TITLE II
CHOCTAW RULES OF CRIMINAL PROCEDURE

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~~CHOCTAW RULES OF CRIMINAL PROCEDURE~~

Rule 1 Scope, Purpose, Construction~~,~~ and Citation

(a) These rules are intended to govern the procedure in all stages of criminal proceedings subject to this court's jurisdiction.

(b) These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration~~,~~ and the elimination of unjustifiable expense and delay.

(c) These rules shall be known and may be cited as the Choctaw Rules of Criminal Procedure~~,~~ and ~~may be abbreviated~~shall be citied as the "C.R.C~~.~~r.P."

Rule 2 Prosecution of Offense

All criminal proceedings shall be prosecuted in the name of the Mississippi Band of Choctaw Indians~~,~~ against the person charged with an offense, referred to as the ~~Defendant~~defendant.

Rule 3 Rights of Defendant

In all criminal proceedings, the ~~Defendant~~ defendant shall have the following rights:

(a) ~~The~~ the right to be present throughout the proceedings and:

(1) ~~-~~to represent himself or herself;
(2) to be~~, or to be~~ represented by appointed counsel paid for by the Tribe upon a finding of indigency by the Court ~~the Choctaw Legal Defense,~~ if the ~~Defendant~~ defendant is an enrolled Tribal member of the Mississippi Band of Choctaw Indians~~,~~
(3) to be represented by appointed counsel paid for by the Tribe upon a finding of indigency by the Court if the defendant is a non-member Indian and if the range of punishment for the charged offense is greater than one year of imprisonment, or;
(4) to be represented by appointed counsel paid for by the Tribe upon a finding of indigency by the Court if the defendant is a non-Indian and the Tribe is prosecuting a charge of domestic violence, dating violence, or a violation of protection orders as defined herein and consistent with the Indian Civil Rights Act, 25 U.S.C. § 1301, *et seq.*(hereafter referred to as "special domestic violence criminal jurisdiction" or "SDVCJ")~~ or at his/her own expense, to be represented by private attorney or other person admitted or permitted to practice before the Tribal Court. Trial of Class C offenses may be had without the presence of the Defendant defendant upon a showing that the Defendant defendant has received notice at least five days prior to the proceeding;~~

(b) ~~The~~ the right to know the nature and cause of the charges against him or her~~/her~~ and to receive a copy of the complaint;

(c) ~~The~~ the right to confront the witness(es) against him or her~~/her~~ in court and to cross-examine all such witnesses;

(d) ~~The~~ the right to compulsory process to obtain the testimony of witnesses in his or her~~/her~~ behalf and physical evidence;

(e) ~~The~~ the right to a speedy public trial by an impartial judge, or if ~~(s)~~he or she elects, an impartial jury;

(f) ~~The~~ the right not to testify without having his or her~~/her~~ failure or refusal to testify construed against him or her~~/her~~ nor commented upon by the prosecutor;

(g) ~~The~~ the right to appeal in all cases;

(h) ~~The~~ the right not to be ~~not~~ twice put in jeopardy by the ~~Tribal~~ tribal court for the same offense; and

(i) ~~All~~ all other rights and protections which the Choctaw ~~Choctaw~~ Tribal Court may from time to time determine to have been conferred upon the ~~Defendant~~ defendant by the Indian Civil Rights Act of 1968, 25 U.S.C. §~~-~~1301 et. ~~Seq~~seq. (~~As~~ as amended by Pub. L. 99-570, Title IV, §~~-~~4217, Oct. 27, 1986)~~,~~ by the Constitution and Bylaws of the Mississippi Band of Choctaw Indians or by other federal or ~~Tribal~~ tribal law.

(j) In any felony proceeding or in any proceeding where the Tribe is exercising special domestic violence criminal jurisdiction when there is a potential term of imprisonment, the presiding judge shall:

(1) have sufficient legal training to preside over criminal proceedings; and

(2) be licensed to practice law by any jurisdiction in the United States, including any tribal jurisdiction.

Rule 4 The Complaint

(a) The complaint is a written statement of the essential facts constituting the offense charged. Formal criminal proceedings against the ~~Defendant~~ defendant are commenced by filing a criminal complaint with the Choctaw Tribal Court.

(b) The complaint must include the following:

(1) ~~The~~ the name of the person alleged to have committed an offense (hereinafter the "~~Defendant~~defendant"), if known, or if not known, then such a description of said person as is known, by which such ~~Defendant~~ defendant can be identified with reasonable certainty and whether the defendant is an enrolled member of the Tribe, an Indian not enrolled as a member of the Tribe, or a non-Indian;

(2) ~~The~~ the place where the alleged offense was committed;

(3) ~~A~~ a short statement of the specific acts or omissions to act complained of;

(4) ~~The~~ the date and approximate time of the commission of the offense, if known;

(5) ~~The~~ the general name and ~~Code~~ the section number from the tribal code designation of the offense; and

(6) ~~The~~ the signature of the person filing the complaint, attesting under oath to the truth of the matters stated in the complaint.

(c) Traffic citations, in a form approved by the a~~Chief~~ Criminal Judge of the Tribal Court, may be issued and take the place of the complaint in traffic offense cases.

(d) For purposes of any crime involving Domestic Violence or Dating Violence alleged to have been committed by a non-Indian, the complaint shall also allege, and the prosecution must prove beyond a reasonable doubt:

(1) that the defendant is a non-Indian;
(2) that the victim is an Indian;
(3) that the offense occurred within the Indian country of the Mississippi Band of Choctaw Indians, and;
(4) that the defendant has sufficient ties to the Mississippi Band of Choctaw Indians, such that:
a) the defendant resided in the Indian country of the Mississippi Band of Choctaw Indians at the time of the offense;
b) the defendant was employed in the Indian country of the Mississippi Band of Choctaw Indians at the time of the offense, or;
c) at the time of the offense, the defendant was a spouse, intimate partner, or dating partner of either:
(i) a member of the Mississippi Band of Choctaw Indians, or
(ii) a non-member Indian who resides in the Indian country of the Mississippi Band of Choctaw Indians.

(e) For purposes of crimes involving non-Indian protection order violations, the complaint shall also allege, and the prosecution must prove beyond a reasonable doubt:

(1) that the defendant is a non-Indian;
(2) that the protection order was issued against the defendant;
(3) that the protected person is an Indian;
(4) that the violation occurred within the Indian country of the Mississippi Band of Choctaw Indians;
(5) that the protection order is consistent with 18 U.S.C. 2265(b);
(6) that the violation relates to that portion of the protection order that provides protection against violation or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, the protected person, and
(7) that the defendant has sufficient ties to the Mississippi Band of Choctaw Indians, such that:
a. the defendant resided in the Indian country of the Mississippi Band of Choctaw Indians at the time of the offense;
b. the defendant was employed in the Indian country of the Mississippi Band of Choctaw Indians at the time of the offense, or;

c. at the time of the offense, the defendant was a spouse, intimate partner, or dating partner of either:

i. a member of the Mississippi Band of Choctaw Indians, or

ii. a non-member Indian who resides in the Indian country of the Mississippi Band of Choctaw Indians.

