



NCA 12-237

CLASSIFICATION: #6. CHILDREN AND FAMILY RELATIONS

A LAW OF THE MUSCOGEE CREEK NATION REPEALING CHAPTER 7 OF TITLE 6 ENTITLED, "MUSCOGEE (CREEK) NATION PATERNITY DETERMINATION CODE" AND REPLACING IT WITH A NEW CHAPTER 7 ENTITLED, "MUSCOGEE (CREEK) NATION PATERNITY DETERMINATION CODE"

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

SECTION ONE: FINDINGS. The National Council finds that:

A. The National Council finds that the Paternity Determination Code enacted in Chapter 2007 needs to be updated to provide guidelines for paternity establishment and parentage determination.

B. This Act repeals the Paternity Determination Code enacted in 2007 and replaces it with this Parentage Determination Code for paternity establishment and proceedings for the establishment of paternity and parentage determination.

SECTION TWO: REPEALER. MCNCA Title 6, Chapter 7, is hereby repealed.

SECTION THREE. NEW LAW. The following new law shall be codified in Title 6, Chapter 7 of the Code of Laws of the Muscogee (Creek) Nation; provided that for purposes of codification of said new law and its inclusion in pocket parts for 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 in this law in order to be consistent with the format in the Code of Laws published in 2010 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 note in said pocket parts any editorial correction of minor clerical or grammatical errors in the following new law:

**CHAPTER 7. MUSCOGEE (CREEK) NATION
PARENTAGE DETERMINATION CODE**

SUBCHAPTER 1. GENERAL PROVISIONS

§ 7-101. Short Title.

This Chapter shall be entitled the Muscogee (Creek) Nation Parentage Determination Code (Code).

§ 7-102. Scope and Choice of Law.

A. This Code applies to the determination of parentage for the establishment of paternity of a child under the jurisdiction of the Muscogee (Creek) Nation and incorporates, except as otherwise provided, guidelines and procedures of the Uniform Parentage Act.

B. The Muscogee (Creek) Nation shall apply the law and guidelines set forth to adjudicate the parent-child relationship. The applicable law does not depend on:

1. The place of birth of the child, or
2. The past or present residence of the child.

C. The law and rules established in this Code does not create, enlarge or diminish parental rights or duties under other laws of the Muscogee (Creek) Nation.

§ 7-103. Establishment of Paternity Has No Effect on Tribal Enrollment.

The establishment of paternity under this Code has no effect on tribal enrollment or membership.

§ 7-104. Definitions.

A. "Acknowledged father" means a man who has established a father-child relationship by signing an acknowledgment of paternity under this Code.

B. "Adjudicated father" means a man who has been adjudicated by a court of competent jurisdiction to be the father of a child.

C. "Alleged father" means a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined. The term does not include:

1. a presumed father;
2. a man whose parental rights have been terminated or declared not to exist; or
3. a male donor.

D. "Child" means an individual of any age whose parentage may be determined under this Code.

E. "District Trial Court Family Division" or "Court" means the District Trial Court Family Division of the Muscogee (Creek) Nation.

F. "CSE" means the Muscogee (Creek) Nation Office of Child Support Enforcement.

G. "Determination of parentage" means the establishment of the parent-child relationship by the signing of a valid acknowledgment of paternity under this Code or adjudication by a court of competent jurisdiction.

H. "Ethnic or racial group" means, for the purposes of genetic testing, a recognized group that an individual identifies as all or part of the individual's ancestry or that is so identified by other information.

I. "Genetic Testing" means an analysis of genetic markers to exclude or identify a man as the father or a woman as the mother of a child. The term includes an analysis of one or a combination of the following:

1. deoxyribonucleic acid, and
2. blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins, or red-cell enzymes.

J. "Man" means a male individual of an age.

K. "Parent" means an individual who has established a parent-child relationship under this Code.

L. "Parent-Child relationship" means the legal relationship between a child and a parent of a child. The term includes the mother-child relationship and the father-child relationship.

M. "Paternity Index" means the likelihood of paternity calculated by computing the ratio between:

1. the likelihood that the tested man is the father, based on the genetic markers of the tested man, mother, and child, conditioned on the hypothesis that the tested man is the father of the child; and
2. the likelihood that the tested man is not the father, based on the genetic markers of the tested man, mother, and child, conditioned on the hypothesis that the tested man is not the father of the child

and that the father is of the same ethnic or racial group as the tested man.

N. "Presumed father" means a man who, by operation of law under this Code, is recognized as the father of a child until that status is rebutted or confirmed in an administrative or judicial proceeding.

O. "Probability of paternity" means the measure, for the ethnic or racial group to which the alleged father belongs, of the probability that the man in question is the father of the child, compared with a random, unrelated man of the same ethnic or racial group, expressed as a percentage incorporating the paternity index and a prior probability.

P. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Q. "Signatory" means an individual who authenticates a record and is bound by its terms.

