

TO APPROVE A COUNCIL BILL ADOPTING A NEW CHOCTAW NATION OF OKLAHOMA JUROR CODE

IN THE TRIBAL COUNCIL OF THE CHOCTAW NATION

RONALD PERRY INTRODUCED THE FOLLOWING COUNCIL BILL

A COUNCIL BILL

TO APPROVE a Council Bill adopting a new Choctaw Nation of Oklahoma Juror Code.

WHEREAS, the Choctaw Nation Tribal Council previously approved Council Bill CB-58-17, adopting a Juror Code to protect the sovereignty, economic security, health, and welfare of the Choctaw Nation of Oklahoma (the "Nation") as well as promote the health and welfare of Nation Members and the general public;

WHEREAS, upon review of the current Juror Code, the Choctaw Nation Tribal Prosecutor's Office has determined that the current code should be replaced with an updated Code that will better facilitate the administration of jury trials in the courts of the Choctaw Nation; and

THEREFORE BE IT ENACTED, by the Tribal Council of the Choctaw Nation of Oklahoma that this Bill be cited as approval to adopt a new Choctaw Nation of Oklahoma Juror Code, as attached. See Exhibit A.

BE IT FURTHER ENACTED, by the Tribal Council of the Choctaw Nation of Oklahoma that this Bill be cited as approval to rescind and replace the previous Juror Code enacted by Council Bill CB-58-17.

CERTIFICATION

I, the undersigned, as speaker of the Tribal Council of the Choctaw Nation of Oklahoma, do hereby certify that the Tribal Council is composed of twelve (12) seats. Eight (8) members must be present to constitute a quorum. I further certify that eleven (11) members answered roll call and that a quorum was present at the Regular Session of the Tribal Council at Tuskahoma, Oklahoma on October 10, 2020. I further certify that the foregoing Council Bill CB- 07 -21 was adopted at such meeting by the affirmative vote of eleven (11) members, zero (0) negative votes, and zero (0) abstaining.

Ronald Perry, Secretary
Choctaw Nation Tribal Council

Thomas Williston, Speaker
Choctaw Nation Tribal Council

Gary Batton, Chief
Choctaw Nation of Oklahoma

Date 10-14-20

TO APPROVE A COUNCIL BILL ADOPTING A NEW CHOCTAW NATION OF OKLAHOMA JUROR CODE

Purpose/Need of Council Bill: The Choctaw Nation of Oklahoma Prosecutor's office has reviewed the existing Choctaw Nation Juror Code and found that the existing code contains several issues and should therefore be replaced with a new Juror Code to ensure uniformity and clarity that will better enable counsel and judges to effectively administer justice in the Nation's courts.

Title of Council Bill: TO APPROVE A COUNCIL BILL ADOPTING A NEW CHOCTAW NATION OF OKLAHOMA JUROR CODE

Agency: Legal & Compliance

Budget: N/A

Match Required: N/A

Request by Project Director: Kara Bacon, Lead Prosecutor; Brad Mallett, SEO, Legal & Compliance

EXHIBIT A

JURORS

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Section 1. Jury Management System

- A. The Government Service Director of Information Technology shall update the Jury Management System database containing a list of eligible jurors not less than twice a year. The list may be maintained in electronic format and shall be used exclusively for jury selection purposes. The Government Service Director of Information Technology shall not copy or permit any person to access the information contained in said database for purposes other than jury selection.
1. To be eligible to serve as a juror, a person must be a tribal member, a spouse of a tribal member, eighteen (18) year of age or older, an employee of the Choctaw Nation of Oklahoma or its enterprises, and/or permanently reside within the territorial boundaries of the Choctaw Nation of Oklahoma, as described in Article I Section II of the 1983 Choctaw Nation of Oklahoma Constitution.
 2. The Government Services Director of Information Technology or an associate of the department acting as his or her designee, shall develop and maintain the Jury Management System using information from the following sources:
 - a. Choctaw Nation of Oklahoma membership records
 - b. Choctaw Nation Human Resource records of nonmember residents
 - c. Tribal Tag records of nonmembers
 - d. Biskinik records of nonmember recipients
- B. Each list shall contain, name, date of birth, and address of each person. This information shall be used thereafter in the selection of juries.
- C. Random selection shall be processed by random selecting from a Jury Selection software of the District Court.

