

IN THE CHEROKEE COURT  
EASTERN BAND OF CHEROKEE INDIANS  
QUALLA BOUNDARY, CHEROKEE, NORTH CAROLINA

EBCI  
CHEROKEE TRIBAL COURT  
CHEROKEE, NC  
2011 APR 26 AM 9:22

EASTERN BAND OF CHEROKEE INDIANS,

v.

RUSSELL MCKINLEY WOLFE;  
LEWIS EMERSON BIRD;  
CINDA TAYLOR;  
ROBERT DOBO;  
MOSES REED;  
JOYCE SMOKER GREGORY;  
TANNER MOREN EAGLE LARCH;  
LLOYD EDWARD OWLE;  
JESSE DERRICK FRANKS;  
HUMBERTO CORRAL, JR;  
SHANE LOUIS WALKINGSTICK;  
PAM STRAUGHAN;  
JORDAN RAE WOLFE;  
JOHN WILLIAM GEORGE;  
JERRI LYNN SMITH;  
CURTIS R. LITTLEJOHN;  
HENDERSON BIDDIX;  
BRENTLY H. McCOY;  
NADINE A. TRAMPER;  
REGINA WATTY;  
ROBERT F. STAMPER, III;  
DANIEL J. RHINEHART;

Defendants.

CR-06-668  
CR-08-1360-62  
CR-09-521  
CR-09-1222  
CR-10-222; TR-09-1284  
CR-10-993  
CR-10-1132; 1395-96  
CR-10-1216-35  
CR-10-1238-39; 1241-42  
CR-10-1430  
CR-10-1430; CR-11-093  
CR-11-0143  
CR-11-201-02  
TR-09-1259  
TR-10-071-76  
TR-10-206  
TR-10-1048  
TR-10-1150  
TR-10-1623-24  
TR-11-067-069  
TR-11-145-46  
TR-11-221-22

FILED

BRENDA D. DAVIS,

Plaintiff,

v.

APRIL BIRD,

Defendant.

CV-02-268

<b>RACHEL L. PHEASANT,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-04-689</b>
	)	
<b>JEREMIAH LITTLEJOHN, JR.,</b>	)	
<b>Defendant.</b>	)	
_____	)	

<b>SARALYN S. JACKSON,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-06-436</b>
	)	
<b>HOWARD R. JACKSON,</b>	)	
<b>Defendant.</b>	)	
_____	)	

<b>ANNA E. PARTON,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-07-111</b>
	)	
<b>KALLUP E. MCCOY, II,</b>	)	
<b>Defendant.</b>	)	
_____	)	

<b>APRIL BIRD,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-07-303</b>
	)	
<b>BEAU CARROLL,</b>	)	
<b>Defendant.</b>	)	
_____	)	

<b>BRANDI OOCUMMA,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-07-511</b>
	)	
<b>ANDREW AGUILERA,</b>	)	
<b>Defendant.</b>	)	
_____	)	

<b>SHONA STAMPER,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-07-541</b>
	)	
<b>NATHANIEL WADE,</b>	)	
<b>Defendant.</b>	)	
_____	)	

<b>JONATHAN TOINEETA,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-07-548</b>
	)	
<b>JANICE CATOLSTER,</b>	)	
<b>Defendant.</b>	)	
_____	)	

<b>BIRDA F. LAMBERT,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-07-690</b>
	)	
<b>JUSTIN HAMILTON,</b>	)	
<b>Defendant.</b>	)	
_____	)	

<b>PATRICK WEST,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-07-790</b>
	)	
<b>VICTERIA SANDOVAL WEST,</b>	)	
<b>Defendant.</b>	)	
_____	)	

<b>REBECCA S. CROWE,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-07-838</b>
	)	
<b>CHRISTOPHER IAN COTTERMAN,</b>	)	
<b>Defendant.</b>	)	
_____	)	

<b>SANTA'S LAND, INC.,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-08-002</b>
	)	
<b>NAKOA CHILTOSKIE,</b>	)	
<b>Defendant.</b>	)	
_____	)	

<b>TRACI TEESATESKIE HEMPHILL,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-08-260</b>
	)	
<b>DENNIS HENRY HEMPHILL,</b>	)	
<b>Defendant.</b>	)	
_____	)	