Rule 5 Arrest – Warrant or Summons

(a) After a complaint has been filed and if the judge finds that there is probable cause to conclude that an offense has been committed and that the ~~Defendant~~ defendant may have committed it, the judge may issue a summons or an arrest warrant. A summons shall contain an order directing the ~~Defendant~~ defendant to appear in court at a specific date and time. An arrest warrant shall direct a Tribal Law Enforcement Officer to arrest the ~~Defendant~~ defendant and bring him before the court. Each summons or arrest warrant shall be signed by the judge and shall state:

(1) ~~The~~ the name of the ~~Defendant~~defendant~~,~~ or, if the name is unknown a description by which the ~~Defendant~~ defendant can be identified with reasonable certainty;

(2) ~~The~~ the offense(es) charged in the complaint; and

(3) ~~The~~ the date of issuance.

(b) Upon service of an arrest warrant the Law Enforcement Officer shall endorse and return it to the Clerk of the Choctaw Tribal Court. When the ~~Defendant~~ defendant cannot be found or served, an arrest warrant shall remain valid. No arrest warrant shall be issued more than two years following the date of the offense charged.

(c) If a properly served summons, whether issued by the judge in lieu of an arrest warrant upon a complaint or as a traffic offense citation, is not obeyed, then the judge shall issue a warrant for the arrest of the ~~Defendant~~defendant.

Rule 6 Arrest

(a) An arrest is the taking of a person into custody in the manner authorized by law. An arrest may be made by either a law enforcement officer or by a private person, subject to restrictions.

(b) ~~Arrest by officer.~~ A ~~law~~ Law ~~enforcement~~ Enforcement ~~officer~~ Officer under the laws of this jurisdiction shall make an arrest pursuant to an arrest warrant. A ~~law~~ Law ~~enforcement~~ Enforcement ~~officer~~ Officer shall, without a warrant, arrest a person as follows:

(1) ~~For~~ for a ~~Class A or B~~ny criminal offense committed in the officer's presence;

(2) ~~When~~ when the officer has ~~a~~ probable cause to believe the person to have committed any ~~Class A or B~~ offense, although not in the officer's presence~~,~~ and there is reason to believe that such person may:

(i) ~~Flee~~ flee the jurisdiction or conceal himself ~~or herself~~ to avoid arrest; ~~or~~

(ii) ~~Destroy~~ destroy or conceal evidence of the commission of an offense~~, or~~;

(iii) ~~Injure~~ injure or threaten another person or damage property belonging to another person.

~~(3) Upon upon the verbal complaint of another that an offense has been committed, that the person being arrested committed it, that the Defendant's remainder at liberty until a warrant of arrest could be secured would pose a threat of injury or damage to another person or property, and that the person making the verbal complaint will immediately and in no event later than eight hours subsequent to the arrest initiate criminal charges against the arrestee.~~

(c) At the time of making the arrest, the arresting officer or other person shall advise the person that he is under arrest and the basis or charge for which the arrest is being made. The arresting authority must further advise the person arrested in accordance with the requirements of subsection (~~e~~d) and/or (~~f~~e) which are set forth below. ~~18~~

(d) ~~When any person is arrested for any offense under Cthis Code, (s)he shall be informed of his/her right to remain silent, that any statements made by him/her may be used against him/her in court, and of his/her right to the advice of legal counsel at his/her own expense or from the Choctaw Legal Defense, Program if the person arrested is an enrolled Tribal member of the Mississippi Band of Choctaw Indians.~~

(e) When any person is arrested for any offense ~~under federal law~~, it shall be necessary to communicate to the ~~Defendant~~ defendant the following information:

"Before we ask you any questions, you must understand your rights. You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning. If you cannot afford a lawyer and you are charged with a felony or if you are a non-Indian charged with a crime involving domestic violence, dating violence or a protection order violation, then a lawyer will be appointed for you before questioning, if you wish. If you cannot afford a lawyer and you are a member of the Mississippi Band of Choctaw Indians, then a lawyer may be appointed for you before questioning, if you wish. ~~If you cannot afford a lawyer, one will be appointed for you before any questioning, if you wish.~~ If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer."

(f) Failure of the arresting officer to advise the ~~Defendant~~ defendant of his or her ~~/her~~ rights at the time of the arrest shall not cause the arrest to be unlawful, but any statement made after the arrest may not be used against the ~~Defendant~~ defendant in court.

(g) An officer need not have the warrant in his or her ~~/her~~ possession at the time of arrest; but, if ~~(s)~~ he does not, the officer shall inform the ~~Defendant~~ defendant that a warrant has been issued, the nature of the charge, and shall provide the ~~Defendant~~ defendant with a copy of the arrest warrant and complaint issued as ~~immediately~~ soon as is reasonably possible and in any event not later than at the time of entering the plea by the ~~Defendant~~defendant.

Rule 7 Search and Seizure

(a) A search warrant is the written authorization by the Choctaw Tribal Court for any ~~law~~ Law ~~enforcement~~ Enforcement ~~officer~~ Officer of this jurisdiction to enter the property or premises of any individual for purposes of conducting a search and seizing of evidence to be used in a criminal prosecution.

(b) No search warrant shall be issued except:

(1) ~~Upon~~ upon a showing of probable cause that a search will disclose:

(i) ~~Stolen~~stolen, embezzled or contraband property;

(ii) ~~Property~~ property which has been used, or is intended for use~~,~~ or is being used to commit a criminal offense~~,~~; or

(iii) ~~Property~~ property constituting material evidence in a criminal prosecution.

(c) A ~~search warrant shall issue only upon the prior presentation to a Tribal judge, a sworn written statement of the facts showing probable cause.~~tribal judge shall issue a search warrant only upon presentation of a sworn, written statement showing probable cause. The sworn statement shall contain the following:

(1) ~~The~~ the name or a full description of the person or place to be searched;

(2) ~~The~~ the items or articles intended to be seized;

(3) ~~The~~ the factual reason or reasons believed to justify the search; and

(4) ~~The~~ the signature, placed under oath, of the person making application for the search warrant.

