

Chapter 7

JUDICIAL CODE

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Sec. 7-1. Composition of the Judicial Branch.

(a) The Judicial Branch shall be comprised of one Supreme Court, one Trial Court, and such other Trial Courts of Special Jurisdiction as established by law. The Supreme Court shall be known as the "Cherokee Supreme Court" and the Trial Court shall be known as the "Cherokee Court." Trial Courts of Special Jurisdiction shall be established by the Tribal Council and named according to their function (e.g., Cherokee Juvenile Court).

(b) The Supreme Court shall be comprised of one Chief Justice and two Associate Justices. The Trial Court shall be comprised of one Chief Judge and two Associate Judges, and other Associate Judges of the Trial Courts of Special Jurisdiction.

(c) All Justices and Judges shall be appointed upon nomination by the Principal Chief, and confirmation by the Tribal Council.

(d) The Court shall maintain a list of temporary justices, judges and magistrates available for assignment to particular cases or duties by the Chief Justice. Prior to assignment by the Chief Justice, temporary justices, judges or magistrates must be nominated and confirmed in accordance with subsection (c) of this section.
(Ord. No. 29, 4-1-2000)

Sec. 7-2. Jurisdiction of the Judicial Branch.

(a) The jurisdiction of the Eastern Band of Cherokee Indians, including the Judicial Branch, extends to all persons, activities, and property within the territory of the Eastern Band based upon inherent territorial or popular sovereignty. The territory of the Eastern Band is comprised of all lands within the Qualla Boundary, all lands held by the United States for the benefit of the Eastern Band or any member of the Eastern Band, and all other lands acquired by the Eastern Band, notwithstanding the issuance of any right-of-way. The territory includes all surface and sub-surface lands, submerged lands under navigable or non-navigable waters, all air and water, and all natural resources. Every person who enters the territory shall, by entering, be deemed to have consented to the jurisdiction of the Eastern Band of Cherokee Indians.

(b) The Trial Court shall have original jurisdiction over all cases and controversies, both criminal and civil, in law or in equity, arising under the Charter, laws, customs, and traditions of the Eastern Band of Cherokee Indians, including cases in which the Eastern Band of Cherokee Indians, or its officials and employees, shall be a party. Any such case or controversy arising within the territory of the Eastern Band of Cherokee Indians shall be filed and exhausted in the Judicial Branch before it is filed in any other jurisdiction. This grant of jurisdiction shall not be construed to be a waiver of sovereign immunity.

(c) The Judicial Branch shall not have jurisdiction over matters in which the exercise of jurisdiction has been specifically prohibited by a binding decision of the United States Supreme Court, the United States Court of Appeals for the Fourth Circuit or by an Act of Congress.

(d) In deciding cases and controversies over which it has jurisdiction, the Judicial Branch shall be bound by the laws, customs, traditions, and precedents of the Eastern Band of Cherokee Indians. If there is no applicable Cherokee law, the Judicial Branch shall look next to Federal law, then to North Carolina law, and finally to the law of other jurisdictions for guidance. Limitations on the authority of the Cherokee Court to grant certain types of relief, which are set forth in the Cherokee Code, shall remain in full force and effect, unless they are specifically rescinded by the Tribal Council.

(e) The Supreme Court shall have appellate jurisdiction to certify and decide any appeal from the Trial Court. The Supreme Court shall have original and exclusive jurisdiction to review a final determination made by the Election Board in any election dispute.
(Ord. No. 29, 4-1-2000; Ord. No. 291, 7-6-2000)

Sec. 7-3. Powers and Duties of the Judicial Branch.

(a) The judicial power shall be vested in the Judicial Branch. The Judicial Branch shall have the power to interpret and apply the Charter, laws, customs, and traditions of the Eastern Band

of Cherokee Indians. The Chief Justice of the Supreme Court shall administer the Judicial Branch.

(b) The Judicial Branch shall develop a system of precedent based on the common law, customs, and traditions of the Eastern Band of Cherokee Indians. The Judicial Branch shall not adjudicate the same matter twice. The Judicial Branch shall have the power to assess fees and costs in accordance with law.

(c) The Judicial Branch shall make projections of judicial revenues and propose an annual budget for the Judicial Branch. The Chief Justice shall have the power to administer funds appropriated by law for the Judicial Branch.

(d) With the exception of appointed Judges and Justices, Judicial Branch personnel shall be tribal employees who are subject to the Tribe's personnel policies and procedures.
(Ord. No. 29, 4-1-2000)

Sec. 7-4. Powers of the Trial Court.