R. "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

S. "Indian Tribe" or "Tribe" means any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe and includes in the list of federally recognized Indian Tribal governments as published in the Federal Register pursuant to 25 U.S.C. 479a-1.

§7-105. Adjudication and Jurisdiction.

A. The Muscogee (Creek) Nation District Trial Court Family Division is authorized to adjudicate parentage under this Code and shall have personal and subject matter jurisdiction over the following:

1. Citizens of the Nation; or
2. Parties that consent to the jurisdiction of the Court; or
3. A child who is a citizen or member of a federally recognized Indian Tribe or is eligible for citizenship or membership of a federally recognized Indian Tribe and is residing within the territorial boundaries of the Nation; or
4. A person, whether or not a resident within the Muscogee (Creek) Nation jurisdiction, who is a party to a child support action.

§ 7-106. Protection of Participants.

Proceedings under this Code are subject to other laws of the Muscogee (Creek) Nation governing the health, safety, privacy and liberty of a child or other individual who could be jeopardized by disclosure of identifying information, including address, telephone number, place of employment, social security number, and the child's daycare facility and school.

§ 7-107. Determination of Maternity.

Provisions of this Code relating to determination of paternity apply to determinations of maternity.

SUBCHAPTER 2. PARENT-CHILD RELATIONSHIP

§ 7-201. Parent-Child Relationship.

A. The mother-child relationship is established between a woman and a child by:

1. The woman's having given birth to the child; or
2. An adjudication of the woman's maternity; or
3. Adoption of the child by the woman; or
4. As otherwise provided by law.

B. The father-child relationship is established between a man and a child by:

1. An unrebutted presumption of the man's paternity of the child under this Code;
2. An effective acknowledgment of paternity by the man under this Code unless the acknowledgment has been timely rescinded or successfully challenged;
3. An adjudication of the man's paternity;
4. Adoption of the child by the man; or
5. As otherwise provided by law.

§ 7-202. No Discrimination Based on Marital Status.

A child born to parents who are not married to each other has the same rights under the law as a child born to parents who are married to each other.

§ 7-203. Parental Rights Valid Until Terminated.

Unless parental rights are terminated, a parent-child relationship established under this Code applies for all purposes, except as otherwise specifically provided by other law of the Muscogee (Creek) Nation.

§ 7-204. Presumption of Paternity in Context of Marriage.

A. A man is presumed to be the father of a child if:

1. He and the mother of the child are married to each other and the child is born during the marriage;
2. He and the mother of the child were married to each other and the child is born within three hundred (300) days after the termination of the marriage by death, annulment, declaration of invalidity, dissolution of marriage, or a decree of separation is entered by the court of competent jurisdiction;
3. Before the birth of the child, he and the mother of the child married each other in apparent compliance with the law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within three hundred (300) days after its termination by death, annulment, declaration of invalidity, dissolution of marriage, or a decree of separation is entered by the court of competent jurisdiction;
4. After the birth of the child, he and the mother of the child married each other in apparent compliance with law, whether or not the marriage is or could be declared invalid, and he voluntarily asserted his paternity of the child, and:
 - a. The assertion is on record filed with the state agency maintaining birth records;
 - b. He agreed to be and is named as the child's father on the child's birth certificate; or
 - c. He promised in a record to support the child as his own; or
5. For the first two (2) years of the child's life, he resided in the same household with the child and openly held out the child as his own.

B. A presumption of paternity established under this section may be rebutted only by an adjudication under Subchapter 5.

SUBCHAPTER 3. VOLUNTARY ACKNOWLEDGMENT OF PATERNITY

§ 7-301. Voluntary Acknowledgment of Paternity.

A. The mother of a child and a man claiming to be the genetic father of the child may sign an acknowledgment of paternity with the intent to establish the man's paternity.

B. An acknowledgment of paternity shall:

1. Be in a record and in a form required by tribal and federal law;
2. Be signed, or otherwise authenticated, under penalty of perjury by the mother and by the man seeking to establish paternity;
3. State that the child whose paternity is being acknowledged:
 - a. does not have a presumed, or has a presumed father whose full name is stated; and
 - b. does not have another acknowledged or adjudicated father;
4. State whether there has been genetic testing and, if so, that the acknowledging man's claim of paternity is consistent with the results of the testing; and
5. State that the signatories understand that the acknowledgment is the equivalent of a judicial adjudication of paternity of the child and that a challenge to the acknowledgment is permitted only under limited circumstances.

C. An acknowledgment of paternity shall be void if it:

1. States that another man is a presumed father, unless a denial of paternity signed or otherwise authenticated by the presumed father is filed with the state agency maintaining birth records;
2. States that another man is an acknowledged or adjudicated father.
3. Falsely denies the existence of presumed, acknowledged or adjudicated father of the child.

D. A presumed father may sign or otherwise authenticate an acknowledgment of paternity.

§ 7-302. Validity of Denial of Paternity by Presumed Father.