~~(d) (d)~~ Upon presentation of an affidavit for a search warrant, a ~~Tribal~~ tribal judge shall question the person making the affidavit and if satisfied that ~~grounds for the application exist or that~~ there is probable cause to believe that grounds for the application~~they~~ exist, ~~(s)~~he shall issue the warrant which shall contain the following:

(d)

(1) ~~The~~ the name or full description of the person or place to be searched;

(2) ~~The~~ the items or articles to be seized;

(3) ~~The~~ the reason or reasons for its issuance;

(4) ~~The~~ the date of its issuance; and

(5) ~~The~~ the signature of the Tribal judge.

(e) A search warrant shall issue only to a ~~law~~ Law ~~enforcement~~ Enforcement ~~officer~~ Officer of this jurisdiction and shall be served only by such an officer between 6:00 a.m. and 10:00 p.m. unless the judge shall, for good cause, authorize service at another time, and such authorization is noted on the warrant.

(f) No search shall be made more than ten (10) days after the issuance of the search warrant. The Law Enforcement Officer shall promptly complete a list of the items or articles seized. The list shall have been prepared in the presence of the person from whom such property was taken, or another witness, and have been signed by such person or witness, as well as by the Law Enforcement Officer. A copy of the list shall be given to the person from whom the property was taken.

(g) ~~Warrantless searches.~~ No law enforcement officer shall search or seize any property without a warrant unless:

(1) ~~The~~ the officer has reasonable cause to believe that the person in possession of such property is then and there engaged in the commission of an offense; ~~or~~

(2) ~~The~~ the search is incidental to a lawful arrest and for the protection of the arresting officer~~,~~ or is incidental to such an arrest and for purpose of seizing evidence of the commission of the offense for which the ~~Defendant~~ defendant is arrested; or

(3) ~~The~~ the person voluntarily consents to the search.

(h) Physical evidence which has been obtained in violation of this Rule ~~7, C.R.C.P.,~~ or of Article X, §-1(b) of the Constitution and Bylaws of the Mississippi Band of Choctaw Indians, or of Title 25~~,~~ U.S.C. §-1302(2) together with all testimonial evidence, confessions and statements obtained as a consequence thereof shall not be admissible in any criminal proceedings of the Choctaw Tribal Court against the ~~Defendant~~defendant.

Rule 8 Bail ~~:~~ and Release from Custody

(a) Release and Detention Pending Trial

(1) ~~Class A Offenses~~Felony Offenses

~~(A~~i) All persons arrested for a felony~~Class A offense~~ shall be brought before a Tribal Judge within thirty-six (36) ~~twenty-four (24)~~ hours of the arrest excluding holidays and weekends. In appropriate circumstances, video teleconferencing may be used to conduct an appearance before a Tribal Judge under this rule, if the defendant consents. The Tribal Judge shall determine if the person should be detained or released pending trial. The Judge shall not order the person released pending trial when the Judge finds that such release will not reasonably assure the appearance of the person as required or that such release will endanger the safety of another person in the community. At the appearance, both the person arrested and the prosecutor's office may present witnesses and cross-examine witnesses with regard to these two issues. If the Judge finds that release is appropriate, the Judge shall require the person to tender a cash bond or surety

bond executed by two or more reliable persons subject to the jurisdiction of the Court before such person is released; provided, however, such reliable persons may not be the Chief, the Vice-Chief, the Secretary-Treasurer, a member of the Tribal Council, an employee of Tribal law enforcement, a Judge, a member of the Court staff~~, or~~ attorney~~s~~ or other persons licensed to practice before the Choctaw Tribal Court or the alleged victim of the underlying charge. The amount of the bond required shall not exceed five times the maximum cash penalty for each offense for which the defendant has been charged. . If bond exceeds one thousand ($1,000) dollars then a surety bond executed through a licensed bonding company is required.~~be a five hundred dollar ($500.00) cash or surety bond for all felonyClass A offenses.~~

(~~B~~i) In addition to the bond, the Tribal Judge may place other conditions upon the release of a person arrested for a felony~~Class A~~ offense if the Judge finds that such conditions are necessary to assure the appearance of a person arrested or are necessary to protect the safety of another person in the community. These conditions may include, but are not necessarily limited to:

(~~1~~A) that the person not commit a federal, state~~,~~ or Tribal crime during the period of release;

(~~2~~B) that the person remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is ~~able~~ reasonably able to assure the judicial officer that the person will appear as required and will not impose a danger to the safety of ~~any other person in~~ the community;

(~~3~~C) that the person maintain employment, or, if unemployed, actively seek employment;

(~~4~~D) that the person maintain or continue an educational program;

(~~5~~E) that the person abide by specified restrictions on personal association, place of abode~~,~~ or travel;

(~~6~~F) that the person avoid all contact with an alleged victim of the crime and with any potential witness who may testify concerning the offense;

(~~7~~G) that the person report on a regular basis to a designated law enforcement agency~~,~~ or other agency of the Choctaw Government;

(~~8~~H) that the person comply with a specified curfew;

(~~9~~I) that the person refrain from possessing a firearm, destructive device~~,~~ or other dangerous weapon;

(~~10~~J) that the person refrain from the use of alcohol, or any other use of a narcotic drug or a controlled substance without a prescription by a licensed medical practitioner;

(~~11~~K) that the person undergo available medical, psychological or psychiatric treatment, including treatment for drug or alcohol dependency; and remain in a specified institution if required for that ~~person~~purpose; and~~/or~~

(~~12~~L) that the person satisfy any other condition that is reasonably necessary to assure the appearance of the person that is required and to assure the safety of any other person in the community.

(~~C~~iii) At the conclusion of the appearance, the ~~Judge~~ judge shall execute an ~~Order~~ order stating whether the person is to be detained or released, and if released, the amount of bond, the date of trial and stating the defendant shall~~to hire an attorney and~~ notify the court within fifteen (15) days from the court arraignment ~~that~~ whether the ~~Defendant~~ defendant will be represented by counsel at trial and any conditions upon such release in addition to the bond. In the case of detention, the judge shall execute an order stating the reasons for the detention and directing that the person be committed to the custody of Choctaw Law Enforcement for confinement separate, to the extent practical, from persons serving sentences after convictions.

(~~D~~iii~~v~~) If a person is ordered detained after a hearing conducted in accordance with this ~~Rule~~rule, the person may appeal the Detention Order to the Choctaw ~~Appellate~~ Supreme Court within five (5) days of the Order of Denial. The appeal shall be determined promptly in accordance with the Choctaw Rules of Appellate Procedure~~s~~.