Section 2. Jury Pool

- A. The Presiding Judge of the District Court, or any other district judge acting as his or her designee shall, more than twenty (20) days prior to each term of court, determine the number of jurors reasonably necessary to meet the needs of the Choctaw Nation District Court, for each jury term. The court may order the drawing of the designated number of jurors all at one time or at periodic intervals, as he or she deems appropriate.

1. A District Judge and the Court Clerk of the Choctaw Nation District Court, or a deputy designated by the Court Clerk, shall utilize a jury selection software to select a sufficient number of eligible jurors.
- B. The Court Clerk shall utilize the jury selection software to randomly draw a sufficient number of names from the sources provided in Section 1 of this act, to satisfy the number of jurors ordered by the judge, including a margin of extra names sufficient to compensate for the estimated number that will be unavailable or ineligible.
 1. The names drawn shall comprise the general panel of jurors from which jurors are selected for service in the Choctaw Nation District Court during the period for which they are designated to serve.

Section 3. Disclosure of Personal Information about Jurors

- A. No person shall disclose, copy or permit any person to copy any general panel jury list or any portion thereof except as provided in this Section.
- B. Persons serving as jurors during a trial shall not be asked or required to give their complete residence address or telephone number in the presence of the defendant.
- C. Names and personal information concerning prospective and sitting jurors shall not be disclosed to the public outside open court, except upon order of the court. A request for disclosure of jurors' names and personal information shall be made in writing directly to the Presiding District Judge, or any district judge acting as his or her designee. The court shall order juror names and personal information to be kept confidential unless the interests of justice require otherwise.
- D. Names and personal information concerning prospective jurors may be provided to the attorneys of record after the general panel jurors have been selected and summoned, unless otherwise directed by the court. The names and information will be provided in written form only. The attorneys shall not share the jury list or information contained in the jury list except as necessary for purposes of jury selection. Following jury selection, the attorneys shall return the original jury lists and any copies to the court. Counsel shall be under a continuing duty to protect the confidentiality of juror information.

Section 4. Summoning Jurors

The Choctaw Nation District Court Clerk shall summon all persons for jury service by mailing a copy of such summons containing the time, place, and the name of the court upon which said persons are required to attend, by certified mail, return receipt requested, or as directed by the court, not less than ten (10) days before the day said person is to appear in the court. The District Court Clerk shall make

a return of such service by filing an affidavit stating the date of mailing and type of mail used in sending the summons.

Section 5. Jury Panel Oath or Affirmation

- A. Each member of the jury panel, when reporting for duty as provided for in Section 2 of this title, shall take and subscribe to an oath or affirmation which shall be in substantially the following form:

OATH

I, the undersigned, do solemnly swear or affirm that I am a citizen of the United States and a resident of the territorial jurisdiction of the Choctaw Nation of Oklahoma. I further swear or affirm that I am eighteen years of age or older.

I further swear or affirm that I have not been convicted of a felony for which a period of ten (10) years since the completion of the original judgment and sentence has not expired, or for which I have not been pardoned. I further swear or affirm that I am not now adjudicated as being mentally incompetent and that I am not mentally retarded

(Signature or mark of general jury panel member)

(Signature of court clerk) _____ (Date)

- B. The oath or affirmation provided for in subsection A of this section shall be administered by a Judge assigned to the District Court, and once subscribed to, shall be maintained in the office of the Choctaw Nation District Court Clerk as a judicial record.

Section 6. On-Call System Jurors

- A. When an on-call system is implemented by order of the Choctaw Nation District Court, each juror retained for services subject to call shall be required to contact a the District Court Clerk's Office for information as to the time and place of his or her next assignment.
- B. For purposes of this section, "on-call system" means a method whereby the court estimates the number of jurors required for a jury docket and those jurors not needed during any particular period are released to return to their home or employment subject to call when needed.
- C. Pursuant to a summons for jury service, each qualified person is retained for service subject to call.

Section 7. Qualifications and Exemptions

A. It is the policy of the Choctaw Nation of Oklahoma that:

1. all persons qualified for jury service pursuant to this section have an obligation to serve on juries when summoned by the Choctaw Nation District Court, unless excused.
2. all litigants in the courts of the Choctaw Nation of Oklahoma who are entitled to trial by jury shall have the right to trial juries selected at random from a fair cross section of the community.
3. all tribal members of the Choctaw Nation of Oklahoma and other citizens of the United States who are over eighteen years of age and have resided within the territorial jurisdiction of the Choctaw Nation of Oklahoma for a period of at least thirty (30) days, who are of sound mind and discretion and of good moral character are competent to act as jurors, except as herein provided, whether or not said person is a member of the Choctaw Nation of Oklahoma.

