

1 bond executed by two or more reliable persons subject to the jurisdiction of the
2 Court before such person is released; provided, however, such reliable persons
3 may not be the Chief, the Vice-Chief, the Secretary-Treasurer, a member of the
4 Tribal Council, an employee of Tribal law enforcement, a Judge, a member of the
5 Court staff, ~~or attorneys~~ or other persons licensed to practice before the Choctaw
6 Tribal Court or the alleged victim of the underlying charge. The amount of the
7 bond required shall not exceed five times the maximum cash penalty for each
8 offense for which the defendant has been charged. If bond exceeds one thousand
9 (\$1,000) dollars then a surety bond executed through a licensed bonding
10 company is required. ~~be a five hundred dollar (\$500.00) cash or surety bond for~~
11 ~~all felony Class A offenses.~~

12
13 (B*i*) In addition to the bond, the Tribal Judge may place other conditions
14 upon the release of a person arrested for a felony Class A offense if the
15 Judge finds that such conditions are necessary to assure the appearance
16 of a person arrested or are necessary to protect the safety of another
17 person in the community. These conditions may include, but are not
18 necessarily limited to:

19
20 (1A) that the person not commit a federal, state, or Tribal crime
21 during the period of release;

22
23 (2B) that the person remain in the custody of a designated person,
24 who agrees to assume supervision and to report any violation
25 of a release condition to the court, if the designated person is
26 ~~able~~ reasonably able to assure the judicial officer that the
27 person will appear as required and will not impose a danger to
28 the safety of ~~any other person in~~ the community;

29
30 (3C) that the person maintain employment, or, if unemployed,
31 actively seek employment;

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33 (4D) that the person maintain or continue an educational program;

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35 (5E) that the person abide by specified restrictions on personal
36 association, place of abode, or travel;

37
38 (6F) that the person avoid all contact with an alleged victim of the
39 crime and with any potential witness who may testify
40 concerning the offense;

41
42 (7G) that the person report on a regular basis to a designated law
43 enforcement agency, or other agency of the Choctaw
44 Government;

45
46 (8H) that the person comply with a specified curfew;

47
48 (9I) that the person refrain from possessing a firearm, destructive
49 device, or other dangerous weapon;

1 | (~~10~~J) that the person refrain from the use of alcohol, or any other use
2 | of a narcotic drug or a controlled substance without a
3 | prescription by a licensed medical practitioner;

4 |
5 | (~~11~~K) that the person undergo available medical, psychological or
6 | psychiatric treatment, including treatment for drug or alcohol
7 | dependency; and remain in a specified institution if required
8 | for that ~~person~~purpose; and ~~or~~

9 |
10 | (~~12~~L) that the person satisfy any other condition that is reasonably
11 | necessary to assure the appearance of the person that is
12 | required and to assure the safety of any other person in the
13 | community.

14 |
15 | (~~C~~iii) At the conclusion of the appearance, the ~~Judge~~judge shall execute an
16 | ~~Order~~order stating whether the person is to be detained or released, and
17 | if released, the amount of bond, the date of trial and stating the
18 | defendant shall to hire an attorney and notify the court within fifteen
19 | (15) days from the court arraignment ~~that whether~~ the ~~Defendant~~
20 | defendant will be represented by counsel at trial and any conditions
21 | upon such release in addition to the bond. In the case of detention, the
22 | judge shall execute an order stating the reasons for the detention and
23 | directing that the person be committed to the custody of Choctaw Law
24 | Enforcement for confinement separate, to the extent practical, from
25 | persons serving sentences after convictions.

26 |
27 | (~~D~~iiiiv) If a person is ordered detained after a hearing conducted in accordance
28 | with this ~~Rule~~rule, the person may appeal the Detention Order to the
29 | Choctaw ~~Appellate~~Supreme Court within five (5) days of the Order of
30 | Denial. The appeal shall be determined promptly in accordance with the
31 | Choctaw Rules of Appellate Procedures.

