

TO APPROVE THE ADOPTION OF THE CHOCTAW NATION PEACEMAKING ACT

IN THE TRIBAL COUNCIL OF THE CHOCTAW NATION

THOMAS WILLISTON INTRODUCED THE FOLLOWING COUNCIL BILL

A COUNCIL BILL

TO APPROVE adopting certain codes for use in the Court of General Jurisdiction of the Choctaw Nation of Oklahoma.

WHEREAS, this Council created the Court of General Jurisdiction of the Choctaw Nation of Oklahoma with Council Bill 65-2009; and

WHEREAS, the new Court system was approved by the U.S. Department of Interior on October 8, 2009; and

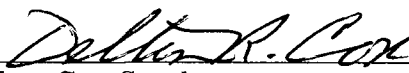
WHEREAS, in accordance with CB-65-2009, the new Court was activated and the CFR Court of Indian Offenses of the Choctaw Nation abolished by the Chief on February 4, 2010; and

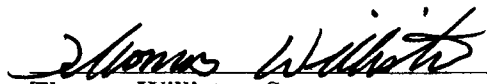
WHEREAS, the Court of General Jurisdiction has provided for adoption by this Council certain Judicial Codes, Rules and Regulations which will replace all or a portion of the Rules for the CFR Court of Indian Offenses of the Choctaw Nation.

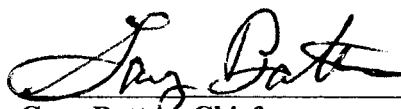
THEREFORE BE IT ENACTED, by the Tribal Council of the Choctaw Nation of Oklahoma, that this Act be cited as approval of the adoption of the Peacemaking Act of the Choctaw Nation of Oklahoma, as attached, under the conditions described herein.

CERTIFICATION

*I, the undersigned, as speaker of the Tribal Council of the Choctaw Nation of Oklahoma, do hereby certify that the Tribal Council is composed of twelve (12) seats. Eight (8) members must be present to constitute a quorum. I further certify that twelve (12) members answered roll call and that a quorum was present at the Regular Session of the Tribal Council at Tuskahoma, Oklahoma on August 8, 2015. I further certify that the foregoing Council Bill CB-139 -15 was adopted at such meeting by the affirmative vote of twelve (12) members, zero ( 0 ) negative votes, and zero ( 0 ) abstaining.*

  
Delton Cox, Speaker  
Choctaw Nation Tribal Council

  
Thomas Williston, Secretary  
Choctaw Nation Tribal Council

  
Gary Batton, Chief  
Choctaw Nation of Oklahoma

Date 8-14-15

# Choctaw Nation Peacemaking Act

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### Section 1. Title

This Act may be known and cited as the “Peacemaking Act”.

### Section 2. Creation and purpose

A. The District Court of the Choctaw Nation of Oklahoma is hereby authorized to utilize peacemakers, which shall be a division of the District Court of the Choctaw Nation of Oklahoma and which shall operate in accordance with the customs and traditions of the Choctaw people.

B. The purpose of Choctaw Nation Peacemakers Act is to provide a forum for the use of traditional Choctaw methods of peacemaking to resolve disputes in a fair, informal, and inexpensive manner.

C. Any ambiguity in this act shall be liberally construed to carry out its purpose of encouraging

traditional Choctaw methods of dispute resolution without formal court proceedings.

D. The District Court of the Choctaw Nation of Oklahoma shall have the authority to assign cases to and supervise the activities of any peacemaker appointed pursuant to this act.

### **Section 3. Qualifications of peacemakers**

A peacemaker shall have the following minimum qualifications:

1. be of good moral character and integrity;
2. not have entered a plea of guilty or nolo contendere or been convicted of a felony or a crime involving moral turpitude;
3. be familiar with the history, customs and traditions of the Choctaw people;
4. be familiar with the provisions of this act, the court procedures of the Choctaw Nation of Oklahoma and federal law applicable to the Choctaw Nation of Oklahoma;
5. be proficient in oral and written communications; and
6. be capable of preparing the documents and reports incidental to the office of peacemaker.

### **Section 4. Jurisdiction of peacemakers**

Peacemakers shall have jurisdiction over any matter referred to it by the District Court of the Choctaw Nation of Oklahoma if all parties to the dispute agree to be bound by the decision of the peacemaker. If a peacemaker determines that the peacemaking process cannot produce an agreed resolution of the matter, the peacemaker shall transfer the case back to the district court which shall resume jurisdiction over the case.

### **Section 5. Limitations of peacemakers**

A peacemaker shall neither force a party to resolve a disputed matter, nor shall a peacemaker have authority to adjudicate a matter which the parties cannot resolve through voluntary agreement.

### **Section 6. Nomination and appointment of peacemakers**

A. Nomination of peacemakers may be made by Tribal Council Members, the Chief, the Assistant Chief, Choctaw Nation employees or any other person. Nominations shall be made to the district court clerk who shall forward the nominations to the district judge.

