

ORIGINAL

MEMORANDUM OF UNDERSTANDING BETWEEN MUSCOGEE (CREEK) NATION

AND

UNITED STATES ATTORNEY'S OFFICE FOR THE EASTERN DISTRICT OF OKLAHOMA

I. Purpose:

This Memorandum of Understanding ("MOU") dated this 6th day of July is made by and between the Muscogee (Creek) Nation ("MCN") and the United States Attorney's Office for the Eastern District of Oklahoma and governs the terms and conditions surrounding the appointment of a Tribal Special Assistant U.S. Attorney ("SAUSA") dedicated to the prosecution of crimes in Indian Country in the Eastern District of Oklahoma.

Nothing in this agreement shall be construed as enlarging or diminishing the jurisdictional authority of either party.

Nothing in this agreement shall be construed to confer any criminal jurisdiction from the United States to the MCN that is inconsistent with federal law.

Nothing in this agreement shall be construed as a limitation on the sovereign powers and responsibilities of either party.

Nothing in this agreement shall be construed as a waiver of sovereign immunity on behalf of either party or the United States.

Nothing in this agreement is intended to create nor does it create any right to administrative or judicial review or any other right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other persons.

II. Authority

This MOU is subject to the requirements of United States Attorneys' Procedures (USAP) 3-4.213.001 and any amendments or revisions thereto, and the authority set forth in 28 U.S.C. § 543 and 25 U.S.C. § 2810.

II. Terms/Scope of Work:

The MCN agree to hire an attorney, who is a member in good standing of the Bar of the State of Oklahoma, and who is admitted to practice in the Muscogee (Creek) Nation District Court and in federal district court in the Eastern District of Oklahoma. The attorney must have the qualifications necessary to prosecute cases in both tribal and federal court, and be agreeable to both the MCN and the U.S. Attorney.

Pursuant to USAP 3-4.213.001, official appointment, extension, and termination of all Tribal attorneys as SAUSAs is the responsibility of the Executive Office for United States Attorneys ("EOUSA"). The attorney will be appointed as a Special Assistant U.S. Attorney ("SAUSA") subject to the completion and favorable adjudication of any background checks required by the USAO or the United States Department of Justice. The USAO will provide background forms and assist in the completion of those forms, and will administer the appointment in accordance with USAP 3-4.213.001. The MCN will administer all pertinent oaths and appointments as well.

The Tribal SAUSA shall be subject to the ethics laws, regulations, and policies applicable to attorneys in the Department of Justice, EOUSA, and the USAO. These include the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635; supplemental standards of ethical conduct for employees of the Department of Justice, 5 C.F.R. Part 3801; federal conflict of interest laws, 18 U.S.C. Sections 202-211; political activity restrictions, 5 U.S.C. Section 7321 et seq.; the Federal Rules of Criminal Procedure, and the local rules as established by the Federal Courts in the Eastern District of Oklahoma. In addition, the Tribal SAUSA may not be engaged in the compensated outside practice of law other than his or her employment with the Tribe.

The Tribal SAUSA will remain an employee of the MCN and subject to the employment conditions of the MCN. The MCN will be responsible for the salary and benefits of the Tribal SAUSA.

The Tribal SAUSA will not have any independent authority to authorize warrantless arrests for federal offenses, authorize officers to submit federal search warrant applications or federal criminal complaints, or authorize federal agents to use law enforcement techniques that require USAO approval. Additionally, as a SAUSA, the Tribal SAUSA will not have authority to issue federal process, including subpoenas, or to expand or obligate funds on behalf of the USAO, but will do so only in conjunction with the First Assistant United States Attorney or any Assistant United States Attorney designated with regard to any matter handled.

Both parties agree that the SAUSA's duties will be limited to prosecuting offenses in or affecting Indian Country or other cases as assigned by the First Assistant United States Attorney or United States Attorney.

The Tribal SAUSA will have the United States as the sole client in any matter assigned by the USAO. In any other matter assigned by the MCN, the Tribal SAUSA will have the MCN as the sole client.

Notwithstanding the fact that the MCN and the USAO generally plan to share information about prosecutions involving crimes in Indian Country in the Eastern District of Oklahoma, the two parties recognize that there may be circumstances when the Tribal SAUSA, appointed pursuant to this agreement, will have confidentiality obligations to his or her client (which may be either the United States or the MCN depending on the assignment) where the client may not consent to the disclosure to the other client. In such situations, the SAUSA should be aware that he or she may have a conflict of interest, about which the SAUSA should consider whether to consult the Professional Responsibility Officer (PRO) or the U.S. Department of Justice's Professional Responsibility Advisory Office (PRAO), if the conflict arises in a federal case, or the MCN, if the conflict arises in the tribal case.

