

TABLED

Cherokee Council House
Cherokee North Carolina

Date: FEB 03 2022

Ordinance No.: 139 (2022)

*An ordinance to amend C.C. § 114A-2 to add criminal defense
to the list of duties of the Legal Assistance Office.*

WHEREAS, the Cherokee Court hears criminal cases regarding violations of Tribal law and, for qualified (indigent) defendants, will appoint an attorney to represent the defendant;

WHEREAS, the Court appoints criminal defense attorneys from the "court-appointed list" of private attorneys who sign up to be on the list, provide the representation to the defendant, and get paid by the Court according to a fee schedule set by the Court; and

WHEREAS, to maintain their practices, the private attorneys on the court-appointed list often represent clients throughout western North Carolina and often have to travel to state courts in multiple counties in a single day to represent their clients; and

WHEREAS, this creates scheduling problems for the Cherokee Court, Tribal prosecutors, defendants and defense counsel and, unfortunately, often results in hearings and trials being postponed in the Cherokee Court; and

WHEREAS, Tribal defendants will be better served, and the Cherokee Court will run more efficiently, if the Tribe amends the law to authorize the Legal Assistance Office (LAO) to provide criminal defense services; and

WHEREAS, the LAO is the appropriate Tribal office in which to establish a Tribal criminal defense program and the defense services could be provided by contract or by creation of employee positions in-house, depending on funding and the direction of Tribal leadership; and

WHEREAS, the Tribe's Department of Justice, including the LAO, and the Cherokee Court, have met and agree that creating a Tribal public defender program in or through the LAO will improve Tribe's criminal justice system.

NOW THEREFORE BE IT ORDAINED, by the Tribal Council of the Eastern Band of Cherokee Indians in Council assembled at which a quorum is present, that Tribal Council hereby amends C.C. § 114A-2 to read as follows:

Sec. 114A-2. Duties.

a. It is the duty of the Legal Assistance Office to:

- 45 i. Provide legal services to the respondent/defendant parties in all C.C. Chapter 7B Child
46 Maltreatment and all C.C. Chapter 122 Involuntary Commitment proceedings;
- 47 ii. Provide civil legal services in domestic violence-related cases;
- 48 iii. Provide legal services to Tribal members in the Cherokee Court in domestic cases in
49 which the rights and relationships of minor Tribal members may be affected for those
50 who qualify as indigent;
- 51 iv. Provide drafting services for simple wills, powers of attorney, health care powers of
52 attorney, advance directives, and other similar documents;
- 53 v. Provide legal services and community education to address the issue of abuse and
54 exploitation of Tribal members;
- 55 vi. Provide legal self-help and community education resources to enhance Tribal
56 members' understanding of the law and their ability to represent themselves in Court
57 and other administrative and legal proceedings;:
- 58 vii. Provide legal services to indigent criminal defendants charged with crimes in the
59 Cherokee Court.

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61 **BE IT FINALLY ORDAINED**, that all resolutions and ordinances inconsistent with this
62 ordinance are rescinded, and this ordinance shall become effective upon ratification by the
63 Principal Chief.

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66 *Submitted by: Hannah Smith, Interim Manager of the Legal Assistance Office*