B. The district judge of the District Court of the Choctaw Nation of Oklahoma shall appoint a qualified peacemaker to each case where the parties have agreed to resolve their dispute through

traditional methods of peacemaking unless all parties to a dispute have agreed to the appointment of a particular qualified peacemaker then the district judge shall appoint that peacemaker to the dispute.

C. Nothing in paragraph B of this section shall be construed to limit the authority of the district judge from appointing more than one peacemaker in cases where it may be advantageous to have more than a single peacemaker. When more than one peacemaker is simultaneously appointed in a case, each of the peacemakers shall work together to assist the parties in resolving the dispute. If one or more of the parties allege that multiple peacemakers are not beneficial, the district judge may remove any or all of the peacemakers upon application by one or more of the parties.

D. A qualified peacemaker is a person who has been certified by the District Court of the Choctaw Nation of Oklahoma as having the minimum qualifications of a peacemaker and who has agreed in writing and who has taken the constitutional oath to serve under the authority of the district court. The clerk of the district court shall maintain a roster of persons certified by the district court as peacemakers.

E. A person may be removed from the peacemaker roster for cause after the person has been afforded a hearing before a district court judge. A person removed from the roster for cause, after said hearing, may appeal the removal to the court of appeals, whose decision shall be final. A peacemaker shall be an officer of the court and shall not be subject to the personnel and grievance policies of the Choctaw Nation of Oklahoma.

F. Peacemakers shall be immune from civil liability for the performance of their duties and responsibilities.

#### **Section 7. Use of Choctaw Nation traditions and customs**

A peacemaker may use cultural traditions and customs of the Choctaw Nation, including but not limited to present day religious teachings, in the peacemaking process if the peacemaker reasonably believes that such use will further the objective of voluntarily resolving a dispute. Peacemakers may also consult with tribal elders regarding tribal customs and traditions as an aid to furthering the resolution process.

#### **Section 8. Use of tribal traditions and customary law**

Parties to a dispute may file a written request with the district court asking that their dispute be heard by a peacemaker. The request may be made either on a form provided by the court or in any written form which provides the following information:

1. the name, address and phone number of the person requesting that the peacemaking process be used;
2. the names of the parties involved in the dispute and their mailing addresses and places of residence;

3. a short statement of the type of dispute involved in the action;
4. the reason the party desires the action to be heard by a peacemaker;
5. the names and addresses of any persons other than the named parties that the requesting party believes might have information useful to a peacemaker resolving the action; and
6. if known, information as to the party's tribal affiliation and membership.

#### **Section 9. Procedures for requesting to transfer as an existing action to a peacemaker**

Any person to an action in the district court may request that the court refer the case to a peacemaker by filing a written motion for referral. The motion for referral must comply with the requirements of the district court and Section 8 of this act.

#### **Section 10. General provisions**

A. If a motion for referral to a peacemaker is made by a party, the moving party shall mail a copy of the motion, by certified mail, return receipt requested, to the other parties. The district court may decline to approve the referral if the court, for good cause, determines that the motion was made to needlessly delay the proceedings or if the court determines that the case is such that it would be unreasonable to believe that the case could reach resolution by a peacemaker. After a party files a motion for referral to a peacemaker, any other party may object to the motion or may consent to the motion by filing a written objection or consent with the court clerk within fifteen (15) working days of receipt of the motion.

B. The district court shall grant a joint motion for referral to a peacemaker filed by all parties to the dispute indicating that all parties consent to the referral of their dispute to a peacemaker.

C. The district court may also, upon its own motion, refer an action to a peacemaker if the court finds that the action, in light of the totality of circumstances concerning the action known then by the court, is the type of action that may be resolved through peacemaking and all parties consent to the referral of their dispute to a peacemaker.

D. Once a matter is referred to a peacemaker, a party or parties may not request that the matter be removed from the peacemaker and assigned back to the dockets of the district court unless such request is pursuant to a motion for a protective order.

E. The district court shall make all referrals to a peacemaker by a duly entered order of the court.

#### **Section 11. Procedure before a peacemaker**

A. Upon referral of a matter to a peacemaker, the district court shall notify a peacemaker of his selection and appointment by causing a copy of the district court's referral order and copies of all

documents filed in the case to be mailed and/or delivered to the peacemaker. If the appointment is accepted, the peacemaker is responsible for advising the parties of his appointment in writing. The copy of the referral order shall serve as evidence of the peacemaker's authority in the matter. If the appointment is declined by the peacemaker, the district court shall select another peacemaker and follow the procedures in this paragraph.

B. The peacemaker shall meet with the parties to resolve the dispute at a time and place agreed to by the peacemaker. The venue may be where the parties reside, in the community where the moving party resides, or a convenient place for the parties when they reside in separate communities. The peacemaker may schedule additional meetings if reasonably necessary to resolve the dispute.

C. The Code of Civil Procedure, the Code of Criminal Procedure and the Evidence Code of the Choctaw of Nation of Oklahoma shall not apply to proceedings conducted by a peacemaker. Attorneys for a party and witnesses shall not have the right to participate in the peacemaking proceedings, but may participate at the discretion of the peacemaker.

