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CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: DEC 09 2021

ORDINANCE NO. 82 (2021)

An ordinance to amend Cherokee Code Chapter 50 to require mediation of child custody actions in Cherokee Court and to provide for participation by grandparents.

WHEREAS, the Charter and Governing Document authorizes and empowers the Eastern Band of Cherokee Indians (EBCI Tribal Council to adopt laws and regulations for the general government of the Tribe. Charter and Governing Document § 23 and C.C. 117-10; and

WHEREAS, C.C. § 50-12 authorizes the filing of child custody actions in Cherokee Court, and subsection (d) of that section allows the Court to order visitation with a grandparent in certain situations; and

WHEREAS, Chapter 50 does not currently require child custody mediation but state law does, and experience in the state courts has proved that mandatory mediation of child custody actions can be beneficial for litigants and the courts; and

WHEREAS, Tribal families would benefit from including grandparents in the mandatory child custody mediation process.

NOW THEREFORE BE IT ORDAINED by the Eastern Band of Cherokee Indians in Tribal Council assembled, at which a quorum is present, that C.C. Chapter 50 is amended to read as follows:

Sec. 50-12. Other family law issues.

(a) Either spouse may file an action for child custody, child support, and spousal support. An action for child custody or child support shall be filed on or before the date the child reaches age 18. An action for spousal support shall be filed no later than three years after a judgment for divorce has been entered.

(b) There shall be no action for divorce from bed and board.

(c) Actions for protection from domestic violence shall be filed pursuant to chapter 50B of the Cherokee Code.

(d) Death of a biological or adoptive parent will constitute grounds for a biological or adoptive grandparent to petition the court for visitation with a biological or adoptive grandchild if it is established by clear and convincing evidence that the grandchild enjoyed a significant bond and relationship with the grandparent prior to the death of the child's biological or adoptive parent.

1 Upon establishing by clear and convincing evidence that a grandchild enjoyed a significant
2 bond and relationship with the biological or adoptive grandparent before the death of the
3 child's biological or adoptive parent, the court may order visitation with the grandparent if in
4 the court's discretion it is in the best interests of the child.

- 5 (e) It shall be grounds for denial of child custody and/or visitation to a party in a child custody
6 action if such party to the action has been convicted of, entered a plea of guilty or no
7 contest, or guilty pursuant to *Alford*, to any crime that is covered by Title I of the Adam
8 Walsh Act (otherwise known as the Sex Offender Registration and Notification Act, 42
9 U.S.C. § 16911 et seq.), as amended, or by Article X of the Cherokee Code, entitled "Sex
10 Offenders," as amended, regardless of where the crime took place or the sentence issued.

11 An "Alford plea" is a plea under which a defendant may choose to plead guilty, not because
12 of an admission to the crime, but because the prosecutor has sufficient evidence to place a
13 charge and to obtain conviction in court.

- 14 (f) If a party to a child custody action is formally charged with any crime that is covered by
15 Title I of the Adam Walsh Act (otherwise known as the Sex Offender Registration and
16 Notification Act, 42 U.S.C. § 16911 et seq.) as amended, or by Article X of the Cherokee
17 Code, entitled "Sex Offenders," as amended, regardless of where the alleged crime took
18 place or where it is charged, such charge shall be grounds for requiring supervised custody
19 and/or visitation until the merits of the allegation have been fully adjudicated, tried, or
20 finally resolved.

- 21 (g) There is a rebuttable presumption, consistent with Cherokee culture, that it is in the best
22 interest of a child to have the love and support of grandparents through reasonable contact
23 with a grandparent.

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26 **Sec. 50-14. - Mandatory Child Custody Mediation.**

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28 (a) There shall be created a mandatory child custody mediation program in the Cherokee
29 Court.

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31 (b) The child custody mediation program shall have, at a minimum, two employees: a program
32 administrator and one support staff person. Employees of the mandatory child custody
33 mediation program shall be hired and supervised by the Chief Justice.

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35 (c) The purpose of the child custody mediation program is to seek resolution of child custody
36 actions before trial. Mediation shall occur after the case is filed in the Cherokee Court. Child
37 custody mediation is mandatory for all child custody actions filed in the Cherokee Court
38 unless the parties enter a consent custody order before mediation occurs or unless the court
39 determines that mediation is not in the best interest of the child.

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41 (d) The child custody mediation program may use culturally specific and traditional EBCI
42 practices that promote holistic, child centered approaches to strengthening and restoring
43 harmony in the family.

1 (e) Grandparents may participate in child custody mediation if the parties who have the right to
2 legal custody of the child or children consent in writing. The writing shall be filed with the
3 court and made part of the case file.

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5 (f) Once a child custody action is referred to the child custody mediation program, all persons
6 participating in the mediation shall be notified of the mediation date, time, and location.

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8 (g) If the parties reach a consent custody agreement, the agreement shall be reduced to writing
9 and presented to a judge for approval and entry of the final consent custody order. If the
10 mediation ends in an impasse, the case shall be set before a judge for hearing at the next
11 appropriate civil session.

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13 (h)(1) The constitutional rights of parents and the presumption of parents' rights to custody of
14 their child is not lost, waived or reduced by the participation of grandparents in the
15 mandatory child custody mediation program.

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17 (2) Should the mediation end in an impasse, grandparents may seek to intervene in the
18 child custody action under the same legal standards and precedent which apply to any
19 child custody case where non-parents seek to intervene. By participating in mediation no
20 special rights or legal status are conferred to grandparents.

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

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27 *Submitted by Carmelita Monteith on behalf of the Cherokee Chapter of the North American*
28 *Indian Women's Association (NAIWA).*