(2) Misdemeanor~~Class B or Class C~~ Offenses:

If a person is arrested for a ~~Class B or Class C~~misdemeanor offense and is not also arrested for a felony~~Class A~~ offense, such person shall not have to appear before a judge in order to obtain release. Such person may obtain release at any time prior to arraignment without appearing before a judge on ~~person~~ personal recognizance~~,~~ or if required, by posting a cash bond or surety bond executed by two reliable persons subject to the jurisdiction of the Tribal Court; provided, however, such reliable persons may not be the Chief, the Vice-Chief, the Secretary-Treasurer, a member of the Tribal Council, an employee of Tribal law enforcement, a judge, a member of the Court staff, or attorneys or other persons licensed to practice before the Choctaw Tribal Court or the alleged victim of the underlying charge. The amount of the bond required shall not exceed five times the maximum cash penalty for each offense for which the defendant has been charged. . If bond exceeds five~~one~~ thousand ($5~~1~~,000) dollars then a surety bond executed through a licensed bonding company is required. Notwithstanding the foregoing, if the arresting officer or complaining witness shall certify to the jailer~~,~~ or if the jailer shall certify based upon his own observation, that the person arrested, was at the time he was brought to the jail, unconscious or in an

intoxicated or apparently intoxicated condition, or for any reason does not appear to be conscious or sober, then such person shall not be released until eight (8) hours after arrival at the jail. The person shall be informed by the jailer of his/her right to post a cash or surety bond when the person is brought to the jail. Persons who reside outsideout the State of Mississippi or off the Tribal lands of the Mississippi Band of Choctaw Indians shall not be permitted to post personal recognizance bonds. post cash bonds. The amount of bond required for persons arrested for a misdemeanorClass B offense shall be a two hundred fifty ($250.00) appearance bond or a two hundred fifty ($250.00) cash or surety bond. The amount of bond for a Class C offense shall be a one hundred dollar ($100.00) cash or surety bond except for the following Class C offenses for which no bond is required and persons may be released on personal recognizance: Liquor violation (3-3-4), Criminal defamation Defamation §(3-2-10), Harassment §(3-2-14), Malicious mischief Mischief §(3-3-6), and Littering §(3-5-5).

(3)(3) Presumption of Innocence Prior to Trial:
(4)

Nothing in this Rule shall be construed as modifying or limiting the presumption of innocence prior to trial.

(4) Release or Detention Pending Appeal:

A judge of the Choctaw Tribal Court exercising jurisdiction over an offense, or a judge of the Choctaw Tribal Appellate Court exercising appellate jurisdiction, shall order that, pending imposition or execution of sentence, or pending appeal of conviction or sentence, a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal, be detained, unless the Judge finds, after petition by the person, by clear and convincing evidence; :

(Ai) that the person is not likely to flee or pose a danger to the safety of any other person of the community if released during the pendency of the person's appeal; and

(Bii) that the appeal is not for the purpose of a delay and raises a substantial question of law or fact likely to result in a reversal, an order for a new trial ,or a sentence that does not include a term of imprisonment of less than the total amount of time already served plus the expected duration of the appeals process.

In those situations where release is found appropriate for persons convinced convicted of a Class A offense, bond shall be set in accordance with the amounts set forth in Rule 8(a)(1)(iA). In addition, the judge may also impose conditions in accordance with the provisions of Rule 8(a)(1)(Bii). In those situations where release is found appropriate for persons convicted of a Class B or Class C offense, bond shall be set in accordance with the amounts set forth in Rule 8(a)(2).

(4) Penalty for Failure to Appear or Violation of Conditions of Release: Whoever, having been released pending trial or pending appeal, fails to appear before court

as required or fails to surrender for service of sentence pursuant to a Court Order, shall be subject to the following penalties:

(a) a term of imprisonment not more than three (3) years if the offense is a felony; or

(b) a term of imprisonment not more than one (1) year if the offense is a misdemeanor

~~(5) Penalty for Failure to Appear or Violation of Conditions of Release:~~.

~~Whoever, having been released pending trial or pending appeal, fails to appear before Court court as required or fails to surrender for service of sentence pursuant to a Court Order, shall be guilty of a Class A offense, which shall be punishable by up to six (6) months imprisonment, five hundred ($500.00) fine or both.~~

As an affirmative defense to a prosecution under this provision, a person may assert that uncontrollable circumstances which the person did not create prevented the person from appearing or surrendering, and that the person appeared and surrendered as soon as such circumstances ceased to exist. A term of imprisonment imposed under this section shall be consecutive to any other sentence of imprisonment.

(6) Sanctions for Violations of a Release Condition:

A person who has been released under this Rule, and who has violated a condition of his or her~~/her~~ release, is subject to a revocation of release and an Order of Detention. An attorney of the Prosecution Office may initiate the proceeding for the revocation of an order of release by filing a motion with the court. A ~~Judge~~ judge may issue a warrant for the arrest of the person charged with violating a condition of release, and the person shall be brought before a ~~Judge~~ judge for a hearing to determine if the person has violated a condition of release. The ~~Judge~~ judge shall enter an Order of Revocation and Detention if, after hearing, the ~~Judge~~ judge finds there is probable cause to believe that the person has committed a federal, state~~,~~ or Tribal crime while on release~~,~~ and may enter such an order if there is probable cause that the person has violated any other conditions of release.

(7) Return of Bond

Provided a person has complied with all orders of the court issued pursuant to this Rule, any cash bond shall be returned to the person providing the bond upon the entry of a not guilty verdict or the sentence of the ~~Court~~ court in the case of a pretrial bond~~;~~ and upon the rendering of a decision on the appeal in the case of an appeal bond.

Rule 9 Arraignment, First Appearance

(a) ~~Explanation of Rights.~~ Upon the first appearance of the ~~Defendant~~ defendant before the Choctaw Tribal Court in response to a summons or warrant or following arrest, the judge shall inform the ~~Defendant~~ defendant in English or when necessary in the Choctaw language of the following:

(1) ~~inform Defendant of~~ the offense(s) charged;

(2) the maximum penalty and mandatory minimum penalty, if any, provided for the offense charged;

(3) the right to bail;

(4) the right of any member of the MBCI who is indigent, ~~if any,~~ to the assistance of a lay advocate or legal counsel at every stage of the proceedings;

(5) the right of any defendant who is indigent facing a felony charge or a non-Indian defendant who is indigent charged with a crime involving domestic violence, dating violence, or a protection order violation to the assistance of legal counsel at every stage of the proceedings paid for by the Tribe;

(6~~5~~) the right, if any, to representation by an attorney at ~~Defendant's~~ defendant's own expense;

(7~~6~~) the right to remain silent~~,~~ and that any statement made by the ~~Defendant~~ defendant may be used against the ~~Defendant~~defendant;

(8~~7~~) the right, if any, to a jury trial; ~~and~~

(9~~8~~) ~~If~~ if the ~~Defendant~~ defendant desires reasonable time and opportunity, to consult with counsel.~~, the judge may allow the defendant reasonable time and opportunity to consult with counsel.~~

(10) If the Court orders the detention of the defendant, the Court shall provide notice to the defendant at the first appearance ~~detained by order of the Tribe pursuant to 25 U.S.C. 1303~~ of his or her right to file in a court of the United States a petition for a writ of habeas corpus. In any case where the Tribe is exercising special domestic violence criminal jurisdiction, the Court shall further advise the defendant of his or her right to petition in a court of the United States to stay his or her detention, and.