<b>SAUNOOKE LAW FIRM,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-09-082</b>
	)	
<b>ANGELA TAYLOR and DORIS SHARP,</b>	)	
<b>Defendants.</b>	)	
_____	)	

<b>LISA CUCUMBER,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-09-432</b>
	)	
<b>ARIANE CUCUMBER and ROCKY LOCUST,</b>	)	
<b>Defendants.</b>	)	
_____	)	

<b>JONAH TEESATUSKIE,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-09-445</b>
	)	
<b>MARIA DAVIS,</b>	)	
<b>Defendant.</b>	)	
_____	)	

<b>LORETTA WELCH,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-09-482</b>
	)	
<b>MARSHA ENSLEY,</b>	)	
<b>Defendant.</b>	)	
_____	)	

<b>SAUNOOKE LAW FIRM,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-09-544</b>
	)	
<b>LESLIE SHANNON BRYANT,</b>	)	
<b>Defendant.</b>	)	
_____	)	

<b>STEVEN MCCOY,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-09-661</b>
	)	
<b>VANESSA MCCOY,</b>	)	
<b>Defendant.</b>	)	
_____	)	

<b>WILLIAM WALDROUP,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-10-352</b>
	)	
<b>CONNIE WALDROUP,</b>	)	
<b>Defendant.</b>	)	
_____	)	

<b>JOHNNIE SWAYNEY,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-10-399</b>
	)	
<b>ELAINE SWAYNEY,</b>	)	
<b>Defendant.</b>	)	
_____	)	

<b>JENNIFER GEORGE,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-10-526</b>
	)	
<b>DWAINE GEORGE,</b>	)	
<b>Defendant.</b>	)	
_____	)	

<b>JESSIE WATTY,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-10-538</b>
	)	
<b>ARIELLA WATTY and HUGO RAMIREZ,</b>	)	
<b>Defendants.</b>	)	
_____	)	

<b>ANNIE YOUNG,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-10-540</b>
	)	
<b>ROBIN YOUNG,</b>	)	
<b>Defendant.</b>	)	
_____	)	

<b>MICHAEL S. DEW,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-10-545</b>
	)	
<b>EDWARD J. TAYLOR,</b>	)	
<b>Defendant.</b>	)	
_____	)	

<b>LAURA CROWE,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-10-552</b>
	)	
<b>SABRINA SAUNOOKE and JOHN DOE,</b>	)	
<b>Defendants.</b>	)	
_____	)	

<b>NADINE TRAMPER, individually and as mother and</b>	)	
<b>executrix of the Estate of Kollin Trampler, a minor,</b>	)	
<b>deceased,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-10-630</b>
	)	
<b>CHEROKEE INDIAN HOSPITAL, CHEROKEE,</b>	)	
<b>HOSPITAL AUTHORITY BOARD, EASTERN BAND</b>	)	
<b>OF CHEROKEE INDIANS, and</b>	)	
<b>MARK A. SHEFFLER, M.D.,</b>	)	
<b>Defendants.</b>	)	
_____	)	

<b>DAKOTA PARKER and DWIGHT PARKER,</b>	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>CV-10-708</b>
	)	
<b>NEVADA RUSSELL and JOHN RUSSELL,</b>	)	
<b>Defendants.</b>	)	
_____	)	

<b>ASHLYN S. PARTON,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-10-709</b>
	)	
<b>TRISTAN WADE PARTON,</b>	)	
<b>Defendant.</b>	)	
_____	)	



ANGEL KIRBY,	)	
	)	
	)	
v.	)	CV-11-011
	)	
MARK KANOTT,	)	
	)	
	)	
Defendant.	)	
_____	)	

JOSIE OWL,	)	
	)	
	)	
v.	)	CV-11-012
	)	
STEVEN BRADY,	)	
	)	
	)	
Defendant.	)	
_____	)	

PHILIP PERRY ARKANSAS,	)	
	)	
	)	
v.	)	CV-11-020
	)	
KIMBER JENKINS,	)	
	)	
	)	
Defendant.	)	
_____	)	

ROBYN LOCUST,	)	
	)	
	)	
v.	)	CV-11-021
	)	
JOSEPH LITTLEJOHN,	)	
	)	
	)	
Defendant.	)	
_____	)	

<b>CARMEN ORR,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-11-022</b>
	)	
<b>GREGORY DAVID ORR,</b>	)	
<b>Defendant.</b>	)	
_____	)	