B. No person shall be excluded from service as a trial juror in the District Court of the Choctaw Nation of Oklahoma on account of race, color, religion, sex, national origin, or economic status.

C. The following persons are not qualified to serve as jurors:

1. judges of the Court of Appeals of the Choctaw Nation and all employees of the court;
2. judges of the District Court of the Choctaw Nation and all employees of the court;
3. the Clerk of the Court of Appeals and all employees in his or her office;
4. the Clerk of the District Court and all employees in his or her office;
5. law enforcement officers;
6. licensed attorneys of any jurisdiction and peacemakers of the peacemaking court;
7. persons who have been convicted of any felony or crime involving moral turpitude, provided that when such conviction has been vacated, overturned upon appeal, or pardoned or when any such person has been fully restored to his civil rights by the jurisdiction wherein such conviction occurred, the person shall be eligible to serve as a juror;

8. Choctaw Nation elected or appointed officials, not to include employees of the Choctaw Nation of Oklahoma; and
 9. Elected or appointed officials of the Federal Government or of the State of Oklahoma.
- D. The court may excuse or discharge any prospective juror selected and summoned as a juror at the request of the person, if the person is:
1. over seventy (70) years of age;
 2. a practicing physician, optometrist, dentist or veterinarian;
 3. a public or private school teacher;
 4. a parent or guardian with unattended minor children who are not in school; or
 5. persons who have served as a juror during the last two (2) immediately preceding calendar years in the courts of the Choctaw Nation of Oklahoma.
- E. The court may also excuse or discharge any prospective juror selected and summoned as a juror at the request of the person, if jury service would cause undue or extreme physical or financial hardship to the prospective juror or a person under his or her care or supervision. A judge of the court for which the individual was called to jury service shall make undue or extreme physical or financial hardship determinations. The authority to make these determinations is delegable only to judges of the Choctaw Nation of Oklahoma. A person requesting to be excused based on a finding of undue or extreme physical or financial hardship shall take all actions necessary to have obtained a ruling on that request by no later than the date on which the individual is scheduled to appear for jury duty. For purposes of this section, “undue or extreme physical or financial hardship” is limited to circumstances in which an individual would be required to abandon a person under his or her personal care or supervision due to the impossibility of obtaining an appropriate substitute caregiver during the period of participation in the jury pool or on the jury, incur costs that would have a substantial adverse impact on the payment of the individual’s necessary daily living expenses or on those for whom he or she provides the principle means of support, or suffer physical hardship that would result in illness or disease. Undue or extreme physical or financial hardship does not exist solely based on the fact that a prospective juror will be required to be absent from his or her place of employment. A person requesting a judge to grant an excuse based on undue or extreme physical or financial hardship shall be required to provide the judge with documentation, such as, but not limited to, federal and state income tax returns, medical statements from licensed physicians, proof of dependency or guardianship, and similar documents, which the judge

finds to clearly support the request to be excused. Failure to provide satisfactory documentation shall result in a denial of the request to be excused.

Section 8. Substantial Compliance

Substantial compliance with the provisions of this title shall be sufficient to prevent the setting aside of any verdict or decision rendered by a jury chosen hereunder, unless the irregularity in drawing, and summoning, or impaneling the same resulted in depriving a party litigant of some substantial right; provided, however, that such irregularity must be specifically presented to the district court within thirty (30) days of the filing of a decision in the action.

Section 9. Number of Jurors

In any case before the Choctaw Nation District Court, a jury shall consist of six (6) jurors and a minimum of one (1) alternate selected from the current list of eligible jurors as provided for herein.

Section 10. Challenges to Jurors

The plaintiff and the defendant may challenge and have dismissed not more than three (3) jurors selected from the list of eligible jurors without cause. There shall be no limit to challenges for cause. The trial judge shall decide as to the sufficiency of all challenges for cause. In cases involving multiple plaintiffs and/or multiple defendants, the trial judge shall, in his or her discretion, determine the appropriate number of challenges without cause that may be exercised by the plaintiffs and/or defendants, but in no event shall the total number of challenges to be exercised by the plaintiffs and or defendants be less than three (3) jurors selected from the list of eligible jurors.

Section 11. Role of the Court and Jury

The trial judge shall instruct the jury as to the law applicable to the case. The jury shall decide the facts in accordance with the law as supplied by the trial court. The trial judge will render judgment in accordance with a jury's verdict and existing law.

