

## Chapter 49

### **ENROLLMENT\***

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\*Cross reference—Exclusion powers of Tribe, ch. 2.

**Sec. 49-1. Authority of chapter.**

This chapter is enacted pursuant to the authority of the Tribe to establish and regulate membership and enrollment under its sovereign powers as a federally recognized Indian Tribe as well as existing federal statutory law and regulatory authority contained in Title 25 C.F.R. part 75.1-75, 1994, Revision of the Membership Roll of the Eastern Band of Cherokee Indians, North Carolina. This chapter governs future membership, loss of membership, and adoption of members into the Eastern Band of Cherokee Indians.  
(Ord. No. 284, 8-2-1996)

**Sec. 49-2. Qualifications for enrollment.**

The membership of the Eastern Band of Cherokee Indians shall consist of the following:

- (a) All persons whose names appear on the roll of the Eastern Band of Cherokee Indians of North Carolina, prepared and approved pursuant to the Act of June 4, 1924 (43 Stat. 376), and the Act of March 4, 1931 (46 Stat. 1518);
  - (b) All direct lineal descendants of persons identified in section 49-2(a) who were living on August 14, 1963; who possess at least  $\frac{1}{32}$  degree of Eastern Cherokee blood, who applied for membership prior to August 14, 1963, and have themselves or have parents who have maintained and dwelt in a home at sometime during the period from June 4, 1924, through August 14, 1963, on lands of the Eastern Band of Cherokee Indians in the Counties of Swain, Jackson, Graham, Cherokee and Haywood in North Carolina;
  - (c) All direct lineal descendants of persons identified in section 49-2(a) who apply for membership after August 14, 1963, and who possess at least  $\frac{1}{16}$  degree of Eastern Cherokee blood.
- (Ord. No. 284, 8-2-1996; Ord. No. 352, 12-3-1998; Ord. No. 645, 8-5-1999)

**Sec. 49-3. In other Indian Tribes.**

Dual enrollment is prohibited.

- (a) Any person who applies for membership after the effective date of this chapter

(9-11-1995) who otherwise qualifies for membership in the Eastern Band but who has been enrolled as a member of another federally recognized Indian Tribe may be enrolled as a member of the Eastern Band of Cherokee Indians provided:

1. They have not shared in any benefits of land or money of another Tribe;
2. Provided further that they relinquish, in writing, their membership in the other Indian Tribe;
3. Provided still further that such applicant is admitted to membership by a majority vote of the Tribal Enrollment Committee.

- (b) Any member of the Eastern Band of Cherokee Indians who subsequent to enrollment with the Eastern Band becomes a member of another Tribe and shares in any benefits of land or money of such other Tribe, shall be disenrolled from the Eastern Band; however, any member of the Eastern Band of Cherokee Indians who subsequent to enrollment with the Eastern Band becomes a member of another Tribe but has not shared in any benefits from that Tribe, shall be given an opportunity, to relinquish such other membership in order to prevent disenrollment in the Eastern Band. Failure to relinquish will result in disenrollment from the Eastern Band.

(Ord. No. 284, 8-2-1996)

**Sec. 49-4. Enrollment Committee.**

The Tribal Council shall appoint either from within or without the membership of the Council, but not from without the membership of the Band, a Committee of six persons, one from each township, to serve as the Enrollment Committee. The Enrollment Committee shall review all applications for enrollment filed in accordance with existing regulations and shall determine the qualifications of the applicant for enrollment with the Band. The Enrollment Committee may perform

such other functions relating to the enrollment and membership in the Band as the Tribal Council may from time to time direct.

(Ord. No. 284, 8-2-1996; Ord. No. 30, 11-24-1999)

#### **Sec. 49-5. Applications for enrollment.**

(a) *Who must file.* All persons who meet the membership requirements contained in section 49-2 but who are not listed on the membership roll of the Eastern Band of Cherokee Indians, who request membership in the Eastern Band of Cherokee Indians must file an enrollment application. Applications for minors or incompetents may be filed by parents, guardians, or other sponsors such as social workers. No one will be considered for enrollment unless an enrollment application has been filed by the individual or a sponsor.

(b) *When and where to file an application.* All enrollment applications must be filed with the Enrollment Clerk or such other person as may be designated by the membership committee of the Eastern Band of Cherokee Indians. Application forms may be obtained by oral or written request from the Eastern Band Tribal Enrollment Office. Applications for membership may be filed at any time. However, in order to be considered for the per capita payment to be distributed in December of the current year, applications and all documentation required to establish lineage and blood degree must be received by September 15 of the current year. Any applications received after September 15 or any applications received before September 15 without all the required documentation will be processed for consideration for inclusion on the membership roll to be used for distribution of payments in subsequent years.