<b>RENEE LEDFORD,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-11-023</b>
	)	
<b>GASPAR CORREA,</b>	)	
<b>Defendant.</b>	)	
_____	)	

<b>JENNIE B. NEIDIGH,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-11-136</b>
	)	
<b>KASEY SILVA,</b>	)	
<b>Defendant.</b>	)	
_____	)	

<b>DIEDRA FOWLER,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-11-141</b>
	)	
<b>RACHEL NICOLE TAYLOR and</b>	)	
<b>DENNIS WOODROW SHELTON, JR,</b>	)	
<b>Defendants.</b>	)	
_____	)	

<b>DUSTIN JONES,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-11-191</b>
	)	
<b>ERIC CROWE in his capacity as GUARDIAN of</b>	)	
<b>JENNIFER CROWE,</b>	)	
<b>Defendant.</b>	)	
_____	)	

<b>JESSIE WILDCAT,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CV-11-201</b>
	)	
<b>STAN WILDCAT and HANNAH SANTIAGO,</b>	)	
<b>Defendants.</b>	)	
_____	)	

<b>IN RE:</b>	)	
<b>THE ESTATE OF LEN EDWARD PARTON,</b>	)	
<b>Deceased.</b>	)	
	)	<b>E-09-004</b>
	)	
_____	)	

<b>IN RE:</b>	)	
<b>THE ESTATE OF JAMES LOCUST,</b>	)	
<b>Deceased.</b>	)	
	)	<b>E-09-053</b>
	)	
_____	)	

**OMNIBUS MEMORANDUM ORDER**

These matters are before the Court pursuant to an Order of the Supreme Court of March 31, 2011 and they came on for a hearing on Tuesday, April 19, 2011.<sup>1</sup> In our discretion and in an

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<sup>1</sup>No one objected to the setting of the hearing, the jurisdiction of the Court or requested a continuance.

attempt to conserve judicial resources, we consolidated these matters and heard the cases *en banc*.

Robert Osley Saunooke, Esquire was present.<sup>2</sup> The Court heard from: Larry Nestler, Esquire, Michael McConnell, Esquire, Kris V. Williams, Esquire, Hunter Murphy, Esquire, Tonya Jenkins, Janice Sutton, Alan B. Ensley, Charlene Stiles, Dakota Parker, Phillip P. Arkansas, Michelle Bradley, Twidge Welch and Angela Wolfe. The Court heard at length from Mr. Saunooke. Following the hearing, we accepted and received a remarkable letter on Mr. Saunooke's behalf from Ms. Martha St. Clair. No attorney for the Attorney General's Office of the Eastern Band of Cherokee Indians appeared. The Prosecutor appeared but did not wish to be heard. No attorney or party, including Mr. Saunooke, asked to put on any evidence. In cases in which the party opposing Mr. Saunooke's client was *pro se*, we gave an opportunity for those parties to address the Court. We gave an opportunity for Mr. Saunooke's clients to address the Court.

We have reviewed these files and heard the argument of counsel and the words of the lay people who chose to speak to us. We take judicial notice of our Memorandum Order in *In Re: Attorney Robert Osley Saunooke*, 7 Cher. Rep. 19 (2008) (*Saunooke I*) and of the proceedings in the Supreme Court in *In Re: Robert Osley Saunooke*, M-09-01 (2010) (*Saunooke II*).

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<sup>2</sup>After reviewing the records of the Court, we are of the opinion that the Order of the Supreme Court only applies to Mr. Saunooke's appearances before the Court. The only other person the Order might apply to is Suzanne Saucier who is a law trained, but unlicensed employee of Legal Aid of North Carolina. However, Ms. Saucier does not purport to appear as counsel before the Court, but rather as a lay advocate pursuant to C.C. § 1-11(g)(2). Similarly, we presume that an Order allowing a non-member of the Bar to appear *pro hac vice* suffices to comply with the Supreme Court's Order.

## FINDINGS OF FACT

1. Attorney Robert Osley Saunooke is not a member of the State Bar of North Carolina, but rather is admitted to practice in the State of Florida. *Id.*

2. By action of the Chief Justice, Mr. Saunooke “was duly admitted and qualified as an Attorney and Counselor of said Cherokee Supreme Court and all lower courts on the 07 day of February, A.D., 2007 and is granted all the rights and privileges pertaining thereto.”