(a) The Trial Court shall have the power to interpret and apply the Charter, laws, customs, and traditions of the Eastern Band of Cherokee Indians, and to make findings of fact and conclusions of law and issue all remedies in law and relief in equity.

(b) Orders of the Trial Court shall be written and published.
(Ord. No. 29, 4-1-2000)

Sec. 7-5. Powers of the Supreme Court.

(a) The Supreme Court shall have the power to interpret and apply the Charter, laws, customs, and traditions of the Eastern Band of Cherokee Indians, and to make conclusions of law. The Supreme Court shall not have the power to make findings of fact.

(b) The Supreme Court shall have the power to declare any law void if such violates the Charter and Governing Document of the Eastern Band of Cherokee Indians, enacted in 1986, as it may from time to time be amended.

(c) The Supreme Court shall have the power to establish written rules for the Judicial Branch, including qualifications to practice law, provided such rules are consistent with law. No person shall be permitted to practice law in any court of the Judicial Branch unless that person has a license to practice law from the State of North Carolina, or that person is an enrolled member licensed from another state.

(d) Orders and opinions of the Supreme Court shall be written and published.

(e) Orders of the Supreme Court are final and shall not be subject to appeal to any other body of the Eastern Band of Cherokee Indians.
(Ord. No. 29, 4-1-2000; Ord. No. 126, 5-12-2006)

Sec. 7-6. Terms of office.

The Chief Justice, the Chief Judge, and Associate Judges for Trial Courts of Special Jurisdiction shall each serve terms of six years, or until their successors have been sworn into office, and shall be eligible for reappointment. Associate Justices of the Supreme Court and Associate Judges of the Trial Court shall serve terms of four years, or until their successors have been sworn into office, and shall be eligible for reappointment.
(Ord. No. 29, 4-1-2000)

Sec. 7-7. Compensation.

The Justices and Judges shall be paid reasonable compensation as established by law which shall not be decreased during a term of office. The Chief Justice of the Supreme Court shall be paid an annual salary. The Associate Justices of the Supreme Court shall be paid on a per case basis. The Chief Judge and Associate Judges of the Trial Court shall be paid an annual salary. Associate Judges for Trial Courts of Special Jurisdiction shall be paid on a per case basis.
(Ord. No. 29, 4-1-2000)

Sec. 7-8. Judicial qualifications.

(a) The Chief Justice of the Supreme Court and the Chief Judge of the Trial Court shall be attorneys licensed by the North Carolina State Bar and members in good standing of the practicing bar of the Eastern Band of Cherokee Indians.

No person shall serve as a justice or judge who has ever been convicted of a felony or other crime of moral turpitude in any jurisdiction, convicted of any crime involving embezzlement, fraud, bribery or theft against the Eastern Band of Cherokee Indians, removed by impeachment from any office, or resigned from any office while under official investigation for impeachment.

(b) All persons appointed as associate justices of the Cherokee Supreme Court and as associate judges of the Cherokee Tribal Court shall also be attorneys licensed by and in good standing with the North Carolina State Bar. This subsection shall not apply to persons appointed and confirmed before the effective date of this amendment.

(Ord. No. 29, 4-1-2000; Ord. No. 503, 12-20-00)

Sec. 7-9. Conflict of interest.

Any Justice or Judge with a direct personal or financial interest in the outcome of any matter shall recuse himself or herself, and failure to recuse shall constitute grounds for impeachment and removal from office.

(Ord. No. 29, 4-1-2000)

Sec. 7-10. Removal by impeachment.

(a) The Ethics Commission shall have the sole power to remove Judges and Justices by impeachment, and any other power delegated by law. The Ethics Commission shall be comprised of five members, who shall be the Principal Chief, Vice-Chief, Chairperson of the Tribal Council, Vice Chairperson of the Tribal Council, and the Chairperson of the Community Club Council. A judge or justice subject to impeachment proceedings shall be given reasonable notice of the charges and shall address the Ethics Commission in a public hearing. An affirmative vote of four members of the Ethics Commission shall be required to remove by impeachment under this section.

(b) The Ethics Commission shall choose from among its own members an officer to preside over an impeachment of a judge or justice. Impeachment proceedings shall be open to the public. A resignation tendered by a person subject to pending impeachment proceedings shall be deemed an

affirmative judgment for removal by impeachment. Judgment to remove by impeachment shall be final and not subject to judicial review.