(11) The Court shall determine if the defendant meets the criteria for indigency.

(b) The judge shall thereafter require the ~~Defendant~~ defendant to plead to the complaint as follows:

(1) ~~Not~~ not guilty;

(2) ~~Guilty~~guilty;

(3) ~~Not~~ not guilty by reason of insanity; or

(4) ~~No~~ with the Court's consent, no contest.

If ~~Defendant~~ defendant refuses to answer, a plea of not guilty must be entered. If the ~~Defendant~~ defendant pleads "not guilty by reason of insanity", the action shall be transferred to the Behavioral Health Department or an appropriate state or federal agency for a determination of ~~Defendant's~~ defendant's competency to stand trial. If the ~~Defendant~~ defendant pleads "not guilty", the action shall be set for trial.

(c) If the ~~Defendant~~ defendant pleads "guilty", the judge shall accept the plea only after determining that the plea is made voluntarily with a full understanding of the nature of the charge and the consequences of the plea. The judge shall not enter a judgment upon a plea of guilty unless ~~(s)~~he is satisfied that there is a factual basis for the plea. If a plea of guilty is accepted and judgment entered, the judge shall sentence the ~~Defendant~~ defendant immediately or within a reasonable period, giving the ~~Defendant~~ defendant an opportunity to inform the court of mitigating facts.

(d) The court may, in its discretion, allow a defendant to withdraw a plea of guilty whenever it appears that the interests of justice and fairness would be served thereby.

(e) ~~Waiver of Arraignment.~~ An arraignment may be waived, by the ~~Defendant~~ defendant filing a written plea of not guilty, signed by ~~Defendant~~ defendant and ~~Defendant's~~ defendant's attorney, no later ~~that~~ than forty-eight (48) hours prior to the scheduled arraignment. The waiver must indicate the date and time of arraignment and the name of the arraigning judge.

Rule 10 Procedure For ~~Excusal:~~ Recusal of Judge

(a) Excusal~~.~~: Whenever a defendant to any criminal action or proceeding of any kind files a notice of excusal, the judge's jurisdiction over the cause terminates upon good cause shown. ~~immediately~~. Procedure for Excusing a Judge: A party for good cause shown may excuse a judge before whom the case is pending by filing with the Clerk of the Court a Notice of Excusal. The Notice of Excusal must be signed by the defendant and filed within ten (10) days after the latter of:

(1) arraignment or the filing of a waiver of arraignment; or

(2) service by the court of notice of assignment or reassignment of the case to a judge.

(b) Limitation of Excusals:~~.~~ A defendant may not excuse a judge after he or she has requested that judge to perform any discretionary act other than conducting an arraignment or first appearance, setting initial condition on arraignment or first appearance of setting initial conditions of release. No party shall excuse more than one judge.

(c) ~~Procedure for Excusing a Judge:. A party for good cause shown may excuse a judge before whom the case is pending by filing with the Clerk of the Court a Notice of Excusal. The Notice of Excusal must be signed by the Defendant~~ defendant ~~and filed within ten (10) days after the latter of:~~

~~(1) arraignment or the filing of a waiver of arraignment; or~~

~~(2) service by the court of notice of assignment or reassignment of the case to a judge.~~

(d) Recusal~~:~~. No judge shall sit in any action in which the judge's impartiality may reasonably be questioned under the provisions of the Constitution of the Mississippi Band of Choctaw Indians or the Code of Judicial Conduct, and the judge shall file a recusal in any such action. Upon receipt of notification of recusal from a judge, the Clerk of the Court shall give written notice to each party. Upon recusal, another judge shall be assigned or designated to conduct any further proceedings in the action.

Rule 11 Pretrial Conference

At any time after the filing of a complaint or citation, the judge may, with or without the filing of a motion, order the parties to appear before him or her to clarify the pleadings and to consider such other matters as may aid in the disposition of the case. The court may in its discretion, if not otherwise prohibited by this tribal code and in compliance with Choctaw Peacemaker code; depending on the nature of the case, transfer to the Peace Maker Court for an alternative disposition.

Rule 12 Right to Jury Trial

(a) Cases shall be tried by the judge unless the ~~Defendant~~ defendant demands a jury trial. The demand may be made orally at the arraignment or by filing a written request with the judge assigned to the case within ten (10) days after the scheduled arraignment. If the demand for a jury trial is not made as provided in this paragraph, trial by jury will be deemed waived.

(b) ~~A defendant is not entitled to a jury trial for Class C offenses.~~In any case where the Tribe is exercising special domestic violence criminal jurisdiction, the defendant has a right to an impartial jury drawn from sources that reflect a fair cross section of the community and does not systematically exclude any distinctive group in the community, including non-Indians.

Rule 13 Motions Before Trial: Defenses and Objections

(a) Motions raising defenses and objections may be made as follows~~:~~;

(1) ~~Any~~ any defenses or objections which are capable of determination other than at trial may be raised before trial by written motion.

(2) ~~Defenses~~ defenses and objections based on defects in the complaint other than that it fails to show jurisdiction in the court or fails to charge an offense may be raised by motion only before trial or such shall be deemed waived, unless the court for good cause shown grants relief from such waiver. Lack of jurisdiction or failure to charge an offense may be raised as defenses or noticed by the court on its own motion at any stage of the proceeding~~.~~;

(3) ~~A~~ a ~~motion for a bill of particulars shall be granted when it appears that the Defendant~~ defendant ~~has a reasonable need for additional facts in order to prepare his defense.~~;

(4) ~~Motions~~ motions may be made orally or in writing. Motions made under this Rule will be argued before trial on the date of trial unless the court directs otherwise. Decision on such motions shall be made by the judge and not by the jury~~.~~;

(5) ~~If~~ if the motion is decided against the ~~Defendant~~defendant, the trial shall proceed if an interlocutory appeal request by the defendant made under this title is not approved by the Trial Court judge ~~as if no motion was made~~. If a motion is decided in favor of a defendant, the judge shall alter the proceedings or enter a judgment as is appropriate in light of the decision.

