

TITLE VII

**ESTABLISHMENT OF THE SUPREME COURT OF
THE MISSISSIPPI BAND OF CHOCTAW INDIANS**

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§7-1-1 Supreme Court

There is hereby established a Supreme Court of the Mississippi Band of Choctaw Indians. The Supreme Court shall sit at such times and places as proper and necessary to hear and decide appeals from judgments, sentences, rulings and/or other orders of the Tribal Court in any and all civil and criminal matters. The Supreme Court shall also sit at such times and places as proper and necessary to hear and decide election appeals perfected pursuant to Title XXXIII and shall hear and decide the election appeal pursuant to the procedures, requirements and standards as outlined in Title XXXIII. The Supreme Court shall be the final authority within this jurisdiction for the interpretation of Tribal law.

§7-1-2 Right to Appeal

Any party who is aggrieved by any final order, commitment or judgment of the Tribal Trial Court System may appeal in the manner prescribed by these rules, provided that appeals at the request of the prosecution from a criminal case in which the defendant has been acquitted shall be based solely on a question or questions of law, the answer to which shall be given prospective application only, without any effect on the defendant and without requiring the defendant to participate in the appeal in any manner.

§7-1-3 Time; Notice of Appeal; Filing Fee

- (1) Within 30 days from the entry of the order of judgment appealed from, unless otherwise provided in the Tribal Code, the party taking the appeal must file with the Clerk of the Supreme Court a written notice of appeal specifying the parties to the appeal, and the order or judgment appealed from. The Clerk shall file the notice and mail copies, to be provided by the appealing party, to all other parties to the appeal at their last known address.
- (2) All appellants in civil cases shall pay a one hundred dollar (\$100.00) filing fee to the Clerk when the appeal is filed; all appellants in criminal cases shall pay a twenty-five dollar (\$25.00) filing fee when the appeal is filed.
- (3) An appellant may file a motion for leave to proceed In Forma Pauperis and must show by affidavit the inability to pay for fees and costs. If the Supreme Court grants the motion, the party may proceed without payment of costs. If the Supreme Court denies the motion, it must state its reasons for the denial in writing.
- (4) Failure to file a timely notice of appeal is jurisdictional and the Choctaw Supreme Court shall dismiss the appeal notice if filed after the date set by law.

§7-1-4 Parties

- (1) The party taking the appeal shall be referred to as the appellant; all other parties shall be referred to as the appellees. The name of the case shall be same as that used in the lower court.
- (2) Joint appeals may be taken by two or more parties whose similar interests make such joinder practicable.

- (3) Upon its own motion or by motion of a party, the Choctaw Supreme Court may consolidate the appeals of different parties.

§7-1-5 Stay Pending Appeal: Bond

- (1) In any civil case in which an appeal is perfected, as required by these rules, the appellant may petition the Supreme Court for a stay of the lower court's order, commitment or judgment. A stay shall be granted in all cases in which it is requested unless manifest injustice would result therefrom, but such stay may be conditioned upon the posting of a suitable bond in an amount set by the court sufficient to guarantee performance of the lower court's order, commitment or judgment in the event the lower court's action is sustained.
- (2) In criminal cases, a stay of the lower court's judgment or sentence shall be automatic upon filing of a Notice of Appeal pursuant to §7-1-4 of the Tribal Code.
- (3) Release Pending Appeal on Criminal Cases: At the time of the entry of the judgment and sentence, the Criminal Court shall review the conditions of release pending appeal to assure the conditions are sufficient to secure the appearance of the defendant and the judgment of the Criminal Court. The Criminal Court may utilize the criteria listed in Rule 2 of the Choctaw Rules of Criminal Procedure, and may also consider the defendant's conviction and the length of sentence imposed. The conditions of release shall be included on the judgment and sentence. A defendant released pending trial shall continue on release pending an appeal to the Supreme Court under the same terms and conditions as previously imposed, unless the court determines that other terms and conditions are necessary to assure the defendant's appearance or to assure that the defendant's conduct will not obstruct the orderly administration of justice.

In the event the lower court requires a bail bond in the same amount as that established for release pending trial, the bond previously furnished shall continue pending appeal or disposition of a motion for a new trial, unless the surety has been discharged by order of the lower court. If the lower court determines that the previously imposed conditions are not sufficient to assure the appearance of the defendant or the orderly administration of justice, the court may increase the amount of the bond on appeal or terminate the conditions of release to assure the appearance of the defendant or the orderly administration of justice. Nothing in this rule shall be construed to prevent the lower court from releasing a person not released prior to or during trial.