(c) A judgment to remove by impeachment rendered by the Ethics Commission shall include disqualification to hold future office, disqualification to be employed in any governmental capacity by the Eastern Band of Cherokee Indians, and may include denial of certain rights, benefits, or privileges as an enrolled member of the Eastern Band of Cherokee Indians. A judgment to remove by impeachment shall be final and jeopardy shall not attach so that an impeached official may be bound over for prosecution, trial, conviction, and sentencing in a court of law. The Eastern Band of Cherokee Indians may initiate a civil action in the Judicial Branch to seek restitution of any funds wrongfully acquired by an individual removed by impeachment.

(Ord. No. 29, 4-1-2000)

Sec. 7-11. Vacancies in the Judicial Branch.

A vacancy in any judicial office shall be filled by appointment in accordance with section 7-1 above.

(Ord. No. 29, 4-1-2000)

Sec. 7-12. Annual report.

The Chief Justice shall make an annual report to the Tribal Council at the Annual Council concerning the following issues:

- (1) Recommended clarifications, changes or additions to the rules of procedure and evidence governing litigation in the Judicial Branch;
- (2) Suggested clarifications, changes or additions, if any, to the Cherokee Code to facilitate the administration of justice;
- (3) Statistics concerning the general nature and character of disputes heard or resolved by the Judicial Branch over the preceding year;
- (4) Budgetary and financial matters related to the Judicial Branch; and
- (5) Such other matters as the Chief Justice deems appropriate.

(Ord. No. 29, 4-1-2000)

Sec. 7-13. Sovereign immunity.

Nothing in this chapter shall be construed as a waiver of the sovereign immunity of the Eastern Band of Cherokee Indians. The Judicial Branch shall dismiss any claim or cause of action against the Eastern Band of Cherokee Indians, or any of its programs, enterprises, authorities, officials, agents, or employees acting in their official capacities, unless the complaining party demonstrates that the Cherokee Tribal Council or the United States Congress has expressly and unequivocally waived the Eastern Band's sovereign immunity for such a claim in a written ordinance, law, or contract.

(Ord. No. 29, 4-1-2000)

Sec. 7-14. Rules of procedure and evidence.

(a) Proceedings in the courts of the Judicial Branch shall be governed by the North Carolina Rules of Civil Procedure, the North Carolina Rules of Evidence, and the North Carolina Rules of Appellate Procedure. The Cherokee Tribal Council adopts these North Carolina rules as a matter of comity to promote respect for the Cherokee Courts and to facilitate the practice of law in the Cherokee Courts.

(b) All documents to be filed with the courts shall be filed at the Cherokee Courthouse, Acquoni Road, Cherokee, Qualla Boundary (North Carolina).

(c) This section shall not be construed as a waiver of the Tribe's inherent sovereign authority to make its own laws and rules. The Supreme Court may propose amendments to specific rules for approval by the Tribal Council. Such rules shall not take effect until so approved and published in the Cherokee Code.

(Ord. No. 29, 4-1-2000)

Sec. 7-15. Transition.

The Tribal Council has stated its intention to enter into a self-determination contract with the Bureau of Indian Affairs under Public Law 93-638 to assume responsibility for the court system using available federal funds. This section shall

not have the effect of transferring judicial responsibility from the BIA to the Tribe until such a contract has been successfully negotiated.

(Ord. No. 29, 4-1-2000)

Editor's note—Contract negotiated effective 4-1-2000.

Sec. 7-16. Severability.

If any section of this chapter is found to be inconsistent with a specific provision of the Charter or Governing Document of the Eastern Band of Cherokee Indians, then the Charter shall supersede that section, but all other sections of this chapter shall remain in full force and effect.

(Ord. No. 29, 4-1-2000)

Sec. 7-17. Amendment.

To protect the independence of the Judicial Branch, this Chapter may only be amended by a vote of two-thirds of the Cherokee Tribal Council and ratification by the Principal Chief.

(Ord. No. 29, 4-1-2000)

Sec. 7-18. Repeal of prior law.

The following sections of Chapter 1 are hereby rescinded, effective upon the implementation of the self-determination contract with the Bureau of Indian Affairs: Sections 1-1, 1-4, 1-5, 1-7, 1-8, 1-9, 1-10, 1-12, 1-13, 1-15, 1-16, 1-17, and 1-18. All other provisions of Chapter 1 shall remain in effect.

(Ord. No. 29, 4-1-2000)