to hear the motion at any time before the Court date if it can be arranged at a time convenient to the Presiding Judge.
- (4) Motions for continuance may be heard by telephone conference calls (all parties and Judge online). Movant must arrange and pay for these conference calls.

## **LR 7.1 - FORM OF PLEADINGS AND PAPERS**

### **(a) Form.**

Pleadings, motions, briefs, and other papers submitted for filing by counsel must be typewritten or printed on 8.5 x 11 inch paper. Mechanically reproduced copies which bear an original signature will be accepted by the Court as originals.

### **(b) Personal Data Identifiers.**

Parties shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all pleadings filed with the Court, including exhibits thereto, whether filed electronically or in paper, unless otherwise ordered by the Court:

- (1) **Social Security numbers** (use only last 4 digits if necessary to include);
- (2) **Names of minor children** (generally use only initials if necessary to include);



(3) **Dates of birth** (generally use only year if necessary to include); and

(4) **Financial account numbers** (use only last 4 digits if necessary to include).

The responsibility for redacting personal identifiers rests solely with counsel and parties.

**(c) Telephone Numbers and Addresses.**

Parties or attorneys signing papers submitted for filing must state their telephone numbers, mailing addresses, e-mail addresses and N.C. State Bar numbers (for attorneys).

## **LR 7.2 - BRIEFS**

**(a) Contents.**

All briefs filed by counsel with the Court should contain:

- (1) a statement of the nature of the matter before the Court;
- (2) a concise statement of the facts with each statement of fact supported by reference to part of the official record in the case;
- (3) a statement of the question(s) presented; and
- (4) an argument which shall refer to all statutes, rules, and authorities relied upon.

**(b) Citation of Published Decisions.**

For purposes of these Rules, published decisions include decisions published in widely used reports and electronic databases, specifically including Westlaw and LEXISNEXIS. The required form of citation is in accordance with The Bluebook, a Uniform System of Citation. The Court's decisions are currently published on LexisNexis, Westlaw and Versuslaw.

**(c) Citation of Unpublished Decisions.**

Unpublished decisions may be cited only if the unpublished decision is furnished to the Court and to opposing parties or counsel when the brief is filed. Unpublished decisions should include in their full citation the case name, number, abbreviated name of Court where decided, and the date of decision.

## **LR 7.3 - MOTION PRACTICE**

**(a) Form.**

It is preferred that all motions, unless made during a hearing or at trial shall be in writing and accompanied by a brief except as provided in section (g) of this Rule.

**(b) Content.**

All motions shall state with particularity the grounds therefore, shall cite any statute or rule of procedure relied upon, and shall set forth the relief or order sought.

**(c) Decided on Motion Papers and Briefs.**

- (1) Motions may be considered and decided by the Court without hearing or oral argument.
- (2) The Clerk shall give at least five (5) days notice of the date and place of oral argument. The Court, however, for good cause shown may shorten the five-day notice period.

**(d) Response to Motion and Brief.**

The respondent may file a response, including a brief, within 10 days after service of the motion (15 days if the motion is for summary judgment). For good cause appearing, a respondent may be required to file any response and supporting documents, including brief, within such shorter period of time as the Court may specify.

**(e) Reply Brief.**

A reply brief may be filed within 5 days after service of the response. A reply brief is limited to discussion of matters newly raised in the response.

**(f) Additional Authority.**

As an addendum to a brief, response brief, or reply brief, controlling authority, without argument, may be filed at any time prior to the Court's ruling and shall contain only the citation to the case relied upon, if published, or a copy of the opinion if the case is unpublished.

**(g) Motions Not Requiring Briefs.**

No brief is required by either movant or respondent, unless otherwise directed by the Court, with respect to the following motions:

- (1) for extension of time for the performance of an act required or allowed to be done, provided request therefore is made before the expiration of the period originally prescribed or as extended by previous orders;

- (2) to continue a pretrial conference, hearing, or the trial of an action;
- (3) to add parties;
- (4) to amend the pleadings;
- (5) to file supplemental pleadings;
- (6) to appoint a guardian *ad litem*;
- (7) for substitution of parties; and
- (8) to stay proceedings to enforce judgment.

The above motions must minimally state good cause and cite any applicable rule, statute, or other authority justifying relief sought. These motions must be accompanied by a proposed order.

**(h) Failure to File and Serve Motion Papers.**

The failure to file a response within the time specified in this Rule shall constitute a waiver of the right thereafter to file such response, except upon a showing of excusable neglect.