- A. A presumed father may sign a denial of his paternity. The denial is valid only if:
1. An acknowledgment of paternity signed, or otherwise authenticated, by another man is filed pursuant to § 7-305;
 2. The denial is in a record, and is signed, or otherwise authenticated, under penalty of perjury; and
 3. The presumed father has not previously:
 - a. acknowledged his paternity, unless the previous acknowledgment has been rescinded pursuant to §7-305 or successfully challenged pursuant to §7-306 or
 - b. been adjudicated to be the father of the child.

§ 7-303. Rules for Acknowledgment and Denial of Paternity, Effective Date, Minor.

A. An acknowledgment of paternity and a denial of paternity may be filed separately or simultaneously. If the acknowledgment and denial are both necessary, neither is valid until both are filed.

B. An acknowledgment of paternity or denial of paternity may be signed before the birth of the child.

C. Subject to subsection (A) of this section, an acknowledgment of paternity or denial of paternity takes effect on the birth of the child or the filing of the document with the state agency maintaining birth records, whichever occurs later.

D. An acknowledgment of paternity or denial of paternity signed by a minor is valid if it is otherwise in compliance with this chapter.

§ 7-304. Effect of Acknowledgment or Denial of Paternity.

A. Except as otherwise provided in §7-305 and §7-306, a valid acknowledgment of paternity filed with the state agency maintaining birth records is equivalent to an adjudication of paternity of a child and confers upon the acknowledged father all of the rights and duties of a parent.

B. Except as otherwise provided § 7-305 and § 7-306, a valid denial of paternity by a presumed father filed with the state agency maintaining birth records in conjunction with a valid acknowledgment of paternity is equivalent to an adjudication of

the nonpaternity of the presumed father and discharges the presumed father from all rights and duties of a parent.

§ 7-305. Proceedings for Rescission, Rescission by Minor.

A. A signatory may rescind an acknowledgment of paternity or denial of paternity by commencing a proceeding to rescind before the earlier of:

1. Sixty (60) days after the effective date of the acknowledgment or denial; or
2. The date of the first hearing, in a proceeding to which the signatory is a party, before a court of competent jurisdiction to adjudicate an issue relating to the child, including a proceeding that establishes support.

B. A signatory who was a minor at the time of execution of the acknowledgment may rescind an acknowledgment of paternity within sixty (60) days of reaching the age of eighteen.

§ 7-306. Proceedings to Challenge an Acknowledgment or Denial of Paternity.

A. After the period for rescission under § 7-305 has expired, a signatory of an acknowledgment of paternity or denial of paternity may commence a proceeding to challenge the acknowledgment or denial only on the basis of fraud, duress, or material mistake of fact. A proceeding may be commenced at any time before the issuance of an order affecting the child named in the acknowledgment or denial, including an order for support of the named child.

B. For purposes of subsection (A), upon evidence based on genetic testing, the man who signs the acknowledgment of paternity and is not rebuttably identified as the father of a child in accordance with §7-405 constitutes a material mistake of fact.

C. A party challenging an acknowledgment of paternity or denial of paternity has the burden of proof.

D. Except as provided in this chapter, a collateral attack on an acknowledgment or paternity signed under this chapter may not be maintained after the issuance of an order affecting the child named in the acknowledgment, including an order for support of the named child.

§ 7-307. Procedures for Rescission or Challenge to Acknowledgment of Denial of Paternity.

A. Every signatory to an acknowledgment of paternity and any related denial of paternity must be made a party to a proceeding to rescind or challenge the acknowledgment or denial of paternity.

B. For the purpose of rescission of, or challenge to, an acknowledgment of paternity or denial of paternity, a signatory submits to the personal jurisdiction of the Muscogee (Creek) Nation by signing the acknowledgment or denial.

C. Except for good cause, during the pendency of a proceeding to rescind or challenge an acknowledgment of paternity or denial of paternity, the District Trial Court Family Division may not suspend the legal responsibilities of a signatory arising from the acknowledgment, including the duty to pay child support.

D. A proceeding to rescind or to challenge an acknowledgment of paternity or denial of paternity shall be conducted in the same manner as a proceeding to adjudicate parentage under Subchapter 5.

E. At the conclusion of a proceeding to challenge an acknowledgment of paternity or denial of paternity, the District Trial Court Family Division shall order that the birth records be amended, if appropriate.

§ 7-308. Ratification Barred for Unchallenged Acknowledgment of Paternity.

The District Trial Court Family Division or any administrative proceeding of the OCSE may not ratify an unchallenged acknowledgment of paternity.

§ 7-309. Full Faith and Credit.

The Muscogee (Creek) Nation shall give full faith and credit to an acknowledgment of paternity or denial of paternity from another tribe or state, if the acknowledgment or denial has been signed and is in compliance with the law of the other tribe or state.

§ 7-310. Exception to the Establishment of Paternity.

The CSE is not required to establish paternity in any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending, if, in the opinion of the CSE, it would not be in the best interest of the child to establish paternity.

§ 7-311. Forms.

A. The CSE shall prescribe forms for the acknowledgment of paternity and the denial of paternity in accordance with this Code.

