

IN THE CONSTITUTIONAL (TRIBAL) COURT OF THE CHOCTAW NATION

ADMINISTRATIVE ORDER RE:)
)
CONSTITUTIONAL COURT RULES)
)

Case No. AO-2022-2

ORDER

By inherent authority granted to the undersigned judges in the Choctaw Nation Constitution, and CB-60-2016 (Council Bill to Unify the Courts of the Choctaw Nation Judicial Department), the Choctaw Nation Tribal Court (now referred to as the Choctaw Nation Constitutional Court) adopts the Rules for the Constitutional Court of the Choctaw Nation, attached as Exhibit "A". These Rules are being promulgated to ensure each litigant or person charged with a crime, as well as all parties in civil litigation matters, have a clear path of appeal to the Constitutional Court. Though these rules will be approved by the Tribal Council, they will become effective immediately, and remain in full force and effect unless or until modified or revoked by the Tribal Council. These rules will supersede all prior rules of this Court.

The filing fee for all matters filed in the Constitutional Court of the Choctaw Nation shall be \$50.00.

IT IS SO ORDERED this 23rd day of September, 2022

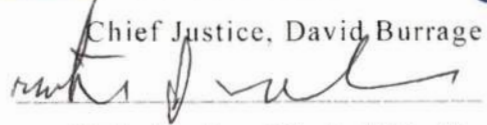
FILED
CHOCTAW NATION OF OKLAHOMA
CONSTITUTIONAL COURT CLERK

SEP 23 2022

COURT CLERK
BY *Aria Schumaker* **Deputy**



Chief Justice, David Burrage



Tribal Judge, Mitchell Mullin



Tribal Judge, Frederick Bobb

Exhibit A

RULES FOR THE CONSTITUTIONAL COURT OF THE CHOCTAW NATION OF OKLAHOMA

Rule 1: TITLE, CITATION, AUTHORITY, EFFECTIVE DATE AND UNSETTLED PROCEDURE

- A. Title and Citation: These Rules shall be known as the Rules of the Constitutional Court of the Choctaw Nation of Oklahoma, and may be cited as “Const.Ct.R. [Rule Number].”
- B. Authority: Article XII of the 1983 Constitution created a Tribal Court as the Judicial Branch of the Choctaw Nation (hereinafter the “Constitutional Court”). CB-65-2009 then created a Court of General Jurisdiction, which included a District Court with one or more judges, and a Court of Appeals with three judges; all those judges are required to be attorneys. CB-60-2016 then unified the judicial branch of the Choctaw Nation, granting the Article XII Court (renamed the Constitutional Court) supervisory authority over the Court of General Jurisdiction (the District Court and Court of Appeals). Section 1.103(b) of CB-60-2016 provides that “[t]he Constitutional Court shall have discretionary authority to hear an appeal from any judgment from the Appellate Division of the Court of General Jurisdiction, under such rules as the Constitutional Court shall adopt, with the approval of the Tribal Council.” These Rules are enacted pursuant to that authority. Therefore, notwithstanding any provision of the Courts of Civil and Criminal Appeals Rules, any party in a civil or criminal appeal filed before the Choctaw Appellate Division of the Court of General Jurisdiction may apply to the Constitutional Court for review, in accordance with the terms of these Rules.
- C. Any point of practice or procedure which stands unsettled by applicable law and is not specifically addressed by these Rules will be resolved by the Constitutional Court as the orderly administration of legal process may require.

Rule 2: COMPUTATION OF TIME

For any period of time set forth in these Rules, the first day shall be excluded and the last day included to complete the period. When the last day of the period so computed falls on a day when the Court Clerk’s office at which the act is to be performed or the instrument filed is not open during the full business day (until 4:00 pm), the last period shall stand extended to include the next ensuing full business day. When the period of time prescribed or allowed is less than eleven (11) days, intermediate legal holidays and any other day when the office of the Supreme Court Clerk does not remain open for business until the regularly scheduled closing time, shall be excluded from the computation.