32 |
33 | (2) Misdemeanor~~Class B or Class C~~ Offenses:

34 |
35 | If a person is arrested for a ~~Class B or Class C~~misdemeanor offense and is not also
36 | arrested for a ~~felony~~Class A offense, such person shall not have to appear before
37 | a judge in order to obtain release. Such person may obtain release at any time
38 | prior to arraignment without appearing before a judge on ~~person~~personal
39 | recognizance; or if required, by posting a cash bond or surety bond executed by
40 | two reliable persons subject to the jurisdiction of the Tribal Court; provided,
41 | however, such reliable persons may not be the Chief, the Vice-Chief, the
42 | Secretary-Treasurer, a member of the Tribal Council, an employee of Tribal law
43 | enforcement, a judge, a member of the Court staff, or attorneys or other persons
44 | licensed to practice before the Choctaw Tribal Court or the alleged victim of the
45 | underlying charge. The amount of the bond required shall not exceed five times
46 | the maximum cash penalty for each offense for which the defendant has been
47 | charged. . If bond exceeds five~~one~~thousand (\$5~~1,000~~) dollars then a surety bond
48 | executed through a licensed bonding company is required. Notwithstanding the
49 | foregoing, if the arresting officer or complaining witness shall certify to the
50 | jailer; or if the jailer shall certify based upon his own observation, that the person
51 | arrested, was at the time he was brought to the jail, unconscious or in an

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

15
16 ~~(3)~~(3) Presumption of Innocence Prior to Trial:

17 ~~(4)~~ _____

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

20
21 ~~(4)~~ _____ Release or Detention Pending Appeal:

22
23 _____ ~~A judge of the Choctaw Tribal Court exercising jurisdiction over an offense, or~~
24 ~~a judge of the Choctaw Tribal Appellate Court exercising appellate jurisdiction,~~
25 ~~shall order that, pending imposition or execution of sentence, or pending appeal~~
26 ~~of conviction or sentence, a person who has been found guilty of an offense and~~
27 ~~sentenced to a term of imprisonment, and who has filed an appeal, be detained,~~
28 ~~unless the Judge finds, after petition by the person, by clear and convincing~~
29 ~~evidence; .~~

30
31 ~~(Ai)~~ _____ that the person is not likely to flee or pose a danger to the safety of any
32 other person of the community if released during the pendency of the
33 person's appeal; and

34
35 ~~(Bii)~~ _____ that the appeal is not for the purpose of a delay and raises a substantial
36 question of law or fact likely to result in a reversal, an order for a new
37 trial, or a sentence that does not include a term of imprisonment of less
38 than the total amount of time already served plus the expected duration
39 of the appeals process.

40
41 ~~In those situations where release is found appropriate for persons convinced~~
42 ~~convicted of a Class A offense, bond shall be set in accordance with the amounts~~
43 ~~set forth in Rule 8(a)(1)(iA). In addition, the judge may also impose conditions~~
44 ~~in accordance with the provisions of Rule 8(a)(1)(Bii). In those situations where~~
45 ~~release is found appropriate for persons convicted of a Class B or Class C~~
46 ~~offense, bond shall be set in accordance with the amounts set forth in Rule~~
47 ~~8(a)(2).~~

48
49 (4) Penalty for Failure to Appear or Violation of Conditions of Release: Whoever,
50 having been released pending trial or pending appeal, fails to appear before court

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

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

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

7 | ~~(5) — Penalty for Failure to Appear or Violation of Conditions of Release:—~~

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

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

19 | (6) Sanctions for Violations of a Release Condition:

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

32 | (7) Return of Bond

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

38 | **Rule 9 Arraignment, First Appearance**

39 | (a) ~~Explanation of Rights.~~ Upon the first appearance of the ~~Defendant~~ defendant before the
40 | Choctaw Tribal Court in response to a summons or warrant or following arrest, the judge
41 | shall inform the ~~Defendant~~ defendant in English or when necessary in the Choctaw
42 | language of the following:
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- (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) the right, if any, to representation by an attorney at ~~Defendant's~~ defendant's own expense;
 - (7) the right to remain silent; and that any statement made by the ~~Defendant~~ defendant may be used against the ~~Defendant~~ defendant;
 - (8) the right, if any, to a jury trial; ~~and~~
 - (9) ~~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.

1
2 If ~~Defendant~~ defendant refuses to answer, a plea of not guilty must be entered. If the
3 ~~Defendant~~ defendant pleads “not guilty by reason of insanity”, the action shall be
4 transferred to the Behavioral Health Department or an appropriate state or federal agency
5 for a determination of ~~Defendant’s~~ defendant’s competency to stand trial. If the
6 ~~Defendant~~ defendant pleads “not guilty”, the action shall be set for trial.