**LR 9.1 - SMALL CLAIMS COURT**

The procedures and policies found in the Small Claims Packet for the Cherokee Courts govern the proceedings in Small Claims Court. This packet can be obtained at the Office of the Clerk of the Cherokee Court.

**LR 16.4 - MEDIATED SETTLEMENT CONFERENCES**

The Presiding Judge may order that a mediated settlement conference be convened in any civil case, and some criminal cases upon consultation with the Cherokee Tribal Prosecutor, in accordance with the law, under such terms and conditions as the Presiding Judge may require.

**LR 17.1 - MINORS OR INCOMPETENTS AS PARTIES**

**(a) Capacity to Sue or Be Sued.**

Minors and incompetent persons may sue or defend by their general or testamentary guardian or by guardians *ad litem* appointed by a State, Federal or Tribal Court.

**(b) Appointment of Guardian ad Litem.**

- (1) Application for the appointment of a guardian or a guardian *ad litem* to sue on behalf of a minor or incompetent may be made by motion submitted contemporaneously with a complaint.
- (2) Application for the appointment of a guardian *ad litem* to defend on behalf of a minor or incompetent person may be filed after service of a summons and complaint and before time has expired to answer or otherwise to respond.
- (3) Applications for the appointment of a guardian *ad litem* by this Court must:
  - (i) set out facts requiring such appointment;
  - (ii) suggest a natural person suitable for appointment;
  - (iii) contain information about that person, including willingness to serve, upon which the Court can judge his or her qualifications; and
  - (iv) be accompanied by a proposed order of appointment.

**(c) Termination of Actions; Court Hearing and Approval.**

- (1) No civil action or proceeding in which a minor or incompetent person is a party may be compromised, settled, dismissed, or otherwise terminated without the approval of the Court.
- (2) In order to obtain Court approval, a party must file a motion setting forth reasons justifying the termination and explaining its effect upon the rights of the minor or incompetent person.
- (3) The Court will conduct a hearing to determine whether the termination is fair, reasonable, and in the best interest of the minor or incompetent. The following persons must be present at the hearing unless excused by the Court:
  - (i) attorneys for all parties;
  - (ii) the minor or incompetent party;
  - (iii) the guardian *ad litem* or other legal representative; and
  - (iv) a parent or other person in loco parentis.
- (4) At the hearing the parties must establish to the satisfaction of the Court:
  - (i) the facts giving rise to the cause of action and the contentions of the parties with respect to liability and damage;

- (ii) the facts concerning the nature and extent of any injury or damage suffered by the minor or incompetent person, supported by medical records and reports in personal injury cases;
- (iii) medical and hospital expenses, if any, incurred or likely to be incurred, and;
- (iv) the facts with respect to any related claims or liens, including separate claims of parents for expenses, and the disposition or status of such other claims.

(5) Ordinarily, the requirements of section (c) (4) of this Rule may be satisfied by summaries made by the parties or their attorneys. In every case, the parties may present sworn testimony of witnesses, affidavits or documentary evidence, and the Court has the authority to call for such evidence at any time.

**(d) Fees.**

The Court will consider requests for counsel fees and a fee for services by the guardian *ad litem* or other legal representative and may make appropriate Orders relating to payment of fees.

**(e) Consent Judgments Approving Settlement.**

Before a Judgment by consent involving a settlement of claims of a minor or incompetent is approved by the Court, it shall be consented and agreed to by counsel for the parties to the action, if any, and by the guardians *ad litem* or other legal representative of the minor or incompetent.

**(f) Payment of Judgment as Settlement.**

When a case is settled by way of a Judgment, the settlement amount shall be paid into the office of the Clerk of this Court, and the Clerk shall make such disbursements from the proceeds as provided by the judgment of the Court. The balance of the proceeds of the judgment shall be paid to the legal guardian of the minor or incompetent. If there is no such guardian, the balance of the proceeds shall be retained by the Clerk of this Court, in an interest-bearing account.

## **LR 26.1 - CIVIL DISCOVERY**

**(a) Discovery Procedures and Materials.**

- (1) All discovery papers must be served on other counsel or parties. The party taking a deposition or obtaining any material through discovery is responsible for its preservation and delivery to the Court when needed or ordered. Any party seeking to compel discovery or other pretrial relief based upon discovery material

which has not been filed with the Clerk must identify the specific portion of the material which is directly relevant and ensure that it is filed as an attachment to the application for relief.

**(b) Extension of the Discovery Period or Request for More Discovery.**

Motions to extend discovery must be made before expiration of the discovery period. The Court will permit additional depositions only on a showing of good cause.