Rule 3: FILING AND NOTICE TO PARTIES

A. Filings.

1. Form. The pages of all filings shall be numbered unless excused by a specific rule herein.
2. Time for Filing. Except as otherwise set forth in these Rules, all briefs, motions, petitions, and other papers shall be deemed filed on the date of receipt by the Court Clerk during regular office hours, Monday through Friday between 8:00 A.M. and 4:30 P.M., tribal holidays excluded. Any documents which are electronically filed after 4:30 P.M. will be deemed filed the next business day.
3. Method of Filing. Any documents may be filed in the Constitutional Court as follows: (a) electronically via the e-filing portal contained on the Judicial Branch website (as available) (b) by emailing the documents to constcourtclerk@choctawnation.com, including a subject line in the email “Filing for Constitutional Court”, or (c) by filing in person or by mail to the Clerk’s Office at Talihina at 302 Church Street, Talihina, Oklahoma 74571, or in Durant at 2250 Chukka Hina Drive, Durant, Oklahoma 74701.
4. Mailbox Rule. If filing a petition for certiorari in the Constitutional Court by the United States Postal Service, the date of mailing as shown by the postmark or other proof from the post office, such as the date stamped by the post office upon a certified mail receipt, will be deemed to be the date of filing the petition. When a petition is mailed through the United States Postal Service, a postmark date from a privately owned postage meter or commercial postage meter label will not suffice as proof of the date of mailing, and, in the absence of other proof of date of mailing from the United States Postal Service, a document bearing only such a postmark will be deemed filed upon date of delivery to the Court Clerk. Additionally, unless the required cost deposit, or a pauper’s affidavit, is actually delivered to the Court Clerk together with the petition for certiorari, the petition will not be considered timely filed.
5. Mailbox Rule for Prisoners. For purposes of a petition for certiorari filed by a prisoner, the filing date will be the date that he or she places the petition in error in the prison mailbox for mailing or otherwise delivers it to a prison official for mailing. Proof of the date of the placement of the petition in the prison mailbox shall be supplied by affidavit attached to the petition in error.

B. Copies.

Notwithstanding any other provision of law, there shall be no requirement that any pleading filed with the Constitutional Court be accompanied by additional copies.

C. Notice to parties.

1. By Parties. Service of all documents filed with the Constitutional Court shall be made in the manner provided in Choctaw Nation Civil Procedure Code § 2005(B). Provided, service of any documents on the Office of Tribal Prosecutor shall be by email to tribalprosecutor@choctawnation.com, and service of any documents to the Public Defender shall be by email to publicdefenders@choctawnation.com. Proof of service may be by a certificate of service endorsed on the filing. The Court may require other methods of service and proof of service. No brief, motion, petition, application or suggestion will be considered by the Court without proof of service as required herein, except where the Court determines that notice is not required.
2. By Clerk. Orders and notices required to be mailed to any parties who have provided a mail address to the Clerk on the date shown by the Clerk's file stamp unless otherwise indicated, and such date will serve as notice of the date of mailing. Notice by the Clerk shall be made to attorney or party present at the email address, or lacking that, the mailing address shown by the entry of appearance or notice of change of address.

Rule 4: MANDATE

In every appeal or petition to review any order of the district court or other tribunal, a mandate will be issued to the lower court or tribunal on order of the Chief Justice of the Constitutional Court upon conclusion of the matter on appeal. The mandate may be issued seven (7) days after the filing of an order denying certiorari or rehearing in the Constitutional Court, or immediately upon expiration of time to file a petition for writ of certiorari or petition for rehearing, and disposition of any timely filed post-decisional motion. No mandate is issued upon conclusion of original actions, questions certified by federal courts, bar disciplinary matters, or original proceedings on initiative or referendum petitions.

