

TABLED

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: FEB 01 2018 FEB 01 2018

ORDINANCE NO.: 103 (2018)

WHEREAS, the Eastern Band of Cherokee Indians is duly authorized to establish and regulate its membership and enrollment under its sovereign powers as a federally recognized Indian Tribe; and

WHEREAS, Chapter 49 of the Cherokee Code sets out the requirements for membership with the Tribe as well as other issues related to enrollment; and

WHEREAS, from time to time, errors in blood quantum records are discovered by the Enrollment Office; and

WHEREAS, there is not currently a section of Chapter 49 that sets out the criteria and procedure for correcting errors in blood quantum records; and

WHEREAS, it is necessary for the Enrollment Office and the Enrollment Committee to establish, and desirable to express in Tribal law, a standardized procedure for correcting blood quantum records when errors are discovered; and

WHEREAS, the procedure adopted must be both efficient for the Enrollment Office and Enrollment Committee, but also fair and equitable to the persons involved in the procedure; and

WHEREAS, the Enrollment Office and the Enrollment Committee hereby submit for establishment in the Cherokee Code, the preferred procedure that the Office and the Committee believe is efficient, fair and equitable.

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, Cherokee Code Chapter 49, governing enrollment, shall be amended by addition thereto of a new section designated as Cherokee Code Sec. 49-9.- Correcting Blood Quantum Records, as expressed below, and renumbering existing Sections 49-9 and 49-10.

Sec. 49-9. – Correcting Blood Quantum Records.

- (a) The purpose of this section is to authorize the correction of errors in blood quantum records and set out the process for making the corrections.

- 47 (b) Potential blood quantum errors are investigated, evaluated, and processed by the
48 Enrollment Office. This section does not create in any person a cause of action, right,
49 standing, or other such privilege or ability to challenge another person's blood quantum.
50 The Enrollment Committee does not hear challenges by members of the public.
51
- 52 (c) This section shall not be used to alter, amend, or otherwise modify the Baker Roll of
53 1924, the roll of the Eastern Band of Cherokee Indians of North Carolina, prepared and
54 approved pursuant to the Act of June 4, 1924 (43 Stat. 376) and the Act of March 4, 1931
55 (46 Stat. 1518).
56
- 57 (d) The Enrollment Office shall increase or decrease the blood quantum record of an enrolled
58 member or first generation descendant if there is substantial evidence of an error in the
59 blood quantum record and of what the correct blood quantum should be.
60
- 61 (e) The Enrollment Office shall provide notice of the blood quantum record change as
62 follows:
63 (1) The Enrollment Office shall provide written notice to the person subject to the
64 blood quantum change. The written notice may be sent to the person's address
65 listed in his/her enrollment file or according to the rules of civil procedure in the
66 Cherokee Courts. The written notice shall include:
67 i. the blood quantum error found,
68 ii. the evidence relied upon by the Enrollment Office for the blood quantum
69 increase or decrease,
70 iii. the correct blood quantum as calculated by the Enrollment Office,
71 iv. a statement that the change in blood quantum could lead to modifications
72 of his/her descendants' blood quantum (if applicable),
73 v. a statement that the change in blood quantum could lead to his/her
74 disenrollment or the disenrollment of his/her descendants (if applicable),
75 vi. a statement that the change in blood quantum could lead to his/her loss of
76 first generation descendent status or the loss of such status for his/her
77 descendants (if applicable), and
78 vii. notice of the person's right to appeal the Enrollment Office's decision to
79 the Enrollment Committee.
80
- 81 (2) The Enrollment Office shall also provide written notice to any of the person's
82 descendants who could have their blood quantum changed because of the error.
83 The written notice may be sent to the person's address listed in his/her enrollment
84 file or according to the rules of civil procedure in the Cherokee Courts. The
85 written notice shall include:
86 i. the blood quantum error found,
87 ii. the evidence relied upon by the Enrollment Office for the blood quantum
88 increase or decrease,
89 iii. the correct blood quantum as calculated by the Enrollment Office,
90 iv. a statement that the change in blood quantum could lead to modifications
91 of his/her descendants' blood quantum (if applicable).