**(c) Jury Trial Preparation after the Close of Discovery.**

For good cause appearing therefore, the physical or mental examination of a party may be ordered at any time prior to trial.

**LR 30.1 - CONDUCT OF DEPOSITIONS**

Depositions shall be conducted in accordance with the following guidelines:

Counsel shall not direct or request that a witness not answer a question, unless that counsel has objected to the question on the ground that the answer is protected by a privilege or a limitation on evidence directed by the Court;

Counsel shall not make objections or statements which might suggest an answer to a witness. Objections of counsel should be succinct, stating the basis of the objection and nothing more; and

Examining counsel shall provide to the witness' counsel a copy of all documents shown to the witness during the deposition. The copies shall be provided either before the deposition begins or contemporaneously with the showing of each document to the witness.

**LR 37.1 - MOTIONS TO COMPEL DISCOVERY**

**Expedited Resolution of Discovery Disputes.**

The Court may expedite the resolution of a discovery dispute via telephone or through a message thread of emails in which all relevant parties are copied.

**LR 40.1 - CALENDARING**

**(a) Responsibility to Set Calendar.**

The calendar for the disposition of civil cases in the Cherokee Court shall be prepared and maintained by the Clerk of the Cherokee Court under the supervision of the Chief Judge or Presiding Judge.

For Criminal Jury trials, the Calendar shall be prepared by the Cherokee Tribal Prosecutor. The Court controls the order of trials.

**(b) Calendaring of Civil Actions / Ready Calendar.**

**(1) Ready Calendar**

- (i) The designated civil clerk shall maintain a Ready Calendar upon which cases shall be placed ninety (90) days after the complaint or action is filed, unless time is extended by Order of the Clerk or Presiding Judge upon request that states with particularity the reasons for the need of extensions.
  - (ii) All cases in which a certificate of readiness by all parties or all counsel of record has been filed with the civil clerk will be placed on the Ready Calendar.
  - (iii) All cases remanded from the Cherokee Supreme Court will be placed on the Ready Calendar, unless otherwise directed by the Cherokee Supreme Court.
  - (iv) All cases specifically ordered to be calendared by the Court will be placed on the Ready Calendar.
- (2) A peremptory setting shall be granted only for good cause and a compelling reason. Requests for a peremptory setting for cases involving persons who must travel long distances, have numerous expert witnesses, or for other extraordinary reasons, should be made to the Presiding Judge for that session.

**(c) Calendar Composition - Order of Listing for Trial.**

- (1) The Trial Calendar shall be composed of matters peremptorily set, cases continued from prior calendars, cases that have certificate of readiness filed by all the parties or counsel, cases requested to be calendared by unrepresented parties, cases remanded from the Cherokee Supreme Court, and cases ordered calendared by the Cherokee Court.
- (2) Peremptorily set cases shall be calendared first on the Trial Calendar and marked accordingly. Thereafter, cases shall be set by date of filing in chronological order, unless otherwise ordered by the Court.

**(d) Publication of Trial Calendar.**

Not less than one (1) week prior to the first day of each Cherokee Court civil session, the designated civil clerk, under the supervision of the Chief Judge or Presiding Judge, will prepare, publish and distribute the calendar of cases for motion and trial at that session. A copy of that calendar shall be distributed by the Clerk to each attorney who appears as counsel of record in one or more cases, to the Presiding Judge, and a

notice to each unrepresented party whose address appears in the record. Each unrepresented party shall be responsible for seeing that their correct mailing address appears in the record and should provide a current email address if possible.

**(e) Request for Calendaring.**

Any attorney or unrepresented party may request that a case or motion be calendared at any scheduled session of Court. Request for calendaring of any case or motion made prior to the publication of the Trial Calendar should be made in writing to the Clerk.

**(f) Carry Over Cases Not Heard.**

All cases or motions not reached or in which a continuance was granted will be continued to a date certain, and shall require no further notice except that the Clerk will include them on the calendar and distribute a copy of the same to all those parties as provided above.

**(g) Child Support Court Sessions.**

Child Support cases are calendared by the Child Support Enforcement Agency in consultation with the Clerk.

**(h) Return Hearings on Temporary Restraining Orders.**

- (1) The attorney granted a Temporary Restraining Order shall be responsible for notifying the Clerk of the name of the case, type of hearing, date and time the hearing is scheduled, and if known, the attorney who represents the opposing parties. The Clerk will place this information on the Presiding Judge's calendar.
- (2) An attorney who applies to the Court for an *ex parte* Custody Order shall prepare both an order allowing and denying such relief.