Rule 5: AMICUS CURIAE

A non-party seeking to appear before the Constitutional Court as *amicus curiae* shall file a statement not to exceed five (5) pages which concisely discloses the nature and extent of the applicant's interest, states any facts or questions of law which may not be presented adequately by the litigants, and the relevancy of these facts or questions of law to the disposition of the cause. The *amicus curiae* shall serve a copy of the statement to the parties. If an objection is not filed within ten (10) days, then the parties not filing an objection shall be deemed to have consented to the appearance of *amicus curiae*. Whether or not the parties consent or an objection is filed, the Court shall review the statement and determine whether to allow the filing of the amicus brief. If permitted, the Court shall issue an order prescribing the time and nature of briefs that *amicus curiae* is permitted to submit, and shall determine whether *amicus curiae* shall be permitted to participate in oral arguments, if any.

The disposition of a cause will not be delayed pending action on a motion for leave to participate as *amicus curiae* or to await the filing of a brief of *amicus curiae*.

Rule 6: **REVIEW BY THE CONSTITUTIONAL COURT ON CERTIORARI**

(a) Reasons for Certiorari.

A review of an opinion of the Court of Appeals in the Constitutional Court on writ of certiorari is a matter of sound judicial discretion and will be granted only when there are special and important reasons and a majority of the justices direct that certiorari be granted. The following, while neither controlling nor fully measuring the Constitutional Court's discretion, indicate the character of reasons which will be considered:

- (1) Where the Court of Appeals has decided a question of substance not heretofore determined by the Constitutional Court;
- (2) Where the Court of Appeals has decided a question of substance in a way probably not in accord with applicable decisions of the Constitutional Court or the Supreme Court of the United States;
- (3) Where the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such procedure by a trial court as to call for the exercise of the Constitutional Court's power of supervision.

(b) Rehearing before the Court of Appeals and Certiorari.

(1) A party may petition for certiorari without having first sought rehearing in the Court of Appeals.

(2) If any party seeks rehearing in the Court of Appeals the time to bring a certiorari petition in the Constitutional Court shall not begin to run for any party until the Court of Appeals has denied all rehearing petitions filed in the case.

(3) No petition for certiorari may be filed in the Constitutional Court during the pendency of any rehearing petition in the Court of Appeals. A certiorari petition filed during the pendency of a rehearing will be treated as timely filed only if the Court Appeals ultimately denies rehearing.

(4) If a petition for rehearing is timely filed in the Court of Appeals after a petition for certiorari has been filed, the certiorari petition shall be treated as timely filed only if rehearing is ultimately denied by the Court of Appeals.

Rule 7: PETITION FOR CERTIORARI, ANSWER AND REPLY

(a) Contents of Petition.

An application for certiorari shall be by petition only which shall contain the following to be set forth in the order here indicated:

- (1) A concise statement as to: (a) the date of the judgment or decision sought to be reviewed and (b) the date of any order concerning a rehearing;
- (2) An outline of the reasons for review as suggested in Rule 6, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of a question presented will be deemed to include every subsidiary question fairly comprised therein.
- (3) The reasons for granting writ shall be supported by:
 - a. A concise statement of fact containing the matters material to consideration of the questions presented.
 - b. A direct and concise argument amplifying the reasons relied on for the allowance of the writ.
- (4) An appendix, which shall consist of a copy of the opinion of the Court of Appeals to which certiorari is sought. No other appendix shall be attached to the Petition.
- (5) The style of the petition for certiorari shall be the same as in the petition in error in the lower tribunal. If there be more than one petition in error, the style shall be the same as that in the petition in error which was determined to commence the principal appeal.

(b) Form of Petition.

No petition for writ of certiorari shall exceed ten 8 1/2 " x 11 " double spaced pages. All contentions in support of a petition shall be set forth in the body thereof as provided in Section (a) of this rule. No separate brief in support of the petition will be received and the clerk shall refuse to file any petition to which is annexed or appended any supporting brief. The failure to present with accuracy, brevity and clarity matters essential to a ready and adequate understanding of the points requiring consideration will be sufficient reason for denying a petition. The petition shall be served upon the respondent and the petition shall show service as provided in these Rules.

(c) Answer and Reply.

