

Cherokee Nation Code Annotated

Title 12: Civil Procedure

Chapter 1: Civil Procedure

§ 13. Parens patriae

Cite as: 12 CNCA § 13

A. The Cherokee Nation Attorney General may bring a civil action in the name of the Cherokee Nation as *parens patriae* on behalf of tribal citizens of the Cherokee Nation and/or on behalf of one or more Nation Business Entities to secure monetary relief for injuries and damages sustained by such persons by reason of any violation of law, both federal and that of states where any citizen of the Cherokee Nation resides, including but not limited to, violations of the Cherokee Nation Unfair & Deceptive Practices Act. Aggregate data and evidence shall be deemed admissible if found by the court to be relevant. The court shall exclude from the amount of monetary relief awarded in such action any amount of monetary relief:

1. Which wholly duplicates amounts which have been awarded for the same injury to tribal citizens of the Cherokee Nation; or
2. Which is properly allocable to natural persons who have excluded their claims pursuant to subsection (C)(2) of this section.

B. The court shall award the Cherokee Nation as monetary relief threefold the total actual damage sustained or ten thousand dollars (\$10,000) per violation, whichever is greater, plus the cost of suit, including a reasonable attorney's fee. The court may award under this section prejudgment interest on the total award for the period beginning on the date of filing of Cherokee Nation's pleading setting forth a claim of *parens patriae* and ending on the date of judgment at a rate equal to the average United States Treasury Bill rate of the preceding calendar year. The court may award under this section postjudgment interest on the total award for the period starting on the date of judgment at the prime rate, as listed in the first edition of the Wall Street Journal published for each calendar year, plus two percent (2%). In determining whether an award of interest under this paragraph for any period is just in the circumstances the court shall only consider:

1. Whether the Cherokee Nation or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay or otherwise acted in bad faith;
2. Whether, the Cherokee Nation or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings; and

3. Whether the Cherokee Nation or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

C. Notice; exclusion election; final judgment

1. In any action brought under subsection (A) of this section the Attorney General shall, at such times, in such manner, and with such content as the court may direct, cause notice thereof to be given by publication. If the court finds that notice given solely by publication would deny due process of law to any person or persons, the court may direct further notice to such person or persons according to the circumstances of the case;

2. Any person on whose behalf an action is brought under subsection (A) of this section may elect to exclude from adjudication the portion of the Cherokee Nation claim for monetary relief attributable to him by filing notice of such election with the court within such time as specified in the notice given pursuant to paragraph (1) of this subsection;

3. The final judgment in an action under subsection (A) of this section shall be *res judicata* as to any claim under this title by any person on behalf of whom such action was brought and who fails to give such notice within the period specified in the notice given pursuant to paragraph (1) of this subsection.

D. Attorney's fees in any action under subsection (A) of this section:

1. The amount of the plaintiffs' attorney's fees shall be determined by the court; and

2. The court may, in its discretion, award a reasonable attorney's fee to a prevailing defendant upon a finding by clear and convincing evidence that the Attorney General has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.

Historical Data

LA 16–16, eff. April 21, 2016. Amended LA 07–18, eff. May 18, 2018.