**(i) Return Hearings on Domestic Violence Protective Orders.**

Return hearings on *ex parte* Domestic Violence Orders may be scheduled at any time, but it is preferred that they be set on the Domestic Violence calendar.

## **LR 40.2 - CALENDAR CALL**

**(a) Attorney Duties.**

When an attorney is notified to appear for setting of a calendar, pre-trial conference, hearing of a motion, or for trial, he or she should appear. Alternatively, such attorney of record may have present, a particular associate or other attorney fully familiar with the particular case involved. If an attorney has a conflict with another court



appearance in state or federal court, appropriate measures should be taken to attempt to resolve the conflict. If the attorney is unable to resolve the conflict and is unable to appear at calendar call, he or she should fax or email the Clerk with a request to hold the case open or file a motion to continue.

**(b) Unrepresented Parties.**

Parties not represented by counsel, with cases on the Trial Calendar, must be present for the calendar call on the first day of the term and remain until their case is scheduled for hearing, continued, or otherwise instructed by the Court.

**LR 43.1 - TRIAL PROCEDURE**

**(a) Opening Statements in Civil Actions.**

At the commencement of the trial of civil actions, the party with the burden of proof may, without argument, state his cause of action and the evidence by which he expects to sustain his claim. The adverse party may then, without argument, state his defense and the evidence by which he expects to sustain his defense. If the trial is to a jury, the opening statement may be made immediately after the jury is sworn. If the trial is to the Court, the opening statement may be made immediately after the case is called for trial. Opening statements shall be subject to such time limitations as may be imposed by the Court.

**(b) Documents, Other than Exhibits, Used at Trial.**

When counsel expects to examine or cross-examine a witness concerning a document, counsel shall have at trial a copy of the document for use by the judge and by opposing counsel.

**(c) Absence During Return of Verdict.**

In a jury trial, if a party or counsel is voluntarily absent from the Courtroom at the return of the verdict, it shall be conclusively presumed that such party or counsel waived presence.

**LR 47.1 - JURIES**

**(a) Examination of Jurors.**

The Court may conduct the examination of prospective jurors, and may permit counsel or a *pro se* litigant to examine prospective jurors as well.

**(b) Contacts Prohibited.**

- (1) All parties and their close contacts, witnesses, and attorneys shall avoid any contact or communication with a jury member or a member of a panel who has been selected or may be selected in a case.
- (2) Attorneys for parties shall inform their clients and witnesses of this Rule.
- (3) No person shall approach a juror, either directly or through any member of his immediate family, in an effort to secure information concerning the juror's background.
- (4) No provision of this Rule is intended to prohibit communication with a juror or panel member after such has been dismissed from further service, so long as the communication does not tend to harass, humiliate, or intimidate the juror in any fashion.

**(c) Disclosure of Names and Addresses of Prospective Jurors.**

- (1) The names of prospective jurors for any session of Court or for a specific case may not be disclosed prior to their reporting for duty except in compliance with instructions of the Court. The Clerk will make available to counsel for the parties, and to any parties appearing *pro se*, a list which sets forth the name and general address of each potential juror when Court is opened for the session for which the jurors have been summoned.
- (2) The names and addresses of persons who have served as jurors may not be disclosed by the Clerk's office without Court permission.

**LR 51.1 - CIVIL JURY ARGUMENTS AND INSTRUCTIONS**

**(a) Jury Arguments.**

Generally, the party having the burden of proof shall have the right to open and close the jury argument, without regard to whether the defendant has offered evidence. The Court, in its discretion, may determine the order of arguments and impose time limitations.

**(b) Instructions to Jury.**

In all cases tried to a jury, a party who desires the jury to be instructed on a particular point must set it out in writing and furnish it to the Court at or before the charge conference.

**LR 65.2 - SURETIES AND BONDS**

**(a) Security.**

Except as otherwise provided by law or by order of the Court, all bonds, guaranties, and undertakings must be secured by:

- (1) Deposit of cash, certified check, bank draft or Post Office money order.
- (2) Undertaking of guaranty of a company holding a certificate of authority from the U.S. Department of Treasury as an acceptable surety on federal bonds; which company has filed with the Clerk the designation of a resident of the Qualla Boundary as agent, dated not more than three years earlier than the date of the undertaking, upon whom process may be served; and which company is otherwise qualified by having met all requirements of the law of the Eastern Band of Cherokee Indians and North Carolina.

