



# **Title IV – Criminal Procedure Code**

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## **Alabama-Coushatta Tribe of Texas Comprehensive Codes of Justice**

**Adopted and Codified as Title IV- Criminal Procedure Code of the A-C, C.C.J. on  
November 24, 2014, by Tribal Council Resolution #2014-85  
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*Title IV- Criminal Procedure Code is comprised of all Tribal statutes relevant to the Rules of Criminal Procedure applicable to the Tribal trial and appellate courts.*

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**CHAPTER I.            CRIMINAL PROCEDURE CODE**

**Sec. 101    Definitions**

**(A)** In this section, the following terms shall mean:

**(1) Arraignment.** Proceeding in which the accused is brought before the court, the court reads the charges, and the accused pleads guilty or not guilty to the charges against him or her.

**(2) Bail.** An amount of money set by the Judge which must be posted by a defendant in order to gain his release until trial, or appellate proceedings; the amount of bail is set at such amount as to reasonably insure that the defendant comes to Court when he is required.

**(3) Bail Bond.** Cash, some type of surety arrangement, or other type of security posted by a defendant to meet the bail set by the Judge as prerequisite to defendant's release from custody until a trial or appellate proceedings.

**(4) Civil Infraction.** An act or omission for which a sentence of incarceration is not authorized.

**(5) Code.** The Criminal Procedure Code of the Alabama-Coushatta Tribe of Texas.

**(6) Complaint.** A written statement of the essential facts constituting the offense(s) charged.

**(7) Complainant.** Any person signing a complaint alleging a violation of the Code.

**(8) Court.** The Alabama-Coushatta Tribe of Texas Tribal Court.

**(9) Crime.** An act or omission for which a sentence of incarceration is authorized.

**(10) Individual Rights.** Those rights set forth in 25 U.S.C. § 1302 as construed by Federal Courts of controlling jurisdiction.

**(11) Motions.** Requests, either written or oral, made to the Court for an order.

**(12) Offense.** A criminal offense set forth in Title VIII of the Comprehensive Judicial Code.

**(13) Officer.** Officer of the Alabama-Coushatta Tribe of Texas Police Department authorized to enforce the Alabama-Coushatta Tribe of Texas Criminal Code and other Codes.

**(14) Personal Recognizance.** A promise by a defendant to appear at trial or appellate proceeding upon which promise the Judge orders defendant's release from custody.

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**(15) Probable Cause.** “A reasonable amount of suspicion, supported by circumstances sufficiently strong to justify a **prudent and cautious person's** belief that certain facts are **probably** true.”

**(16) Public Servant.** A public servant is a person who is serving the Tribal government, State of Texas, or Federal government, or any of their political subdivisions as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services.

**(17) Serious Physical Injury.** A physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

**(18) Summons.** A notice to appear before the Court.

**(19) Summons and Complaint.** A single document containing all the requisites of both a summons and complaint.

**(20) Violation.** A criminal violation set forth in Title VIII of the Comprehensive Judicial Code.

**(21) Warrant, Arrest/Search.** Document issued by the Court expressly authorizing and directing an officer to execute an arrest or conduct a search of specifically delineated premises.

**Sec. 102      Establishment of Court**

Pursuant to Article XIII of the Constitution of the Alabama-Coushatta Tribe of Texas, there is established for the Alabama-Coushatta Tribe of Texas, a Court known as the Alabama-Coushatta Tribal Court.

**Sec. 103      Jurisdiction**

The trial division of the Alabama-Coushatta Tribal Court is vested with jurisdiction to enforce all provisions of this Code, as amended from time to time, against any person violating the Criminal Offenses and Criminal Violations of the Tribe **within the territory** of the Alabama Coushatta Tribe of Texas, **as that term is described in Article 1 Section 1 of the Tribe’s Constitution** who is under the jurisdiction of the Tribal Court.<sup>1</sup>

**Sec. 104      Judges**

**(A) Appointment.** The Tribal Council of the Alabama-Coushatta Tribe of Texas shall appoint a Chief Judge of the Trial Division of the Tribal Court. The Tribal Council may appoint as many Associate Judges as needed. All Judges will be appointed to serve for a term

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<sup>1</sup> Sec. 103 – Jurisdiction – Revised on May 17, 2016 by Tribal Resolution #2016-22

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of four (4) years, and all Judges are eligible for re-appointment at the end of each term of office.

**(B) Eligibility.**

**(1)** Any person who has graduated from an accredited law school and is an active member of any state bar may be eligible to serve as a Judge of the Alabama-Coushatta Tribal Court.

**(2)** No candidate shall ever have been convicted of a felony or, within one year past, of misdemeanor involving moral turpitude. An eligible candidate must be of high moral character and physically sound.

**(C) Conflict of Interest.** No Judge shall be qualified to act as such in any case wherein said Judge has any vested interest or wherein any relative by marriage or blood in the first or second degree is a party.

**(D) Unlawful Interference.** No member of the Alabama-Coushatta Tribal Council shall attempt to use said member's position to influence any decision of the Court.

**Sec. 105 Court Personnel**

**(A) Tribal Court Administrator.** The Tribal Administrator will hire a Tribal Court Administrator who will be responsible for hiring and firing all court personnel, except for the Trial Court Judges, planning and administering the court budget and for oversight of all court record keeping and reporting.

**(B)** The Tribal Court Administrator, in consultation with the Chief Judge of the Trial Division, shall appoint a person to be Clerk of the Court and, as such, to undertake all administrative duties of the Court as directed by the Tribal Court Administrator, including but not limited to maintaining court records with the utmost care and security, collecting fees and fines authorized under this Code; issuing marriage licenses, issuing jury summonses and providing general information to tribal members about the functions of the tribal courts.

**(C) Bailiffs.** Officers of the Alabama-Coushatta Tribal Police Department, on direction of the Chief of Police, shall serve as Bailiff when the Court is in session. As such, they shall be responsible for preserving the peace and decorum of the Court Room while the Court is in session and undertaking other responsibilities as ordered by the presiding Judge.

**Sec. 106 Appearance of Attorneys**

The Chief Judge of the Trial Division of the Alabama-Coushatta Tribal Court shall establish minimum standards of education, experience, familiarity with tribal laws and customs, conduct and moral character for attorneys wishing to represent clients before the Alabama-Coushatta Tribal Courts. At a minimum, any attorney appearing before the Tribal Court must be licensed to practice before a Federal District Court in at least one Federal

District or licensed to practice in the highest court of any state. No attorney shall be qualified to appear before the Tribal Court until said attorney has met the standards established by the Chief Judge of the Trial Division.

**Sec. 107     Tribal Prosecutor**

The Tribal Council of the Alabama-Coushatta Tribe of Texas shall appoint a Tribal Prosecutor to serve as prosecutor for the Tribe. The Tribal Council may appoint as many Assistant Tribal Prosecutors as needed.