(c) *What the application must contain.* Each enrollment application must be completed in its entirety and must contain sufficient personal information to properly determine the applicant's eligibility for enrollment. Applications must show the following:

- (1) All names by which the applicant is known;
- (2) The address of the applicant;
- (3) The applicant's degree of Eastern Cherokee blood;

- (4) The names of Eastern Cherokee ancestors whose names appear on the 1924 Baker Roll of the Eastern Band, together with the names of Eastern Cherokee ancestors in generations between that roll and the applicant;
- (5) The name of the Tribe and degree of Indian blood of any Tribe other than Eastern Cherokee, as certified by other Tribe;
- (6) The Social Security Number and a copy of the Social Security card of the applicant or a copy of the completed application for a Social Security card. An application shall not be considered incomplete due solely to a delay by the Social Security Administration in issuing Social Security cards;
- (7) The county and state of birth and a county certified birth certificate (state certified birth certificates will only be accepted when the county does not issue birth certificates);
- (8) The status of natural or adopted applicant;
- (9) The signature of the applicant or sponsor;
- (10) The date of the filing of the application; and
- (11) A completed, signed, and dated IRS Form W-9.

(d) *Proof of lineage.* The burden of proof is on the applicant. The application for membership must be accompanied by the original copy of a certified birth certificate issued by the appropriate governmental entity where the birth occurred. In addition, the Enrollment Committee may, at its discretion, require the submission of one or more of the following documents to establish to its satisfaction that the applicant has the lineage and blood quantum required by Tribal law:

- (1) A marriage license for the parents of the applicant;
- (2) A notarized paternity affidavit signed by the biological mother and biological father of the applicant;
- (3) A court order determining paternity;

- (4) The results of DNA test signifying the probability of paternity; and/or
- (5) Other similar documents which are needed for a specific applicant.

*Effect of court order of paternity.* An order determining paternity issued by the court of the Eastern Band is evidence of lineage and shall be given due deference by the Enrollment Committee. An order determining paternity issued by a court other than the court of the Eastern Band shall be appropriately weighed, along with other evidence, by the Enrollment Committee. If information submitted in support of an application for enrollment does not include an order determining paternity issued by the court of the Eastern Band or does not establish, in the discretion of the Enrollment Committee, that the applicant has the lineage and blood quantum required by Tribal law, the Enrollment Committee shall require DNA testing of the applicant and other necessary persons.

(e) *Adopted Eastern Band of Cherokee Indians child.* An adopted person's eligibility for enrollment is determined through one or both of the natural parents. Documentary evidence submitted to support an adopted person's application for enrollment must show relationship to the natural parent through whom eligibility for enrollment is determined. The information shall be contained in locked file cabinets, and adequate safeguards shall be installed to ensure that the confidentiality of these records shall not be violated.

(f) Adoptions by this Tribe of Indian children from other federally recognized Indian Tribes. It is recognized that some persons have been adopted into membership in the Eastern Band of Cherokee Indians pursuant to Tribal Resolution 381 (1977) and that such persons are entitled to retain their membership. However, Resolution No. 381 (1977) is hereby rescinded as of the effective date of this amendment to the enrollment ordinance (8-9-1996), and persons who do not possess the required lineage and the required degree of Eastern Cherokee Indian blood shall not be adopted into membership regardless of their degree of other Tribal blood or their status as legally adopted children of Eastern Band members.

(Ord. No. 284, 8-2-1996; Ord. No. 566, 1-12-2001; Ord. No. 670, 3-17-2001)

#### **Sec. 49-6. Processing of the application.**

(a) *By enrollment staff.* All applications shall be received by the Enrollment Office personnel. The actions taken by the enrollment staff shall include:

- (1) Stamp the application form with the date on which it is received and acknowledge receipt of it.
- (2) Make a folder for the application and supporting documents.
- (3) Make sure the application is complete. If not, notify the applicant of what is required.
- (4) If applicant possesses blood of any other Tribe(s), check on possible enrollment.
- (5) Compute degree of Eastern Cherokee blood. The degree of Eastern Cherokee Indian blood shown on the 1924 Baker Roll shall be used in all cases for computing the degree of Eastern Cherokee Indian blood for new enrollees for enrollment purposes.
- (6) As completely as possible, verify other claimed Indian blood.
- (7) Separate applications into two stacks:
  - a. Applicants descended from Eastern Cherokee base roll who also meet other requirements; and
  - b. Applicants who do not meet requirements or who do not have proper documentation.
- (8) Prepare certifications accepting or rejecting applications for consideration of Enrollment Committee.