B. A valid acknowledgment of paternity and a denial of paternity is not affected by a latter modification of the prescribed form.

SUBCHAPTER 4. GENETIC TESTING

§ 7-401. Scope.

A. This subchapter governs genetic testing of an individual to determine parentage, whether the individual is:

1. voluntarily submitting to testing, or
2. is tested pursuant to an order of Muscogee (Creek) Nation District Trial Court Family Division or the CSE.

B. Any tribal traditional and/or customary objections to blood testing and/or DNA testing shall not be a basis for refusal to undergo such testing.

§ 7-402. Order for Testing.

A. Except as otherwise provided, the District Trial Court Family Division shall order the child and other designated individuals to submit to genetic testing if the request for testing is supported by a sworn statement by the party to the proceeding:

1. Alleging paternity, and stating facts establishing a reasonable possibility of the requisite sexual contact between the parties; or
2. Denying paternity and stating facts establishing a possibility that sexual contact between the individuals, if any, did not result in the conception of the child.

B. The CSE may order genetic testing only if there is no presumed, acknowledged, or adjudicated father.

C. If two or more men are subject to court-ordered genetic testing, the testing may be ordered concurrently or sequentially.

D. If a request for genetic testing of a child is made before the birth of the child, the District Trial Court Family Division or the CSE may not order in-utero testing.

§ 7-403. Requirements for Genetic Testing.

A. Genetic testing shall be of a type relied upon by experts in the field of genetic testing and performed in a testing laboratory accredited by:

1. The American Association of Blood Banks, or a successor to its functions;
2. The American Society for Histocompatibility and Immunogenetics, or a successor to its functions; or
3. An accrediting body designated by the federal Secretary of Health and Human Services.

B. A specimen used in genetic testing may consist of one or more samples, or a combination of samples of blood, buccal cells, bone, hair, or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each individual undergoing genetic testing.

C. Based on the ethnic or racial group of an individual, the testing laboratory shall determine the databases from which to select frequencies for use in calculation of the probability of paternity. If there is disagreement as to the testing laboratory's choice, the following rules apply:

1. The individual objecting may require the testing laboratory, within thirty (30) days after receipt of the report of the test, to recalculate the probability of paternity using an ethnic or racial group different from that used by the laboratory;
2. The individual objecting to the testing laboratory's initial choice shall:
 - a. if the frequencies are not available to the testing laboratory for the ethnic or racial group requested, provide the requested frequencies compiled in a manner recognized by accrediting bodies; or
 - b. engage another testing laboratory to perform the calculations.
3. The testing laboratory may use its own statistical estimate if there is a question regarding which ethnic or racial group is appropriate. If available, the testing laboratory shall calculate the frequencies using statistics for any other ethnic or racial group requested.

D. If, after recalculation using a different ethnic or racial group, genetic testing does not conclusively identify a man as the father of a child under § 7-405, an individual who has been tested may be required to submit to additional genetic testing.

§ 7-404. Report of Genetic Testing, Chain of Custody.

A. A report of genetic testing must be in a record and signed under penalty of perjury by a designee of the testing laboratory. A report made under the requirements of this section will be admitted as evidence and is self-authenticating.

B. Documentation from the testing laboratory of the following information is sufficient to establish a reliable chain of custody that allows the results of genetic testing to be admissible without testimony:

1. the names and photographs of the individuals whose specimens have been taken;
2. the names of the individuals who collected the specimen;
3. the places and dates the specimens were collected;
4. the names of the individuals who received the specimens in the testing laboratory, and
5. the dates the specimens were received.

§ 7-405. Genetic Testing Results, Rebuttal.

A. Under this Code, a man is rebuttably identified as the father of a child if the genetic testing complies with this section and the results disclose that:

1. The man has at least a ninety-nine (99%) percent probability of paternity, using a prior probability of 0.50, as calculated by using the combined paternity index obtained in the testing; and
2. A combined paternity index of at least 100 to 1.

B. A man identified under subsection (A) of this section as the father of the child may rebut the genetic testing results only by other genetic testing satisfying the requirements of this Code which:

1. Excludes the man as a genetic father of the child; or
2. Identifies another man as the possible father of the child.

C. Except as otherwise provided in §7-409, if more than one man is identified by genetic testing as the possible father of the child, the District Trial Court Family Division shall order them to submit to further genetic testing to identify the genetic father.

§ 7-406. Cost of Genetic Testing.

- A. The costs of the initial genetic testing shall be advanced:
1. By the CSE in a proceeding in which the tribal agency is providing services; or
 2. By the individual who made the request; or
 3. As agreed by the parties; or
 4. As ordered by the court.
- B. In cases in which the cost is advanced by the CSE, the tribal agency may seek reimbursement from the man who is rebuttably identified as the father.

§ 7-407. Advance Payment for Additional Genetic Testing.

The District Trial Court Family Division or the CSE shall order additional genetic testing upon the request of the party who contests the result of the original testing. If the previous genetic testing identified a man as the father of the child, additional testing may not be ordered unless the party challenging the test provides advance payment for the testing.