**Sec. 108     Tribal Public Defenders**

The Tribal Council of the Alabama-Coushatta Tribe of Texas shall appoint a Tribal Public Defender to represent all defendants who are unable to retain an attorney to represent them in any manner in which a defendant is charged with an offense found in Title VIII- Criminal Offenses and Violations Code of the A-C, C.C.J.

**Sec. 109     The Complaint**

**(A)** All prosecutions for violations of the offense or violations contained in Title VIII – Criminal Offenses and Violations Code of the A-C, C.C.J. shall be commenced by the filing of a Complaint. All Complaints must be signed by an officer of the Alabama-Coushatta Tribal Police Department or the Tribal Prosecutor. Immediately after service, all Complaints shall be filed with Court.

**(B)** The Complaint shall:

- (1)** Be in writing and in the name of the Alabama-Coushatta Tribe of Texas;
- (2)** State the name of the accused, if known, and if not known, designate the accused by description so the accused can be identified with reasonable certainty;
- (3)** Bear the signature of the arresting officer or Tribal Prosecutor;
- (4)** State the name and section number of the offense or violation charged;
- (5)** State the facts constituting the offense or violation in ordinary and precise language, and in such manner as to enable a person of common understanding to know what conduct is alleged to constitute the offense or violation; and
- (6)** State the time and place of offense as definitely as can be done.

**Sec. 110     Summons**

A summons may be issued by the Judge following the filing of a Complaint when the Complaint alleges that an offense or violation has been committed by the accused. The summons shall contain the name of the accused and shall direct the accused to appear before the Court at a stated date, time and place.

**Title IV– Criminal Procedure Code/C.C.J.****Sec. 111      Summons and Complaint**

A Summons and Complaint may be issued by an officer for an offense or violation which was committed in his presence, or if not committed in his presence, when he has probable cause for believing that the offense or violation was committed in fact by the accused. A copy of the summons and complaint so issued shall be filed immediately with the Court before which appearance is required. A second copy shall be supplied to the prosecutor.

**Sec. 112      Service of Summons and Summons and Complaint**

A Summons and/or Complaint issued pursuant to these rules shall be served on the accused personally or by registered mail with return receipt requested by an officer. Service and proof of service shall be documented and provided to the appropriate court.

**Sec. 113      Arrest by Warrant on Complaint**

(A) In lieu of a summons, an arrest warrant may be issued by the Judge at this discretion following the filing of a Complaint charging an offense set forth in Title VIII of the Comprehensive Judicial Code by an officer or the Tribal Prosecutor.

(B) When an accused is arrested under a warrant, the accused shall be taken without unnecessary delay before the Judge who issued the warrant and at such time a copy of the Complaint and warrant shall be given to him. Also, at such time, the Judge shall either:

- (1) Set bail or release the accused on personal recognizance and give a summons to the accused; or
- (2) Order the accused held in custody and to proceed without unnecessary delay with arraignment according to Sec. 117.

**Sec. 114      Arrest Without Warrant**

(A) A law enforcement officer may make an arrest without a warrant if the officer has probable cause to believe that the person has committed an offense set forth in Title VIII – Criminal Offenses and Violations Code of the A-C, C.C.J. , or for any other federal or state criminal offense committed in the officer's presence, or if there is probable cause to believe the person has violated a protective order.

(B) A law enforcement officer may arrest a person without a warrant when the officer is notified by another law enforcement officer of any other jurisdiction that there exists a duly issued warrant for the arrest of a person charged with a crime committed within the officer's jurisdiction.



**Sec. 115      Arrest by Warrant on Failure to Appear**

If an accused, on which a summons has been served pursuant to this Code, fails to appear in person or by counsel at the place and time specified therein, a bench warrant may be issued by the Judge for the arrest of the accused.

**Sec. 116      Execution of Warrant**

A warrant issued according to this Code shall be executed by an officer within the boundaries of the Alabama-Coushatta Tribe of Texas Territories.

**Sec. 117      Magistration of Defendant in Custody**

The Tribal Judge, either electronically or in person at the jail or court, shall hold a Magistration proceeding for any defendant in custody during the first seventy-two (72) hours of custody, excluding holidays recognized by the Tribal government, Saturdays, and Sundays. Failure to hold this proceeding within the required time shall result in the release of the defendant. During this proceeding the Judge will determine bail pursuant to Sec. 120 below and also sua sponte issue any protective orders or injunctions against the Defendant reasonably necessary in the Judge’s discretion to protect any alleged victim from further harm by the Defendant. <sup>2</sup>

**Sec. 118      Arraignment**

An arraignment shall be conducted in open Court on the defendant's first appearance in Court unless defendant is granted a continuance to seek assistance of counsel to determine which plea to enter, or for other good or sufficient reason. The Judge shall advise each defendant of his right to have the arraignment continued on his request for good cause which may be made at any time prior to pleading guilty or not guilty. If no such request is made, the Judge may proceed with the arraignment in accordance with this rule.

**(A)** The defendant may appear in person or by legal counsel.

**(B)** Before defendant is called on to plead guilty or not guilty, the following proceedings shall be conducted by the Judge:

**(1)** The complaint shall be read to the defendant or the substance of the charge in the complaint shall be stated to him;

**(2)** The defendant shall be given a copy of the complaint or summons and complaint, if one has not been previously served;

**(3)** The defendant shall be advised of the maximum penalty which the Judge may impose in event of conviction; and

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<sup>2</sup> New Sec. 117 – Added on May 17,2016, by Tribal Resolution #2016-22

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- (4)** The judge shall inform the defendant of defendant's rights, which shall include, but not be limited to, the following:
- (a)** The right to counsel and the right to a reasonable continuance to obtain legal counsel;
  - (b)** The right to be informed of the charges against defendant;
  - (c)** The right to have the Court compel the witnesses against defendant to appear and testify;
  - (d)** The right to cross-examine and question the witnesses against defendant;
  - (e)** The right to call witnesses in defendant's own behalf and to have the Court issue subpoenas within its jurisdictional limits notifying the witnesses to appear;
  - (f)** The right to a speedy trial (180 days if the defendant is accused of a felony; 90 days if the defendant is accused of a misdemeanor punishable by imprisonment for more than 180 days; 60 days if the defendant is accused of a misdemeanor punishable by imprisonment of 180 days or less, or punishable by a fine only);
  - (g)** The right to a public trial;
  - (h)** At trial, the right to testify or not to testify in defendant's own behalf, because defendant has the privilege against self-incrimination;
  - (i)** If found guilty, the right to appeal;
  - (j)** The right to file a writ of habeas corpus in the United States District Court if defendant believes defendant's right have been violated;<sup>3</sup>
  - (k)** The right to be released on bail or on his own recognizance pending trial; and
  - (l)** The reading of any or all of these rights may be expressly waived by a defendant represented by legal counsel.