- 7
8 (c) If the ~~Defendant~~ defendant pleads “guilty”, the judge shall accept the plea only after
9 determining that the plea is made voluntarily with a full understanding of the nature of the
10 charge and the consequences of the plea. The judge shall not enter a judgment upon a plea
11 of guilty unless ~~(s)~~he is satisfied that there is a factual basis for the plea. If a plea of guilty
12 is accepted and judgment entered, the judge shall sentence the ~~Defendant~~ defendant
13 immediately or within a reasonable period, giving the ~~Defendant~~ defendant an opportunity
14 to inform the court of mitigating facts.
- 15
16 (d) The court may, in its discretion, allow a defendant to withdraw a plea of guilty whenever it
17 appears that the interests of justice and fairness would be served thereby.
- 18
19 (e) ~~Waiver of Arraignment.~~—An arraignment may be waived, by the ~~Defendant~~ defendant
20 filing a written plea of not guilty, signed by ~~Defendant~~ defendant and ~~Defendant’s~~
21 ~~defendant’s~~ attorney, no later ~~that~~ than forty-eight (48) hours prior to the scheduled
22 arraignment. The waiver must indicate the date and time of arraignment and the name of
23 the arrainging judge.

24
25 **Rule 10 Procedure For ~~Excusal:~~ Recusal of Judge**

- 26
27 (a) ~~Excusal—:~~ Whenever a defendant to any criminal action or proceeding of any kind files a
28 notice of excusal, the judge's jurisdiction over the cause terminates upon good cause
29 shown. ~~immediately.~~ Procedure for Excusing a Judge: A party for good cause shown may
30 excuse a judge before whom the case is pending by filing with the Clerk of the Court a
31 Notice of Excusal. The Notice of Excusal must be signed by the defendant and filed
32 within ten (10) days after the latter of:

33
34 (1) arraignment or the filing of a waiver of arraignment; or

35
36 (2) service by the court of notice of assignment or reassignment of the case to a
37 judge.

- 38
39 (b) ~~Limitation of Excusals:~~ A defendant may not excuse a judge after he or she has requested
40 that judge to perform any discretionary act other than conducting an arraignment or first
41 appearance, setting initial condition on arraignment or first appearance of setting initial
42 conditions of release. No party shall excuse more than one judge.

- 43
44 (c) ~~Procedure for Excusing a Judge:~~—A party for good cause shown may excuse a judge
45 ~~before whom the case is pending by filing with the Clerk of the Court a Notice of Excusal.~~
46 ~~The Notice of Excusal must be signed by the Defendant~~ defendant and filed within ten
47 ~~(10) days after the latter of:~~

48
49 ~~(1) arraignment or the filing of a waiver of arraignment; or~~

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

2 |
3 | (d) Recusal: No judge shall sit in any action in which the judge's impartiality may reasonably
4 | be questioned under the provisions of the Constitution of the Mississippi Band of Choctaw
5 | Indians or the Code of Judicial Conduct, and the judge shall file a recusal in any such
6 | action. Upon receipt of notification of recusal from a judge, the Clerk of the Court shall
7 | give written notice to each party. Upon recusal, another judge shall be assigned or
8 | designated to conduct any further proceedings in the action.
9 |

10 | **Rule 11 Pretrial Conference**

11 |
12 | At any time after the filing of a complaint or citation, the judge may, with or without the filing of a
13 | motion, order the parties to appear before him or her to clarify the pleadings and to consider such
14 | other matters as may aid in the disposition of the case. The court may in its discretion, if not
15 | otherwise prohibited by this tribal code and in compliance with Choctaw Peacemaker code;
16 | depending on the nature of the case, transfer to the Peace Maker Court for an alternative
17 | disposition.
18 |
19 |

20 | **Rule 12 Right to Jury Trial**

21 |
22 | (a) Cases shall be tried by the judge unless the ~~Defendant~~ defendant demands a jury trial. The
23 | demand may be made orally at the arraignment or by filing a written request with the
24 | judge assigned to the case within ten (10) days after the scheduled arraignment. If the
25 | demand for a jury trial is not made as provided in this paragraph, trial by jury will be
26 | deemed waived.
27 |

28 | (b) ~~A defendant is not entitled to a jury trial for Class C offenses.~~ In any case where the Tribe
29 | is exercising special domestic violence criminal jurisdiction, the defendant has a right to
30 | an impartial jury drawn from sources that reflect a fair cross section of the community and
31 | does not systematically exclude any distinctive group in the community, including non-
32 | Indians.
33 |

34 | **Rule 13 Motions Before Trial: Defenses and Objections**

35 |
36 | (a) Motions raising defenses and objections may be made as follows:;

37 |
38 | (1) ~~Any~~ any defenses or objections which are capable of determination other than at
39 | trial may be raised before trial by written motion.