§ 7-408. Genetic Testing When Specimen Is Not Available from Potential Father.

A. Subject to subsection (B) of this section, if a genetic-testing specimen is not available from a man who may be the father of a child, for good cause and under circumstances the District Trial Court Family Division considers to be just, the Court may order the following individuals to submit specimens for genetic testing:

1. The parents of the man;
2. Brothers and sisters of the man;
3. Other children of the man and their mothers;
4. Other relatives of the man necessary to complete genetic testing;
and
5. Any other custodians of genetic material.

B. Issuance of an order under this section requires a finding that a need for genetic testing outweighs the legitimate interests of the individual sought to be tested.

§ 7-409. Identical Brothers, Nongenetic Evidence to Determine Father.

A. The District Trial Court Family Division may order genetic testing of a brother of a man identified as the father of a child if the man is commonly believed to

have an identical brother and evidence suggests that the brother may be the genetic father of the child.

B. If each brother satisfies the requirements as the identified father of the child under this Code without consideration of another identical brother being identified as the father of the child, the District Trial Court Family Division may rely on nongenetic evidence to adjudicate which brother is the father of the child.

§ 7-410. Testing of Deceased Individual.

For good cause shown, the District Trial Court Family Division may order genetic testing of a deceased individual.

§ 7-411. Confidentiality of Genetic Report.

A. Release of the report of genetic testing for parentage is controlled by applicable tribal and federal law.

B. An individual who intentionally releases an identifiable specimen of another individual for any purpose other than that relevant to the proceeding regarding parentage without a court order or the written permission of the individual who furnished the specimen commits a misdemeanor.

SUBCHAPTER 5. PROCEEDINGS TO ADJUDICATE PARENTAGE

§ 7-501. Civil Proceedings to Adjudicate Parentage.

A civil procedure may be maintained to adjudicate parentage of a child. The proceeding is governed by the Muscogee (Creek) Nation Rules of Civil Procedure.

§ 7-502. Standings to Maintain Proceedings.

A. Subject to subchapter 3, §7-507 and § 7-509, a proceeding to adjudicate parentage may be maintained by:

1. The child;
2. The mother of the child;
3. A man whose paternity of the child is to be adjudicated;
4. The Muscogee (Creek) Nation Office of Child Support Enforcement or another agency authorized by other law; or
5. A representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor.

B. After the date a child having no presumed, acknowledge or adjudicated father becomes an adult, a proceeding to adjudicate the parentage of the adult child may only be maintained by the adult child.

§ 7-503. Necessary Parties to Proceedings.

A. The following individuals must be joined as parties in a proceeding to adjudicate parentage:

1. The mother of the child; and
2. A man whose paternity of the child is to be adjudicated.

§ 7-504. Personal Jurisdiction.

A. An individual may not be adjudicated to be a parent unless the District Trial Court Family Division has personal jurisdiction over the individual.

B. Lack of jurisdiction over one individual does not preclude the District Trial Court Family Division from making an adjudication of parentage binding on another individual over whom the Court has personal jurisdiction.

§ 7-505. Venue.

Venue for a proceeding to adjudicate parentage under this Act with the Muscogee (Creek) Nation District Trial Court Family Division.

§ 7-506. No Time Limitation: Child Having No Presumed, Acknowledged or Adjudicated Father.

A. A proceeding to adjudicate the parentage of a child having no presumed, acknowledged, or adjudicated father may be commenced at any time, even after:

1. The child becomes an adult, but only if the child initiates the proceeding; or
2. An earlier proceeding to adjudicate paternity has been dismissed based upon the application of a statute of limitation then in effect.

§ 7-507. Time Limitation: Child Having Presumed Father.

A. Except as otherwise provided in subsection (B) of this section, a proceeding brought by a presumed father, the mother, or another individual to

adjudicate the parentage of a child having a presumed father shall be commenced no later than three (3) years after the birth of the child.

B. A proceeding seeking to disprove the father-child relationship between a child and the child's presumed father may be maintained at any time if the Court determines that:

1. The presumed father and the mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception; and the presumed father never openly held out the child as his own; or
2. The presumed father did not commence a proceeding to adjudicate parentage of the child within the time limit in subsection (A) because he had the mistaken belief he was the child's biological father based on misrepresentations that led him to believe that he was the biological father of the child.

§ 7-508. Authority to Deny Motion for Genetic Testing, Factors to Consider.

A. In a proceeding to adjudicate the parentage of a child having a presumed father or to challenge the paternity of a child having an acknowledged father, the District Trial Court Family Division may deny a motion seeking an order for genetic testing of the mother, the child and the presumed or acknowledged father if the Court determines that:

1. The conduct of the mother or the presumed or acknowledged father estops that party from denying parentage; and
2. It would be inequitable to disprove the father-child relationship between the child and the presumed or acknowledged father.