§7-1-6 Record on Appeal

- (1) Within thirty (30) days after receipt of the Notice of Appeal, the lower court shall submit to the Supreme Court, a certified record of the case, together with all documents, exhibits, pleadings, records and tapes of proceedings. If a party desires to submit a transcript of the proceedings in addition to the certified record, such transcripts shall be submitted within thirty (30) days of the filing of the certified record.
 - (a) The cost of producing the transcript shall be paid by the appellant. Costs of a transcript are among the costs of appeal that may be awarded by the Supreme Court to a prevailing party.

- (2) If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the lower court, either before or after the record is transmitted to the Supreme Court on proper motion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary, that a supplemental record be certified and transmitted.

§7-1-7 Briefs and Memoranda

- (1) Appellant's Brief: Within thirty (30) days of the filing of the certified record or within such other time as the Supreme Court shall provide by order, the appellant shall file a written brief, memorandum or statement in support of his appeal. An original shall be filed with the Supreme Court and copies shall be served upon or mailed to each party, attorney or representative.
- (2) Appellee's Reply Brief: The appellee shall have thirty (30) days or such other time as the Supreme Court shall provide by order from the date of receipt of the appellant's brief, memorandum or statement within which to file a reply brief, memorandum or statement and shall file and serve such in the same manner as the appellant's brief, memorandum or statement.
- (3) Appellant's Rebuttal Brief: The appellant shall have fifteen (15) days or such other time as the Supreme Court shall provide by order from the date of receipt of the appellee's reply brief, memorandum or statement within which to file a rebuttal brief, memorandum or statement and shall file and serve such in the same manner as stated above. No further response shall be allowed by either party without leave of the court.
- (4) Brief of an Amicus Curiae: The Mississippi Band of Choctaw Indians or its officer or agency may file an amicus curiae brief without consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have agreed to the following:
 - (a) Motion for Leave to File: The motion must be accompanied by the proposed brief and state:
 - (i) the movant's interest; and
 - (ii) the reason why an amicus curiae brief is desirable and why the matters asserted are relevant to the disposition of the case.
 - (b) Time for Filing: An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than seven (7) days after the principal brief of the party being supported is filed. An amicus curiae not supporting any party must file its brief no later than seven (7) days after the appellant's principal brief is filed. The court may grant leave for a later filing, specifying the time within which an opposing party may answer.

§7-1-8 Oral Argument

The Supreme Court shall decide all cases upon the briefs, memoranda and statements filed, plus the record of the Tribal Court without oral argument or unless the court decides on its own motion, or upon motion of either party, to hear oral argument.

§7-1-9 Decision

The Supreme Court shall endeavor to issue a final written decision within six (6) months after the filing of the notice of appeal. The decision shall be made on the basis of facts and/or issues of law stipulated to by the parties and, if the parties so stipulate, without or with less than all of the record and/or verbatim transcript, in addition to briefs, memoranda or statements of the parties. The decision of the Supreme Court shall affirm, reverse, modify and/or remand the decision of the Tribal Court.

§7-1-10 Interlocutory Appeal by Permission

- (1) Petition for Permission to Appeal. An appeal from an interlocutory order may be sought if a substantial basis exists for a difference of opinion on a question of law as to which appellate resolution may:
- (a) materially advance the termination of the litigation and avoid exceptional expense to the parties;
 - (b) protect a party from substantial and irreparable injury; or
 - (c) resolve an issue of general importance in the administration of justice.

Appeal from such an order may be sought by filing a petition for permission to appeal with the clerk of the Supreme Court within 21 days after the entry of such order in the trial court with proof of service on the trial judge and all other parties to the action in the trial court.

- (2) Content of Petition; Answer. The petition shall contain a statement of the facts necessary to an understanding of the question of law determined by the order of the trial court; a statement of the question itself; a statement of the current status of the case; and a statement as to why the petition for interlocutory appeal is timely. The petition shall further identify all other cases or petitions for interlocutory appeal pending before the appellate court and known to the petitioner which are related to the matter for which interlocutory review is sought. The petition shall include or have annexed a copy of the order from which appeal is sought and of any related findings of fact, conclusions of law or opinion. Within 14 days after service of the petition, the trial judge may file a statement informing the appellate court of any reasons why that judge believes that the petition should or should not be granted, and any adverse party may file an answer in opposition with the clerk of the Supreme Court, with proof of service on the trial judge and all other parties to the action in the trial court. The petition with any statement by the trial judge and answers of all parties responding shall be submitted without oral argument unless otherwise ordered.
- (3) Form of Papers; Number of Copies. Four (4) copies of the petition and answer, if any, shall be filed with the original, but the Court may require that additional copies be furnished. The provisions of Rule 27 concerning motions shall govern the filing and consideration of the petition and answer, except that no petition or answer, including its supporting brief, shall exceed 15 pages in length.
- (4) Grant of Permission; Prepayment of Costs; Filing of Record. If permission to appeal is granted by the Supreme Court, the appellant shall pay the docket fee as required by section 7-1-3 of this chapter within 14 days after entry of the order granting permission to appeal,

and the record on appeal shall be transmitted and filed and the appeal docketed in accordance with sections 7-1-6 of this chapter. The time fixed by those rules for transmitting the record and docketing the appeal shall run from the date of entry of the order granting permission to appeal. A notice of appeal need not be filed.