Rule 14 Discovery and Inspection

(a) Disclosure by Prosecution~~—~~: Not less than ten (10) days before trial, the prosecution shall disclose and make available for inspection, copying and photographing any records, papers, documents, recorded statements made by witnesses or other tangible evidence in its possession, custody and control and which are material to the preparation of the defense or are intended for use by the prosecution at the trial or were obtained from or belong to the ~~Defendant~~defendant.

(b) Disclosure by Defendant~~—~~: Not less than ten (10) days before trial, the ~~Defendant~~ defendant shall disclose and make available to the prosecution for inspection, copying and photographing any records, papers, documents or other tangible evidence in the ~~Defendant's~~ defendant's possession, custody or control which the ~~Defendant~~ defendant intends to introduce in evidence at the trial.

(c) Witness Disclosure~~—~~: Not less than ten (10) days before trial the prosecution and ~~Defendant~~ defendant shall exchange a list of the names and addresses of the witnesses each intends to call at the trial. Upon request of a party, any witness named on the witness list shall be made available for interview prior to trial.

(d) Continuing Duty to Disclose~~—~~: If a party discovers additional material or witnesses which the party previously would have been under a duty to disclose and make available at the time of such previous compliance if it were then known to the party, the party shall promptly give notice to the other party of the existence of the additional material or witnesses.

(e) Failure to Comply~~—~~: If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this ~~Rule~~ rule or with an order issued pursuant to this ~~Rule~~rule, the court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance~~,~~ or prohibit the party from calling a witness not disclosed, or introducing in evidence the material not disclosed, or it may enter such other order as it deems appropriate under the circumstances, including but not limited to holding an attorney or party in contempt of court.

Rule 15 Notice of Alibi Defense

The ~~Defendant~~ defendant or his legal representative shall by written notice to the court at least ten (10) working days before trial provide the names and addresses of any witnesses upon whom the defense intends to rely for an alibi defense for the ~~Defendant~~defendant and to include a summary of the witnesses expected testimony. Failure to provide such notice will prevent the use of such witnesses by the defense unless it can be shown by the defense that prior notice was impossible or that no prejudice to the prosecution has resulted, in which case the judge may order the trial delayed or make such other orders as ~~intended~~ required to assure a just determination of the case.

Rule 16 Subpoena

(a) A subpoena is an order of the court issued by a judge or the Clerk of the Court. It shall contain the name of the court, the title of the case~~,~~ and shall command each person to whom it is directed to attend and give testimony or produce for use documents, etc. named, at the time and place specified therein~~herein~~.

(b) A subpoena may be served by any person who is not a party to the case and not less than eighteen (18) years of age~~law enforcement officer or other officer designated by the Judge~~. Service shall be accomplished by handing a copy of the subpoena to the person named therein. Upon completion of service, a proof of service shall be filed with the Court. ~~No fees or mileage allowance need be rendered with service.~~

(c) A subpoena may be served any place within the territorial jurisdiction of the Choctaw Tribal Court.

(d) Failure, without adequate excuse, to obey a properly served subpoena may be deemed ~~a~~ contempt of court and prosecution thereof may proceed upon the order of the court. No contempt shall be prosecuted unless a return of service of the subpoena has been made on which is endorsed the date, time~~,~~ and place of service and the person performing such service.

Rule 17 Trials ~~to~~ by Jury

(a) Tribal Court Jury~~.~~ : A jury shall consist of six persons. Notwithstanding subsection (i) of this rule, a~~A~~ny enrolled member of the Mississippi Band of Choctaw Indians~~,~~ who is qualified to vote in elections of the Council, shall be eligible for jury service except Tribal Council, judges, clerks, lay advocates or professional attorneys, and persons of unsound mind or who have been convicted of a felony ~~Class A~~ offense under this Code during the past two years or of a felony under the laws of any other sovereign or dishonorably discharged from the Armed Forces of the United States.

(b) Jury Panel~~.~~ : Once every six (6) months (January and July) in open court the ~~Clerk~~ clerk shall draw the names of 32 persons at random from a box containing the names of the persons registered to vote in elections held by the Mississippi Band of Choctaw Indians. If an ineligible name is drawn, an additional name shall be drawn until thirty-two (32) eligible persons are on the jury panel.~~names shall have been drawn.~~ Such persons shall constitute the jury panel.

~~(c) Jury Selection. : When it is necessary to form a jury, at the direction of the trial Judgejudge, the Clerk clerk shall draw names from a box containing the names of the~~

~~persons on the jury panel until six names are drawn, none of whom have served on a jury during the past year.~~

(d) Challenges for ~~cause~~ Cause or ~~without~~ Without ~~cause~~Cause~~.~~: Either party in the case may challenge not more than two jurors without cause and any number of jurors for cause. The judge, the prosecutor~~,~~ and the ~~Defendant~~ defendant shall be entitled to question each juror to determine the existence of cause. Cause ~~my~~ may consist of, but shall not be limited to:

(1) Non-eligibility as juror or such physical or mental defect as to render the juror incapable of performing his duties;

(2) Having been a juror, party~~,~~ or witness in any civil or criminal proceeding involving the same facts; ~~and~~or

(3) Such family or business relationship with the ~~Defendant~~ defendant or having such an opinion of the guilt or innocence of the ~~Defendant~~ defendant as would impair impartiality as a juror.

(e) Oath of Jurors~~—~~: The judge shall administer the oath or affirmation as follows: "We, and each of us, do solemnly swear~~r,~~ or affirm~~,~~ that we will truly and fairly try this case between the Mississippi Band of Choctaw Indians and the ~~Defendant~~defendant, so help us God."

(f) Additional Jurors~~—~~: The trial ~~Judge~~judge, by rule, may establish procedures for supplementing the list of prospective jurors from time to time in accordance with subsection (b) of this ~~Rule~~ rule as may be required by caseload and jury trial demands.

(g) Juror Compensation~~—~~: Each juror selected shall be entitled to a fee of twenty-five dollars ($25.00) for each day of jury service plus mileage at the current ~~Tribal~~ tribal rate per mile for necessary travel to and from the court for jury service. Jurors not selected shall be entitled to mileage at the current ~~Tribal~~ tribal rate per mile for travel to and from the court.

(h) Exemption from jury service; excuses; service of disqualified jurors

(1) A person who is fifty-seven (57) years of age or older is considered an elder by Tribal custom, and who provides proof of such age to the Administrator of Tribal Court requesting an exemption from jury service with the Tribal court shall be temporarily or permanently exempted from such service.

(2) A person may be temporarily or permanently excused from jury service at the direction of a Tribal Judge in the division in which the case is pending if the person has a physical and/or mental disability that renders the person unable to perform jury service.