The respondent may file an answer to the petition for certiorari within fifteen days of the date the petition for certiorari was filed. The answer shall be succinct and shall not exceed in length, ten 8 1/2 " x 11" double spaced pages. The answer shall be served upon the petitioner as provided by these Rules. A concise reply of not more than five 8 1/2 " x 11 " double spaced pages may be filed and served upon the respondent within ten (10) days after filing of the answer. The reply should be addressed to

arguments raised in the answer which petitioner does not believe to be sufficiently covered in the petition. The Court need not delay decision pending filing of a reply. No appendix shall be attached to the answer or reply.

(d) Content of Petition, Answer, and Reply.

The petition, answer and reply shall not reach the merits of the appeal but rather pertain to reasons the Constitutional Court should review the decision of the Court of Appeals. The only matters considered in determining whether to grant certiorari are the petition for certiorari and the response to the petition for certiorari. Briefs on appeal and briefs in support of petition for rehearing are not considered in determining whether to grant certiorari.

(e) Time to File Petition.

When no party seeks rehearing in the Court of Appeals a petition will be deemed timely if filed with the clerk of the Constitutional Court within twenty (20) days of the date the opinion was filed by the Court of Appeals. When a party sought rehearing a petition for certiorari will be deemed timely if filed with the clerk of the Constitutional Court within twenty (20) days of the date the order of the Court of Appeals is filed that has denied all timely filed rehearing petitions. The time to file petition for certiorari shall not be extended.

(f) Supplemental Authority.

Any party may file a Notice of Supplemental Authority while a petition for certiorari is pending, calling attention to new cases or legislation or other intervening matter not available at the time of that party's last filing. The Notice shall not exceed three pages.

(g) Costs.

A petition for certiorari shall be timely filed when the requirements for filing are met as set forth in these rules and when a party filing a petition for certiorari remits to the cost of deposit provided by statute. If the petitioner is an indigent an affidavit in forma pauperis shall be filed concurrently with the petition for certiorari on the form maintained by the Constitutional Court Clerk. Provided, if the petitioner for certiorari previously filed an affidavit in forma pauperis in the Court of Appeals no further affidavit need be filed with the petition for certiorari.

Rule 8: ORDER GRANTING CERTIORARI AND REVIEW IN CERTIORARI

(a) Order Granting Certiorari and Recall of Order.

When a petition for writ of certiorari to review a decision of the Court of Appeals is granted, an order shall be entered to that effect. The Court may, upon consideration of the matter, recall its order granting certiorari and enter an order denying certiorari.

(b) Review on Certiorari.

Issues not presented in the petition for certiorari may not be considered by the Constitutional Court. Provided, however, if the Court of Appeals did not decide all of the properly preserved and briefed issues, the Constitutional Court may--should it

vacate the opinion of the Court of Appeals--address such undecided matters or it may remand the cause to the Court of Appeals for that Court to address such issues. The case will then be decided on the reviewable issue or issues presented in the briefs theretofore filed, unless for good cause the filing of additional briefs be then allowed. The Constitutional Court may--should it vacate the opinion of the Court of Appeals--address any issue properly raised in the appeal or on certiorari.

Rule 9: DENIAL OF PETITION FOR WRIT OF CERTIORARI

When a petition for writ of certiorari is denied an order shall be entered to that effect and the mandate shall issue. If writ of certiorari is denied, no petition for rehearing may be filed in the Constitutional Court.

Rule 10: REHEARING AFTER OPINION ON CERTIORARI

A party aggrieved by an opinion of the Constitutional Court rendered on the merits after the Court has granted certiorari may file a petition for rehearing in the manner and within the time period provided for rehearing of opinions of the Court of Appeals in the type of case presented.

Rule 11: PETITIONS FOR ASSUMPTION OF ORIGINAL JURISDICTION BY THE CONSTITUTIONAL COURT

(a) Commencement and Costs.