**Sec. 119 Pleas**

- (A)** A defendant, personally or by legal counsel, may plead guilty or not guilty.
- (B) Plea of Not Guilty.** If defendant pleads not guilty, the Judge shall:
  - (1)** Set the date and time for trial, or for further proceedings; and

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<sup>3</sup> Existing Section 117 renumbered to 118 and revised on May 17, 2016, by Tribal Resolution #2016-22

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**(2)** Advise the defendant of defendant's right to bail if the defendant is still in custody on arrest with or without warrant. If bail has not yet been set, the Judge shall set bail.

**(C) Plea of Guilty.** The Court shall not accept the plea of guilty without first addressing the defendant personally and determining that the plea is made voluntarily, with the understanding of the nature of the charge, explaining fully to the defendant the defendant's right to trial, right to counsel, and the maximum penalty possible for the offense(s) charged. The Judge shall not enter a judgment on a plea of guilty unless the Judge is satisfied that the defendant is pleading guilty because the defendant, in fact, committed the offense of which defendant is charged. On acceptance of a plea of guilty, the Judge may sentence immediately or at a later date.<sup>4</sup>

**Sec. 120 Bail**

**(A) Entitlement.** Every defendant shall be entitled to bail. Bail shall be set by the Judge. Bail is allowable pending appearance before the Trial Court or, if after conviction, during the appeal process in a case involving non-violent offenses. Bail shall be set at the completion of the Magistration proceeding, or at the close of arraignment.

**(B) Amount.** A defendant shall be entitled to have bail set in an amount which in the judgment of the Judge is necessary and sufficient to insure the defendant's presence at future Court proceedings at which defendant's presence is required.

**(C) Form of Bail Bond and Place of Deposit.** A defendant allowed bail shall execute a bond for his appearance in Court on a designated day, and from day to day thereafter as the Judge may deem appropriate. The bail bond may be in the form of cash, some type of surety arrangement, or other kind of security as may be acceptable in the judgment of the Clerk of the Court. A personal recognizance bond may be allowed by the Judge at the Judge's discretion in lieu of cash, surety or other kind of security bond. The bond shall be made and deposited in the office of the Clerk of the Court.

**(D) Disposition of Bail.**

**(1) Forfeiture.** If there is a breach of a condition of a bond, the Judge shall declare a forfeiture of the bail.

**(a) Setting Aside.** The Judge may direct that a forfeiture be set aside, on such conditions as the Judge may impose, if it appears that justice does not require the enforcement of the forfeiture.

**(b) Enforcement.** By entering into a bond, each obligor, whether defendant or surety, submits to the jurisdiction of the Court. An obligor's liability under the bond may be enforced, without the

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<sup>4</sup> Existing Sec. 118 renumbered to 119 on May 17, 2016 by Tribal Resolution# 2016-22

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necessity of an independent action. The Judge shall order the issuance of a citation directed to the obligor to show cause why judgment should not be entered against him forthwith and execution issued thereon. Said citation shall be served personally or by registered mail on the obligor at the address given in the bond. Hearing on the citation shall be held not less than twenty days after service. The defendant and the prosecutor shall be given notice of the hearing. At the conclusion of the hearing, a judgment and execution shall issue thereon as on other judgments. Judgment may be for Contempt of Court and bail posted may also be forfeited.

**(2) Exoneration of the Obligor.** The obligor shall be exonerated when the condition of the bond has been satisfied; or, when forfeiture has been declared, the amount of forfeiture has been paid; or on surrender of the defendant into custody before judgment on an order to show cause and on payment of all costs occasioned thereby.

**(3) Continuation of Bond.** In the discretion of the Judge and with the consent of surety, the same bond may be continued until the final disposition of the case on appeal in a case involving a non-violent offense. Otherwise, the defendant shall be detained during the pendency of the appeal.<sup>5</sup>

**Sec. 121 Motions During Arraignment**

**(A) Defenses and Objections which may be passed by Motion.** Any defense or objection which is capable of determination without the trial of the general issue may be raised during arraignment.

**(B) Defenses and Objections which must be raised.** The following defenses and objections must be raised by motion during arraignment:

**(1)** Generally, defenses and objections based on defects in the institution of the prosecution or in the complaint including but not limited to:

**(a)** Motions to dismiss for defective complaint (other than it fails to show jurisdiction in the Court or to change an offense) defective warrant, defective service, or unnecessary delay in arraignment; and

**(b)** Motion to disqualify the Judge.

**(C) Disqualification of Judge.** Whenever a party to any proceeding believes that the Judge has a personal bias or prejudice either against him or in favor of an adverse party,

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<sup>5</sup> Existing Sec. 119 renumbered to 120 and revised on May 17, 2016, by Tribal Resolution #2016-22

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the party may move to disqualify the Judge. The moving party must state the facts and reasons for the party's belief that prejudice or bias exists. A party may make only one such motion in any case and that motion must be made in good faith.

**(D) Waiver of Defenses or Objections required to be raised.** Failure to present any defense or objection required to be raised during arraignment constitutes a waiver of such defense or objection, but the Judge for cause shown may grant relief from the waiver.

**(E) Notice of Lack of Jurisdiction or Defect in Complaint by Court.** Lack of Jurisdiction or failure of the complaint to charge an offense or civil infraction may be noticed by the Judge at any time pending final disposition of the case.

**(F) Time and Manner of Making Motion.** Motions under this Code shall be made orally and before any plea is entered by the defendant, and shall be supported by reasons, therefore, also orally made. The Judge may require that a motion and reasons, therefore, be put in writing.

**(G) Hearing on Motion.** Motions under this Code shall be determined by the Judge during arraignment proceedings, unless the Judge orders that it is taken under advisement and deferred for determination at a later date.<sup>6</sup>

**Sec. 122 Joinder of Defendants or Offenses at Trial**

During arraignment, or at any time during the pendency of a criminal matter, the Judge may order two or more defendants to be tried together if the offenses and defendants could have been joined in a single complaint. The joinder, if ordered, must occur at least fifteen (15) days prior to trial, and notice shall be given to defendant forthwith.<sup>7</sup>

**Sec. 123 Pretrial Motions**

**(A) Generally.** Any defense or objection which is capable of determination without the trial of the general issue and which is not required to be raised during arraignment may be raised by pretrial motion.

