

**TABLED**

**AMENDED  
PASSED**

**JUL 09 2020**

,Cherokee Council House  
Cherokee, (NC)

**FEB 06 2020**

ORDINANCE NO. 125 (2020)

WHEREAS, the Department of Human Services is responsible for administering the Tribe's child maltreatment program to achieve the best outcomes for children and families; and

WHEREAS, maltreatment cases that languish in the court system contribute to ongoing trauma and instability felt by children and families and presently the rate of court continuances is unacceptably high as a result of attorney scheduling conflicts; and

WHEREAS, the Legal Assistance Office has expanded into a structure that can provide all of the legal representation necessary for child maltreatment cases through its staff and when necessary contract attorneys under contract with the office; and

WHEREAS, the local and available resources of the Legal Assistance Office to the parents and respondents in child maltreatment cases will decrease the unacceptable rate of continuances due to scheduling conflicts, contributing to better outcomes for children.

NOW THEREFORE BE IT ORDAINED in Tribal Council assembled, at which a quorum is present, that Chapter 114A and 7B of the Cherokee Code shall be amended as attached in Exhibit A.

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by the Principal Chief and that all prior ordinances and resolutions that are inconsistent with this ordinance are rescinded.

*Submitted by: Department of Human Services*

## EXHIBIT A

## Chapter 114A - LEGAL ASSISTANCE OFFICE

### 1 Sec. 114A-1. - Legal Assistance Office.

2 There shall be established a Legal Assistance Office administered through the Executive Branch of  
3 the Eastern Band of Cherokee Indians for sole and limited purpose of providing and or managing to  
4 provide or manage such all-indigent defense and free legal counsel services required by law. The Legal  
5 Assistance Office which shall be placed or organized for administrative purposes within the Department of  
6 Justice.

7 (Ord. No. 118, 6-21-2016)

### Sec. 114A-2. - Duties.

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

- i. Provide indigent legal services to those entitled to indigent or free legal representation by tribal or other applicable laws as provided in the Cherokee Code. in maltreatment cases under Cherokee Code Chapter 7B when appointed as counsel by the Cherokee Court;
- ii. Provide civil legal services in domestic violence-related cases;
- iii. Provide indigent legal services to Tribal members in the Cherokee Court in domestic cases in which the rights and relationships of minor Tribal members may be affected for those that who qualify as indigent;
- iv. Provide drafting services for simple wills, powers of attorney, health care powers of attorney, advance directives, and other similar documents;
- v. Provide legal services and community education to address the issue of abuse and exploitation of Tribal members;
- vi. ~~Provide legal services to Tribal employees as authorized under the Tribe's employment rules, regulations, and policies; and~~
- vii. Provide legal self-help and community education resources to enhance Tribal members' understanding of the law and their ability to represent themselves in Court and other administrative and legal proceedings.

(Ord. No. 118, 6-21-2016; Ord. No. 464, 3-16-2017)

### Sec. 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 Attorney General for administrative purposes only. The Manager of the Legal Assistance Office shall not share client confidences, communications or strategies with the Attorney General and the Attorney General shall not direct the manner of provision of legal services in specific cases.
- b. The Manager of the Legal Assistance Office shall ~~contract~~ hire, direct, and manage the lawyers and staff within the Legal Assistance Office and ensure that all indigent or free legal are managed to achieve efficiency and competency in the Tribe's judicial system as well as to achieve public confidence in the independence of the legal representation provide for the provision of legal services as required under the Code, though direct provision of legal services and through contracts with private attorneys when necessary.

- c. The Manager of the Legal Assistance Office shall promulgate (and from time to time amend as reasonably necessary) protocols consistent with this Chapter 114A for the provision of legal services as provided herein.
- d. The Manager of the Legal Assistance Office shall direct the administrative functions of the Legal Assistance Office, which includes but is not limited to client intake, assignment of cases, contracting, grant management, and other administrative aspects of the office not involving litigation. The office of the Manager will be referred to as A qv yi ("first"). The Manager shall also provide administrative oversight and supervision toof two separate and additional offices – Taline and Tsoine ("second" and "third"). The attorneys in the Taline and Tsoine offices shall not share client confidences, communications or litigation -strategies including with the Manager and the Manager shall not direct the manner of provision of legal services in specific cases.