3. On August 25, 2010, after a comment period during which the members of the Bar could and did make suggestions, the Supreme Court promulgated the Local Rules of Practice and Procedure for the Courts of this Nation.

4. LR 83.1(b) provides as follows:

To be eligible for admission to and continuing membership in the Bar of the Cherokee Court, a person must be admitted to the practice of law in North Carolina and in good standing with the State Bar of North Carolina. Prior to being admitted to practice, an attorney must certify, on the Application for Admission to the Bar form provided for use in the Cherokee Courts, that the attorney has read and is familiar with the North Carolina Revised Rules of Professional Conduct and these Local Rules. Upon request, attorneys seeking admission to practice in this Court will be provided with an email version or hard copy of these rules. Attorneys seeking admission to practice in this Court must take an oath or make an affirmation on a form approved by the Court and pay the filing fee required by the Administrative Office of the Cherokee Court for admission to practice in this Court. When the application form prescribed for use by this Court is completed and the appropriate filing fee has been paid to the Clerk of the Cherokee Court, the Chief Justice of [the] Cherokee Supreme Court may admit an attorney who is qualified according to these rules to practice before this Court. Each member of the Cherokee Bar shall provide a current email address to the Clerk.

5. LR 1.1(a) sets out the scope and purpose of the Local Rules: “These Local Rules govern practice in the Cherokee Courts for the Eastern Band of Cherokee Indians(EBCI). These Rules shall be interpreted and applied to promote the just and prompt determination of all proceedings.”

6. No acts of professional misconduct have been alleged against Mr. Saunooke in this Court and no evidence supports any finding of misconduct in Mr. Saunooke's office of attorney.

7. The March 31, 2011 Order of the Supreme Court applies on its face to the appearances of attorney Robert Osley Saunooke before this Court.

### **DISCUSSION**

We posed several questions which we believed were fairly raised by virtue of the Order of the Supreme Court:

1. In the absence of a case or controversy pending before the Supreme Court, does that Court have the inherent authority to direct the Cherokee Court to take cognizance of an issue involving the membership status of a member of the Bar when no party has brought the issue to the attention of the Cherokee Court?
2. If the answer to question one is yes, what effect, if any, does LR 83.1(b) have on "the continuing membership in the Bar of the Cherokee Court" of Mr. Saunooke?
3. If the answer to question two is that LR 83.1(b) does impact Mr. Saunooke's continuing membership in the Bar of this Court, what effect, if any, does the right of his clients to counsel pursuant to 25 U.S.C. § 1302(a)(6) and Rule 6(b)(4)(h) of the Cherokee Rules of Criminal Procedure have in resolving the question?

Despite our offer to consider others, no one suggested another issue upon which we might pass.

#### Issue 1

This question is closer than it might appear because the independence of the judiciary must be carefully guarded in the interest of justice. However, we conclude that the Supreme Court has the inherent authority to order us to conduct this hearing and enter this ruling.

The Supreme Court initiated this matter *ex mero motu*. See Felix F. Stumpf, *Inherent Powers of the Courts* 61-65 (1994) (citing cases from other jurisdictions using mandamus actions, declaratory judgment actions, contempt proceedings, certiorari, debt actions, and *ex parte* orders to initiate the inherent power of the Courts). That we had not taken cognizance of this issue previously is simply a reflection of the fact that no party had, since the inception of the Local Rules, brought the matter to our attention and, in the exercise of our discretion, we did not act *ex mero motu*. However, because we elected, for reasons satisfactory to ourselves, not to exercise our discretion in construing the Local Rules does not mean that the Supreme Court is prohibited from doing just that.

C.C. § 7-5(c) provides *in pari materia*: “The Supreme Court shall have the power to establish written rules for the Judicial Branch, including qualifications to practice law, provided such rules are consistent with law.” Thus, as a matter of law, the Supreme Court is authorized to establish written rules regarding the qualifications of attorneys to practice law.

Furthermore, among the powers vested in the Judicial Branch are its inherent powers.

Inherent powers consist of all powers reasonably required to enable a court to perform efficiently its judicial functions, to protect its dignity, independence and integrity, and to make its lawful actions effective. These powers are inherent in the sense that they exist because the court exists; the court is, therefore it has powers reasonably required to act as an efficient court.