B. In determining whether to deny a motion seeking an order for genetic testing under this section, the District Trial Court Family Division shall consider the best interest of the child, including the following factors:

1. The length of time between the proceeding to adjudicate parentage and the time that the presumed or acknowledged father was placed on notice that he might not be the genetic father;
2. The length of time during which the presumed or acknowledged father has assumed the role of father of the child;
3. The facts surrounding the presumed or acknowledged father's discovery of his possible nonpaternity;

4. The nature of the relationship between the child and the presumed or acknowledged father;
5. The age of the child;
6. The harm that may result to the child if presumed or acknowledged paternity is successfully disproved;
7. The nature of the relationship between the child and any alleged father;
8. The extent to which the passage of time reduces the chances of establishing the paternity of another man and a child-support obligation in favor of the child; and
9. Other factors that may affect the equities arising from the disruption of the father-child relationship between the child and the presumed or acknowledged father or the chance of other harm to the child.

C. In a proceeding involving the application of this section, a minor or incapacitated child must be represented by a guardian ad litem.

D. A denial of a motion seeking an order for genetic testing must be based on clear and convincing evidence.

E. If the District Trial Court Family Division denies a motion seeking an order for genetic testing, it shall issue an order adjudicating the presumed or acknowledged father to be the father of the child.

§ 7-509. Time Limitation: Child Having Acknowledged or Adjudicated Father.

A. If a child has an acknowledged father, a signatory to the acknowledgment of paternity or denial of paternity may commence a proceeding seeking to rescind the acknowledgment or denial or challenge the paternity of the child only within the time allowed under § 7-306.

B. If a child has an acknowledged father or an adjudicated father, an individual, other than the child, who is neither a signatory to the acknowledgment of paternity nor a party to the adjudication and who seeks an adjudication of paternity of the child shall commence a proceeding no later than three (3) years after the effective date of the acknowledgment or adjudication.

§ 7-510. Joinder of Proceedings.

A. Except as otherwise provided in subsection (B), a proceeding to adjudicate parentage may be joined with a proceeding for adoption, termination of parental rights, child custody or visitation, child support, divorce, annulment, legal

separation or separate maintenance, probate or administration of an estate or other appropriate proceedings.

B. A respondent may not join a proceeding described in subsection (A) with a proceeding to adjudicate parentage brought under the Uniform Interstate Family Support Act.

§ 7-511. Proceedings Before Birth.

A. A proceeding to determine parentage may be commenced before the birth of the child, but may not be concluded until after the birth of the child. The following actions may be taken before the birth of the child:

1. Service of process;
2. Discovery; and
3. Except as prohibited under this Code, collection of specimens for genetic testing.

B. The CSE may commence a proceeding to determine parentage after the birth of the child pursuant to this Code.

§ 7-512. Child as Party: Representation.

A. A minor child is a permissible party, but is not a necessary party to a proceeding under this Code.

B. The District Trial Court Family Division shall appoint a guardian ad litem to represent a minor or incapacitated child if the child is a party or the Court finds that the interests of the child are not adequately represented.

§ 7-513. Termination of Parent-Child Relationship When Genetic Testing Did Not Occur.

A. A man may file suit for termination of the parent-child relationship between the man and child if, without obtaining genetic testing, the man signed an acknowledgment of paternity of the child or was adjudicated under the Nation's law to be the father of the child in a previous proceeding under Subchapter 3 **VOLUNTARY ACKNOWLEDGMENT OF PATERNITY** in which genetic testing did not occur.

B. A petition for the termination of a parent-child relationship must allege facts that show:

1. the petitioner is not the child's genetic father; and

2. the petitioner signed the acknowledgment of paternity or failed to contest parentage because of the mistaken belief, at the time the acknowledgment was signed or on the date the court order in the previous proceedings was rendered, that he was the child's genetic father based on misrepresentations that led him to believe he was the genetic father of the child.
- C. A man may not file a petition under subsection (A) if:
1. the man is the child's adoptive father;
 2. the child was conceived by assisted reproduction and consented to assisted reproduction by his wife under applicable state or tribal law.
 3. the man is the intended father of the child under a gestational agreement validated by a court order under applicable state or tribal law.
- D. A petition under subsection (A) of this section must be filed within a year of the date on which the petitioner becomes aware of the facts alleged in the petition indicating that the petitioner is not the child's genetic father.
1. Subsection (D) applies beginning November 1, 2013. Before that date, a petition may be filed under subsection (D) regardless of the date on which the petitioner became aware that the petitioner is not the child's genetic father.
- E. In a proceeding initiated under subsection (A), the court shall hold a pretrial hearing to determine whether the petitioner has established a prima facie case for termination of the parent-child relationship. If a prima facie claim is established, the court shall order the petitioner and the child to submit to genetic testing under Subchapter 4 of this Code. The genetic paternity testing costs shall be paid by the petitioner.
- F. If the results of genetic testing ordered under subsection (E) exclude the petitioner as the child's genetic father, the court shall:
1. Grant relief on the petition and enter judgment setting aside the previous judgments of paternity and child support and extinguish any existing child support arrearage only as to the child found not to be the biological child of the petitioner;

2. Order the state agency maintaining birth records to modify the child's birth certificate accordingly.
3. A finding under subsection F shall constitute a material mistake of fact under this Code.