- v. a statement that the change in blood quantum could lead to his/her disenrollment or the disenrollment of his/her descendants (if applicable).
- vi. a statement that the change in blood quantum could lead to his/her loss of first generation descendent status or the loss of such status for his/her descendants (if applicable), and
- vii. notice of the person's right to appeal the Enrollment Office's decision to the Enrollment Committee.

(3) If the person subject to a blood quantum record change is a minor child or otherwise legally incompetent, notice shall be given to his/her parent(s), custodian(s), or guardian(s).

(f) The person(s) subjected to a blood quantum change shall have the right to appeal the Enrollment Office's decision to the Enrollment Committee. The person, or his/her parent, custodian, or guardian if a minor child or otherwise legally incompetent, must file a written notice of appeal with the Enrollment Office within sixty (60) days of delivery of the written notice under Section 49-9(e)(1)-(3). Multiple appeals based upon the same decision may be heard together.

(g) The Enrollment Committee shall decide the matter de novo. The person(s) subject to a change in blood quantum shall have the opportunity to be heard, present evidence, and be represented by a duly licensed attorney, but may not submit evidence not previously disclosed to the Enrollment Office. The Enrollment Office shall have the opportunity to be heard, submit evidence, be represented by a duly licensed attorney, but may not submit evidence not previously disclosed to the person(s) subject to the blood quantum change. The Enrollment Committee shall decide by majority vote if there is substantial evidence to increase or decrease the blood quantum record. If the Enrollment Committee decides that there is not substantial evidence, the blood quantum change shall be denied. Errors applicable to two or more persons shall be applied uniformly. The person(s) subjected to a blood quantum change shall be given written notification of the Enrollment Committee's decision.

(h) The person(s) subjected to a change in blood quantum shall have the right to appeal the Enrollment Committee's decision to Tribal Council. The person, or his/her parent, custodian, or guardian if a minor child or otherwise legally incompetent, must file with the Enrollment Office a written notice of appeal to Tribal Council within ten (10) days of receiving written notice of the Enrollment Committee's decision. Multiple appeals based upon the same decision may be heard together.

(i) The members of Tribal Council not serving on the Enrollment Committee shall hear the appeal. Tribal Council shall determine if the Enrollment Committee's decision was clearly erroneous. Tribal Council shall only review the record of the Enrollment Committee and the evidence it received. No new evidence is allowed. Tribal Council shall decide by majority vote if the Enrollment Committee's decision was clearly erroneous. If Tribal Council decides that the Enrollment Committee's decision was

clearly erroneous, the blood quantum change shall be denied. Errors applicable to two or more persons shall be applied uniformly. Tribal Council's decision is final.

(j) Any change to a person's blood quantum made pursuant to this section shall be effective upon a final determination being made upon his/her blood quantum.

(1) For purposes of this sub-section, a final determination is

i. the expiration of the time period to file an appeal to the Enrollment Committee,

ii. the expiration of the time period to file an appeal to Tribal Council, or

iii. a decision by Tribal Council that does not deny the person's blood quantum change.

(2) If the final determination of an error in blood quantum records is denied by the Enrollment Committee or by Tribal Council, no person may have their blood quantum changed based upon the denied error.

(k) The corrected blood quantum may not be the basis to seek reimbursement of benefits, but may be the basis to initiate disenrollment procedures or procedures to remove first generation descendant status.

Existing Cherokee Code Sec. 49-9. - Loss of membership shall be renumbered to become Cherokee Code Sec. 49-10 – Loss of membership. No other change is made to this section.

Existing Cherokee Code Sec. 49-10. - Conflicting ordinances and resolutions is renumbered to become Cherokee Code Sec. 49-11 – Conflicting ordinances and resolutions. No other change is made to this section.

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

Submitted by the Enrollment Committee