Jim R. Carrigan, “Inherent Powers and Finance,” *Trial Magazine* 7, no. 6, p. 22 (1971). The inherent powers of the judicial branch are the powers which are "essential to the existence of the court and the orderly and efficient exercise of the administration of justice." *Beard v. The N.C. State Bar*, 320 N.C. 126, 129, 357 S.E.2d 694, 696 (1987); see *State v. Rorie*, 348 N.C. 266, 270, 500 S.E.2d 77, 80 (1998).

A subset of the Court's inherent powers is its duty to supervise the attorneys who come before it.<sup>3</sup> "The trial court has the inherent power to regulate attorney conduct." *Ivarsson v. Office of Indigent Def. Services*, 156 N.C. App. 628, 632, 577 S.E.2d 650, 653, *disc. rev. denied*, 357 N.C. 250, 582 S.E.2d 269 (2003). "This power is based upon the relationship of the attorney to the court and the authority which the court has over its own officers to prevent them from, or punish them for, committing acts of dishonesty or impropriety calculated to bring contempt upon the administration of justice." *Gardner v. N.C. State Bar*, 316 N.C. 285, 287, 341 S.E.2d 517, 519 (1986); *see also Bank of Nova Scotia v. United States*, 487 U.S. 250, 264, 108 S.Ct. 2369, 2378, 101 L.Ed.2d 228, 243 (1988)(Scalia, J., concurring)(Observing that the supervisory authority to discipline attorneys "concerns their performance before the court and their qualifications to be members of the court's bar").

Thus, it is the Judicial Branch which holds the power to supervise, punish and regulate the attorneys who come before it. *Ivarsson*, 156 N.C. App. at 632, 577 S.E.2d at 653; *see also United States v. Hasting*, 461 U.S. 499, 505, 103 S.Ct. 1974, 1978, 76 L.Ed.2d 96, 103-04 (1983)(Assuming that the Circuit Court of Appeals was exercising its supervisory powers over a prosecutor when it dismissed a conviction as a way of disciplining counsel for improper conduct). The Judicial Branch's supervision and regulation of attorneys is "vigilant." *Ivarsson*, 156 N.C. App. at 633, 577 S.E.2d at 653.

With the Supreme Court's powers, and indeed our own, over the members of the Bar in mind, we now turn to examine the role of the attorneys with respect to the Supreme Court. "The profession of an attorney and counsellor is not like an office created by an" ordinance of the

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<sup>3</sup>We note that Mr. Saunooke conceded as much in *Saunooke I* and makes no objection to the Court's inherent authority over his office as a member of the Bar in this case.



Tribal Council, “which depends for its continuance, its powers, and its emoluments upon the will of its creator, and the possession of which may be burdened with any conditions not prohibited by” law. *Ex Parte Garland*, 71 U.S. (4 Wall.) 333, 378, 18 L.Ed. 366, 370 (1866). The members of the Bar of this Court are not officers of the Eastern Band of Cherokee Indians. *Id.* Rather, “[t]hey are officers of the court, admitted as such by its order,” upon examination of their application. *Id.*

The order of admission is the judgment of the court that the parties possess the requisite qualifications as attorneys and counsellors, and are entitled to appear as such and conduct causes therein. From its entry the parties become officers of the court, and are responsible to it for professional misconduct. They hold their office during good behavior, and can only be deprived of it for misconduct ascertained and declared by the judgment of the court after opportunity to be heard has been afforded.

*Id.*; see also *Brown v. Supreme Court of Virginia*, 359 F. Supp. 549, 554 (1973).

Not only are the members of the Bar of the Court officers of the Court, the very nature of their offices relate almost exclusively to proceedings of a judicial nature.<sup>4</sup> *Garland*, 71 U.S. (4 Wall.) at 379, 18 L.Ed at 370. Thus, the Supreme Court has the authority to make rules regarding the qualifications to practice law before the Courts of the Nation as well as to supervise those members of the Bar engaged in that practice.