(3) Requests for an excuse from jury services, as to Paragraph 2, shall be received by the Court and heard prior to commencement of the matter for which the person was summoned as a juror. Requests for an age exemption from jury service shall be received by the Court and the court may delegate the Administrator of Tribal Court the authority to excuse jurors as to Paragraph 1 only. ~~.~~

(i) Special Domestic Violence Criminal Jurisdiction Cases.

(1) In any case where the Tribe is exercising special domestic violence criminal jurisdiction, the defendant is entitled to a trial by an impartial jury that is drawn from sources that reflect a fair cross section of the community and do not systematically exclude any distinctive group in the community, including non-Indians. Notwithstanding the jury selection process described in this title, the following groups of individuals shall be a part of the jury pool, including non-Indians, in any case where the Tribe is exercising special domestic violence criminal jurisdiction:

(a) Enrolled members of the MBCI who are qualified to vote in Tribal elections;

(b) spouses of members of the MBCI;

(c) employees of the MBCI tribal government;

(d) employees of any MBCI tribal enterprise or entity, or

(e) any non-member of the MBCI with a permit issued by the Permitting Officer to reside on the Choctaw Reservation.

(2) The Human Resources department for the MBCI Tribal government and any MBCI tribal enterprise or entity is authorized and is directed to provide a list of employees including their full name, address, and telephone number, to the Court Administrator to comply with this section. A list shall be compiled and submitted to the Court Administrator on an annual basis beginning with October 2018.

Rule 18 Trial Procedure

(a) After the jury has been selected and sworn by the judge or if no jury trial is demanded:

(1) The ~~Clerk~~ clerk shall read the complaint and state the ~~Defendant's~~ defendant's plea;

(2) Any pre-trial motions not previously heard shall be argued at this time (outside the presence of the jury);

(3) Opening statements may, if not waived, be made by the prosecutor and the ~~Defendant~~ defendant or his representative;

(4) The prosecutor shall present evidence in support of the charge, and the defendant or his or her~~/her~~ legal representative shall have the right to cross-examine any witness called by the prosecutor;

(5) The ~~Defendant~~ defendant may, at the end of the prosecution's case present any motions to dismiss or move for directed verdict (outside the presence of the jury);

(6) The ~~Defendant~~ defendant or his or her~~/her~~ legal representative shall present the defense and evidence in support thereof, and the prosecutor shall have the right to cross-examine any witness called by the ~~Defendant~~ defendant or his or her~~/her~~ representative;

(7) The parties may then offer ~~rebutting~~ rebuttal testimony only, except that the court may in the interest of justice permit the introduction of new evidence;

(8) At the conclusion of all testimony in the trial, the ~~Defendant~~ defendant may (outside the presence of the jury) present any motions to dismiss. No penalty, rights~~,~~ or legal arguments of ~~Defendant~~ defendant shall be deemed waived solely on account of his or her~~/her~~ failing to renew at the close of testimony any legal claims or arguments previously presented by motion;

(9) In a jury trial the judge shall charge the jury orally or in writing, stating the law applicable to the cause, at the close of the evidentiary phase of the trial but before the closing arguments (if any);

(10) The prosecutor and the ~~Defendant~~ defendant or his or her~~/her~~ legal representative may then argue the case, the prosecutor having the right to open and close;

(11) Motions for mistrial may be made at any time as appropriate.

(b) Instructions to Juries~~.~~: In a jury trial, questions of law shall be decided by the judge and questions of fact shall be decided by the jury. At any time during the trial the judge may give the jury such instructions as to the law as he or she~~/she~~ considers necessary. The judge may, from time to time during the course of the trial, excuse the jury from the courtroom in order to receive evidence and testimony or motions and arguments on the admissibility of evidence or points of law. The parties may file requested instructions in writing at the close of the evidence or otherwise as the judge may direct, furnishing copies thereof to the other party. The judge shall inform the parties of his or her~~/her~~ action on such requests prior to oral argument. Either party may object to instructions and such objections shall be made outside the hearing of the jury. Objections not made before the jury retires to determine its verdict shall be waived.

Rule 19 Return of Verdict

(a) Return~~.~~: In a bench trial, a~~A~~fter the close of evidence, the judge shall render a verdict of guilt or innocence and shall, upon request of any party, make specific findings which may be embodied in a written decision. In a jury trial, the verdict shall be unanimous and signed by the foreman. It shall be returned by the jury to the judge in open court.

(b) Jury ~~deliberations~~Deliberations~~.~~: In cases before a jury, except where a directed verdict of acquittal has been granted by the judge, the jury shall retire to determine a verdict after the charge. All instructions, physical evidence and notes taken by the jurors shall be available to them. The jury shall remain in the charge of an officer appointed by the court until discharged by the judge. During its deliberation, the jury may return to court to request further instructions from the judge or request that the ~~Clerk~~ clerk read portions of the transcript of any testimony in the case or where tape recorded, play back such portions of the testimony. The jury must render a unanimous verdict of "Guilty," "Not Guilty," or "Not Guilty by Reason of Insanity," or "No Verdict" on every charge against the ~~Defendant~~defendant.

(c) Discharge of ~~jury~~Jury~~.~~: After the jury has retired to consider their verdict the judge shall discharge the jury from the case when:

(~~-~~1)~~-~~ their verdict has been announced to the judge, ~~or~~

(2) the judge finds there is no reasonable probability that the jury can reach a unanimous verdict~~, or~~;

(3) some other necessity exists for their discharge.

Rule 20 Sentence

Within a reasonable time after a verdict or plea of guilty and after such pre-sentencing investigation as the judge may direct, the judge shall sentence the Defendant in conformity with the applicable provisions of ~~this~~ the Tribal Code and deliver to a law enforcement officer of this jurisdiction a signed copy of the sentence. When a defendant is sentenced to pay a fine, the court may permit payment within a definite period or by installment. In the absence of such permission, a fine shall be payable forthwith. Fines, and any installments thereof, shall be payable to the ~~Clerk~~ clerk of the Court.

Rule 21 Default in Payment

When a defendant defaults in the payment of a fine, or any installments thereof, the court, on its own motion or on application by the prosecuting attorney, shall order the ~~Defendant~~ defendant to show cause why ~~(s)~~he or she is not in contempt and may issue a summons or an arrest warrant for the ~~Defendant's~~ defendant's appearance. Unless the ~~Defendant~~ defendant shows that ~~(s)~~he or she has made a good faith effort to obtain funds to make payment, the court may reinstate the sentence imposed on the original offense or offenses. Where good faith is shown, the court may allow additional time for payment or revoke all or part of the unpaid fine. Upon such default, the court may order the garnishment of ~~Tribal~~ tribal distribution checks or order seizure and sale of any personal property of the ~~Defendant~~ defendant found within the Choctaw Tribal lands.