Consistent with the SAUSA's confidentiality obligations to his or her clients, the SAUSA will protect the confidentiality of each client's information, including as follows:

- the Tribal SAUSA, who will be working out of the tribal office, will ensure that the work he or she performs on federal investigations and cases is not accessible to others in the tribal offices;
- the Tribal SAUSA will ensure that federal case files are kept in locked file cabinets and, if using tribal computers, that computer files are password protected and not accessible to others who use the computer or network; folders and files on his or her desktop computer cannot be accessed by other people who use that network or have access to that computer;
- if using a Department computer while working at the MCN's offices, the Tribal SAUSA will safeguard the computer;
- the Tribal SAUSA will take precautions to ensure confidentiality when conversing on the telephone about federal case matters and when conducting in-person interviews while at the tribal offices;
- the Tribal SAUSA will instruct support staff who may work with the SAUSA about how to keep confidential the respective files of the U.S. and the MCN. *See generally* Model Rules of Prof'l Conduct R. 5.3 (2009).
- the Tribal SAUSA will ensure that information about work performed for the MCN is not transmitted to others in the USAO without the consent of the MCN. Model Rule 1.6.

The parties recognize that there may be circumstances when the Tribal SAUSA might have a conflict of interest in undertaking representation of the United States or the MCN in a particular case. Such a conflict could arise, for example, if the U.S. wishes to assign

the Tribal SAUSA to a matter on which the Tribal SAUSA previously worked, either for the MCN or for witnesses or the defendant. Or, the Tribal SAUSA may have a conflict of interest because he or she has confidential information about a matter handled for the MCN that would be useful in representing the U.S. in a case, but where he or she is not permitted to use or disclose the information in representing the U.S. because of his or her ongoing duty of confidentiality to the MCN. Model Rules 1.6, 1.7, 1.9.

Upon perceiving the possibility of a conflict in any assignment, the Tribal SAUSA will consult his or her supervisors in the MCN and in the USAO or PRO or PRAO, as appropriate, to resolve such conflicts where possible through client consent, without disclosing one party's confidential information to the other party, unless the appropriate party consents to the disclosure.

The parties agree that the SAUSA will participate in SAUSA training provided by DOJ's Office of Legal Education.

III. Effective Date and Term:

This agreement shall become effective upon execution by the parties on the date of the last signature. The agreement shall remain in effect for three years unless and until termination or amendment as described herein.

IV. Termination and Withdrawal:

This agreement may be terminated at any time without cause upon written consent of either party. Notice of termination shall be transmitted to all parties and effective 30 days from such notice. Termination of the MOU does not necessarily mean that the SAUSA appointments have been terminated.

V. Amendments:

This agreement may be amended at any time provided the amendments are in writing and signed by both parties to the agreement and provided that any amendments stay within the parameters of this agreement.

VI. Notices:

All notices and other communications required to be given by the parties to this agreement shall be deemed to have been given when delivered in person or posted by United States certified mail, return receipt requested, with postage prepaid, addressed as follows:

1. If to the MCN:
Principal Chief, Muscogee (Creek) Nation
2. If to the Office of U.S. Attorney:

United States Attorney for the Eastern District of Oklahoma

VII. Entire Agreement:

This agreement constitutes the entire agreement between the parties. Any term or condition which is not expressly stated as part of this agreement is not to be considered part of the agreement.

IN WITNESS WHEREOF, the parties named herein have caused this MOU to be duly executed on their behalf and their seal to be hereunto official and attested, all as of this date and year below written.

DATED: 7.2.15

SIGNED: *George Tignor*

DATED: 7-6-15

SIGNED: *Mark Green*



U.S. Department of Justice

Executive Office for United States Attorneys

Human Resources Staff

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September 21, 2017

Honorable Brian J. Kuester
United States Attorney
Eastern District of Oklahoma
520 Denison Avenue
Muskogee, Oklahoma 74401

Dear Mr. Kuester:

The Special Assistant United States Attorney appointment for Ms. Shelly L. Harrison is extended in your district, effective October 4, 2017, not to exceed October 3, 2018. This extension is subject to the conditions set forth in the original appointment letter under 28 U.S.C. § 543 dated September 22, 2015. The appointee will continue to serve without compensation. No additional appointment papers are necessary.

You must file a copy of this letter with the Clerk of the District Court to evidence this extension. Any questions concerning this extension should be addressed to Nicole West, SAUSA Program Assistant, Operations Division.

Sincerely,

A handwritten signature in cursive script that reads "Valarie D. Mulcahy".

Valarie D. Mulcahy
Assistant Director
Human Resources Staff
Operations Division