**(b) Individual Sureties.**

- (1) An individual surety must execute an affidavit or justification giving full name, occupation, residence address, business address, and facts showing his or her financial qualification to act as surety.
- (2) Members of the Cherokee Bar, officers and employees of this Court, and any person having anything to do with the control of Tribal prisoners may not serve as sureties in any suit, action, or proceeding in this Court.

**(c) Approval of sureties.**

All bonds, guaranties, undertakings, and individual sureties must be approved by a Judge or the Clerk. Individual sureties who justify on the basis of ownership of real or personal property located outside of the Qualla Boundary may be required to provide proof of ownership.

**(d) Identifying information on bond.**

The following information shall be entered on each bail bond:

- (1) The name and mailing address of the defendant.
- (2) The name and address of any accommodation bondsperson (or unlicensed bondsman receiving no consideration for services rendered as a bondsperson) executing the bond as surety.
- (3) The name and license number of any professional bondsperson executing the bond as surety and the name and license number of the runner executing the bail bond on behalf of the professional bondsperson.

- (4) The name of any insurance company executing the bond as surety, and the name, license number, and power of appointment number of the bail agent executing the bail bond on behalf of the insurance company.

If a defendant is released upon execution of a bail bond that does not contain all the information required above, the defendant's Order of pretrial release may be revoked.

**(e) Per Capita Garnishment**

Bond cannot be posted with a promise to pay by voluntary garnishment of per capita funds.

**(f) Professional Sureties and Bondspersons**

No person shall act in the capacity of a professional surety or bondsperson unless that person is qualified and licensed. Any person authorized and licensed to act as bail surety in the state courts of North Carolina shall be qualified to act as a surety in The Cherokee Courts, and shall be liable to the same obligations as in their licensing jurisdiction. Such sureties must also comply with all orders and rules of The Cherokee Courts, and comply with the license requirements of the (EBCI).

Professional bondspersons are authorized to write bonds in the amount of ten times their net valuation as listed provided, however, professional bondspersons shall not be authorized to write any one bond in excess of 50% of its net valuation.

**(g) Forfeiture Proceedings**

If a defendant, who was released upon execution of a bail bond pursuant to Cherokee Code Ch. 15, App. A, Rule 6, fails to appear before the Court as required, the Court may enter a forfeiture for the amount of that bail bond in favor of the EBCI, against the defendant and against each surety on the bail bond.

The Clerk will mail a notice of forfeiture to defendant and to surety, containing a date on which the defendant and surety must appear to show cause why a final judgment of forfeiture should not be entered. Any final judgment of forfeiture will be enforceable by execution against any defendant, surety, accommodation bondsman or professional bondsman on the bond.

Any professional bondsman or surety failing to satisfy bond forfeiture within ninety days after forfeiture has been entered by the Court may be prohibited from writing or executing any additional bonds. In addition, the final judgment of forfeiture will be sent to any applicable insurance agencies, the North Carolina Department of Insurance and to the Bureau of Indian Affairs.

**LR 77.1 - JUDGMENTS, SETTLEMENTS, ORDERS**

**(a) Submission of Judgments and Orders.**

All Judgments and Orders in civil cases are to be submitted to the Judge for signature as ordered by the Court not more than thirty (30) days after the entry of the Judgment or Order.

**(b) Settlement Notification.**

If any case or motion on the Trial Calendar is settled prior to the beginning of the scheduled term, the plaintiff or plaintiff's attorney of record must notify the Clerk and advise who will prepare the judgment or order.

**(c) Copies.**

Prior to the presentation of the judgment or order to the Judge for signature, the attorney preparing and submitting the judgment shall tender a copy thereof to the opposing counsel (or in the absence of counsel, to the opposing party). Any objection by opposing counsel or opposing party must be made within five (5) working days of the receipt of the judgment or order or the Judge may sign the Judgment or Order as presumptively uncontested.

**(d) Settlement.**

If a case on the Trial Calendar for a scheduled civil jury session is settled in whole or in part on the day it is scheduled to be heard, the attorney or parties shall prepare a memorandum of judgment. The parties **must**, after the memorandum is prepared, appear before the Presiding Judge so he can inquire of them in open Court as to whether they agree with the memorandum of settlement. No attorney is authorized to release his or her client or witness until the above procedure is followed. All remaining issues in the case should be clearly defined.