**(B) Specifically.** Pretrial motions include, but are not limited to the following:

**(1) Motion for continuance of trial date;**

**(2) Motion to dismiss complaint for lack of jurisdiction or for failure to charge an offense;**

**(3) Motion for relief from prejudicial joinder.** If it appears the Defendant or his case is prejudiced by a joinder of offenses or of defendants in a complaint by such joinder for trial together, the Judge may order separate trials of courts, grant a severance of defendants or provide whatever other relief justice requires. In ruling on a motion by defendant for severance, the

<sup>6</sup> Existing Sec. 120 renumbered to 121 on May 17, 2016, by Tribal Resolution #2016-22

<sup>7</sup> Existing Sec. 121 renumbered to 122 on May 17, 2016, by Tribal Resolution#2016-22

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Judge may order the prosecutor to deliver to him for inspection privately in his chambers, any statements or confession made by defendants with the prosecutor intends to introduce in evidence at the trial;

**(4) Motion for pretrial conference.** At any time after the filing of the complaint, the Court, on motion of any party or on its own motion, may order one or more conferences to consider such matters as will promote a fair and expeditious trial. At the conclusion of a conference(s), the Judge shall prepare and file a memorandum of the matters agreed on; and

**(5) Motions in Limine.** A motion in limine to either suppress evidence or to admit evidence.

**(C) Time and Manner of Making and Opposing Motions.** Motions made under this Code shall be written and supported by reasons therefore, and shall be filed not later than fifteen (15) days before the trial date. Such motions shall be served on the opposing party simultaneously with filing thereof. Response in opposition to such motions shall be made in writing and supported by reasons therefore, and shall be filed not later than five (5) days before the trial date. Responses in opposition shall be served simultaneously with the filing thereof. The Judge, at his discretion, may direct that any motion be made orally.

**(D) Determination of Motions.** The Judge may enter judgment on pretrial motions solely on papers filed, or he may set a date and time for a hearing on the pretrial motions.<sup>8</sup>

**Sec. 124     Disclosure**

**(A) Disclosure of Evidence by Prosecution, Information Subject to Disclosure.**

**(1) Statement of Defendant.** On request of a defendant the Tribal Prosecutor shall permit the defendant to inspect and copy or photograph the following:

**(a)** Any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the Prosecutor, the existence of which is known, or by the exercise of due diligence may become known, to the Prosecutor; and

**(b)** The substance of any oral statement which the Prosecutor intends to offer in evidence at the trial made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a Tribal agent.

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<sup>8</sup> Existing Sec. 122 renumbered to 123 on May 17, 2016, by Tribal Resolution #2016-22

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**(2) Defendant's Prior Record.** On request of the defendant, the Tribal Prosecutor shall furnish to the defendant such copy of his prior criminal record, if any, as is within the possession, custody or current control of the Prosecutor, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the Prosecutor.

**(3) Documents and Tangible Objects.** On request of the defendant the Tribal Prosecutor shall permit a defendant to inspect any copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof which are within the possession, custody or control of the Prosecutor, and which are relevant or likely to lead to the discovery of relevant evidence in the preparation of defendant's defense or are intended for use by the Prosecutor as evidence in chief at the trial, or were obtained from or belong to the defendant.

**(4) Reports and Examinations and Tests.** On request of a defendant the Tribal Prosecutor shall permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments, or copies thereof, which are within the possession, custody or control of the Prosecutor, the existence of which is known, or by the exercise of due diligence may become known, to the Prosecutor, and which are relevant or likely to lead to the discovery of relevant evidence to the preparation of the defense or are intended for use by the Prosecutor as evidence in chief at the trial.

**(5) Information Not Subject to Disclosure.** Except as provided in subsection (A) (1), (2) and (4) or by other rule, this rule does not authorize the discovery or inspection of reports, memoranda or other internal Tribal documents made by the Prosecutor or other Tribal agents in connection with the investigation or prosecution of the case, or of statements made by witnesses or prospective witnesses.

**(B) Disclosure of Evidence by Defense, Information Subject to Disclosure.**

**(1) Documents and Tangible Objects.** If the defendant requests disclosures under subsection (A) (3) or (4) of this Code, on compliance with such request by the Tribal Prosecutor, the defendant, shall permit the Prosecutor to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody or control of the defendant and which the defendant intends to introduce as evidence in defendant's case in chief at the trial.

**(2) Reports of Examinations and Tests.** If the defendant requests disclosure under subdivision (A)(3) or (4) of this Code, he shall permit the

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Prosecutor to inspect and copy or photograph any test results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as evidence in case in chief at the trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to his testimony.

**(3) Information Not Subject to Disclosure.** Except as to scientific or medical reports, this subdivision does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant, or his attorneys or agents in connection with the investigation or defense of the case, statements made by the defendant in connection to his defense, or by witnesses, or by prospective witnesses, to the defendant, his agents or attorneys made in connection with the defense.<sup>9</sup>

**Sec. 125      Subpoena**

**(A) Attendance of Witnesses, Form, Issuance.** A subpoena shall be issued by the Judge or by the clerk under authority of the Judge. It shall state the name of the Court and the title, if any of the proceedings, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein, or to provide documents at the time and place specified.

**(B) Service.** A subpoena may be served by a Tribal Police Officer. Service of a subpoena shall be made by delivering a copy thereof to the person ordered to appear.

**(C) Proof of Service.** Proof of Service of a subpoena shall be made by the person who served the subpoena in accordance with Sec. 124(B). If the person to be served cannot be located, the person who attempted to serve the subpoena shall file a statement of attempt to service which shall describe his efforts at service.

**(D) Contempt.** Failure by a person without adequate excuse to obey a subpoena served upon him may be deemed in contempt of the Court from which the subpoena issued.<sup>10</sup>

**Sec. 126      Trial Procedure****(A) Right to Trial.**

**(1)** In cases involving a violation of the violations set forth in Title VIII-Criminal Offenses and Violations Code of the A-C, C.C.J., the defendant shall have a trial by the Court in accordance with these rules.

<sup>9</sup> Existing Sec. 123 renumbered to 124 on May 17, 2016, by Tribal Resolution#2016-22

<sup>10</sup> Existing Sec. 124 renumbered to 125 on May 17, 2016, by Tribal Resolution #2016-2



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**(2)** In cases involving a violation of the offenses set forth in Title VIII – Criminal Offenses and Violations Code of the A-C, C.C.J., the defendant shall have a trial by jury, unless defendant unambiguously waives that right. In that case, a bench trial will be held.

**(3)** The prosecution has the burden of proving beyond a reasonable doubt that the defendant is guilty of the violation(s) or offense(s) as charged.

**(B) Number of Jurors.** Juries for criminal trial shall consist of six (6) jurors and one (1) alternate. The verdict must be unanimous.

**(C) Oath.** When a jury has been selected, the judge shall administer to the jurors the following oath: “You and each of you do solemnly swear or affirm that you will well and truly try the issues relative to the cause now on trial according to the law and the evidence under the pains and penalty of perjury.”

**(D) Juror Eligibility.** To be eligible to serve as a juror, a person must be an enrolled member of the Alabama-Coushatta Tribe of Texas and/or an employee of the Alabama-Coushatta Tribe of Texas or its enterprises. A juror must be eighteen (18) years of age or older, never have been convicted in any court of a felony, and must not at the time the list is made, or at the time of trial, be holding the office of Tribal Judge, Tribal Police Officer, or Tribal Council member, nor be a witness or a party in the matter before the court.

**(E) Juror List.** Jurors for trial shall be selected from a list of eligible jurors prepared from the Alabama-Coushatta Tribal Census Roll and non-member and employee statistics. The list of eligible jurors will be provided by Tribal Council, or a designee thereof, and submitted to the Tribal Court Administrator no later than December 15th of each year.