G. The petitioner shall have not right for reimbursement for any monies previously paid pursuant to an order.

H. An order that terminates the parent-child relationship under subsection (F) does not prevent the initiation of a proceeding to adjudicate another man as the genetic parent of the child. If another man is adjudicated as the child's parent, the court shall issue a new child support order requiring that man to pay child support for the child in accordance with the MCN Child Support Code.

SUBCHAPTER 6. SPECIAL RULES FOR PROCEEDINGS TO ADJUDICATE PARENTAGE

§ 7-601. Admissibility of Results of Genetic Testing.

A. Except as otherwise provided in subsection (C) of this section, a record of a genetic testing expert is admissible as evidence of the truth of the facts asserted in the report unless a party objects to its admission within fourteen (14) days after its receipt by the objecting party and cites specific grounds for exclusion. The admissibility of the report is not affected by whether the testing was performed:

1. Voluntarily or pursuant to an order of the District Trial Court Family Division or another tribal or state child support enforcement agency or court of competent jurisdiction; or
2. Before or after the commencement of the proceeding.

B. A party objecting to the results of genetic testing may call one or more genetic-testing experts to testify in person or by telephone, videoconference, deposition or another method approved by the District Trial Court Family Division. Unless otherwise ordered by the Court, the party offering the testimony bears the expense for the expert testifying.

1. If a child has a presumed, acknowledged or adjudicated father, the results of genetic testing are inadmissible to adjudicate parentage unless performed:

- a. With the consent of both the mother and the presumed, acknowledged or adjudicated father; or
- b. Pursuant to an order of the Court under this Code.

C. Copies of the bill for genetic testing for prenatal or postnatal health care for the mother and child which are furnished to the adverse parent no less ten (10) days before the date of a hearing are admissible to establish:

1. The amount of the charges billed; and
2. That the charges were reasonable, necessary and customary.

§ 7-602. Consequences of Declining Genetic Testing.

- A. An order for genetic testing is enforceable by contempt.
- B. If an individual whose paternity is being determined declines to submit to genetic testing ordered by the District Trial Court Family Division, the Court for that reason may adjudicate parentage contrary to the position of that individual.
- C. Genetic testing of the mother of a child is not a condition precedent to testing the child and a man whose paternity is being determined. If the mother is unavailable or declines to submit to genetic testing, the Court may order the testing of the child and every man whose paternity is being adjudicated.

§ 7-603. Admission of Paternity Authorized.

- A. A respondent in a proceeding to adjudicate parentage may admit to the paternity of a child by filing a pleading to that effect or by admitting paternity under penalty of perjury when making an appearance or during a hearing.
- B. If the District Trial Court Family Division finds that the admission of paternity satisfies the requirements of this section and finds that there is no reason to question the admission, the Court shall issue an order adjudicating the child to be the child of the man admitting paternity.

§ 7-604. Temporary Order.

- A. In a proceeding under this Code, the District Trial Court Family Division shall issue a temporary order for support of a child if the order is appropriate and the individual ordered to pay support is:
 1. A presumed father of the child;
 2. Petitioning to have his paternity adjudicated;

3. Identified as the father through genetic testing under § 7-405;
4. An alleged father who has declined to submit to genetic testing;
5. Shown by clear and convincing evidence to be the father of the child; or
6. The mother of the child.

B. A temporary order may include provisions for custody and visitation as provided by other law of the Muscogee (Creek) Nation.

SUBCHAPTER 7. HEARINGS AND ADJUDICATION

§ 7-701. Rules for Adjudication of Paternity.

A. The District Trial Court Family Division shall apply the following rules to adjudicate the paternity of a child:

1. The paternity of a child having a presumed, acknowledged or adjudicated father may be disproved only by admissible results of genetic testing excluding that man as the father of the child or identifying another man as the father of the child.
2. Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man identified as the father of a child under § 7-405 shall be adjudicated the father of the child.
3. If the Court finds that genetic testing under § 7-405 neither identifies nor excludes a man as the father of a child, the Court may not dismiss the proceeding. In that event, the results of genetic testing, and other evidence, are admissible to adjudicate the issue of paternity.
4. Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man excluded as the father of a child by genetic testing shall be adjudicated not to be the father of the child.

§ 7-702. Jury Prohibited.

The District Trial Court Family Division, without a jury, shall adjudicate paternity of a child.

§ 7-703. Closed Hearing, Final Order.

A. Upon the request of a party and for good cause shown, the District Trial Court Family Division may close a proceeding under this Code.

B. A final order in a proceeding under this Code is available for public inspection. Other records, reports and papers are available only with the consent of the parties or an order of the District Trial Court Family Division for good cause.

§ 7-704. Order on Default.

