

Este Cvte Mvskoke Etlwv Fvtceekv Cuko Hvlwat



Muscogee (Creek) Nation Supreme Court  
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Roger Barnett, Speaker  
Muscogee (Creek) National Council  
P.O. Box 158  
Okmulgee, OK 74447

VIA HAND-DELIVERY

July 23, 2010

**RE: *Forensic Audit Directed By National Council***

Dear Speaker:

This letter is in response to the demands set forth in your letter dated July 16, 2010 regarding a forensic audit of the Judicial Branch.

Any request or demand that unduly infringes upon or inhibits the Judicial Branch's jurisdictional or administrative functions violates the fundamental principles of the doctrine of Separation of Powers – a Constitutional doctrine that has long been embedded in Muscogee (Creek) Nation law. Thus, any requests or demands that excessively interfere with judicial independence, especially those that are not supported by sufficient justification, have no legal force or effect.

Because transparency in financial matters is good policy for all the governmental branches, the Judicial Branch has always adhered to practices that promote such policy. For this reason, the Supreme Court, in accordance with the Nation's internal auditing procedures, regularly provides materials to Arledge and Associates, the independent consulting firm tasked by the Nation with conducting independent annual financial audits of the Judicial Branch. Furthermore, the Supreme Court, as a matter of standard procedure, has historically provided copies of the resulting financial audit reports to the Legislative and Executive branches. Your office has already been provided with our most recent financial audit report (2009) and has been provided copies of earlier reports in the past.

Additionally, *and of the utmost importance*, it is essential for government officers, as well as the citizens of the Nation, to understand the distinction between a *forensic* audit and a *financial* audit. Those terms should only be used by the branches after consulting their legal counsel and developing a thorough understanding of the difference. A *forensic* audit is usually a subset of a fraud examination, and is generally an open-ended investigation into various matters and affairs not necessarily limited to financial matters. A *financial* audit (which is most important to ensure fiscal accountability) largely is a check of bookkeeping functions. Due to the significantly different purpose of a *forensic* audit versus a *financial* audit, the scope,

**Response to National Council Demand for  
Forensic Audit of Judicial Branch**

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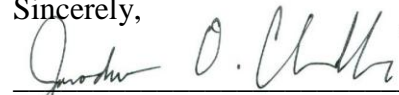
procedures, costs, and administrative burdens associated with conducting and complying with a *forensic* audit greatly exceed those associated with a *financial* audit. In short, a *forensic* audit is drastically more costly and time-intensive than a financial audit conducted for the purposes of financial accountability. Thus, a generalized commitment to or call for fiscal responsibility – a concept that this Branch has always championed – is not, by itself, relevant to the extraordinary purpose and scope of a *forensic* audit/examination.

If the Legislative Branch (or any branch or office) was aware of any justification for a *forensic* audit (as opposed to a *financial* audit), the proper course of action was to notify the Supreme Court – as the supreme office of the Judicial Branch – with details and supporting documents relating to such justification so that the Judicial Branch could inquire into such matters in the first instance. Without such a cooperative measure being taken, your demands of a *forensic* audit (as opposed to a *financial* audit), on their face, are undue infringements into judicial authority.

Similarly, the extraordinarily costly, administratively burdensome, and highly-intrusive demands that a *forensic* audit entails improperly infringe on this Branch's ability to operate as a separate and co-equal branch of this Nation's government and thus patently violate the doctrine of Separation of Powers. Furthermore, the demands and orders of the type set forth in your correspondence are by nature directive and not consistent with *legislative* actions. A legislative body acts by passing laws; it does not enforce or interpret them.

For the above reasons, the demands you have set forth in your July 16, 2010 letter (and subsequent letter of correction and letter addressing Executive Order 10-13) have no legal force or effect. Future demands of the types set forth in these letters, as well as any additional requests or correspondence regarding similar demands, are addressed by this letter and will therefore not be addressed in continued correspondence. In the spirit of cooperation among branches and in the interest of promoting transparency, however, copies of the last two years' financial audit reports are attached.

Sincerely,



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Jonodev Osceola Chaudhuri

Chief Justice

Mvskoke (Creek ) Nation Supreme Court

CC: MCN District Court  
MCN Office of the Principal Chief