**(F) Selection of Panel.** Not less than twenty (20) days before the date set for the beginning of a jury trial, the Chief Judge of the Trial Division shall draw from the master jury list, at random, 24 names as potential jurors. The clerk of the court shall then issue and cause to be served upon each person who was selected a jury duty summons.

**(G) Jury Summons.** The jury summons shall notify the person being summoned to appear in court on the date set for the beginning of the trial, one hour before the time set for the trial.

**(H) Failure to Appear.** Failure of a person served with a jury summons to appear shall constitute contempt of court and the summons shall contain a warning to that effect.

**(I) Excuses from Jury Service.** A person for whom jury service would be a severe hardship may be excused from service by the judge, but such excuse from jury duty shall be disfavored.

**(J) Removal for Cause.** After the prospective jury panel has been seated, the judge shall examine each prospective juror as to their qualifications, and excuse any who appear to be biased, prejudiced, unable to fairly and effectively perform the duties of a juror or otherwise not qualified to serve as a juror. The judge shall permit the prosecution and

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defense to similarly examine and ask for the removal of jurors for cause, without any limit to the number of jurors so challenged or removed, except that all such challenges must be made in good faith. The judge shall excuse any juror he or she believes to be unqualified.

**(K) Peremptory Challenges.** After the Judge has ruled on any challenges for cause, the prosecution and defense each shall have the right to remove any two persons from the jury without stating any reason. The defense shall exercise its initial peremptory challenge first, and the parties shall alternately remove jurors, or waive their turn to do so, until they have exhausted their peremptory challenges.

**(L) The Seating of the Jury.** Following the exercise of the parties' peremptory challenges, the clerk of the court shall read aloud the first six names on the list and those persons shall be jurors for the trial. The clerk shall also read aloud the seventh name on the list, and that person shall be an alternate juror for the trial. The alternate juror shall act in all respects as a juror, except that he or she shall not participate nor vote during jury deliberation unless one of the other jurors has been excused by the judge during the course of the trial.

**(M) Opening Statements.** Both parties shall have the right to make an opening statement to summarize for the Court the facts, evidence and arguments each will present and rely on during trial. The prosecution shall present its statement first and the defense shall have the option of making its opening statement at that time or after the prosecution has completed the presentation of its case. Either side may waive the opening statement.

**(N) Presentation of the Prosecution's Case.** On the completion of the opening statements, the prosecution shall present to the Court, all of the evidence and testimony of witnesses on the prosecution's side of the case.

**(O) Presentation of the Defendant's Case.** On the completion of the presentation of the prosecution's case and after making any appropriate motions, the defense shall present to the Court all the evidence in accordance and testimony of witnesses for the defendant's case.

**(P) Rebuttal Case.** At the conclusion of the defendant's case, the prosecution can present evidence to refute evidence presented by the defendant. This may include only evidence not presented in the prosecution's case-in-chief, or a new witness who contradicts the defendant's witnesses.

**(Q) Reopening Case.** After the presentation of both sides of the case either side may ask that the case be reopened to allow the presentation of evidence or testimony that was inadvertently omitted, unavailable or non-existent earlier in the trial. Whether such evidence or testimony will be received is in the discretion of the Court.

**(R) Closing Arguments.** After the presentation of both sides of the case, both parties shall have the right to make closing arguments in which they may interpret the facts

and argue the law and generally summarizes the case as they interpret it. Either side may waive their right to making closing arguments.

**(S) Objections.** Objections may be made by either party to test the validity of any procedural, substantive, or evidentiary matter before the Court during any hearing or trial. All objections shall be made at the time the objectionable matter arises and the specific grants therefore shall be stated. The Court shall either rule immediately on the objection or take the matter under advisement for a later ruling in its discretion.<sup>11</sup>

### **Sec. 127      Motions at Trial**

Either party may make motions, all of which shall be oral unless otherwise directed by the Court throughout the course of the trial. Both parties shall have the opportunity to argue their respective positions on any motion(s) made. The motions that can be made include but are not limited to the following:

**(A) Motion for a Directed Verdict.** At the close of the prosecutor’s case, the defense may move that the Court direct a verdict of not guilty. Defendant’s motion shall be granted only if the prosecution has failed to present a prima facie case of defendant’s guilt.

**(B) Motions for Exclusion of Witnesses.** A motion to exclude all witnesses who have not yet testified may be made by either party or done by the Court on its own initiative, prior to the time any witness has testified to insure that the testimony of all witnesses is his own independent recollection of the facts and that he does not adopt the testimony of a prior witness. It shall be within the discretion of the Court to grant or deny a motion to exclude witnesses made by either party.

**(C) Motion for Mistrial.** A motion for mistrial can be made at any time during the trial and can be granted in the Court’s discretion. A party may make a motion for a mistrial when any action by any person other than the moving party, has the effect of prejudicing the outcome of the trial to the point that such prejudice could only be overcome by holding a new trial.

**(D) Motion for a Judicial Notice.** Either party may, during the presentation of its case, move the Court to take judicial notice of matters which by their nature, are not properly the subject of testimony or which are universally regarded as established by common notoriety. Granting or denying the motion shall be within the discretion of the Court.

**(E) Motion for a New Trial.** The defendant may make a motion for a new trial after a verdict of guilty has been rendered against him. The motion must specifically allege the errors made by the Court during the trial which forms the basis for the motion. The motion shall be granted or denied as justice dictates.

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<sup>11</sup> Existing Sec. 125 renumbered to 126 on May 17, 2016, by Tribal Resolution #2016-22

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**(F) Motion to Dismiss for Unnecessary Delay in Prosecution.** A motion to dismiss for unnecessary delay in prosecution may be made by the defendant prior to the commencement of the trial proceedings and shall be granted if any unreasonable amount of time has elapsed since the defendant was arraigned and if the delay was not requested or acquiesced in by the defendant.

**(G) Motion to Exclude Evidence.** A motion to exclude evidence may be made during the course of a trial when an opposing party introduces evidence that is inadmissible under these rules.<sup>12</sup>

**Sec. 128 Evidence**

**(A)** All evidence which the Court deems proper and necessary for reaching a true and just verdict or which is in accordance with Tribal customs and traditions shall be deemed subject to rules governing the permissible scope of search and seizure. In reaching a decision on the admissibility of any evidence, the Court may avail itself of any materials, books or documents prior to rule.

**(B)** The testimony of witnesses shall be given orally unless the witness, for good reason presented to the Court, is or will be unable to appear personally in Court, in which case arrangements shall be made by the party calling the witness, for both parties to simultaneously question the witness under oath for purposes of obtaining a written statement for presentation to the Court at trial. Before either party relies or comments on a written statement so taken at trial, it shall be presented to the Court and he shall strike out any questions, answers or statements he deems improper. Any witness testifying in Court or being questioned for purposes of a written statement shall be subject to direct examination by the party who called him as a witness, cross-examination by the opposing party, redirect examination by the party who called him and re-cross examination by the opposing party.