40 |
41 | (2) ~~Defenses~~ defenses and objections based on defects in the complaint other than
42 | that it fails to show jurisdiction in the court or fails to charge an offense may be
43 | raised by motion only before trial or such shall be deemed waived, unless the
44 | court for good cause shown grants relief from such waiver. Lack of jurisdiction
45 | or failure to charge an offense may be raised as defenses or noticed by the court
46 | on its own motion at any stage of the proceeding:;

47 |
48 | (3) ~~A motion for a bill of particulars shall be granted when it appears that the~~
49 | ~~Defendant defendant has a reasonable need for additional facts in order to~~
50 | ~~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

1 | The ~~Defendant~~ defendant or his legal representative shall by written notice to the court at least ten
2 | (10) working days before trial provide the names and addresses of any witnesses upon whom the
3 | defense intends to rely for an alibi defense for the ~~Defendant~~ defendant and to include a summary of
4 | the witnesses expected testimony. Failure to provide such notice will prevent the use of such
5 | witnesses by the defense unless it can be shown by the defense that prior notice was impossible or
6 | that no prejudice to the prosecution has resulted, in which case the judge may order the trial
7 | delayed or make such other orders as ~~intended~~ required to assure a just determination of the case.
8 |

9 | **Rule 16 Subpoena**

- 10 |
- 11 | (a) A subpoena is an order of the court issued by a judge or the Clerk of the Court. It shall
12 | contain the name of the court, the title of the case, and shall command each person to
13 | whom it is directed to attend and give testimony or produce for use documents, etc.
14 | named, at the time and place specified ~~therein~~ herein.
- 15 |
- 16 | (b) A subpoena may be served by any person who is not a party to the case and not less than
17 | eighteen (18) years of age ~~law enforcement officer or other officer designated by the Judge.~~
18 | Service shall be accomplished by handing a copy of the subpoena to the person named
19 | therein. Upon completion of service, a proof of service shall be filed with the Court. ~~No~~
20 | ~~fees or mileage allowance need be rendered with service.~~
- 21 |
- 22 | (c) A subpoena may be served any place within the territorial jurisdiction of the Choctaw
23 | Tribal Court.
- 24 |
- 25 | (d) Failure, without adequate excuse, to obey a properly served subpoena may be deemed a
26 | contempt of court and prosecution thereof may proceed upon the order of the court. No
27 | contempt shall be prosecuted unless a return of service of the subpoena has been made on
28 | which is endorsed the date, time, and place of service and the person performing such
29 | service.
30 |

31 | **Rule 17 Trials ~~to~~ by Jury**

- 32 |
- 33 | (a) Tribal Court Jury: A jury shall consist of six persons. Notwithstanding subsection (i) of
34 | this rule, a Any enrolled member of the Mississippi Band of Choctaw Indians, who is
35 | qualified to vote in elections of the Council, shall be eligible for jury service except Tribal
36 | Council, judges, clerks, lay advocates or professional attorneys, and persons of unsound
37 | mind or who have been convicted of a felony ~~Class A~~ offense under this Code during the
38 | past two years or of a felony under the laws of any other sovereign or dishonorably
39 | discharged from the Armed Forces of the United States.
- 40 |
- 41 | (b) Jury Panel: Once every six (6) months (January and July) in open court the ~~Clerk~~ clerk
42 | shall draw the names of 32 persons at random from a box containing the names of the
43 | persons registered to vote in elections held by the Mississippi Band of Choctaw Indians.
44 | If an ineligible name is drawn, an additional name shall be drawn until thirty-two (32)
45 | eligible persons are on the jury panel ~~names shall have been drawn~~. Such persons shall
46 | constitute the jury panel.
- 47 |
- 48 | ~~(c) Jury Selection: When it is necessary to form a jury, at the direction of the trial~~
49 | ~~Judge, the Clerk clerk shall draw names from a box containing the names of the~~

