

Cherokee Nation Code Annotated

Title 12: Civil Procedure

Chapter 1: Civil Procedure

§ 16. Class actions

Cite as: 12 CNCA § 16

A. All persons may join in one action as plaintiffs if:

1. They assert any right to relief jointly, severally, or in the alternative, in respect of or arising out of the same transaction, occurrence, personal injury or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action; or

2. They have a claim, right, or interest adverse to the defendant in the property or controversy which is the subject of the action.

B. It is not necessary that each plaintiff be interested as to every cause of action or as to all relief prayed for. Judgment may be given for one or more of the plaintiffs according to their respective right to relief.

C. All persons may be joined in one action as defendants if there is asserted against them:

1. Any right to relief jointly, severally, or in the alternative, in respect of or arising out of the same transaction, occurrence, injury or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action; or

2. A claim, right, or interest adverse to them in the property or controversy which is the subject of the action.

D. It is not necessary that each defendant be interested as to every cause of action or as to all relief prayed for. Judgment may be given against one or more defendants according to their respective liabilities.

E. Where the plaintiff is in doubt as to the person from whom he or she is entitled to redress, he or she may join two or more defendants, with the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined between the parties.

F. When parties have been joined under Section (A) or (C), the court may make such orders as may appear just to prevent any party from being embarrassed, delayed, or put to undue expense, and may order separate trials or make such other order as the interests of justice may require.

G. If the consent of anyone who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.

H. It is the intent of the Tribal Council in enacting this section to ensure that the unpaid residuals in class action litigation are distributed, to the extent possible, in a manner designed either to further the purposes of the underlying causes of action, or to promote justice for all Cherokees. The Tribal Council finds that the use of funds collected by the Court Fund pursuant to this section for these purposes is in the public interest, is a proper use of the funds, and is consistent with essential public and governmental purposes.

I. Prior to the entry of any judgment in a class action, the court shall determine the total amount that will be payable to all class citizens, if all class citizens are paid the *pro rata* amount to which they are entitled pursuant to the judgment. The court shall also set a date when the parties shall report to the court the total amount that was actually paid to the class citizens. After the report is received, the court shall amend the judgment to direct the defendant to pay the sum of the unpaid residue, plus interest on that sum at the legal rate of interest from the date of entry of the initial judgment, to organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to organizations providing services to the indigent.

J. No appeal shall be taken from the granting of the certification of a class.

K. Any waiver by a person of their right to pursue a class action is contrary to public policy and shall be unenforceable and void.

Historical Data

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