**(C)** The defendant cannot be compelled to testify as a witness. If the defendant invokes this privilege and does not testify, the Court shall not consider such action as an indication of evidence of guilt. If the defendant voluntarily testifies he shall be subject to direct, cross, redirect, and re-cross examination, the same as any other witness.

**(D)** Evidence obtained by unlawful search and seizure is inadmissible. Lawful searches and seizures may be made in accordance with the following subsections.

**(1) Permissible Objects of Search and Seizure.** The following are subject to search and seizure:

**(a)** Evidence of or information concerning the commission of a criminal offense;

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<sup>12</sup> Existing Sec. 126 renumbered to 127 on May 17, 2016, by Tribal Resolution#2016-22

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- (b) Contraband, the fruits of the crime, or things otherwise criminally possessed;
- (c) Property that has been used, to commit or conceal the commission of an offense; and
- (d) A person for whose arrest there is probable cause or who is unlawfully held in concealment.<sup>13</sup>

**Sec. 129      Issuance of Search Warrant**

(A) A search warrant may be issued only by a Trial Judge.

(B) Application for a search warrant may be made only by a tribal attorney or by any tribal police officer.

(C) The application shall consist of a proposed warrant in conformance with Sec. 129, and shall be supported by one or more affidavits particularly setting forth the facts and circumstances tending to show that such things are in the places, or in the possession of individuals, to be searched. If an affidavit is based in whole or in part on hearsay, the affiant shall set forth facts bearing on any unnamed informants reliability and shall disclose, as far as possible, the means by which the information was obtained.

(D) **Hearing.** Before acting on the application, the Judge may examine under oath the affiants, the applicant and any witnesses he may produce, and may himself call such witnesses as he considers necessary to a decision. He shall make and keep a record of any testimony taken before him. The record shall be admissible as evidence on any motion to suppress.

(E) If the Judge finds that the application meets the requirements of Sec. 129, and that, on the basis of the record made before him, there is probable cause to believe that the search will discover things specified in the application and subject to seizure), he shall issue a search warrant. If he does not so find, the Judge shall deny the application.

(F) Until the warrant is executed, the proceedings upon application for a search warrant shall be conducted with secrecy appropriate to the circumstances.

**(G)      Contents of Search Warrant.**

(1) A search warrant shall be dated and shall be addressed to an officer authorized by law to execute search warrants.

(2) The warrant shall state, or describe with particularity:

(3) The identity of the Judge issuing the warrant and the date the warrant was issued;

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<sup>13</sup> Existing Sec. 127 renumbered to 128 on May 17, 2016, by Tribal Resolution #2016-22

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- (4) The name of the person to be searched, or the location and designation of the premises or places to be searched in as much detail as practicable;
- (5) The things constituting the object of the search and authorized to be seized; and
- (6) The period of time, not to exceed five (5) days, after execution of the warrant except as otherwise provided, within which the warrant is to be returned to the issuing authority. If the warrant is not returned within five (5) days it is null and void and a new warrant must be applied for.

**(H) Execution of Warrant.**

- (1) A search warrant may be executed only within the period and at the times authorized by the warrant and only by a tribal police officer. A tribal police officer charged with its execution may be accompanied by such other persons as may be reasonably necessary for the successful execution of the warrant with all practicable safety.
- (2) The executing officer shall, before entering the premises, give appropriate notice of his identify, authority and purpose to the person to be searched, or to the person in apparent control of the premises to be searched, as the case may be.
- (3) Before undertaking any search and seizure pursuant to the warrant, the executing officer shall read and give a copy of the warrant to the person to be searched. If the premises are unoccupied or there is no one in apparent control, the officer shall leave a copy of the warrant suitably affixed to the premises.
- (4) The scope of search shall be only such as is authorized by the warrant and is reasonably necessary to discover the persons or things specified therein. Upon discovery of the persons or things so specified, the officer shall take possession or custody of them and search no further pursuant to the authority of the warrant. If in the course of the search the officer discovers things, not specified in the warrant, which he has probable cause to believe to be subject to seizure under Sec. 128(D)(1), which he did not have probable cause to expect to find, he shall also take possession of the things discovered.
- (5) Promptly upon completion of the search, the officer shall make a list of the things seized, and shall deliver a receipt embodying the list to the person from whose possession they are taken, or the person in apparent control of the premises or vehicle from which they are taken. If the vehicle or premises

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are unoccupied or there is no one present in apparent control, the executing officer shall leave the receipt suitably affixed to the vehicle or premises.

- (6) Use of Force in Executing Warrants.** The executing officer and other officers accompanying and assisting him may use the degree of force, short of deadly physical force, against persons, or to effect an entry, or to open containers, as is reasonably necessary for the execution of the search warrant with all practicable safety.

**(I) Return of the Warrant.**

**(1)** If a search warrant is not executed within the time specified by the warrant, the officer shall forthwith return the warrant to the issuing Judge.

**(2)** An officer who has executed a search warrant shall, as soon as is reasonably possible and in no event later than the date specified in the warrant, return the warrant to the issuing Judge together with a signed list of things seized and setting forth the date and time of the search.

**(3)** Subject to the provisions of subsection (D) herein, the issuing Judge shall file the warrant and list returned to him, with the record of the proceedings on the application.

**(4)** If the issuing Judge does not have jurisdiction to inquire into the offense in respect to which the warrant was issued or the offense apparently disclosed by the things seized, the Judge shall transmit the warrant and the record of proceedings for its issuance, together with the documents submitted on the return, to the clerk of the appropriate court having jurisdiction to inquire into such offense.

**(J) Handling and Disposition of Things Seized.**

**(1)** The provisions of subsections (b), (c), and (d) of this section apply to all cases of seizure except for a seizure made under a search warrant.

**(a)** If an officer makes an arrest in connection with the seizure, he shall, as soon thereafter as is reasonably possible, make a written list of the things seized and furnish a copy of the list to the defendant.

**(b)** If no claim to rightful possession has been established the court shall order that the things be delivered to the officials having responsibility under the applicable laws for selling, destroying or otherwise disposing of contraband, forfeited for unclaimed goods in official custody.

**(c)** If things seized in connection with an arrest are not needed for evidentiary purposes, and if a person having a rightful claim establishes his identity and right to possession beyond a

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reasonable doubt to the satisfaction of the seizing officer the office may summarily return the things seized to their rightful possessor. If the things seized are perishable and it is not possible to return them to the rightful possessor, the seizing officer may dispose of the items as justice and the necessities of the case require.

**(2) Motion for Return or Restoration of Things Seized.**

**(a)** After actual notice of any seizure, the Court in its discretion may allow:

- i.** An individual's things from whose person, property or premises have been seized may move the appropriate court to return things seized to the person or premises from which they were seized.
- ii.** Any other person claiming rightful possession of the things seized may move the appropriate court to restore the things seized to the movant.