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

3 |
4 | (d) Challenges for ~~cause~~ Cause or ~~without~~ Without ~~cause~~ Cause.— Either party in the case
5 | may challenge not more than two jurors without cause and any number of jurors for cause.
6 | The judge, the prosecutor, and the ~~Defendant~~ defendant shall be entitled to question each
7 | juror to determine the existence of cause. Cause ~~my~~ may consist of, but shall not be
8 | limited to:

9 |
10 | (1) Non-eligibility as juror or such physical or mental defect as to render the juror
11 | incapable of performing his duties;

12 |
13 | (2) Having been a juror, party, or witness in any civil or criminal proceeding
14 | involving the same facts; ~~and~~ or

15 |
16 | (3) Such family or business relationship with the ~~Defendant~~ defendant or having
17 | such an opinion of the guilt or innocence of the ~~Defendant~~ defendant as would
18 | impair impartiality as a juror.

19 |
20 | (e) Oath of Jurors.— The judge shall administer the oath or affirmation as follows: “We, and
21 | each of us, do solemnly swear, or affirm, that we will truly and fairly try this case
22 | between the Mississippi Band of Choctaw Indians and the ~~Defendant~~ defendant, so help us
23 | God.”

24 |
25 | (f) Additional Jurors.— The trial ~~Judge~~ judge, by rule, may establish procedures for
26 | supplementing the list of prospective jurors from time to time in accordance with
27 | subsection (b) of this ~~Rule~~ rule as may be required by caseload and jury trial demands.

28 |
29 | (g) Juror Compensation.— Each juror selected shall be entitled to a fee of twenty-five dollars
30 | (\$25.00) for each day of jury service plus mileage at the current ~~Tribal~~ tribal rate per mile
31 | for necessary travel to and from the court for jury service. Jurors not selected shall be
32 | entitled to mileage at the current ~~Tribal~~ tribal rate per mile for travel to and from the court.

33 |
34 | (h) Exemption from jury service; excuses; service of disqualified jurors

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

40 |
41 | (2) A person may be temporarily or permanently excused from jury service at the
42 | direction of a Tribal Judge in the division in which the case is pending if the person
43 | has a physical and/or mental disability that renders the person unable to perform jury
44 | service.

45 |
46 | (3) Requests for an excuse from jury services, as to Paragraph 2, shall be received by the
47 | Court and heard prior to commencement of the matter for which the person was
48 | summoned as a juror. Requests for an age exemption from jury service shall be
49 | received by the Court and the court may delegate the Administrator of Tribal Court
50 | the authority to excuse jurors as to Paragraph 1 only. -

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

8 (a) Enrolled members of the MBCI who are qualified to vote in Tribal
9 elections;
10 (b) spouses of members of the MBCI;
11 (c) employees of the MBCI tribal government;
12 (d) employees of any MBCI tribal enterprise or entity, or
13 (e) any non-member of the MBCI with a permit issued by the Permitting
14 Officer to reside on the Choctaw Reservation.

15
16 (2) The Human Resources department for the MBCI Tribal government and any
17 MBCI tribal enterprise or entity is authorized and is directed to provide a list of employees including their
18 full name, address, and telephone number, to the Court Administrator to comply with this section. A list
19 shall be compiled and submitted to the Court Administrator on an annual basis beginning with October
20 2018.
21
22
23

24 **Rule 18 Trial Procedure**

- 25
26 (a) After the jury has been selected and sworn by the judge or if no jury trial is demanded:
27
28 (1) The ~~Clerk~~ clerk shall read the complaint and state the ~~Defendant's~~ defendant's
29 plea;
30
31 (2) Any pre-trial motions not previously heard shall be argued at this time (outside
32 the presence of the jury);
33
34 (3) Opening statements may, if not waived, be made by the prosecutor and the
35 ~~Defendant~~ defendant or his representative;
36
37 (4) The prosecutor shall present evidence in support of the charge, and the defendant
38 or his ~~or her~~ legal representative shall have the right to cross-examine any
39 witness called by the prosecutor;
40
41 (5) The ~~Defendant~~ defendant may, at the end of the prosecution's case present any
42 motions to dismiss or move for directed verdict (outside the presence of the jury);
43
44 (6) The ~~Defendant~~ defendant or his ~~or her~~ legal representative shall present the
45 defense and evidence in support thereof, and the prosecutor shall have the right to
46 cross-examine any witness called by the ~~Defendant~~ defendant or his ~~or her~~
47 representative;
48
49 (7) The parties may then offer ~~rebutting~~ rebuttal testimony only, except that the court
50 may in the interest of justice permit the introduction of new evidence;