That being the case, it follows that the Supreme Court could have initiated this matter in the Supreme Court. Indeed, it did just that in *Saunooke II*. However, as a matter of law, the Supreme Court does not have the power to make findings of fact. C.C. § 7-5(a). Thus, any due process hearing in the Supreme Court which would require findings of fact would have to be

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<sup>4</sup>Accordingly, our Order today only relates to Mr. Saunooke’s appearances before the Courts of the Judicial Branch of government. We express no opinion with regard to any appearances he may make before the Tribal Council, any administrative agency of the Executive Branch or any other practice in this jurisdiction outside of the Court. *Cf.* C.C. § 7-5(c) with C.C. § 87(a)(5).

referred to the Cherokee Court for that to be accomplished. It follows that the Supreme Court could instead simply direct us to undertake the matter in its entirety. Thus, this matter is properly before us.

## Issue 2

Most of the argument we heard was either praise for Mr. Saunooke as an attorney and role model for younger members of the Tribe or policy arguments as to why one result or another should be reached by us. However, this Court does not make policy—that is the purview of the Tribal Council, and, to the limited extent permitted in its rule making authority, of the Supreme Court as well. Rather, we are concerned with the state of the law.

The issue before us requires us to construe LR 83.1(b) to determine whether Mr. Saunooke’s “continuing membership in the Bar of the Cherokee Court” is now conditioned upon his being a member of the North Carolina State Bar. In construing this Rule, we are therefore required to balance an attorney’s right to remain clothed in the vestments of his office versus the obligation of the Supreme Court to create rules for the orderly dispensation of justice.

On one hand, the profession of an attorney is of great importance to an individual, and the propriety of his whole life may depend on its exercise. The right to exercise it ought not to be lightly or capriciously taken from him. On the other, it is extremely desirable that the respectability of the bar should be maintained, and that its harmony with the bench should be preserved. For these objects, some controlling power, some discretion ought to reside in the Court. This discretion ought to be exercised with great moderation and judgment; but it must be exercised; and no other tribunal can decide, in a case of removal from the bar, with the same means of information as the Court itself. If there be a revising tribunal, which possesses controlling authority, that tribunal will always feel the delicacy of interposing its authority, and would do so only in a plain case.

*Ex Parte Burr*, 22 U.S. (9 Wheat.) 529 (1824). Thus, while we have not sought this case, neither may we shrink from it.

The right of an attorney to practice before the Court is a property right.

The attorney and counsellor being, by the solemn judicial act of the court, clothed with his office, does not hold it as a matter of grace and favor. The right which it confers upon him to appear for suitors, and to argue cases, is something more than a mere indulgence, revocable at the pleasure of the court, or at the command of the legislature. It is a right of which he can only be deprived by the judgment of the court, for moral or professional delinquency.

*Garland*, 71 U.S. (4 Wall.) at 379, 18 L.Ed at 370. Moreover, we have observed that “[t]he members of the Bar have an expectation that, while supervising and regulating them vigilantly, the Court will also protect them in their office of Attorneys and Counselors of the Court.”

*Saunooke I*, 7 Cher. Rep. at 26. Indeed, “it is the duty of the Court” to insure that the exercise of its supervisory authority over the members of its Bar is accomplished in such a manner “whereby the rights and independence of the bar may be as scrupulously guarded and maintained by the court, as the rights and dignity of the court itself.” *Ex Parte Secombe*, 60 U.S. (19 How.) 9, 13, 15 L.Ed. 565, 566 (1857).

The only case we can find on point suggests that a Court may remove a member of the Bar from the membership through rule making activity, assuming that there is a rational relationship to a legitimate state interest. *Gallo v. United States District Court for the District of Arizona*, 349 F.3d 1169, 1187 (2003), *cert. denied*, 541 U.S. 1073, 124 S.Ct. 2420, 158 L.Ed.2d 982 (2004). This being a matter of first impression in this jurisdiction, we are permitted to look at the Federal law “for guidance.” C.C. § 7-2(d).

In *Gallo*, the United States District Court for the District of Arizona changed its local rules to provide that “Admission to and continuing membership in the bar of this Court is limited to attorneys who are active members in good standing of the State Bar of Arizona.” *Id.* at 1187. *Gallo*, a member of the bar of the State of California, had previously been admitted as a member of the bar of the District Court. *Id.* at 1173. The United States Court of Appeals for the

Ninth Circuit found that the amendment of the local rules “effectively terminated Gallo’s membership in the bar of the District Court....” *Id.* at 1185.<sup>5</sup> The only significant difference we can discern between the facts before us and those as reported in *Gallo*, is that in *Gallo* the change in the local rules affected an entire class of membership, where, as here, the institution of the Local Rules only affects one member of the Bar. However, the effect on only one member of the Bar simply entitles him to be afforded procedural due process through a full due process hearing, which we have done in this instance.