D. If the parties reach agreement or resolution through the peacemaking process, the peacemaker will assist the parties in drafting a written agreement to be signed by all parties and the peacemaker. The peacemaker will present a copy of the agreement and a proposed dismissal order to the district court. The district court shall review the agreement and proposed order to ensure that those documents meet the requirements of the court. If the agreement and proposed order are sufficient, the court shall endorse the order and file the agreement and order in the case as a final, non-appealable order. The district court shall cause a copy of the entered agreement and order to be mailed to each of the parties and to the peacemaker.

E. If the agreement and/or order does not meet the requirements of the district court, the court shall cause the agreement and/or order to be sent back to the peacemaker with suggested revisions. If the parties sign the revised agreement incorporating the suggested revisions, the peacemaker shall then present the revised agreement to the district court and the procedure described in Subsection D above shall be followed.

F. If the parties cannot reach an agreement to resolve their dispute, the peacemaker shall certify in writing to the district court that the dispute was not resolved. The court may then refer the matter to another peacemaker or enter an order referring the matter back to the district court for further proceedings.

G. Notwithstanding any other provision of this chapter, the peacemaker or district court may enter an order referring any matter before a peacemaker back to the district court if the parties have not reached an agreement resolving the matter after sixty (60) days have lapsed from the date of the order from the district court referring the matter to the peacemaker.

H. Notwithstanding any other provision of this act, a case may not be referred to a peacemaker more than one (1) time by the district court unless all of the parties in the case consent.

## **Section 12. Form of agreements and proposed orders**

A. A peacemaker shall not approve any agreement referred to in the previous section unless:

1. The agreement contains a provision stating that all issues concerning the parties involved in the legal action are resolved;
2. The agreement contains a statement that all parties have voluntarily signed the agreement and consent to the proposed order; and
3. The peacemaker, upon review of the agreement in its entirety, finds that the agreement contains the complete agreement of the parties and contains sufficient information for the parties to understand their respective mutual obligations under the agreement and proposed order.

B. A peacemaker may enter an agreement and proposed order only when the following conditions have been met:

1. the court has jurisdiction over the parties and the subject matter of the agreement;
2. all parties have voluntarily signed the agreement and consented to the proposed order;
3. the order contains sufficient information regarding the full agreement so a dispute as to the order is not likely to arise in the future; and
4. the agreement and proposed order is otherwise proper and enforceable by the district court.

C. All orders shall set forth the names of the parties, the fact that the matter has been resolved by participation in the peacemaking process and a statement that the parties have reached an agreement to resolve their dispute.

## **Section 13. Enforcement of orders**

An order entered pursuant to this act shall be enforceable in the same manner as other orders of the District Court of the Choctaw Nation of Oklahoma.

## **Section 14. Admissibility of statements made in the peacemaking process**

Statements made by any party during the peacemaking process shall be considered statements made during settlement negotiations and shall not be admissible in any court proceedings.

## **Section 15. Conduct of a peacemaker**

A person shall not participate as a peacemaker in any matter:

1. in which the peacemaker has a monetary or property interest;

2. in which the peacemaker is or has been a material witness; or
3. in which the peacemaker is related by blood or marriage within the second degree to any of the parties.

#### **Section 16. Protective orders**

A. Any party or witness involved in the peacemaking process may move the district court for a protective order ending or placing limitations on the peacemaking process. The grounds for such protective order shall be:

1. harassment by the peacemaker or another person which is not properly handled by the peacemaker;
2. invasion of personal privacy by the peacemaker to an unreasonable extent;
3. conduct of the peacemaker which is degrading, inhumane, dangerous, assaultive, or otherwise violates individual rights;
4. conduct by the peacemaker in violation of Section 15 of this act;
5. the assertion of any privilege recognized by law but not respected by the peacemaker; or
6. the assertion of any right guaranteed by tribal or federal law but not recognized by the peacemaker.

B. A motion for a protective order shall be made in writing to the district court. Upon receipt of a motion for a protective order, the district court shall conduct a hearing on the motion. The court may grant or deny the motion in whole or in part. The court may order any remedy that it finds reasonably appropriate, even if such remedy was not requested by the party filing the motion.

#### **Section 17. Process of peacemaking**

A peacemaker is permitted to use any reasonable process or method of working with the parties to resolve their dispute as long as force, violence, threats or compulsion is not used. The basic rights of the parties shall be respected by the peacemaker and all parties during the peacemaking process.

#### **Section 18. Forms and rules**

The district court may adopt additional rules and standard forms for use in the peacemaking process.



- i. Implementation: The Chief is authorized to take all necessary actions to implement this Act as soon as practical.

**Title IV: Rescission of Previous Acts**

Previous Acts of the Tribal Council governing banking and investments, except any provisions of such Acts pertaining to or relied upon by any existing agreements of the Nation, are hereby rescinded and superseded by this Act. Any provisions of former Acts pertaining to or relied upon by agreements in effect as of the date of the Act shall remain in effect only for the duration of such existing agreements.