- (5) Expedited Proceedings. The Court may in its discretion expedite the appeal and give it preference over ordinary civil cases. If the Court determines that the issues presented can be fairly decided on the petition, response and exhibits presented, the Court may decide those issues simultaneously with the granting of the petition, without awaiting preparation of a record or further briefing.
- (6) Effect on Trial Court Proceedings. The petition for appeal shall not stay proceedings in the trial court unless the trial judge or the Supreme Court shall so order.

§7-1-11 Duties of the Clerk of the Lower Court

The Clerk of the Lower Court shall have the duty to prepare, certify and file with the Clerk of the Supreme Court all papers and tapes comprising the record of the case appealed within thirty (30) days after a notice of appeal is filed.

§7-1-12 Duties of the Clerk of the Supreme Court

The Clerk of the Supreme Court shall maintain a separate appellate file for each case docketed with the Supreme Court and a separate Supreme Court docket in which shall be recorded each stage of the proceedings on each case appealed.

- (1) When judgment is rendered upon the appeal, it must be certified by the Clerk and entered into the records of the Lower Court.

§7-1-13 Supreme Court Rules of Appellate Procedure

Rule 1 Title

These rules shall be known as the Rules of Appellate Procedure for the Mississippi Band of Choctaw Indians Supreme Court pursuant to §7-1-13 of the Tribal Code.

Rule 2 Scope of Rules

These rules govern the procedure for appeals to the Supreme Court of the Mississippi Band of Choctaw Indians and except where specified, apply to all actions, civil and criminal. Election appeals perfected pursuant to Title XXXIII shall be governed by the procedures, requirements and standards as outlined in Title XXXIII and not the Rules of Appellate Procedure.

Rule 3 Appeals in Special Tribal Criminal Jurisdiction Cases

In any appeal of a case when the Tribe exercises Special Tribal Criminal Jurisdiction over a Covered Crime where a term of imprisonment of any length may be imposed, the Justices in the Supreme Court presiding over the appeal must have sufficient legal training to preside over criminal proceedings and are licensed to practice law by any jurisdiction in the United States, including any Tribal government.

Rule 4 Appointment of Justice Pro-tem

- (1) The Tribal Council shall appoint and certify, on an annual basis, a list of eligible judges to serve as a Justice pro-tem in accordance with this rule.
- (2) Upon vacancy, unavailability, recusal, or disqualification of a Supreme Court Justice, in a case before the Supreme Court, the Chief Justice shall assign a judge of the Tribe's Civil, Criminal, or Youth Court, exclusive of the judge and division from where the decision on appeal was taken, shall serve as a justice pro-tem for the Tribe's Supreme Court.
- (3) Upon disqualification of all the sitting trial judges of the Tribe's Civil, Criminal, or Youth Court due to vacancy, recusal, unavailability, or a conflict of interest, the Chief Justice shall assign a judge from outside the Tribe's Civil, Criminal, or Youth Court who appears on the Tribal Council's certified list of eligible judges appointed to serve as justices pro tem.
- (4) Appointments made under this rule may be carried out in a manner which insures a three-justice panel for every case before the Supreme Court and specifically:
 - (a) At least one (1) of the justices serving on this panel must be a Mississippi Band of Choctaw Indians tribal member in compliance with §1-3-4 (1) of the Tribal Code; and
 - (b) At least two (2) of the justices must be law trained, in good standing with the state bar, and at least two years of experience serving as a judge for a state, federal, or tribal court, or this stated criteria may be waived, if the candidate has a minimum of ten (10) years of experience as a Tribal judge pursuant to §1-3-4(2) of the Tribal Code.
- (5) Pro Tem appointments made under this rule in any appeal of a case when the Tribe exercises Special Tribal Criminal Jurisdiction over a Covered Crime, must ensure that all Justices in the Supreme Court presiding over the proceedings must have sufficient legal training to preside over criminal proceedings and are licensed to practice law by any jurisdiction in the United States, including any Tribal government.