



RECONSIDERATION OF NCA 10-144

I, the undersigned, certify that the foregoing "Reconsideration of NCA 10-144" is a true extract from the July 31, 2010, Regular Session Journal of the Muscogee (Creek) National Council.


AND THAT, NCA 10-144 entitled, A LAW OF THE MUSCOGEE (CREEK) NATION AMENDING MCNCA TITLE 35, CHAPTER 10, ENTITLED "Muscogee (Creek) Nation Legal Services Citizen Department", was presented to the National Council acting as a Council as a Whole and was approved in Quarterly Session on July 31, 2010, National Council by a vote of 17 in favor, 2 against, 0 abstention.

AND THAT, Said legislation was returned as a Veto with objections by the Principal Chief on August 12, 2010 and said objections have been entered at large in the Journal of the Muscogee (Creek) National Council;

AND THAT, The National Council taking action reconsider the Bill to **OVER-RIDE** the Veto at the Regular Session on August 28, 2010, in accordance with the Constitution, Article VI, Section 6(a), requires a (2/3) vote of the full membership, which consists of Twenty-Six members;

AND THAT, The record of vote reflects there were Twenty-three present with a vote of 15 in favor, 8 against, 0 abstention;


THEREFORE, BE IT KNOWN, under Article VI., Section 6. (a) of the Muscogee (Creek) Nation Constitution, NCA 10-144 is hereby recorded as a "**VETO**" on this 30th day of **August 2010**.



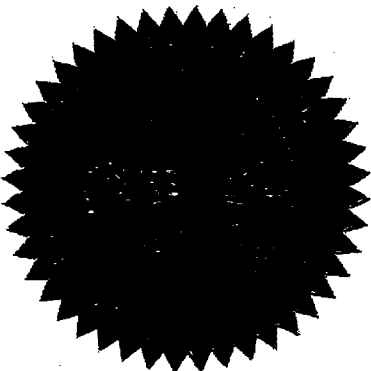
Terry A. Fish, Recording Secretary
Muscogee (Creek) National Council

CERTIFICATION OF APPROVAL

IN WITNESS WHEREOF, I, the Presiding Officer of the Muscogee (Creek) National Council have hereto attached my signature this 30th day of **August 2010**.



Roger Barnett, Speaker
National Council
Muscogee (Creek) Nation



VETO



NCA 10-144

CLASSIFICATION: #35. SOCIAL SERVICES/PUBLIC ASSISTANCE/DONATIONS

A LAW OF THE MUSCOGEE (CREEK) NATION AMENDING MCNCA TITLE 35, CHAPTER 10, ENTITLED "Muscogee (Creek) Nation Legal Services Citizen Department"

Be it Enacted by the National Council of the Muscogee (Creek) Nation:

SECTION ONE. AMENDMENT. This amendment shall be codified in Title 35, Chapter 10 of the Code of Laws of the Muscogee (Creek) Nation; provided that for purposes of codification of said amendment and its inclusion in pocket parts of the Code of Laws of the Muscogee (Creek) Nation, the Codification Committee is hereby authorized: (1) to approve any changes related to the manner in which sections, articles, chapters and sub-chapters are designated consistent with the format in the Code of Laws published in 2003 by West Publishing Company; (2) to include footnoted references to the legislative history in said pocket parts to the Code of Laws and (3) to not in said pocket parts any editorial correction of minor clerical or grammatical errors in the following amendment, without further National Council approval:

SECTION TWO. AMENDMENT. MCNCA Title 35, Chapter 10, is hereby amended to read as follows:

**CHAPTER 10. MUSCOGEE (CREEK) NATION CITIZEN
LEGAL SERVICES DEPARTMENT**

§ 10-101. Findings

The National Council finds that:

A. Many Muscogee (Creek) Citizens have limited or no access to legal assistance. Muscogee (Creek) Citizens have nowhere to turn when certain legal rights, some guaranteed by treaty, are denied.

B. There is a need for complete legal services in the following areas for citizens of the Muscogee Nation and their families:

- (1) basic elder law needs such as probate and guardianship,
- (2) basic estate planning, such as simple wills, deeds, durable powers of attorney, advanced directives;

- (3) basic family law, divorce and guardianships of minor children, including cases that might arise under the Indian Child Welfare Act (ICWA);
- (4) consumer law and collection issues;
- (5) basic criminal law defense, such as misdemeanor violations and some limited felony cases, as defined by the Commission;
- (6) community education programs and presentations; and
- (7) regularly scheduled Chartered Community Meetings, outreach site visits to Senior Center Activities, Commodity Distribution Sites, Elderly Nutrition Sites, Tribal Towns and other tribal social service agencies.