1
2 | (8) At the conclusion of all testimony in the trial, the ~~Defendant~~defendant may
3 (outside the presence of the jury) present any motions to dismiss. No penalty,
4 | rights, or legal arguments of ~~Defendant~~defendant shall be deemed waived solely
5 | on account of his ~~or her~~her failing to renew at the close of testimony any legal
6 | claims or arguments previously presented by motion;
7

8 (9) In a jury trial the judge shall charge the jury orally or in writing, stating the law
9 applicable to the cause, at the close of the evidentiary phase of the trial but before
10 the closing arguments (if any);
11

12 | (10) The prosecutor and the ~~Defendant~~defendant or his ~~or her~~her legal representative
13 | may then argue the case, the prosecutor having the right to open and close;
14

15 (11) Motions for mistrial may be made at any time as appropriate.
16

17 | (b) Instructions to Juries—: In a jury trial, questions of law shall be decided by the judge and
18 | questions of fact shall be decided by the jury. At any time during the trial the judge may
19 | give the jury such instructions as to the law as he ~~or she~~she considers necessary. The
20 | judge may, from time to time during the course of the trial, excuse the jury from the
21 | courtroom in order to receive evidence and testimony or motions and arguments on the
22 | admissibility of evidence or points of law. The parties may file requested instructions in
23 | writing at the close of the evidence or otherwise as the judge may direct, furnishing copies
24 | thereof to the other party. The judge shall inform the parties of his ~~or her~~her action on
25 | such requests prior to oral argument. Either party may object to instructions and such
26 | objections shall be made outside the hearing of the jury. Objections not made before the
27 | jury retires to determine its verdict shall be waived.
28

29 **Rule 19 Return of Verdict**

30
31 | (a) Return—: ~~In a bench trial, a~~After the close of evidence, the judge shall render a verdict of
32 | guilt or innocence and shall, upon request of any party, make specific findings which may
33 | be embodied in a written decision. In a jury trial, the verdict shall be unanimous and
34 | signed by the foreman. It shall be returned by the jury to the judge in open court.
35

36 | (b) Jury ~~deliberations~~Deliberations—: In cases before a jury, except where a directed verdict
37 | of acquittal has been granted by the judge, the jury shall retire to determine a verdict after
38 | the charge. All instructions, physical evidence and notes taken by the jurors shall be
39 | available to them. The jury shall remain in the charge of an officer appointed by the court
40 | until discharged by the judge. During its deliberation, the jury may return to court to
41 | request further instructions from the judge or request that the ~~Clerk~~clerk read portions of
42 | the transcript of any testimony in the case or where tape recorded, play back such portions
43 | of the testimony. The jury must render a unanimous verdict of “Guilty,” “Not Guilty,” or
44 | “Not Guilty by Reason of Insanity,” or “No Verdict” on every charge against the
45 | ~~Defendant~~defendant.
46

47 | (c) Discharge of juryJury—: After the jury has retired to consider their verdict the judge shall
48 | discharge the jury from the case when:
49

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

1 |
2 | (2) _____the judge finds there is no reasonable probability that the jury can reach a
3 | unanimous verdict~~;~~~~or~~;

4 |
5 | ~~(3) _____~~some other necessity exists for their discharge.
6 |

7 | **Rule 20 Sentence**

8 |
9 | Within a reasonable time after a verdict or plea of guilty and after such pre-sentencing investigation
10 | as the judge may direct, the judge shall sentence the Defendant in conformity with the applicable
11 | provisions of ~~this~~ the Tribal Code and deliver to a law enforcement officer of this jurisdiction a
12 | signed copy of the sentence. When a defendant is sentenced to pay a fine, the court may permit
13 | payment within a definite period or by installment. In the absence of such permission, a fine shall
14 | be payable forthwith. Fines, and any installments thereof, shall be payable to the ~~Clerk~~ clerk of the
15 | Court.
16 |