**LR 77.2 - ORDERS AND JUDGMENTS GRANTABLE BY CLERK**

**(a) Orders and Judgments.**

The Clerk is authorized to grant, without direction by the Court and upon a showing of good cause, consent Orders in civil actions for extending for not more than 30 days (plus an additional 30 days in exceptional circumstances) the time within which to answer or otherwise plead.

**(b) Clerk's Action Reviewable.**

The actions of the Clerk may be suspended, altered, or rescinded by the Court.

**LR 77.3 - COURT LIBRARIES**

The Court's library is available for use by Court employees, Judges, staff of the Tribal Attorney General, and members of any State or Tribal Bar.

## **LR 79.1 - ACCESS TO COURT RECORDS**

### **(a) Access.**

The public records of the Court are available for examination in the Clerk's office during normal business hours.

- (1) No file, pleading, paper or index card may be removed from the Courthouse without the approval of a Judge or the Clerk.
- (2) When removal of a file or document is authorized, the Clerk will set a date for its return and will require a written receipt for its release.

### **(b) Copies.**

The Clerk will make and furnish copies of official Court records upon request and upon payment of prescribed fees.

## **LR 79.2 - RELEASE OF INFORMATION BY COURT PERSONNEL**

All Court personnel, including interns, are prohibited from disclosing to any person, without authorization by the Court, material information that is not part of the public records of the Court.

## **LR 79.3 - CUSTODY AND DISPOSITION OF TRIAL EXHIBITS, SEALED DOCUMENTS, AND FILED DEPOSITIONS**

### **(a) Custody with the Clerk.**

Unless otherwise directed by the Court, all trial exhibits admitted into evidence in civil actions shall be placed in the custody of the Clerk, except as provided in Section (b) below.

### **(b) Custody with the Offering Party or Prosecutor.**

- (1) All exhibits not suitable for filing and transmission to the Cherokee Supreme Court as a part of a record on appeal shall be retained as ordered by the Court.
- (2) At the conclusion of a trial or proceeding, the party ordered to retain such exhibits is responsible to the Court for preserving them in their condition as of the time admitted until any appeal is resolved or the time for appeal has expired. The party retaining custody shall make such exhibits available to opposing counsel for use in preparation of an appeal and be responsible for their safe transmission to the Cherokee Supreme Court, if required. The Court may make other orders regarding the preservation or disposition of evidence.

**(c) Disposition of Exhibits, Sealed Documents, and Filed Depositions by Clerk.**

Any exhibit, sealed document, disk, or filed deposition in the Clerk's custody more than thirty (30) days after the time for appeal, if any, has expired, or an appeal has been decided and mandate received, may be returned to the parties or disposed, as ordered by the Court.

**(d) Depositions.**

Depositions read into the Court record are considered exhibits for which the parties shall be responsible as provided in section (b) above. Depositions on file admitted into evidence but not read into the record shall be retained in the Clerk's custody and disposed of as authorized in section (c) of this Rule.

**LR 83.1 - ATTORNEYS**

**(a) Roll of Attorneys.**

The Bar of this Court shall consist of those attorneys admitted to practice before this Court.

**(b) Eligibility and Admission.**

To be eligible for admission to and continuing membership in the Bar of the Cherokee Court, a person must be admitted to the practice of law in North Carolina and in good standing with the State Bar of North Carolina. Prior to being admitted to practice, an attorney must certify, on the Application for Admission to the Bar form provided for use in the Cherokee Courts, that the attorney has read and is familiar with the North Carolina Revised Rules of Professional Conduct and these Local Rules. Upon request, attorneys seeking admission to practice in this Court will be provided with an email version or hard copy of these rules. Attorneys seeking admission to practice in this Court must take an oath or make an affirmation on a form approved by the Court and pay the filing fee required by the Administrative Office of the Cherokee Court for admission to practice in this Court. When the application form prescribed for use by this Court is completed and the appropriate filing fee has been paid to the Clerk of the Cherokee Court, the Chief Justice of Cherokee Supreme Court may admit an attorney who is qualified according to these rules to practice before this Court. Each member of the Cherokee Bar shall provide a current email address to the Clerk.

**(c) Litigants Must be Represented by a Member of the Bar of this Court.**

(1) Litigants in civil actions before this Court, except parties appearing *pro se*, must be represented by at least one attorney who is a member of the Bar of this Court.

- (2) All pleadings and papers presented to the Clerk for filing, except parties appearing *pro se*, shall be signed by a member of the Bar of this Court.