(Ord. No. 118, 6-21-2016)

ARTICLE 6. - BASIC RIGHTS OF CHILDREN AND PARENTS IN MALTREATMENT CASES

1    Sec. 7B-601. - Appointment and duties of guardian ad litem and guardian ad litem attorney advocate.

- 2    (a)    In petitions alleging child maltreatment the Court shall appoint a guardian ad litem and a guardian  
3    ad litem attorney advocate to represent the child's interests. The guardian ad litem attorney advocate  
4    shall be provided appointed by contracted through the Legal Assistance Office, pursuant to C.C. Ch.  
5    114A. In every case where a non- attorney is appointed as a guardian ad litem, an attorney advocate  
6    shall be appointed in the case in order to assure protection of the child's legal rights throughout the  
7    proceeding. The guardian ad litem and attorney advocate have standing to represent the child in all  
8    actions under this chapter where they have been appointed. The appointment shall be made  
9    pursuant to the program established by the Cherokee Courts. The appointment shall terminate when  
10   the permanent plan has been achieved for the child and approved by the Court or when the Court's  
11   jurisdiction of the case terminates. The Court may relieve and reappoint a guardian ad litem and  
12   attorney advocate pursuant to a showing of good cause upon motion of any party, including the  
13   guardian ad litem, attorney advocate, or of the Court.
- 14   (b)    The duties of the guardian ad litem and/or attorney advocate shall be to make an investigation to  
15   determine the facts of the case, the needs of the child, and the available resources within the family  
16   and community to meet those needs; to facilitate, when appropriate, the settlement of disputed  
17   issues; to offer evidence and examine witnesses at adjudication and all other hearings; to explore  
18   options with the ICWT and the Court for the disposition of cases; to conduct follow-up investigations  
19   to insure that services contained in service contracts and the orders of the Court are being properly  
20   executed; to report to the Court when the needs of the child are not being met; and to protect and  
21   promote the best interests of the child until formally relieved of the responsibility by the Court.
- 22   (c)    The Court may authorize the guardian ad litem and/or attorney advocate to accompany the child to  
23   Court in any criminal action wherein the child may be called on to testify in a matter relating to abuse.
- 24   (d)    The guardian ad litem and attorney advocate have the authority to obtain any information or reports,  
25   whether or not confidential, that may in the guardian ad litem or attorney advocate's opinion be  
26   relevant to the case. No privilege other than the attorney-client privilege may be invoked to prevent  
27   the guardian ad litem, attorney advocate and the Court from obtaining such information. The  
28   confidentiality of the information or reports shall be respected by the guardian ad litem and attorney  
29   advocate, and no disclosure of any information or reports shall be made to anyone except by order  
30   of the Court or unless otherwise provided by law.

31   (Ord. No. 524, 7-17-2015)

Sec. 7B-602. - Parent's right to counsel; guardian ad litem.

- (a)    In cases where a petition alleges that a child is maltreated, the parent has the right to appointed  
counsel unless that person waives the right. Appointed When assigning counsel shall be provided,  
the Court shall assign by the Eastern Band of Cherokee Indians Legal Assistance Office, which,  
pursuant to C.C. Ch. 114A., shall be responsible for representing or providing for representation of  
all parents appointed under this Section.
- (b)    In addition to the right to counsel set forth above, a guardian ad litem and attorney advocate shall  
be appointed to represent a parent who is under the age of 18 years and who is not married or  
otherwise emancipated. The appointment of a guardian ad litem and attorney advocate under this  
subsection shall not affect the minor parent's entitlement to a guardian ad litem pursuant to C.C.  
section 7B-601 in the event that the minor parent is the subject of a separate child maltreatment  
petition.
- (c)    On motion of any party or on the Court's own motion, the Court may appoint a guardian ad litem and  
attorney advocate for a parent who is incompetent in accordance with N.C.G.S. 1A-1, rule 17.

- (d) The parent's counsel shall not be appointed to serve as the guardian ad litem and the guardian ad litem shall not act as the parent's attorney. Communications between the guardian ad litem appointed under this section and the parent and between the guardian ad litem and the parent's counsel shall be privileged and confidential to the same extent that communications between the parent and the parent's counsel are privileged and confidential.