C. There is a need for a centralized and independent Office of Public Defender for indigent defense appointments made by the Courts of the Muscogee (Creek) Nation.

§ 10-102. Purpose

The purpose of this chapter is to create the Muscogee (Creek) Nation Citizen Legal Services Department:

A. 4. **The goal of the Muscogee (Creek) Nation Citizen Legal Services Department will be to provide direct legal representation for Muscogee (Creek) Citizens and to administer the Office of Public Defender for indigent defense appointments made by the Courts of the Muscogee (Creek) Nation.**

B. The Department will be structured as follows:

- 1. A Legal Aid Office will be established to provide direct legal services for Muscogee (Creek) Nation citizens for civil and criminal cases arising in tribal, state or federal court, under the eligibility guidelines governed by the Commission.**
- 2. An Office of Public Defender will be established to provide indigent defense to individuals in tribal court cases upon order of appointment by the Courts of the Muscogee (Creek) Nation.**

§ 10-103. Creation

There is hereby created the Muscogee (Creek) Nation Citizen Legal Services Department, an Independent Agency of the Tribe.

§ 10-104. Eligibility for Services

All enrolled members of the Muscogee (Creek) Nation are eligible for all services provided by the Muscogee (Creek) Nation Citizen-Legal Services Department. In addition, the same assistance will may be extended to individuals who are not enrolled members but are eligible for enrollment under the Muscogee (Creek) Constitution and Laws, and to other individuals who come within the jurisdiction of the Muscogee (Creek) Nation and entitled to indigent defense counsel as ordered by the Courts of the Muscogee (Creek) Nation. No Muscogee (Creek) citizen is eligible for payment of legal expenses by the Muscogee (Creek) Nation except through the Muscogee (Creek) Nation Citizen-Legal Services Department.

§10-105. Commission

There is hereby created a seven-~~(7)~~ five (5) member Commission, all to be citizens of the Muscogee (Creek) Nation ~~living within tribal jurisdiction boundaries,~~ who will oversee and coordinate the operation of the Muscogee (Creek) Nation Citizen Legal Services Department. The members of the Commission shall consist of two (2) members appointed by the National Council, two (2) members appointed by the Principal Chief, and one (1) member who is to be selected by the four (4) appointed members of the Commission within the first 10 days after the Commission is seated. All Commission appointees shall be confirmed by Tribal Resolution. For the appointments by the National Council and Principal Chief, one appointee shall be an attorney in good standing as a member of the Muscogee (Creek) Nation Bar Association and one appointee shall be a lay person. It is at the discretion of Commission to set policy for whether the Commission's appointee shall be an attorney or a lay person. ~~the (1) Speaker of the National Council or designee, (2) one member of the Business and Governmental Committee of the National Council, (3) one tribal citizen appointed by the Speaker of the National Council, (4) the Principal Chief or designee, (5) one tribal citizen appointed by the Principal Chief, and (6) the Second Chief or designee and (7) the District Court Judge of the Muscogee (Creek) Nation.~~

A. Commissioners are prohibited from accepting employment or an elected or appointed position with the Muscogee (Creek) Nation or entity thereof. The Commission shall meet at a minimum of once a month. Meeting compensation for Commissioners shall be Four Hundred and No/100 Dollars (\$400.00) per meeting, in addition to mileage.

B. At the beginning of each fiscal year, the Commissioners shall elect among its membership an attorney to serve as Chairperson to be the primary administrator of the day-to-day operations of the Commission. The Chairperson shall have at minimum, one weekly meeting with the Public Defender and Director

of Legal Aid to ensure proper administrative oversight of the Legal Department by the Commission. The Chairperson shall be compensated at the rate of \$1500 per month. The Chairperson's duties include but are not limited to:

1. Be the liaison between the Department and the Commission.
2. File bar complaints with the tribal and state bar associations if an attorney's conduct warrants such a referral.
3. Call and conduct the monthly meetings of the Commission.
4. Call and conduct the weekly meetings with the Public Defender and Director of Legal Aid.
5. Ensure that a proper system is in place for grievances for denial of services or attorney conduct to be presented to the Commission.

§10-106. Contract Employees

A. The Commission shall ensure that there are sufficient number of attorneys to accomplish the goals of this Title and shall have full authority to make hiring decisions, including the flexibility to hire attorneys on a full or part-time basis. The positions of the Public Defender and Director of Legal Aid shall be full-time employees with administrative oversight of the respective offices, subject to oversight by the Commission.

B. The Commission shall have the discretion to directly hire, or delegate to the Public Defender and Director of Legal Aid the power to hire support staff for the Department.

