

Date: FEB 04 2016

ORDINANCE NO. 118(2016)

TITLE: Department of Justice

**WHEREAS**, currently the Cherokee Code does not provide for a Department of Justice or Office of Attorney General;

**WHEREAS**, the provisioning and management of legal services to the Eastern Band of Cherokee Indians has no clear governmental mandate;

**WHEREAS**, currently the responsibility for the provisioning and management of legal services to the Eastern Band of Cherokee Indians is not organized or centrally managed and comes from a number of sources, including the Office of the Attorney General;

**WHEREAS**, a centralized structure and mandate for providing and management of legal services to the EBCI will provide enhanced accountability and efficiency of use of tribal resources;

**WHEREAS**, in order to effect these goals, the Cherokee Code should provide for a Department of Justice, an Attorney General and for a clear mandate and centralized structure for providing and management of legal services; and

**WHEREAS**, there is also a need for a Legal Assistance Office to provide legal services to individual Tribal members who cannot otherwise afford those services.

**NOW THEREFORE BE IT ORDAINED** by the Tribal Council of the Eastern Band of Cherokee Indians assembled, at which a quorum is present, that Chapter 114 and Chapter 114A of the Cherokee Code are hereby adopted to establish the Department of Justice giving it the authority and responsibility to oversee the provisioning and management of legal services for the EBCI and its legal entities, committees and boards, and to provide for a Tribal Legal Assistance Office:

**C.C. CHAPTER 114 DEPARTMENT OF JUSTICE AND ATTORNEY GENERAL**

**§ 114-1. – Department of Justice and Attorney General**

- a. There shall be an Eastern Band of Cherokee Indians Department of Justice, which shall be under the direction and control of the Attorney General.

- b. The Attorney General shall be a lawyer duly licensed in the State of North Carolina and in the Cherokee Court, and shall serve as the Tribe's chief legal counsel. The Attorney General shall be appointed by the Principal Chief and shall serve at the discretion of the Principal Chief.
- c. All lawyers employed within the Department of Justice, as licensed lawyers, shall abide by the Rules of Professional Conduct.

#### **§ 114-2. – Duties**

It shall be the duty of the Attorney General:

- a. To prosecute or provide for the prosecution and defend or provide for the defense of all actions in which the EBCI, including any of its departments, subdivisions, enterprises, boards, committees, or programs shall be interested, or a party, and to appear for the EBCI in any other court or tribunal in any cause or matter, civil or criminal, in which the EBCI may be a party or interested. The primary source for all legal services for the EBCI is the Attorney General.
- b. To engage and manage outside legal resources as are reasonably necessary to protect the best interests of the EBCI and to maintain autonomy for tribal entities and subdivisions where required by tribal law.
- c. To direct and manage all lawyers within the Department of Justice, including the civil and criminal divisions.
- d. To consult with legal counsel for the Tribal Council and legal counsel for the Principal Chief to ensure that there are open lines of communication among all legal service providers engaged or employed by the EBCI.
- e. To engage outside independent counsel for such boards as is necessary to provide for the fair administration of justice, not inconsistent with the powers granted to boards or enterprises by the Cherokee Code.

#### **§ 114-3. – Prosecutor's Office**

- a. There shall be a Prosecutor's Office within the Department of Justice, which shall be under the direction of a Chief Prosecutor hired by the Attorney General.
- b. It is the duty of the Chief Prosecutor to:
  - i. ensure that justice is served through the prosecution in a timely manner and in the name of the EBCI all criminal actions and infractions requiring prosecution in Cherokee Court;
  - ii. direct and manage such assistant prosecutors and other personnel as are hired within the Prosecutor's Office; and



- iii. cooperate and coordinate with all law enforcement to assist in the development of criminal cases to ensure timely and successful prosecutions.

#### **§ 114-4. – Lawyers Employed by the EBCI outside the Department of Justice**

Legislative counsel to the Tribal Council and executive counsel to the Principal Chief are not employees of the Department of Justice and are not managed by the Attorney General. However, the Attorney General shall coordinate regular meetings and communication among the Attorney General, legislative counsel to the Tribal Council, and executive counsel to the Principal Chief to ensure coordinated and efficient provision of legal services to the EBCI.

#### **§ 114-5. – Notice of Litigation or other legal proceedings**

Any division, department, sub-division, enterprise, board, committee or program of the EBCI shall IMMEDIATELY inform the Attorney General of any litigation or other legal proceeding in which it becomes involved.

#### **§ 114-6. – Agent for Service of Process**

Except as provided in 16-12.11, the Attorney General shall be the exclusive agent upon whom process may be served for all actions against the EBCI and any of its divisions, departments, subdivisions, enterprises, boards, committees, or programs. Service may be made by personally delivering a copy of the summons and of the complaint to the Attorney General; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General, delivering to the addressee, and obtaining a delivery receipt. As used in this section, "delivery receipt" includes an electronic or facsimile receipt.

#### **§ 114-7. – Protocols for the provision of legal services**

The Attorney General shall promulgate (and from time to time to amend as reasonably necessary) protocols consistent with this Chapter 114 for the efficient provision of legal services for the EBCI and publish those protocols to all of the divisions, departments, subdivisions, enterprises, boards, committees, and programs of the EBCI.

### **C.C. CHAPTER 114A LEGAL ASSISTANCE OFFICE**

#### **§ 114A-1. – Legal Assistance Office**

There shall be an Eastern Band of Cherokee Indians Legal Assistance Office.

#### **§ 114A-2. – Duties**

It is the duty of the Legal Assistance Office to:

- i. Provide indigent legal services to tribal members in criminal cases when appointed as counsel by the Cherokee Court;
- ii. Provide indigent legal services to tribal members in domestic cases in which the rights and relationships of minor tribal members may be affected;
- iii. Provide drafting services for simple wills; and
- iv. Provide legal services to tribal members as authorized under the laws establishing the Tribal Employee Rights Office.

**§ 114A-3. – Legal Assistance Office Manager**

- a. The Manager of the Legal Assistance Office shall be a lawyer duly licensed within the State of North Carolina hired by and reporting to the Principal Chief. The Manager of the Legal Assistance Office shall not share client confidences, communications or strategies with the Principal Chief and the Principal Chief shall not direct the manner of provision of legal services in specific cases.
- b. The Manager of the Legal Assistance Office shall hire, direct, and manage the lawyers and staff within the Legal Assistance Office.
- c. The Manager of the Legal Assistance Office shall promulgate (and from time to time to amend as reasonably necessary) protocols consistent with this Chapter 114A for the provision of legal services as provided herein.

**BE IT FINALLY ORDAINED** that all portions of ordinances inconsistent with this ordinance are rescinded; that no provision of this ordinance shall impair the terms of any contract legally in effect as of the effective date of this ordinance; and that this ordinance shall become effective when ratified by the Principal Chief.

*Submitted by Principal Chief Patrick Lambert.*