A. The District Trial Court Family Division shall issue an order adjudicating the paternity of a man who:

1. After service of process, is in default; and
2. Is found by the Court to be the father of a child.

§ 7-705. Dismissal for Want of Prosecution.

The District Trial Court Family Division may issue an order dismissing a proceeding commenced under this Code for want of prosecution only without prejudice. An order of dismissal for want of prosecution purportedly with prejudice is void and has only the effect of a dismissal without prejudice.

§ 7-706. Order Adjudication Parentage.

A. The District Trial Court Family Division shall issue an order adjudicating whether a man alleged or claiming to be the father is the parent of the child.

B. An order adjudicating parentage must identify the child by name and date of birth.

C. Except as otherwise provided in subsection (D) of this section, the District Trial Court Family Division may assess filing fees, reasonable attorney's fees, fees for genetic testing, other costs and necessary travel and other reasonable expenses incurred in a proceeding under this Code. The Court may award attorney's fees, which may be paid directly to the attorney, who may enforce the order in the attorney's own name.

D. The District Trial Court Family Division may not assess fees, costs or expenses against any Title IV-D child support-enforcement agency of this tribe or another tribe or state, except as provided by other law.

E. If the mother and father agree to change the surname of the child to that of the father, the District Trial Court Family Division may order that the name of the child be changed.

F. If the order of the District Trial Court Family Division is at variance with the child's birth certificate, the Court shall order that the birth records be amended.

§ 7-707. Binding Effect of Determination of Parentage.

A. Except as otherwise provided in subsection (B) of this section, a determination of parentage is binding on:

1. All signatories to an acknowledgment or denial of paternity, and
2. A child is not bound by a determination of parentage under this Code unless:
 - a. The determination was based on an unrescinded acknowledgment of paternity and the acknowledgment is consistent with the results of genetic testing;
 - b. The adjudication of parentage was based on a finding consistent with the results of genetic testing and the consistency is declared in the determination or is otherwise shown; or
 - c. The child was a party or was represented in the proceeding determining parentage by an attorney or guardian ad litem.

B. In a proceeding to dissolve a marriage the District Trial Court Family Division is deemed to have made an adjudication of the parentage of a child if the Court acts under circumstances that satisfy the jurisdictional requirements of § 201 of the Uniform Interstate Family Support Act and the final order: 1.) expressly identifies a child as a child of a marriage, "issue of the marriage" or similar words indicating that the husband is the father, or 2.) provide for support of the child by the husband unless paternity is specifically disclaimed in the order.

C. Except as otherwise provided in subsection (B) of this section, a determination of parentage may be a defense in a subsequent proceeding seeking to adjudicate parentage by an individual who was not a party to the earlier proceeding.

D. A party to an adjudication of paternity may challenge the adjudication only under law of the Muscogee (Creek) Nation relating to appeal, vacation or judgments, or other judicial review.

SECTION FOUR. UNIFORMITY AND CONSTRUCTION.

A. In applying and construing this Code, consideration shall be given to the need to promote uniformity of the laws with respect to its subject matter among states and tribes that enact it.

B. In matters concerning a child of assisted reproduction or a gestational agreement, the District Trial Court Family Division shall follow applicable state law in regard to parentage.

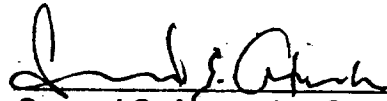
SECTION FIVE. SEVERABILITY CLAUSE. If a provision of this Code or its application to an individual or circumstance is held invalid, the invalidity does not affect other provisions or application of this Code which can be given effect without the invalid provision or application.

SECTION SIX. TRANSITIONAL PROVISION. A proceeding to adjudicate parentage which was commenced before the effective date of this Code is governed by the law in effect at the time the proceeding was commenced.

SECTION SEVEN. EFFECTIVE DATE. The provisions of the Code become effective immediately upon proper approval and execution in accordance with the requirements of the Muscogee (Creek) Nation Constitution.

ENACTED by the Muscogee (Creek) National Council on this **15th** day of **December, 2012.**

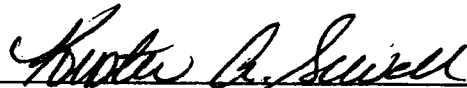
IN WITNESS WHEREOF, the Speaker of the Muscogee (Creek) National Council has hereto attached his signature.



Samuel S. Alexander, 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 Eighteen members with **Sixteen** members attending this meeting on the **15th** day of **December, 2012** and that the above is in conformity with the provisions therein adopted by a vote of **15** in favor, **0** against, 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.



Kristie A. Sewell, Recording Secretary
Muscogee (Creek) National Council

APPROVAL

I, the Principal Chief of the Muscogee (Creek) Nation, hereby affix my signature on this 20th day of Dec, 2012 to the above Law, **NCA 12-237** authorizing it to become a Law under Article VI., Section VI., of the Constitution of the Muscogee (Creek) Nation.



George Tiger, Principal Chief
Muscogee (Creek) Nation