Original jurisdiction proceedings shall be commenced by filing with the clerk an application to assume original jurisdiction and a petition (such as a petition for mandamus, prohibition or habeas corpus) and a brief in support of the application and petition. An entry of appearance shall be filed with the application and petition. The cost deposit provided by law shall be remitted to the Clerk at the same time the Petition is filed, or if the petitioner is an indigent, an affidavit in forma pauperis shall be filed concurrently with the application to assume original jurisdiction and petition.

(b) Application and Petition.

The application and petition may be combined in the same instrument and shall state concisely:

(1) the reasons why such action or proceeding is brought in the Constitutional Court instead of another court of competent jurisdiction and why original jurisdiction should be assumed,

(2) the nature of the remedy or relief sought, and

(3) the facts entitling the petitioner to the remedy or relief sought.

(c) Brief.

The brief may not exceed fifteen (15) pages, 8 1/2" x 11" double spaced typed. No appendix or exhibits may be attached to the brief. If a response is filed by the respondent the petitioner shall not file a reply brief without leave of Court. Failure to observe this rule may result in summary dismissal of the action.

(d) Appendix.

(1) A separate appendix may be submitted with the brief. Only one appendix shall be filed. The appendix may contain only:

- a. the trial court order which has precipitated the bringing of the action;
- b. affidavit(s) presenting facts not of record in the Constitutional Court; and
- c. copies of exhibits admitted below or pertinent portions of the trial court record which a party believes are necessary to the Court's understanding and disposition of the matter.

(2) Only those relevant portions of exhibits that are material to the original action may be included in the appendix. For a lengthy instrument copies of only the cover page and those relevant pages of the instrument should be included in the appendix. For example, a deposition exhibit should include only the cover page and those relevant pages of the deposition, and not the entire deposition. The same rule applies to contracts and other instruments.

(3) The appendix shall include an index of its contents. For each exhibit or item of the trial court record contained therein, the index shall contain the following information:

- a. a description of the item;
- b. the item's date, if dated;
- c. a concise statement of the relevancy of the item to the issues presented; and
- d. a synopsis of the item.

(4) Failure to observe this rule may result in summary dismissal of the action.

(e) Notice to Adverse Parties and Time to File Notice.

No application or petition, except for habeas corpus, will be heard without notice to the adverse party or parties unless by reason of an emergency this Court determines the same should be heard without notice. A copy of the filed application, petition, brief in support, and any appendix shall be attached to the notice. Hearing and response dates shall be set by order of the Chief Justice. The order setting hearing and response dates shall be served by the Clerk to all parties set forth in the notice. The Court may require different or additional service of notice.

(f) Response.

The Court may refuse to assume original jurisdiction without a response being filed. The date of any response shall be set by order of the Chief Justice of the Constitutional Court. The allowed response may not exceed fifteen (15) pages, 8 1/2" x 11" double spaced typed. No appendix or exhibits may be attached to the response. However, an appendix complying with this Rule may be filed. An entry

of appearance shall be filed with the response. Service of the response shall be made in accordance with these Rules. Failure to observe this rule may result in striking the response.

(g) Oral Argument.

Oral argument before the Constitutional Court is not a matter of right. The Court may refuse to assume original jurisdiction without hearing oral presentation.

(h) Commencement At Least Ten Days Before Hearing or Trial.

This Court will not assume original jurisdiction in any matter except habeas corpus nor shall this Court stay any proceedings unless the same is filed with the clerk of this Court at least ten (10) days prior to the date said cause is set for hearing or trial. Provided however, the above limitation may be excused by this Court if petitioner alleges and shows that asserted grounds for relief were not known, or could not reasonably have been discovered, prior to the ten-day period.

(i) Sanctions.

Sanctions for the filing of a frivolous application to invoke this Court's extraordinary powers to issue original jurisdiction writs may be invoked against the party filing such proceeding in favor of the party required to defend against it (including a real party in interest). Sanctions may include an award of costs and attorney's fees.

A frivolous proceeding may include one brought for the sole purpose of delay or to disrupt the proceeding in the court below or a proceeding so obviously without any merit as to impute bad faith on the party bringing the action. Where the filing of such proceeding is in good faith, sanctions will not be imposed.