**(d) Limited Practice of Out-of-State Attorneys**

Any attorney domiciled in another state, and regularly admitted to practice in the Courts of record of and in good standing in that state, having been retained as attorney for a party to any civil or criminal legal proceeding pending in the Cherokee Courts, may, on motion, be admitted to practice in that forum for the sole purpose of appearing for a client in the proceeding. The motion required under this section shall be signed by the attorney and shall contain or be accompanied by:

- (1) The attorney's full name, post-office address, bar membership number, and status as a practicing attorney in another state;
- (2) A statement, signed by the client, setting forth the client's address and declaring that the client has retained the attorney to represent the client in the proceeding;
- (3) A statement that unless permitted to withdraw sooner by Order of the Court, the attorney will continue to represent the client in the proceeding until its final determination, and that with reference to all matters incident to the proceeding, the attorney agrees to be subject to the Orders and amenable to the disciplinary action and the civil jurisdiction of the Cherokee Courts and the North Carolina State Bar in all respects as if the attorney were a regularly admitted and licensed member of the Bar of North Carolina and a licensed member of the Bar of the Cherokee Courts in good standing;
- (4) A statement to the effect that the attorney has associated and is personally appearing in the proceeding, with an attorney who is a resident of this State, has agreed to be responsible for filing a registration statement with the North Carolina State Bar, and is duly and legally admitted to practice in the General Court of Justice of North Carolina and the Cherokee Courts, upon whom service may be had in all matters connected with the legal proceedings, or any disciplinary matter, with the same effect as if personally made on the foreign attorney within this State;
- (5) A statement accurately disclosing a record of the entirety of that attorney's disciplinary history. Discipline shall include (i) public discipline by any court or lawyer regulatory organization and (ii) revocation of any *pro hac vice* admission; and
- (6) A fee in the amount of two hundred twenty-five dollars (\$225.00), of which two hundred dollars (\$200.00) shall be remitted to the Clerk of the Cherokee Court, for the support of the Cherokee Courts, and twenty-five dollars (\$25.00) shall be transmitted to the North Carolina State Bar to regulate the practice of out-of-state attorneys as provided in this section.



Compliance with the foregoing requirements does not deprive the Court of the discretionary power to allow or reject the application.

**(e) Secured Leave Policy**

- (1) Each attorney is entitled to designate three weeks during each calendar year as secured leave during which time no matter requiring that attorney's appearance shall be calendared for hearing in the Cherokee Courts. The weeks designated may be consecutive.
- (2) A secured leave period shall be designated ninety (90) days or more in advance and should not conflict with matters that are already scheduled before the Court.
- (3) Designation shall be made by the attorney by filing a letter with the Clerk of the Cherokee Courts. The attorney shall retain a copy of the letter which may be provided to the Court and opposing counsel as needed.
- (4) For extraordinary circumstances, the Court may designate other or additional weeks of secured leave when an attorney is faced with a particular and unusual situation.

Additionally, the secured leave policy does not bar a Judge of the Cherokee Court of their inherent authority to control the trial or other disposition of pending cases.

**LR 83.2 - COURTROOM PRACTICES**

**(a) Addressing the Court.**

Attorneys or litigants shall rise when addressing the Court, and shall make all statements to the Court from behind the counsel table or the lectern facing the Court. They shall not approach the bench, except upon permission of the Court.

**(b) Questioning Witnesses.**

Unless otherwise directed by the Court, while questioning witnesses, attorneys or *pro se* litigants shall remain seated or standing behind the counsel table or standing at the lectern. They shall not approach the witness except for the purpose of examining the witness with respect to an exhibit. Only one attorney for each party may participate in the examination or cross-examination of a witness.

**(c) Professional Appearance.**

All attorneys shall dress in a professional manner when appearing in open Court. Additionally, all Court employees will maintain a professional business-like appearance while at work. Defendants and witnesses appearing in Court are also expected to dress appropriately.

### **LR 83.3 - SANCTIONS**

If an attorney or a party fails to comply with a Local Rule of this Court, the Court may impose sanctions against the attorney or party, or both. The imposition of sanctions does not preclude the Court's use of its contempt powers for the same or substantially similar conduct subject to sanctions and contempt findings. The Court may make such orders as are just under the circumstances of the case.

### **LR 83.4 - PHOTOGRAPHS, RECORDINGS, AND BROADCASTS**

Radio or television broadcasting and the use of photographic, electronic, or mechanical reproduction or recording equipment without Court permission is prohibited in Courtrooms or their environs unless allowed by Order of a Justice or Judge. "Environs" is defined to mean the Courtrooms, the offices of the Judges, Clerk, Probation Officers, or any corridor connecting or adjacent thereto. All cellular telephones are to be turned off in the Courtroom. Text messaging is strictly prohibited in the Courtroom.