**(b)** The appropriate court to consider such motion is:

- i.** The court having ultimate trial jurisdiction over any crime charged in connection with the seizure; or
- ii.** If no crime is charged in connection with the seizure, the court to which the warrant was returned; or
- iii.** If the seizure was not made under a warrant and no crime is charged in connection with the seizure, any court having authority to issue search warrants in the county in which the seizure was made.

**(c)** A motion for the return or restoration of things seized shall be based on the ground that the movant has a valid claim to rightful possession thereof, because:

- i.** The things had been stolen or otherwise converted, and the movant is the owner or rightful possessor; or
- ii.** The things seized were not in fact subject to seizure; or
- iii.** The movant, by license or otherwise, is lawfully entitled to possess things otherwise subject to seizure; or
- iv.** Although the things seized were subject to seizure, the movant is or will be entitled to their return or restoration upon the court's determination that they are no longer needed for evidentiary purposes; or



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- v. The parties in the case have stipulated that the things seized may be returned to the movant.

**(3) Postponement of Return or Restoration; Appellate Review.**

- (a)** In granting a motion for return or restoration of things seized, the court shall postpone execution of the order until such time as the things in question need no longer remain available for evidentiary use.
- (b)** An order granting a motion for return or restoration of things seized shall be reviewable on appeal in regular course. An order denying such a motion shall be reviewable on appeal upon certification by the court having custody of the things in question that they are no longer needed for evidentiary purposes.

**(4) Disputed Possession Rights.**

- (a)** If, upon consideration of a motion for return or restoration of things seized, it appears to the court that the things should be returned or restored, but there is a substantial question whether they should be returned to the person from whose possession they were seized or to some other person, or a substantial question among several claimants to rightful possession, the court may:
  - i.** Return the things to the person from whose possession they were seized; or
  - ii.** Impound the things seized and set a further hearing, assuring that all persons with a possible possessory interest in the things in question receive due notice and an opportunity to be heard; and
  - iii.** Upon completion of the hearing provided for in subsection (ii), enter an order for the return or restoration of the things seized.
  - iv.** If there is no substantial question whether the things should be returned to the person from whose possession they were seized, they must be returned to the person upon the release of the defendant from custody.
  - v.** Instead of conducting the hearing provided for in subsection (ii) and returning or restoring the property, the court in its discretion, may leave the several

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claimants to appropriate civil process for the determination of the claims.<sup>14</sup>

**Sec. 130     Verdict**

**(A)** On the completion of the closing arguments, the Court or jury shall render its verdict.

**(B)** The Court or the jury shall render a verdict of guilty if it believes the defendant to be guilty beyond a reasonable doubt, otherwise it shall render a verdict of not guilty. The Court shall have the option of rendering a verdict immediately after closing arguments or taking the case under advisement and ruling on it at a later date. The jury shall begin deliberations under the supervision of the Judge and will render its verdict if it cannot reach a unanimous decision. If the jury is unable to render a unanimous decision, it shall so inform the Judge. The Judge may instruct the jury to continue its deliberations in an effort to reach a unanimous decision until such time as the judge determines that it is impossible for the jury to reach such a decision. In such an event, the Judge shall declare a mistrial.

**(C)** If a verdict of not guilty is rendered by the Court or the jury, judgment shall be rendered immediately and the defendant shall be immediately released from custody.

**(D)** If a verdict of guilty is rendered by the Court or the jury, the Judge shall so advise the defendant in open Court, set a date for sentencing, and enter a judgment of guilty in the Court's records.<sup>15</sup>

**Sec. 131     Sentencing Procedure**

**(A)** On the date set for sentencing the defendant shall appear before the Trial Court and sentence shall be pronounced.

**(B)** The Judge may, in its discretion, order a pre-sentence investigation report inquiring in the characteristics, attitude, circumstances, needs, and potential of the

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<sup>14</sup> Existing Sec. 128 renumbered to 129 on May 17, 2016, by Tribal Resolution# 2016-22

<sup>15</sup> Existing Sec. 129 renumbered to 130 on May 17, 2016, by Tribal Resolution#2016-22

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defendant, his criminal and social history, circumstances of the offense and any other information pertinent to sentencing.

**(C)** A pre-sentencing investigation, if ordered, shall be available to defendant and he shall have an opportunity to rebut the contents thereof and offer information in addition thereto prior to sentencing.

**(D)** On an order by the Court for a pre-sentence investigation, such an investigation shall be undertaken by the clerk of the court. Said Report shall be completed and submitted to the Court within the time period established by the Court.<sup>16</sup>

**Sec. 132 Presence of the Defendant**

The defendant shall be present in person at all proceedings in his case unless the Judge directs that defendant may appear by counsel for all or certain proceedings.<sup>17</sup>

**Sec. 133 Contempt of Court**

**(A)** Any person or persons found guilty of any of the following acts shall be adjudged to be in Contempt of Court and shall be punished as the Court may direct:

- (1)** Disorderly, contemptuous, or insolent behavior toward the Judge while holding Court, tending to interrupt the due course of a trial or other judicial proceeding;
- (2)** A breach of the peace, boisterous conduct, or violent disturbance in the presence of the Judge, or in the immediate vicinity of the Court held by him, tending to interrupt the due course of a trial or other judicial proceeding;
- (3)** Disobedience or resistance to the carrying out of a lawful order or process made or issued by the Judge;
- (4)** Disobedience to a subpoena duly serviced, or refusing to be sworn in or to answer as a witness; and
- (5)** Rescuing or interfering with any person or property in the custody of a police officer.

**(B)** When a contempt is committed in the immediate view and presence of the Judge, it may be punished summarily. To that end, an order must be made reciting the facts as they occurred, and adjudging that the person proceeded against is thereby guilty of the contempt, and that he be punished as therein prescribed.

**(C)** When a contempt is not committed in the immediate view and presence of the Judge, a warrant of arrest may be issued by such Judge, whereupon the person who is charged may be forthwith arrested and brought before the Judge at which time the accused

<sup>16</sup> Existing Sec. 130 renumbered to 131 on May 17, 2016, by Tribal Resolution#2016-22

<sup>17</sup> Existing Sec. 131 renumbered to 132 on May 17, 2016, by Tribal Resolution#2016-22

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must be given an opportunity to be heard in his defense or excuse of his action or actions. The Judge may thereupon convict or discharge him of the charge.<sup>18</sup>

**Sec. 134      Time**

**(A) Computation.** In computing any period of time, the date of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a Tribal holiday. When a period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and Tribal holidays shall be excluded in the computation.

**(B) Enlargement.** The Judge may for cause shown at any time in its discretion, with or without motion, order the period enlarged if the request is made before the expiration of the period originally prescribed or as extended by a previous order. If a request is made after the expiration of the prescribed period, the Judge may permit the act to be done if failure to act is in the opinion of the Judge excusable.<sup>19</sup>

**Sec. 135      Service and Filing of Papers**

**(A) Service.** Any written document filed with the Court by a party shall be served on the other party.

**(B) Service, How Made.** Service when required shall be made on the defendant or his counsel by delivering to the defendant or his counsel, in person or by registered mail, a copy of the document to be served.