17 | **Rule 21 Default in Payment**

18 |
19 | When a defendant defaults in the payment of a fine, or any installments thereof, the court, on its
20 | own motion or on application by the prosecuting attorney, shall order the ~~Defendant~~ defendant to
21 | show cause why ~~(s)he~~ or she is not in contempt and may issue a summons or an arrest warrant for
22 | the ~~Defendant's~~ defendant's appearance. Unless the ~~Defendant~~ defendant shows that ~~(s)he~~ or she
23 | has made a good faith effort to obtain funds to make payment, the court may reinstate the sentence
24 | imposed on the original offense or offenses. Where good faith is shown, the court may allow
25 | additional time for payment or revoke all or part of the unpaid fine. Upon such default, the court
26 | may order the garnishment of ~~Tribal~~ tribal distribution checks or order seizure and sale of any
27 | personal property of the ~~Defendant~~ defendant found within the Choctaw Tribal lands.
28 |

29 | **Rule 22 Suspension of Sentence**

30 |
31 | (a) The court may, upon such reasonable terms and conditions as it considers necessary to
32 | assist the ~~Defendant~~ defendant to lead a new life, following Choctaw laws and applicable
33 | federal laws, suspend any sentence and release a prisoner on probation. In granting
34 | probation the judge shall consider the defendant's prior criminal record~~of the prisoner~~, his
35 | background, character, financial condition, family obligations, and other reasonably
36 | relevant circumstances.
37 |

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

- 39 |
40 | (1) ~~To~~ to meet his or her family obligations;
41 |
42 | (2) ~~To~~ to devote himself or herself to ~~a~~ specific employment or an occupation;
43 |
44 | (3) to undergo available medical or psychiatric treatment or attend regular
45 | rehabilitation programs, such Alcoholics Anonymous or similar meetings, and to
46 | enter and remain in a specified institution when required for that purpose;
47 |
48 | (4) ~~To~~ to pursue a prescribed secular course of study or vocational training;
49 |

- (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 ~~TChoctaw-Tribal~~ 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 probation 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 trialTrial-;~~ 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

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

- 4 |
- 5 | (1) ~~Receipt~~receipt by the jury of evidence not authorized by the court;
- 6 |
- 7 | (2) ~~Determination~~determination of a verdict through intimidation; or otherwise
8 | without a fair expression of opinion;
- 9 |
- 10 | (3) ~~When~~when the court has refused to instruct the jury correctly as to the law; or
11 |
- 12 | (4) ~~When~~when, for any cause, the ~~Defendant~~defendant has not received a fair and
13 | impartial trial. ~~If a motion for a new trial is not granted within twenty (20) days~~
14 | ~~from the date it is filed, the motion is automatically denied.~~
- 15 |
- 16 | (b) Motion to Set Aside Verdict: After a jury verdict of guilty is announced, the ~~Defendant~~
17 | defendant may move to set aside the verdict on the grounds that it was contrary to the law
18 | or the evidence. The judge shall grant such a motion if ~~(s)~~ he determines that there was
19 | insufficient evidence to support the verdict or that, as a matter of law, there was
20 | reasonable doubt as to the ~~Defendant's~~defendant's guilt.
- 21 |
- 22 | (c) Modification of Sentence—: Within ten (10) days immediately following the imposition
23 | of sentence, the ~~Defendant~~defendant may move for a reduction, suspension; or
24 | modification of the sentence and may, in the discretion of the judge, present evidence and
25 | testimony in support of said motion.
- 26 |

27 | **Rule 24 Appeals**

28 |

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

- 37 |
- 38 | (b)
- 39 | ~~(4)~~ Release or Detention Pending Appeal: A judge of the Choctaw Tribal Court
40 | exercising jurisdiction over an offense, or a judge of the Choctaw Supreme Court
41 | exercising appellate jurisdiction, shall order that, pending imposition or execution
42 | of sentence, or pending appeal of conviction or sentence, a person who has been
43 | found guilty of an offense and sentenced to a term of imprisonment, and who has
44 | filed an appeal, be detained, unless the Judge finds, after petition by the person,
45 | by clear and convincing evidence:
- 46 |
- 47 | (i) that the person is not likely to flee or pose a danger to the safety of any
48 | other person of the community if released during the pendency of the
49 | person's appeal; and
- 50 |

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(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).