The above actions shall be completed by the staff within 45 days of receipt of the application.

(b) *By Enrollment Committee.* Actions taken by the Enrollment Committee shall include:

- (1) Examine applications and documentation presented by Enrollment Staff.
- (2) Determine accuracy and sufficiency of research, requiring additional action by staff if necessary.
- (3) Decide to accept or reject applicants.

- (4) Direct the staff to notify accepted applicants of action, informing them of the roll number assigned.
- (5) Direct the staff to notify rejected applicants of Enrollment Committee's action, by certified mail, return receipt requested, and of their right to appeal this decision to the Tribal Council, through the Appeals Officer appointed by the Tribal Council.

The above actions shall be completed by the Enrollment Committee within 30 days of its receipt of the material from the staff.

(Ord. No. 284, 8-2-1996)

**Sec. 49-7. Appeals for adverse ruling of Enrollment Committee.**

(a) *For membership purposes only.*

- (1) Applicants who are determined ineligible by the Enrollment Committee shall be notified of their rejection by certified mail, return receipt requested. The rejection notice shall state the specific reason they do not qualify. Each rejected applicant shall also be advised of the right to appeal the decision of the Enrollment Committee to the Tribal Council through the Appeals Officer. The applicant shall be advised to submit with the appeal any supporting evidence not previously furnished. Any appeal must be received by the Appeals Officer no later than 30 days from the date of receipt of the notice of rejection by the Enrollment Committee. No person shall have the right to appeal an adverse decision after the expiration of 30 days from the date notice was served on applicant. A final decision by either the Committee, appeals officer or Tribal Council is Res Judicata and shall not be brought on for rehearing by any Tribal body or Committee.
- (2) When an appeal is received, the Appeals Officer shall review the Enrollment Committee decision and base his decision solely upon documentary evidence presented with the application and the appeal which established that the applicant does or does not qualify for membership pursuant to

the provisions of this chapter 49. The decision of the Appeals Officer, if it is the same as that of the Enrollment Committee, shall be final. The decision of the Appeals Officer, if it is different from the Committee's decision, shall be returned to the Committee for further discussion and action. The Committee may then either uphold its earlier adverse decision or honor the Appeals Officer reversal of the Committee's earlier decision. If the Committee upholds its earlier adverse decision, then the applicant's appeal shall be forwarded to the Tribal Council for consideration. All decisions of the Tribal Council shall be final.

(b) *To share in distribution of trust assets.* Applicants who are determined ineligible by the Enrollment Committee when a roll is being prepared for distribution of Tribal judgment funds or other trust assets shall be notified of their right to appeal to the Secretary of the Interior. That appeal must be in writing addressed to the Secretary of the Interior and mailed to the Superintendent of the Cherokee Indian Agency. All appeals must be filed within 30 days from the date of receipt of the notice of the decision of the Enrollment Committee.

(Ord. No. 284, 8-2-1996)

**Sec. 49-8. Recordkeeping.**

(a) *Content of individual folder.* An individual folder shall be established for each Tribal member. This folder shall contain the following items:

- (1) Application form;
- (2) Family tree;
- (3) County certified birth certificate; (state certified birth certificates will only be accepted when the county does not issue birth certificates);
- (4) Correspondence;
- (5) All other documentation on the person pertinent to membership in the Tribe;
- (6) Marriage license/legal name change;
- (7) Copy of the applicants Social Security card;