**(C) Service, by Whom Made.** Service shall be made by a tribal police officer except where otherwise prescribed in these rules.

**(D) Proof of Service.** Proof of service shall be made by the person serving a document by filing promptly after completion of service, a sworn signed statement containing the name of the person served, the document served, and the date, time and place served.

**(E) Territorial Limits.** Service may be made anywhere within the boundaries of the Alabama-Coushatta Tribe of Texas.

**(F) Notice of Orders.** Immediately upon the entry of an order of the Judge made on written pretrial motion, the clerk shall mail to each party, a notice thereof and shall make a note in the docket of the mailing. Email may be allowed with the written permission of the receiving party.

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<sup>18</sup> Existing Sec. 132 renumbered to 133 on May 17, 2016, by Tribal Resolution#2016-22

<sup>19</sup> Existing Sec. 133 renumbered to 134 on May 17, 2016, by Tribal Resolution# 2016-22

**(G) Filing.** Filing shall be accomplished by delivering the original and one copy of a document to the clerk who shall stamp it with the date. All papers required to be served shall be filed with the Court.<sup>20</sup>

**Sec. 136 Court Reporter and Transcripts**

All trials shall be recorded. Any party wishing a transcript of the trial shall bear the costs thereof.<sup>21</sup>

**Sec. 137 Court Records and Files**

All Court records and files shall be in the custody of the Clerk of the Court under the discretion and supervision of the Chief Judge of the Trial Division.<sup>22</sup>

**Sec. 138 Dismissal of Action by Court or Prosecution**

**(A) By the Court.** Whenever, in the opinion of the presiding Judge, the plaintiff has failed to state a cause of action, a non-justifiable action is presented or other such basic defect exists rendering judicial action improper, he may, on his own motion, dismiss said action with or without prejudice.

**(B) By the Prosecution.** The prosecution in any criminal proceeding, with the concurrence of the arresting officer, may recommend to the Court, that a case be dismissed; provided that good cause exists for said recommendation.<sup>23</sup>

**Sec. 139 Findings of Fact, Conclusions of Law**

**(A)** Whenever deemed necessary by a presiding Judge for purposes of effecting his judgment in a case, he shall prepare or direct the preparation of findings of fact, conclusions of law and a memorandum opinion.

**(B)** In every case wherein an appeal is taken, findings of fact, conclusions of law and a memorandum opinion shall be prepared.<sup>24</sup>

**Sec. 140 Calendars and Dockets**

The Clerk of the Court shall be responsible for controlling the calendar and dockets of the Court under such system as shall be established by the Judges of the Alabama-Coushatta Tribal Court.<sup>25</sup>

<sup>20</sup> Existing Sec. 134 renumbered to 135 on May 17, 2016, by Tribal Resolution#2016-22

<sup>21</sup> Existing Sec. 135 renumbered to 136 on May 17, 2016, by Tribal Resolution#2016-22

<sup>22</sup> Existing Sec. 136 renumbered to 137 on May 17, 2016, by Tribal Resolution#2016-22

<sup>23</sup> Existing Sec. 137 renumbered to 138 on May 17, 2016, by Tribal Resolution#2016-22

<sup>24</sup> Existing Sec. 138 renumbered to 139 on May 17, 2016, by Tribal Resolution#2016-22

<sup>25</sup> Existing Sec. 139 renumbered to 140 on May 17, 2016, by Tribal Resolution#2016-22

**Sec. 141      Filing Fees**

Filing fees shall be established by the Trial Court in an amount they deem proper. Said amount may be reviewed and revised periodically.<sup>26</sup>

**Sec. 142      Procedures for Appeal**

**(A)      Grounds for Appeal.** A party may appeal a final order of the Alabama-Coushatta Tribal Court to the Alabama-Coushatta Court of Appeals on an allegation, made in good faith, that an error was made by the Alabama-Coushatta Tribal Court that prejudiced the outcome of the proceedings before that Court or that an error was made by that Court in the interpretation of law.<sup>27</sup>

**(B)      Notice of Appeal.** The party wishing to appeal shall file a notice of appeal with both Courts within ten (10) working days after the decision being appealed is rendered.

**Sec. 143      Record on Appeal**

**(A)      Record on Appeal.** The record on appeal shall consist of the transcript of proceedings in the Alabama-Coushatta Tribal Court and all documents, exhibits, motions, briefs, and memoranda filed therein in that case along with all rulings, opinions, findings of fact, and conclusions of law issued by the Court therein.

**(B)      Transcript, Cost.** Any party requesting a transcript of the proceedings before the Alabama-Coushatta Tribal Court shall bear the cost thereof.<sup>28</sup>

**Sec. 144      Briefing and Argument**

**(A)      Schedule.** The Alabama-Coushatta Court of Appeals, on receipt of the notice of appeal, shall establish a briefing and argument schedule.

**(B)      Length of Argument.** The Alabama-Coushatta Court of Appeals shall determine and inform the parties in each case of the amount of time in which the arguments are to be presented.<sup>29</sup>

**Sec. 145      Briefs**

**(A)      Form.** All briefs shall be neatly typed on white 8 ½" x 11" paper. The first page shall contain the name of the Court, the name of the case and the docket number, along with the names, addresses and telephone numbers of the attorneys involved, if any.

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<sup>26</sup>Existing Sec. 140 renumbered to 141 on May 17, 2016, by Tribal Resolution#2016-22

<sup>27</sup> Existing Sec. 141 renumbered to 142 on May 17, 2016, by Tribal Resolution#2016-22

<sup>28</sup> Existing Sec. 142 renumbered to 143 on May 17, 2016, by Tribal Resolution #2016-22

<sup>29</sup> Existing Sec. 143 renumbered to 144 on May 17, 2016, by Tribal Resolution#2016-22

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**(B) Number and Sequence.** The parties shall file the following briefs in the following sequence in accordance with the briefing schedule established by the Court:

- (1) First.** Defendant’s Opening Brief;
- (2) Second.** Prosecution’s Answering Brief; and
- (3) Third.** Defendant’s Reply Brief.<sup>30</sup>

**Sec. 146**     **Decisions**

On the completion of the briefing schedule, receipt of the record on appeal and the hearing of arguments in the case, the Alabama-Coushatta Court of Appeals shall render a written decision which such concurring and dissenting opinions as the Judge shall deem necessary and a copy of that decision shall be sent to the parties.<sup>31</sup>

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<sup>30</sup> Existing Sec. 143 which should have been 144 renumbered to 145 on May 17, 2016, by Tribal Resolution#2016-22

<sup>31</sup> Existing Sec. 144 which should have been 145 renumbered to 146 on May 17, 2016, by Tribal Resolution#2016-22

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