

Date: APR 07 2016

ORDINANCE NO. 183 (2016)

- WHEREAS, The Eastern Band of Cherokee Indians has inherent authority as a self-governing political body to make its own laws to protect the health and welfare of its membership and promote a safe community;
- WHEREAS, Cherokee Code Chapter 48, entitled "Adoption", serves to provide judicial procedures and establish a formal and legal family relationship between two or more persons which after adoption, shall exist as if the parties were born into the relationship by blood.
- WHEREAS, These laws have been in effect and use since October 1, 2015 and there are areas of the law that require amendment for purposes of clarification;
- WHEREAS, It is necessary to amend C.C. 48-4. Jurisdiction; C.C. 48-11. Consent to Adoption; and C.C. 48-20. Service of Petition; summons and notice; parties; in order to increase the efficiency of procedures and services provided to Cherokee Families;

NOW THEREFORE BE IT ORDAINED by the Eastern Band of Cherokee Indians in Council assembled, at which a quorum is present, that Chapter 48 of the Cherokee Code be amended as follows:

Cherokee Code

Chapter 48 – ADOPTION

48-4. Jurisdiction.

- (a) Adoption shall be by a special proceeding within the Cherokee Court pursuant to C.C. 1-2(b).
- (b) Jurisdiction over adoption proceedings commenced under this Chapter exists if, at the commencement of the proceeding there is no other similar action pending in another jurisdiction and:
- (1) The adoptee is an enrolled member of the Eastern Band of Cherokee Indians, ~~except as provided in (d) below.~~
 - (2) The adoptive parent is an enrolled member of the Eastern Band of Cherokee Indians.
 - (3) If neither the Petitioner(s) nor adoptee are enrolled members of the EBCI, then the Petitioner(s) and adoptee must have resided within the tribal lands of the EBCI for a period of at least six (6) months prior to the filing of the Petition for Adoption.
- (c) It is the intent of this child adoption code to confer jurisdiction within the Cherokee Court over the adoption of any enrolled member of the Eastern Band of Cherokee Indians, if the enrolled member, as adoptee or adoptive parent; regardless of place of residency and adoptee and/or Petitioners.
- (1) Resided on Tribal lands for at least six consecutive months, excluding periods of temporary absence; or
 - (2) In the case of an enrolled child under six months of age, lived on Tribal lands from soon after birth with a parent, a guardian, a prospective adoptive parent, or another person acting as parent.

~~(d) Jurisdiction may be exercised over the adoption proceedings of adoptees not enrolled as members of the Eastern Band, so long as at least one of the Petitioners is an enrolled member of the Tribe. However, if the adoptee is not enrolled, then the Petitioner(s) and the adoptee must have resided within the Tribal lands of the Eastern Band for a period of at least six months prior to the filing of the Petition for Adoption.~~

(e-d) The Cherokee Court is empowered to assert jurisdiction over children who have come under the jurisdiction of a court outside that of the Cherokee Court and whose cases have been transferred to the Cherokee Court; or those in which the Tribe has intervened or asserted rights pursuant to the applicable provisions of the Indian Child Welfare Act, 25 U.S.C. 1901 et seq., the Uniform Child Custody Jurisdiction and Enforcement Act, N.C.G.S. § 50A Article 2, the Adoption and Safe Families Act, 42 U.S.C. § 671 et seq. and the Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A.

48-11. Consent to Adoption.

(a) Written consent to an adoption is required from:

- (1) The birth parent, guardian or legal custodian where that person or agency is empowered to consent;
- (2) The Court, if the guardian or custodian is not empowered to consent;
- (3) The adoptee, where the child is of sufficient maturity and understanding the Court may, and in every case of a child over eleven (11) years of age the Court shall require the consent of the child and whenever possible, the Court should interview such child in private concerning the adoption, prior to approving the child's consent;
 - (A) The adoptee's consent shall be expressed or adopted in such form as the Court shall direct.
- (4) A birth parent less than sixteen (16) years of age may give their consent only with the written consent of one of their parents, guardian, or a guardian ad litem of the minor parent which may be appointed by the Court.

(b) Written consent to an adoption is not required from the birth parent and adoptive parent if the birth parent:

- (1) Has had their parental rights terminated or suspended either voluntarily or involuntarily;
- (2) Has been adjudicated incompetent by reason of mental disease, defect, injury or by abuse of alcohol or drugs, and it appears by a preponderance of evidence that such person will be unable to provide the necessary care and control of said child for a significant period of time prior to the child reaching majority;
- (3) Has been adjudicated guilty of a felony and sentenced to death or a term of imprisonment which is likely to prevent release of the parent for a period such that the parent will be unable to provide the necessary care and control of the child for a significant period of time prior to the child reaching majority; or
- (4) For a period of twelve (12) months immediately preceding the filing of the petition for adoption, has willfully failed, refused or neglected to provide and contribute to the support of the child in a manner that illustrates the birth parent has failed to substantially comply with a decree or case plan approved by the Court ordering such compliance to be obtained.