(Ord. No. 524, 7-17-2015)

~~Sec. 7B-602.1. — Conflict of interest or impracticality of implementation.~~

~~If a conflict of interest prohibits a guardian ad litem or attorney advocate from providing representation to a maltreated child, the Court may appoint any member of the Cherokee bar to represent the child.~~

~~(Ord. No. 524, 7-17-2015)~~

Sec. 7B-603. - Payment of Court-appointed attorney or guardian ad litem attorney advocates.

An attorney or guardian ad litem attorney advocate appointed pursuant to C.C. section 7B-601 shall be paid a reasonable fee as determined by the Cherokee Court their agreement with the Legal Assistance Office.

(Ord. No. 524, 7-17-2015)

## Floor Amendments to Ordinance 125 (2020) Exhibit A.

### Sec. 114A-1. Legal Assistance Office

Replace the last word of the first sentence with the words “this Chapter”.

(To read: “There shall be established a Legal Assistance Office administered through the Executive Branch of the Eastern Band of Cherokee Indians to provide or manage legal services for indigent clients or as required by law this Chapter.”)

### Sec. 114A-2. Duties

Replace proposed (a)(i) with:

- a. It is the duty of the Legal Assistance Office to:
  - i. Provide legal services to the respondent/defendant parties in all Chapter 7B Child Maltreatment proceedings.

### Sec. 114A-3(b)

To read: required under ~~the Code~~ this Chapter

### Sec. 114A-3(d)

To read: The Manager of the Legal Assistance Office shall direct the administrative functions of the Legal Assistance Office, which includes but is not limited to client intake, assignment of cases, contracting, grant management, and other administrative aspects of the office. The LAO will be subdivided into three offices: Office of the Manager, LAO Taline, and LAO Tsoine. Taline and Tsoine shall operate as separate, independent legal offices. The office of the Manager will be referred to as A gv yi (“first”). The Manager shall also provide administrative oversight and supervision to two separate and additional offices – Taline and Tsoine (“second” and “third”). The attorneys in the Taline and Tsoine offices shall not share client confidences, communications or litigation strategies including with the Manager and the Manager shall not direct the manner of provision of legal services in Taline or in Tsoine.

### Sec. 7B-601(a). Appointment and duties of the guardian ad litem and guardian ad litem attorney advocate.

Remove proposed changes to the second sentence in its entirety.

(The first and second sentence to read as it is in the existing law. “In petitions alleging child maltreatment the Court shall appoint a guardian ad litem and a guardian ad litem attorney advocate to represent the child’s best interests. In every case where a non-attorney is appointed as a guardian ad litem, an attorney advocate shall be appointed in the case in order to assure protection of the child’s legal rights throughout the proceeding.”)

### Sec. 7B-602.1 Conflict of interest or impracticality of implementation.

Remove proposed changes to the entire section and allow the original language to the section to remain unchanged.

### Sec. 7B-603 Payment of Court-appointed attorney or guardian ad litem attorney advocates

Change section title to Payment of appointed attorney

(To read: An attorney appointed in a child maltreatment matter shall be paid a reasonable fee as determined by their agreement with the Legal Assistance Office.)

The attached Resolution/Ordinance No. 125 dated February 6, 2020 was:

**PASSED ( X )**

**KILLED ( )**

and ratified in open Council on July 9, 2020 by 76 voting for the act  
and 0 members voting against it as follows:

VOTE	FOR	AGAINST	ABSTAIN	ABSENT
Richard French	X			
Perry Shell	X			
Boyd Owle				X
Bucky Brown	X			
Tom Wahneetah	X			
David Wolfe	X			
Adam Wachacha	X			
Bo Crowe	X			
Chelsea Saunooke	X			
Albert Rose				X
Dike Sneed	X			
Tommye Saunooke	X			
	76	0	0	24

  
TRIBAL COUNCIL CHAIRMAN

  
ENGLISH CLERK

  
PRINCIPAL CHIEF

APPROVED ☒ VETOED ( )

VETO UPHELD ( ) VETO DENIED ( )

DATE: 7/20/2020

I hereby certify that the foregoing act of the Council was duly:

**PASSED ( )**

**KILLED ( )**

and ratified in open Council after the same has been interpreted by the Official Interpreter and  
has been fully and freely discussed.

INTERPRETED ( )

OMITTED ( )