

August 29, 2023

Executive Office
Tribal Council
The Eastern Band of Cherokee Indians
Cherokee, NC

We conducted an internal control review of the Civil Law department in accordance with the FY23 annual audit plan.

An internal control review is designed to assess the control structure and business risk of the program. The review is intended to be used as a tool to determine effectiveness of controls, compliance, and if improvement is needed.

Overall, there are opportunities for improvement in the Civil Law department's internal controls. Our office identified 2 observations. The details of these findings along with recommendations can be found in the attached report. Management's response is included as an attachment.

The assistance of the Civil Law department staff is appreciated. Please do not hesitate to contact our office with questions.

Sincerely,



Sharon Blankenship, CIA, CGAP, CFE, LPEC
Chief Audit and Ethics Executive

cc: Lori Lambert, Audit and Ethics Committee Chair
Michael McConnell, Attorney General
Hannah Smith, Senior Associate Attorney General



**CIVIL LAW DEPARTMENT
OFFICE OF THE ATTORNEY GENERAL
INTERNAL CONTROL REVIEW (23-013)**

August 29, 2023

EASTERN BAND OF CHEROKEE INDIANS



OFFICE OF INTERNAL AUDIT AND ETHICS

738 ACQUONI ROAD □ PO BOX 455 □ CHEROKEE NC 28719



HIGHLIGHTS

Why We Did This Audit

The Civil Law department was identified for audit on the FY23 annual audit plan. The overall objective of this audit was to assess the control structure and business risk of the program to determine if improvement is needed.

What We Found and Recommend

There are opportunities for improvement in the Civil Law departments' internal controls. There were 2 observations identified.

OBSERVATION	RECOMMENDATION
Legal service transactions do not have a valid contract	Utilize the contracts process when obtaining legal services.
The process of publishing legislation should be evaluated	Civil Law Department, TOP staff, and Legislative branch, work together to determine who will process documents for public notice.

The details of these findings and recommendations can be found beginning on page 3 of this report. Management's response, in which they concur with the observation and agree to implement the recommendations, is included as an attachment.

BACKGROUND

The Civil Law Department resides within the Department of Justice, also known as the Office of the Attorney General, which was established in Tribal law by Ordinance No. 118 in 2016. The purpose of the department is to provide all legal services for the Tribe, or to coordinate the provision of legal services by others, such as contract attorneys. Chapter 114 states that “The primary source for all legal services for the EBCI is the Attorney General”; and that the Attorney General is the official agent for service of legal process for all litigation against the Tribe and its entities.

For FY23 the Civil Law Department is operating on a revised budget of \$5.5 million with a staff of 15 full time positions who provide legal services to tribal programs, including specific legal services for the Family Safety program and Human Resources.

OBJECTIVES & SCOPE

The audit objectives were to obtain an understanding of key processes within the program, to evaluate the adequacy of internal controls and to identify opportunities for process improvements.

The scope of the audit included a review of financial and operational information for the period of 10/1/2020-5/11/2023.

AUDIT CONCLUSIONS

The following issues were identified:

1. Legal service transactions do not have a valid contract.
2. The process of publishing legislation should be evaluated.

The details of these findings are on the following pages. The cooperation and assistance of the program staff is acknowledged and appreciated.

OBSERVATIONS AND RECOMMENDATIONS

1. Legal service transactions do not have a valid contract.

Of the transactions reviewed, there were four vendors where expenses were paid without a contract.

Vendor	Description	Amount
11479	Legal Services	\$7,012.50
7009	Legal Services	\$46,041.75
30356	Legal Services	\$71,310.49
35278	Legal Services	\$583,831.42

These expenses were identified as contractual in nature and should have a formal contract. Program management is paying for services without a valid contract which could increase financial and legal risk to the Tribe.

It is recommended that program management utilize the contracts process when obtaining legal services.


2. The process of publishing legislation should be evaluated.

The publication of laws is handled by the civil law department; however, they rely on the copies of ordinances and legislation. All original documents pertaining to laws should be reviewed by the Attorney General's office prior to publication. Currently the process owner and responsibility of original documents for laws has not been properly identified, which can cause ineffectiveness and inaccuracy.

It is recommended that the Civil Law Department, TOP staff and the Legislative branch work together to determine who will process and hand all original ordinances and legislation for publication.

MEMORANDUM

TO: Executive
Tribal Council

FROM: Sharon Blankenship, Chief Audit and Ethics Executive 

CC: Lori Lambert, Audit and Ethics Committee Chair
Michael McConnell, Attorney General
Hannah Smith, Senior Associate Attorney General

DATE: August 29, 2023

RE: Responses to Report 23-015 – Civil Law Department

The 2 observations and recommendations identified in the Civil Law Department audit report 23-015 were distributed to the program and responses prepared. The responses as provided are stated below. The original response forms are on file with this office.

1. **Observation 1: Legal service transactions do not have a valid contract.**

Response: Disagree.

Respondent narrative: “this office is very careful about contracts and payments. At the same time, we seek to balance caution with efficiency. To be efficient, we chose to approve some payments based on invoices submitted by the outside attorneys. Our use of invoices in this manner was authorized in Sec. 400, Sub. 6, of the Tribe’s Fiscal Management Manual as recommended to us by the Tribe’s former treasurer, Cory Blankenship, in or about the summer of 2021. The invoices were used in a way that was similar to an “open P.O.” approach. Professional services such as representation by an attorney or law firm present a unique contracting need. Lawsuits are difficult to budget for because they present a fluid set of circumstances and demands that change from month to month. Therefore, the timing and amount of work is unpredictable.”

“We note that there is no dispute regarding the quality, quantity or cost of the legal work performed and referenced in the report. We also note that there was no legal risk to the Tribe for the professional services obtained. There was no ongoing obligation to engage with the lawyers or law firms involved. Those relationships could have been terminated by the Tribe or the law firm at any time for any reason, and the risk to the Tribe would only have been to pay for work that was performed before the termination. “



2. Observation 2: The process of publishing legislation should be evaluated.

Response: Agree, Target implementation 11/25/2023

Respondent narrative: "We will meet with Chairman of Tribal Council and TOP staff to develop a path for improvement."