(c) Written consent to adoption of a minor child shall in all cases be in writing, notarized, recorded by the clerk of Court, ~~and executed before a judge of the Court~~ and must contain:

- (1) The date, place, and time of the execution of consent;
- (2) The name and date of birth of the person executing the consent;

- (3) The current mailing address, telephone number, and social security number of the person executing the consent; and
- (4) The name, address, phone number and signatures of two witnesses.
- (4) (5) Instructions that the consequences of executing the consent are the termination of the parental rights of the natural parent(s), loss of inheritance rights and support obligations and that the consent is irrevocable, except upon the specific grounds specified in C.C. 48-15 which describes how the consent can be revoked and the manner in which a motion to set aside the consent must be filed.

(d) A consent must state:

- (1) That the person executing the document is voluntarily and unequivocally consenting to the adoption of the minor;
- (2) An understanding that after the permanent relinquishment is executed, it is final and, except for fraud or duress, may not be revoked or set aside for any reason except as otherwise authorized in this Chapter;
- (3) That the person executing the permanent relinquishment is represented by counsel or has waived any right to counsel;
- (4) Notwithstanding any other orders of the court, that the execution of the permanent relinquishment does not terminate any duty of the person executing the permanent relinquishment to support the minor until the adoption is completed;
- (5) That the person executing the permanent relinquishment has not received or been promised any money or anything of value for the permanent relinquishment, except for payments authorized by law;
- (6) That the person believes the adoption of the minor is in the minor's best interest.

(e) Pursuant to the Indian Child Welfare Act, where any birth parent or Indian custodian voluntarily consents to an adoption or termination or suspension of parental rights, the presiding judge must certify that terms and consequences of the consent were fully explained in detail and were fully understood by the birth parent or Indian custodian, that the explanation was interpreted if necessary, and that any consent given prior to or within ten (10) days after the birth of the adoptee shall not be valid.

48-20. Service of Petition; summons and notice; parties.

(a) Upon filing of the petition, the petitioner shall initiate service of notice of the filing, no later than five days upon the filing of the petition. The notice shall be directed to the following persons or agency, not otherwise a party, who shall be named as respondents:

- (1) The child welfare agency, if it is the legal custodian or if there are any pending matters relating to the abuse, neglect or dependency of the child;
- (2) The birth parents of the child, where consent is required but has not yet been obtained or has been revoked or voided;
- (3) A man who to the actual knowledge of the petitioner claims to be or is named as the biological or possible biological father of the minor, and any biological or possible biological fathers who are unknown or whose whereabouts are unknown, except that :
 - (A) Notice need not be served upon a man who has executed a consent, a relinquishment, or a notarized statement denying paternity or disclaiming any interest in the minor, a man whose parental rights have been legally terminated or who has been judicially determined not to be the minor's parent, a man whose consent to the adoption is not required under G.S. 48-48-11(b), or, provided the petition is filed within three months of the birth of the minor a man

who not legitimized the child or who has abandoned the child as defined in C.C. 7B-35A-1384(a).

- (4) A person that has legal custody of the child or visitation rights pursuant to a court order, unless not required a notice by above provisions; and
- (5) Any other party the court may deem necessary.

(b) The notice shall notify the respondents to file a written answer within 30 days after service of the summons and petition. Service of the notice and petition shall be completed as provided under the procedures established by N.C.G.S. 1A-1, Rule 4(j). For purposes of this Chapter, a minor parent of the child shall not be deemed to be under a disability based on their status as a minor.

(c) The summons shall be issued by the Court pursuant to N.C.G.S. 1A-1, Rule 4 and the provisions of subsections (a) and (b) of this section and shall include:

- (1) The name of the child;
- (2) Notice that a written answer to the petition must be filed with the clerk who signed the petition within 30 days after service of the summons and a copy of the petition, or if not, the petitioner's decree of adoption may be granted;
- (3) Notice of the date, time, and place of the hearing if no answer is filed within 30 days from the date of service;
- (4) A copy of the petition for adoption, including the pre-adoptive assessment and other documents required under C.C. 48-19.
- (5) Notice of the purpose of the hearing and notice that the birth parents may attend the hearing if those parents were required service.

(d) If the child is the subject of existing maltreatment proceedings under C.C. Chapter 7B and the petitioner has requested to join the proceedings, the petitioner shall be joined to those proceedings pursuant to C.C. 7B-600 in that court's discretion and when the court finds it is in the child's best interest.

BE IT FINALLY ORDAINED that all ordinances that are inconsistent with this ordinance are rescinded, and that this ordinance shall become effective when ratified by the Principal Chief.

Submitted by: Office of the Attorney General