Section 12. Jury Selection

- A. In selecting a jury from among the panel members, the initial questioning of the jurors shall be conducted by the trial judge in order to determine whether each perspective juror is capable of being fair and impartial. Questions to be asked by the trial judge include whether a panel member:
1. is directly related and a person involved in the action, including, but not limited to, the parties, counsel, alleged victims, or any perspective witness;
 2. is or has been involved in any business, financial, professional, or personal relationship with a party or alleged victim;

3. has had any previous involvement in a criminal or civil lawsuit or dispute with a party or alleged victims;
4. has a financial or personal interest in the outcome of the action before the court; or
5. has formed an opinion as to the defendant's guilt or innocence.

When the court determines that a juror is prejudiced or cannot act impartially, the juror shall be excused. After questioning by the trial judge, the parties may, at the judge's discretion, question the jurors concerning the nature of the action. The trial judge may limit such examination when the judge believes that such examination to be improper, or unacceptably time consuming.

- B. All challenges to perspective jurors must be made to the trial court before the jury was empaneled and sworn. When a potential challenge for cause is discovered after the jury is sworn, and before the introduction of any evidence, the court may allow a challenge for cause to be made. Each party shall have unlimited challenges for cause. Each such challenge for cause must be identified on the record and determined by the trial court at the time the challenge was made. Each party shall have three (3) peremptory challenges. In criminal cases where defendants are tried together, prosecution and defense shall each be entitled to one additional peremptory challenge. In civil cases involving multiple parties, additional challenges may be allowed at the discretion of the court.

Section 13. Oath to the Jury

After selection of the jury and prior to the opening statements of the parties, the court shall place the jury under oath or affirmation

OATH TO THE JURY

Do you, and each of you, solemnly swear (affirm) that you will well and truly try the issues submitted to you in the case now on trial and reach a true verdict, according to the law and evidence presented to you, so help you God? (Or, this you do affirm under the penalties of perjury?)

Section 14. Failure to Appear for Jury Service

An individual who fails to appear in person on the date set pursuant to Section 4 of this act, and who has failed to be excused or discharged, shall be in indirect contempt of court and shall be punished by the imposition of a fine not to exceed One Hundred Dollars (\$100.00), a second and subsequent violation of this section shall result in a fine not to exceed Five Hundred Dollars (\$500.00). The prospective juror may be excused from paying sanctions for good cause shown or in the interests of justice. In addition to or in lieu of the fine, the court may order that the prospective juror complete a period of community service for a period no less than if the

prospective juror would have completed jury service, and provide proof of completion of this community service to the court.

Section 15. Discharge of Employee for Jury Service

- A. No person shall be discharged from his employment because of said person's absence from his or her employment by reason of having been required to serve on a jury for the court.
- B. An employee may not be required or requested to use annual, vacation, or sick leave for time spent responding to a summons for jury duty, time spent participating in the jury selection process, or time spent actually serving on a jury. Nothing in this provision shall be construed to require an employer to provide annual, vacation, or sick leave to such employees who otherwise are not entitled to such benefits under company policies.
- C. Any person, firm, or corporation who discharges or causes to be discharged an employee because of said person's absence from his or her employment by reason of having been required to serve on a jury for the court shall be liable to the person so discharged in a civil action at law for both actual and punitive damages. Damages shall include all pecuniary losses suffered including, but not limited to, lost earnings, both past and future, mental anguish, and all reasonable damages incurred in obtaining other suitable employment, including the cost of relocation and retraining, if any, and a reasonable attorney fee to be determined by the court.

Section 16. Adverse Action Against Student for Jury Service Prohibited

No school, college, university, or other educational institution may take or permit to be taken any adverse academic action against a student because of the student's service on a jury or because the student was summoned for jury service.

Section 17. Fees and Mileage for Jurors

Jurors and persons summoned for jury duty shall receive \$100.00 per day of jury duty and the current mileage reimbursement rate to and from his or her usual residence to the court at the rate specified in the Federal Register of the United States.

Section 18. Conduct of Jury During Trial

Once empaneled, jurors shall be instructed by the trial judge that it is their duty not to converse among themselves or with anyone else on the subject connected with the trial, or to form or express an opinion thereon, until the issues of the case are finally submitted to them. Jurors may be allowed to take notes, in the discretion of the trial court. Each adjournment or recess prior to the submission of the case to the jury, jurors notes shall be collected by the bailiff and the trial judge shall instruct the jurors as to whether they may separate or must remain in the case of the bailiff or other proper court officer.