### **LR 83.5 - COURTROOM SECURITY**

At least one officer of the Cherokee Indian Police Department should be present at all proceedings held in open Court. In juvenile cases, a juvenile police officer should also be present.

### **LR 83.10a-1 - PURPOSE OF DISCIPLINARY RULES**

The Court, in furtherance of its inherent power and responsibility to supervise attorneys who practice before it, adopts these rules of disciplinary enforcement.

### **LR 83.10c-1 - DISCIPLINE IMPOSED BY ANOTHER COURT OR BY A STATE BAR**

#### **(a) Duty to Inform the Clerk.**

Any attorney practicing before this Court shall, upon being subjected to public discipline by any Court or by the state bar of any state, promptly inform the Clerk of such action.

#### **(b) Show Cause Order.**

Upon the filing of a certified copy of a judgment or order demonstrating that an attorney has been disciplined by another Court or by a state bar, this Court shall forthwith issue a notice containing a copy of the judgment or order and an order to show cause directing that the attorney inform this Court within twenty (20) days why imposition of the identical discipline by this Court would be unwarranted and the reasons therefore.

**(c) Imposition of Discipline.**

If no response to the show cause order has been filed by the attorney within 20 days from service of the show cause order, this Court will presume the misconduct to have been established and will impose discipline as it sees fit.

**LR 83.10e-1 - STANDARDS FOR PROFESSIONAL CONDUCT**

**(a) Disciplinary Enforcement.**

For misconduct defined in these rules or as determined by the Cherokee Courts in their inherent and supervisory authority over the members of the Local Bar, and after notice of an opportunity to be heard, any attorney practicing before this Court may be disbarred, suspended from practice, reprimanded, or subjected to such other disciplinary action as the circumstances may warrant.

**(b) Standards for Conduct.**

Acts or omissions by an attorney practicing before this Court which violate the North Carolina Revised Rules of Professional Conduct shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

**LR 83.10f-1 - DISCIPLINARY PROCEEDINGS**

**Referral of Complaints to Counsel or to a State Bar.**

When allegations of misconduct by an attorney practicing before this Court come to the attention of a Judge of this Court, whether by complaint or otherwise, the Judge may refer the matter to the Cherokee Tribal Prosecutor for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate. Additionally, the Judge may refer the matter to the appropriate State Bar. The Court is not restricted from taking such disciplinary action as is within the inherent authority of the Court.

**LR 83.10h-1 - REINSTATEMENT**

**(a) Procedure.**

Petitions for reinstatement by a disbarred or suspended attorney under this Rule shall be filed with the Court. Upon receipt of the petition, the Chief Justice shall assign the matter for a prompt hearing before a Judge (or Judges) of the Court and may, in the Chief Justice's discretion, refer the petition to the Cherokee Tribal Prosecutor for investigation. The Judge assigned to the matter shall schedule a hearing at which petitioner shall have the burden of demonstrating by clear and convincing evidence that the attorney should be reinstated to the Bar of the Cherokee Court and that he has

the moral qualifications, competency, and learning of the law required for admission to practice law before this Court, and that the attorney's resumption of the practice of law will not be detrimental to the integrity and standing of the Bar or the administration of justice or subversive to the public interest. In all proceedings upon a petition for reinstatement, cross-examination of the witnesses and the submission of evidence, if any, in opposition to the petition shall be conducted by the Cherokee Tribal Prosecutor if the matter has been referred to the Cherokee Tribal Prosecutor by the Court.

**(b) Costs.**

Petitions for reinstatement under this Rule shall be accompanied by an advanced cost deposit in an amount to be set from time to time by the Court to cover anticipated costs of the reinstatement proceeding.

**(c) Order of Reinstatement.**

If the petitioner is found to be unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found to be fit to resume the practice of law, the Judge may Order the reinstatement of the petitioner

**LR 83.10j-1 - SERVICE OF PAPERS AND OTHER NOTICES**

Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the attorney. Service of any other papers or notices required by these rules shall be deemed to have been made if such paper or notice is addressed to the attorney or to the attorney's counsel and is posted by regular mail.

**LR 83.10m-1 - JURISDICTION**

Nothing contained in these rules shall be construed to deny to the Cherokee Courts such powers as are necessary for the Court to maintain control over proceedings conducted before it, such as proceedings for contempt, or sanctions generally.