Rule 22 Suspension of Sentence

(a) The court may, upon such reasonable terms and conditions as it considers necessary to assist the ~~Defendant~~ defendant to lead a new life, following Choctaw laws and applicable federal laws, suspend any sentence and release a prisoner on probation. In granting probation the judge shall consider the defendant's prior criminal record ~~of the prisoner~~, his background, character, financial condition, family obligations~~,~~ and other reasonably relevant circumstances.

(b) The court, as a condition of its order, may require the ~~Defendant~~defendant:

(1) ~~To~~ to meet his or her family obligations;

(2) ~~To~~ to devote himself or herself to ~~a~~ specific employment or an occupation;

(3) to undergo available medical or psychiatric treatment or attend regular rehabilitation programs, such Alcoholics Anonymous or similar meetings, and to enter and remain in a specified institution when required for that purpose;

(4) ~~To~~ to pursue a prescribed secular course of study or vocational training;

(5) ~~To~~ to attend or reside in a facility established for the instruction, recreation, or residence of persons on probation;

(6) ~~To~~ to refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;

(7) ~~To~~ to not have in his or her possession any firearm or other dangerous weapon;

(8) ~~To~~ to make restitution of the fruits of his or her crime or to make reparation, in an amount he or she can afford to pay, for the loss or damage caused thereby;

(9) ~~To~~ to remain within the jurisdiction of the court and to notify the court or the ~~Probation~~ probation ~~Officer~~ officer of any change in his address or employment;

(10) ~~To~~ to report as directed to the court or the ~~Probation~~ probation ~~Officer~~ officer and to permit the officer to visit his or her home;

(11) ~~To~~ to post a bond, with or without surety, conditioned on the performance of any of the foregoing obligations; ~~and/~~or

(12) ~~To~~ to satisfy any other conditions reasonably related to the rehabilitation of the ~~Defendant~~ defendant and not unduly restrictive of his liberty or incompatible with his freedom of conscience.

(c) No conditions or conditional orders entered under Rule 22(b) shall have any force and effect for any period of time in excess of the maximum sentence which the court could lawfully impose under ~~this~~ the Tribal Code, and no order purporting to continue such conditions beyond said period shall be entered or enforced in the T~~Choctaw T~~ribal Court~~-~~s.

(d) Upon the expiration of the term fixed for such probation, the ~~Probation~~ probation ~~Officer~~ officer shall report that fact to the court, with a statement of the conduct of the probationer while on probation, and the court may thereupon discharge the probationer from further supervision, or may extend the probation, as he shall deem advisable. At any time during the probationary term the court may:

(1) ~~Modify~~ modify the terms and conditions of the Order of Probation~~,~~; or may terminate such probation, when in the opinion of the court the ends of justice shall require, and when the probation is so terminated the court shall enter an order discharging the probationer from serving the imposed penalty, or

(2) ~~Revoke~~ revoke the Order of Probation and cause the arrest of the probationer and impose a sentence and require him to serve the sentence or pay the fine originally imposed, or both, as the case may be, and the time pon robation shall not be taken into account to diminish the time for which he was originally sentenced.

Rule 23 Post-Trial Motions

(a) Motion for ~~new~~ New ~~trial~~Trial~~.~~: Within ten (10) days after the finding of guilt, a convicted defendant may file a motion for a new trial.~~-~~ If a motion for a new

trial is not granted within twenty (20) days from the date it is filed, the motion is automatically denied. A new trial may be granted by the court for the following causes:

(1) ~~Receipt~~ receipt by the jury of evidence not authorized by the court;

(2) ~~Determination~~ determination of a verdict through intimidation~~,~~ or otherwise without a fair expression of opinion;

(3) ~~When~~ when the court has refused to instruct the jury correctly as to the law; or

(4) ~~When~~when, for any cause, the ~~Defendant~~ defendant has not received a fair and impartial trial.~~. If a motion for a new trial is not granted within twenty (20) days from the date it is filed, the motion is automatically denied.~~

(b) Motion to Set Aside Verdict: After a jury verdict of guilty is announced, the ~~Defendant~~ defendant may move to set aside the verdict on the grounds that it was contrary to the law or the evidence. The judge shall grant such a motion if ~~(s)~~ he determines that there was insufficient evidence to support the verdict or that, as a matter of law, there was reasonable doubt as to the ~~Defendant's~~ defendant's guilt.

(c) Modification of Sentence~~.~~ : Within ten (10) days immediately following the imposition of sentence, the ~~Defendant~~ defendant may move for a reduction, suspension~~,~~ or modification of the sentence and may, in the discretion of the judge, present evidence and testimony in support of said motion.

Rule 24 Appeals

(a) A party who is aggrieved by the judgment or final order in a criminal action may appeal to the ~~Choctaw Court of Appeals~~Choctaw Supreme Court by filing with the ~~Clerk~~ clerk a Notice of Appeal within thirty (30) days of the entry of the order from which the appeal is taken. The Choctaw ~~Court of Appeals~~Supreme Court may affirm or reverse the order of the ~~Choctaw~~ Tribal Court, order a new trial~~,~~ or may increase or decrease any sentence or fine. An appeal to the Choctaw ~~Appellate~~ Supreme Court shall be on the record established ~~at~~ in the ~~trial~~ Tribal~~Lower court~~ Court. T~~and t~~he appeal procedure set out in ~~Title VII~~ – Choctaw Rules of Appellate Procedure shall govern the proceedings on appeal.

(b)

~~(4)~~ Release or Detention Pending Appeal: A judge of the Choctaw Tribal Court exercising jurisdiction over an offense, or a judge of the Choctaw Supreme Court exercising appellate jurisdiction, shall order that, pending imposition or execution of sentence, or pending appeal of conviction or sentence, a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal, be detained, unless the Judge finds, after petition by the person, by clear and convincing evidence:

(i) that the person is not likely to flee or pose a danger to the safety of any other person of the community if released during the pendency of the person's appeal; and

(ii) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in a reversal, an order for a new trial or a sentence that does not include a term of imprisonment of less than the total amount of time already served plus the expected duration of the appeals process.

In those situations where release is found appropriate for persons convicted of a felony offense, bond shall be set in accordance with the amounts set forth in Rule 8(a)(1)(i). In addition, the judge may also impose conditions in accordance with the provisions of Rule 8(a)(1)(ii). In those situations where release is found appropriate for persons convicted of a misdemeanor offense, bond shall be set in accordance with the amounts set forth in Rule 8(a)(2).