Mr. Saunooke’s main argument is that C.C. § 7-5(c) mandates that the Supreme Court’s rule making authority must be “consistent with law” and for us to find that the effect of LR 83(b) terminates his membership in the Bar would be inconsistent with the law as it existed at the time he was admitted. Mr. Saunooke is correct that, when he was admitted to membership in the Bar by the Chief Justice, the act was lawfully done under the law as it existed at that time. However, the Tribal Council subsequently changed C.C. § 7-5(c) to require North Carolina State Bar membership as a precursor to joining the Bar of this Court, and in *Saunooke I* we noted that Mr. Saunooke conceded that the Tribal Council’s change in the law was prospectively valid. *Saunooke I*, 7 Cher. Rep. at 22.<sup>6</sup> While construing LR 83(b) to have terminated Mr. Saunooke’s membership in the Bar might be inconsistent with the law at the time Mr. Saunooke joined the Bar, such a construction is consistent with the current state of the law.

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<sup>5</sup>The Ninth Circuit went to great lengths to explain that Gallo was not disbarred as no misconduct had been alleged against him. Rather, his membership in the bar “expired.” *Id.* at 1183.

<sup>6</sup>This effectively closed what Mr. Saunooke wryly calls “The Rob Saunooke exception to the Rob Saunooke rule.” As we noted in *Saunooke I*, Mr. Saunooke was the only person who joined the Bar of the Court during the time in which membership was open to enrolled members of the Tribe who were licensed in State’s other than North Carolina.

Having resolved Mr. Saunooke's argument that Tribal law precludes the Court from construing LR 83(b) to have terminated his membership in the Bar, we conclude that pursuant to 25 U.S.C. § 1302(a)(8) and C.C. § 15-7 Mr. Saunooke may not be deprived of his property right in his professional license without substantive due process of law.

A "retroactive licensing scheme" is the technical term for construing LR 83(b) to have terminated Mr. Saunooke's membership in the Bar. *Gallo*, 349 F.3d at 1179. For such an interpretation of the local rule to pass constitutional muster, it must have a rational relationship to a legitimate Tribal interest. *Id.* at 1179. In this case, the rational relationship is the Supreme Court's interest in having a uniform Bar membership which comports to the Tribe's public policy. *See Id.* at 1181. In the Federal Courts, the requirement that all Bar members be a member of the local State Bar is "clearly permissible." *In Re Babies*, 315 B.R. 785 (N.D. GA 2004).

Since Mr. Saunooke's rights in his Bar membership are property rights but not "fundamental rights," "any 'conceivable basis'" will suffice to meet a constitutional challenge to the Supreme Court's licensing scheme. *Id.* at 1179. The scheme in this case, like that in Mr. Gallo's, ensures that Mr. Saunooke, as well as all other members of the Bar, meet the standard required by the Tribal Council. *Id.* at 1181. It is a conceivable basis for the "retroactive licensing scheme."

Thus, we can only conclude that LR 83(b)'s retroactive application of the North Carolina State Bar membership requirement does not violate Mr. Saunooke's rights to substantive due process as it is justified by the rational purpose of perfecting the regulation of Bar admission for the Court and in comporting with the public policy of the Eastern Band of Cherokee Indians.

Mr. Saunooke asserts that he is being singled out for disparate treatment. Accordingly, we examine the Supreme Court's licensing scheme under an equal protection analysis. However, absent a fundamental right, and there is none here, the test is the same: a rational relationship to a legitimate Tribal interest. *Jacobson v. EBCI*, 4 Cher. Rep. 38, 41 (2005).<sup>7</sup> Mr. Saunooke is correct; he is the only person to whom this retroactive application of the North Carolina State Bar membership requirement applies. So, in a sense, he is singled out—but he omits the fact that he sought special treatment by the Tribal Council to join the Bar and took advantage of it when it was granted to him.<sup>8</sup> Mr. Saunooke's situation is unique, even different from Mr. Gallo's, but the rational relationship remains the same as under the substantive due process analysis.

Nothing we determine today prohibits Mr. Saunooke from seeking to appear *pro hac vice* in the future. Mr. Saunooke may also choose to take the North Carolina Bar Exam.