- (8) Current completed, signed, and dated Form W-9.
- (9) Death certificate, if applicable.
- (b) *Confidentiality and access to records and roll.*
- (1) *Confidentiality.* Information in a tribal member's individual folder is considered confidential. It shall not be available to anyone except:
- The individual member (or his/her guardian or legal representative);
  - To enrollment staff, Tribal Enrollment Committee members and Tribal Council members when such examination is necessary in considering enrollment decisions;
  - To the Office of Internal Audit when examination is necessary to verify adherence to Tribal law, policies and procedures; and
  - To a person or group commissioned by the Tribal Council for the purpose of conducting inspections, audits and verification of current and past membership.
- (2) *Access to roll.* The Tribe's membership roll may be viewed only by authorized personnel of the enrollment office and others authorized by the Enrollment Committee. Neither the roll nor any portion thereof may be copied or distributed to any person or organization except by permission granted by the Eastern Band of Cherokee Enrollment Committee. The Enrollment Committee shall use its discretion in using or releasing information from the roll for the benefit of Tribal programs.
- (c) *Updating records.* Upon receipt of appropriate documentation, the Enrollment Staff is authorized to update the information on the Tribal roll. The following documentation is deemed adequate for such actions to be taken:
- Name change: marriage license, divorce decree, court order changing name, Social Security card stating name change.
  - Address change: written statement signed by Tribal member or their guardian.
  - Death: death certificate, Bureau of Indian Affairs records, mortuary records, hospital records, obituary notice from newspaper, written, signed statement from someone who attended funeral or who saw the grave marker and can provide the date of death.
- (d) *Changes.* Any change for which none of the above documents are available must be approved by the Enrollment Committee. A copy of that statement, stating the reason for the change without usual documentation shall be placed in the individual's folder.
- (e) *Updating records.* To ensure accurate and complete records, every enrolled member must keep his or her enrollment documentation current. (For instance, enrolled members are responsible for notifying the Enrollment Office whenever there is a change of name through marriage or divorce or when there is a change of address). Also, as directed by the Enrollment Committee, the Enrollment staff may require enrolled members to update any documentation set forth in this section.  
(Ord. No. 284, 8-2-1996; Ord. No. 566, 1-12-2001; Ord. No. 129, 4-23-2004)

#### **Sec. 49-9. Loss of membership.**

##### (a) *Relinquishments.*

- Any adult member of the Eastern Band of Cherokee Indians may voluntarily relinquish his/her membership. Such a relinquishment must be in writing, and the signature must either be notarized or witnessed by two persons. A person who has relinquished his/her membership in Eastern Band as an adult, over the age of 18, may not reapply for membership.
- The membership of any member of the Eastern Band of Cherokee Indians who is not at least 18 years of age may not be relinquished by anyone. The only exception is when the parent or guardian desires to enroll the minor child into another federally recognized Indian Tribe.

However, this may only be accomplished on a conditional relinquishment form. A person whose membership in the Eastern Band was relinquished by a parent or guardian while the person was a minor may reapply for membership after reaching the age of 18.

- (3) Any member wishing to relinquish will be encouraged to do so on a conditional relinquishment form. In such case, the relinquishment will become effective upon the acceptance of that individual into membership of another Tribe. The member's name will not be removed from the Eastern Cherokee Tribal Roll until documentation of the acceptance into the other Tribe's membership is received.
- (4) Should a member insist upon relinquishing in writing, without using the conditional relinquishment form, the Tribe will comply with the member's wishes and will remove the member's name from the Eastern Cherokee Tribal Roll on the effective date specified in the relinquishment submitted.

(b) *Disenrollments.* The Enrollment Staff shall bring to the attention of the Enrollment Committee the names of such Tribal members as an examination of the records of the enrollment office indicate, might be subject to disenrollment. Should the Enrollment Committee determine that disenrollment action is necessary, the procedures described in this section shall be followed. Any person whose disenrollment has been completed shall not be eligible to reapply for membership.

- (1) *Grounds for disenrollment.* A Tribal member may be subject to disenrollment if records reveal one or more of the following conditions exist:
  - (A) The member was erroneously enrolled (that is, he/she did not meet the eligibility criteria in existence at the time of his/her enrollment).
  - (B) The member has accepted benefits of land or money (or if a minor, a parent or guardian has accepted benefits of land or money on the minor's behalf) as an enrolled member of

another Indian Tribe after the effective date of this chapter (9-11-1995).

- (C) The member is currently enrolled with another Indian Tribe and has either refused to relinquish membership in the other Tribe or has failed to respond to a notice of the requirement to relinquish membership in the other Tribe.
- (2) *Procedures for disenrollment.* Members identified as being subject to disenrollment pursuant to subsection (1) of this section shall be notified by certified mail, return receipt requested, of the intent to disenroll. Included in the notice shall be the date set for a hearing before the Enrollment Committee to consider the matter. Following the hearing, whether or not the affected member makes any appearance or response, the Enrollment Committee shall determine if the member shall be disenrolled. The disenrolled member shall be notified of the action taken by certified mail, return receipt requested. Such notice shall include the right to appeal the Enrollment Committee's decision to the Tribal Council within 30 days of the date of the receipt of the notice. Should such an appeal be timely filed, the Tribal Council shall make a decision on the disenrollment. The decision of the Tribal Council shall be final. If no appeal is timely filed, the decision of the Enrollment Committee shall be final.  
(Ord. No. 284, 8-2-1996; Ord. No. 645, 8-5-1999)

**Sec. 49-10. Conflicting ordinances or resolutions.**

All ordinances or resolutions in conflict with any provision of this chapter are hereby rescinded.

(Ord. No. 284, 8-2-1996)