

Cherokee Nation Code Annotated

Title 10: Children

Chapter 2A: Uniform Adoption Act

§ 60.5. Consent to adoption

Cite as: 10 CNCA § 60.5

Unless consent is not required by 10 CNCA § 60.6, an adoption of a child may be decreed when there has been filed written consent to adoption executed by:

1. Both parents, if living, or the surviving parent if one parent be deceased. Consent shall not be required from one whose parental rights have been judicially terminated. If the child is born out of wedlock, its parents, if sixteen (16) years of age or older, shall be deemed capable of giving consent. If the mother or father be below the age of sixteen (16), consent to the adoption shall be deemed sufficient if given by such mother or father before a Judge of the District Court, in writing, and if accompanied by the written consent of the legal guardian of the person of such parent. If such underage mother or father has no such guardian, the consent shall be accompanied by the written consent of his or her parents, but if one parent be deceased or the parents be divorced, then the written consent of the parent having the custody shall be deemed sufficient; if both parents of the underage mother or father be deceased, then the written consent of the person having his or her physical custody shall be deemed sufficient. If in any case consent cannot be secured from the person, other than the underage mother or father, authorized herein to give consent, notice by mailing shall be given by the Court, unless notice is waived by personal appearance, to such person or persons authorized herein to give consent, directing such person to show cause, at a time appointed by the Court, which shall be not less than ten (10) days from the date of mailing, why adoption should not be granted without that person's consent. If such person shall not appear to contest the adoption or if the Court should find that consent of such person is unreasonably withheld, the adoption may be granted without the consent of that person; or
2. The legal guardian of the person of the child or the guardian ad litem of the child if both parents are dead, or if the rights of the parents have been terminated by judicial proceedings, and such guardian or guardian ad litem has authority by order of the Court appointing him to consent to the adoption; or
3. Cherokee Nation if both parents are dead, or if the child has been relinquished for adoption to such agency, or if the rights of the parents have been judicially terminated and custody of the child has been legally vested in such agency with authority to consent to adoption of the child; or

4. Any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated, but in such case the court having jurisdiction of the custody of the child must consent to adoption, and a certified copy of its order shall be attached to the petition. The consent required by subparagraphs 1, 2 and 3 hereof, including the consent required by the parent, guardian or party having physical custody as required for mothers or fathers under sixteen (16) in subparagraph 1 hereof, shall be acknowledged before a Judge of the District Court or the judge of any specially created court having jurisdiction in adoption proceedings. Provided, that when the person whose consent is necessary does not reside in Cherokee Nation Indian country may execute such consent before a district judge of this state or probate judge or judge having adoption jurisdiction of any other state of the county of his residence. Provided, further, that when such consent for adoption is necessary for children in custody of Cherokee Nation, the Director of the appropriate department may designate, authorize, and direct in writing an employee of the Department to appear in the Court and to give written consent for the adoption of such child by the family whose application for adoption has been approved by the department. This provision shall apply to consents heretofore given as well as to those given after the approval of this act; or

5. In the event the person having the legal custody or the parents of a child desired to be adopted in this Nation reside in a country or place other than the United States of America, the consent of such person to the adoption may be obtained by a written instrument signed by such person and acknowledged before an officer of the legal subdivision of government of the place of his, her or their residence who is authorized to administer oaths under the laws of such country or place; or, when the party seeking to give such consent is a member of the United States Armed Services stationed in a country or place other than the United States, then such consent may be acknowledged before an officer of the Judge Advocate General's Office or other legal officer possessing the authority to administer oaths. Where consent is so obtained, it shall not be necessary for such person to appear before the District Court having jurisdiction of the adoption proceedings. If the written instrument containing such consent is written in any language other than the English language, the person adopting the child must have it translated into the English language by a person qualified so to do, and must file the original instrument together with the translation with the Court, and the translation must be sworn to as being a true and correct translation by the translator.