### Issue 3

Having concluded that the Supreme Court's licensing scheme may apply retroactively to Mr. Saunooke, even though he has committed no misconduct, we must address the situation with regard to his current clients. His clients have, tearfully in one instance, begged us not to force them to seek substitute counsel. We conclude that the right of his criminal clients to counsel pursuant to 25 U.S.C. § 1302(a)(6); C.C. § 15-7 and Rule 6(b)(4)(h) of the Cherokee Rules of Criminal Procedure compel the result that he may conclude their business before the Court

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<sup>7</sup>Noting that Equal Protection under the ICRA is somewhat different than Equal Protection under the United States Constitution.

<sup>8</sup>Mr. Saunooke suggests that, under some conditions he is subject, like the other Bar members, to regulation by the North Carolina State Bar. We sincerely doubt this. The North Carolina State Bar has police powers over its members, who have voluntarily submitted to it. But to suggest that the North Carolina State Bar has been given sovereign authority to exercise its police power over Indian Country to prohibit the unauthorized practice of law is simply wrong. Tribal Council has established its own regulation of attorneys practicing in this territory. C.C. § 87(a)(5). When the Council wishes to give its sovereign authority to police the unauthorized practice of law away to the State of North Carolina, we are confident it will do so explicitly.

without having to resort to a *pro hac vice* admission. For his civil clients, we reach the same conclusion, because to do otherwise would impair the obligation of their contract with Mr. Saunooke.

In this analysis, this matter differs from the *Gallo* case. In *Gallo*, counsel was seeking to initiate a case. In Mr. Saunooke's situation, he represents individuals in dozens of cases, all in varying postures before the Court. Even if this matter had been brought to our attention on the day the Local Rules became effective, the situation would have been functionally the same—Mr. Saunooke has been a very busy member of the Bar.

Accordingly given the complexities of this decision, we conclude that it should apply to cases initiated by Mr. Saunooke from this day forward. We believe this comports with LR 1.1(a).

Mr. Saunooke's current clients are entitled to his services, as predicting that the Supreme Court's retroactive licensing scheme would terminate his membership in the Bar would have been speculative until this decision is rendered. In these cases, Mr. Saunooke's continued appearances are in the nature of a special appearance before the Court.

#### Conclusion

The Supreme Court has the inherent authority to direct that we conduct this hearing. The Supreme Court's retroactive licensing scheme as applied to Mr. Saunooke comports with substantive due process and does not violate the equal protection of the law. His membership in the Bar of this Court has therefore been terminated by operation of law. Mr. Saunooke's current clients are entitled to have him represent them in the nature of a special appearance before the Court.

## **CONCLUSIONS OF LAW**

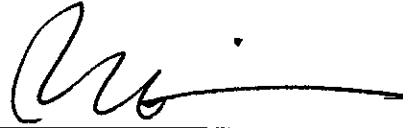
1. This matter is properly before us upon Order of the Supreme Court in the exercise of its inherent authority.
2. The Local Rules have the force and effect of law.
3. LR 83(b) is consistent with the law of the Tribe.
4. Robert Osley Saunooke has committed no misconduct in his office of attorney.
5. LR 83(b)'s retroactive licensing scheme as applied to Mr. Saunooke's membership in the Bar of this Court comports with substantive due process.
6. LR 83(b)'s retroactive licensing scheme as applied to Mr. Saunooke's membership in the Bar of this Court does not violate the equal protection of the law.
7. LR 83(b) operates to terminate Mr. Saunooke's membership in the Bar of this Court.
8. Mr. Saunooke's current clients are entitled to have him represent them in the nature of a special appearance before the Court until their matters are concluded.
9. Mr. Saunooke received a full and fair hearing which comported with procedural due process.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the membership of Robert Osley Saunooke in the Bar of this Court has been TERMINATED on this date as a result of the implementation of LR 83(b) through the rule making authority of the Supreme Court. IT IS FURTHER ORDERED that Mr. Saunooke is allowed to SPECIALLY APPEAR to represent those parties for whom he has made an appearance as of this date until those matters are concluded.





KIRK G. SAUNOOKE  
CHEROKEE COURT JUDGE



J. MATTHEW MARTIN  
CHEROKEE COURT JUDGE

April 26, 2011.