C. \$75,000 shall be set aside in the Department's budget to hire outside attorneys on a case by case basis when a conflict of interest prohibits the attorneys within the Department from providing adequate representation in a case. When such a conflict occurs, members of the Muscogee (Creek) Nation Bar Association that are willing to accept such appointments shall receive the appointments on a rotating basis.

D. The Citizen Legal Services Commissions shall adhere to the policies and procedures of the Nation including all accounting and financial procedures.

~~A. The Commission shall negotiate and the Principal Chief shall execute a contract with licensed attorneys experienced in Federal Indian Law, Muscogee (Creek)~~

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~~Nation and Oklahoma Law in accordance with this chapter and containing all items of legal services set out and contained in Title 35, § 10-101. These attorneys will be independent contractors and will be responsible for the administration of the program within the parameters as set out in this chapter and in accordance with policy and procedures developed by the Commission. All contracts must follow the Tribe's procurement policy. There will be one (1) attorney who will be the managing attorney, responsible for all reporting and communications with the Commission and Court.~~

~~B. The contract shall specify payment by the Muscogee (Creek) Nation at the beginning of each month upon receipt by the District Court of an original invoice to be followed by a monthly report from the Clinic attorney contracting group as specified in Title 35, § 10-113. Funds shall be appropriated to the District Court specifically for the Muscogee (Creek) Nation Citizen Legal Services Department.~~

§ 10-107. Insurance

The Muscogee (Creek) Nation Citizen Legal Services Department shall maintain legal malpractice insurance for the benefit of Muscogee (Creek) Nation citizen clients and hold harmless the Muscogee (Creek) Nation.

§ 10-108. Grievance procedure and appeals process

Within the first 60 days of operation under this legislation, ~~T~~the Muscogee (Creek) Nation Citizen Legal Services Department shall provide the Commission written policies and procedures detailing a grievance procedure and appeals process for any denials of legal service.

§ 10-109. Interference by tribal officials

The acceptance, prioritizing and assignment of cases selected by the Muscogee (Creek) Nation Citizens Legal Services Department are to be free of interference by tribal officials.

§ 10-110. Court costs and publication fees

A. The Attorneys Commission shall determine, in accordance with **shall establish** guidelines established by the ~~Advisory Board Commission,~~ **for** a client's eligibility for payment of court costs and publication fees from the Legal Service's Court Costs and Publication Fee Revolving Fund. A written recommendation with payee information and invoice for the services needed will be presented to the District Court Clerk for proper payment.

B. The National Council hereby authorizes the District Court Clerk to expend

monies from The ~~Legal Service's~~ Court Cost and Publication Fees Revolving Fund upon receipt a written recommendation from the Muscogee (Creek) Nation ~~Citizen~~ Legal Services Department and presentment of a proper invoice.

C. The Muscogee (Creek) Nation District Court may in accordance with District Court Rules waive court costs in cases filed by the Muscogee (Creek) Nation ~~Citizen~~ Legal Services Department. The Muscogee (Creek) Nation Supreme Court may in accordance with Supreme Court Rules waive court costs in cases appealed by the Muscogee (Creek) Nation ~~Citizen~~ Legal Services Department.

§ 10-111. Accountability; quarterly and annual reports

The ~~Managing Attorney~~ **Public Defender and Director of Legal Aid** shall submit to the Commission within 30 days of the close of each fiscal quarter, a quarterly activity report on the Muscogee (Creek) Nation ~~Citizen~~ Legal Services Department in the preceding fiscal quarter and within 45 days of the close of each fiscal year, a complete fiscal year's activity report and audit shall be submitted to the Commission. The Commission shall request information at any time.

§ 10-112. Muscogee (Creek) preference.

A. Muscogee (Creek) Nation citizens will be given **hiring** preference in the ~~contracting~~ **employment** of licensed attorneys.

B. Muscogee (Creek) Nation citizens will be given hiring preference for all staff positions created to accomplish the goals of this chapter.

§ 10-113. Notice to citizens


Notice to the Muscogee (Creek) Nation's citizens shall be by publication in the Muscogee Nation News using both the Mvskoke Emponakv and English, informing the citizens of The Muscogee (Creek) Nation ~~Citizen~~ Legal Services Department, its startup date, and information concerning appointments to obtain legal services.

SECTION THREE. EFFECTIVE DATE. This Act shall become effective **October 1, 2010** immediately upon proper approval and execution in accordance with the requirements of the Muscogee (Creek) Nation Constitution, **provided, the provisions of § 10-105 shall become effective immediately upon proper approval and execution to allow the Commission to be seated prior to the transfer date of October 1, 2010.**

SECTION FOUR. TRANSFER DATE. The Muscogee (Creek) Nation shall employ all attorneys and staff of the Citizen Muscogee (Creek) Nation Legal Services Department beginning October 1, 2010. All employees will be under the personnel policies and procedures of the Nation.

ENACTED by the Muscogee (Creek) National Council on this 31st day of July 2010.

IN WITNESS WHEREOF, the Speaker of the Muscogee (Creek) National Council has hereto attached his signature.



Roger Barnett, Speaker
National Council
Muscogee (Creek) Nation

CERTIFICATION

I, the undersigned, certify that the foregoing is a true extract from the minutes of the Muscogee (Creek) National Council comprised of twenty-six members with Twenty members attending this meeting on the 31st day of July 2010, and that the above is in conformity with the provisions therein adopted by a vote of 17 in favor, 2 against, 0 abstentions, and that said Law has not been rescinded or amended in any way and the above is the signature of the Speaker of the National Council.



Terry A. Fish, Recording Secretary
Muscogee (Creek) National Council

APPROVAL

I, the Principal Chief of the Muscogee (Creek) Nation, hereby affix my signature this _____ day of _____, 2010, to the above Law, **NCA 10-144** authorizing it to become a Law under Article VI., Section VI., of the Constitution of the Muscogee (Creek) Nation.

A. D. Ellis, Principal Chief
Muscogee (Creek) Nation



Muscogee (Creek) Nation

PRINCIPAL CHIEF

A.D. Ellis

SECOND CHIEF

Alfred Berryhill

OFFICE OF THE PRINCIPAL CHIEF

PO Box 580

(HWY 75, Loop 56)

Okmulgee, OK 74447

918.732.7600

August 12, 2010

Muscogee (Creek) National Council
Honorable Speaker Barnett

Dear Speaker Barnett:

I am returning NCA 10-144 herewith:

A MESSAGE OF THE PRINCIPAL CHIEF RETURNING NCA 10-144 TO THE NATIONAL COUNCIL AS A VETO WITH OBJECTIONS

In accordance with the Constitution of the Muscogee (Creek) Nation, I, A.D. Ellis, Principal Chief of the Muscogee (Creek) Nation, do hereby return NCA 10-144, entitled "**A LAW OF THE MUSCOGEE (CREEK) NATION AMENDING MCNCA TITLE 35, CHAPTER 10, ENTITLED 'Muscogee (Creek) Nation Legal Services Citizen Department'**" as a VETO with the following objections:

OBJECTION ONE: Although the Principal Chief and the Executive Branch support adequate funding for legitimate Muscogee (Creek) Nation tribal and social service programs, NCA 10-144 is not a necessary appropriation of scarce tribal funds. The current system of representation set forth in the current statutes, Title 35, Chapter 10 of the Muscogee (Creek) Nation Code, is far superior to the so-called "centralized organization" mandated by NCA 10-144, and provides greater flexibility for the Muscogee (Creek) Nation in meeting the needs of the citizens of the Muscogee (Creek) Nation.

OBJECTION TWO: As currently drafted, proposed Title 35, § 10-104 of NCA 10-144 mandates legal services to be provided to "other individuals who come within the jurisdiction of the Muscogee (Creek) Nation and entitled to indigent defense counsel as ordered by the Courts of the Muscogee (Creek) Nation." Such language potentially broadens the provision of legal services to individuals who may not be citizens of the Muscogee (Creek) Nation. The Principal Chief does not believe scarce tribal funds should be required to be expended for such purposes, which are better left to applicable federal and state funding.

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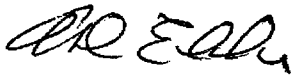
National Council Office

OBJECTION THREE: The proposed legislation would necessitate the hiring of a Legal Services Division larger than the Attorney General's Office to be put in place by October 1, 2010. There are insufficient funds in the Tribal Treasury to fund the appropriations proposed under NCA 10-144. Therefore, it is fiscally irresponsible for the Principal Chief to sign this legislation in view of the funding available in the Treasury.

OBJECTION FOUR: The Principal Chief believes that the intent of NCA 10-144 is purely politically motivated and intended to improperly oust the current Legal Services and Indigent Defense Contractors rather than to improve the provision and delivery of legal services to citizens of the Muscogee (Creek) Nation. The result of passage of this legislation would be the delay in hundreds of cases currently at issue in the courts of the Muscogee (Creek) Nation and other state courts.

For the reasons outlined above, NCA 10-144 is hereby returned as a VETO.

Sincerely,



A. D. Ellis, Principal Chief
Muscogee (Creek) Nation

ADE/ldy

DATED: August 12, 2010