

Cherokee Nation Code Annotated

Title 22: Criminal Procedure

Chapter 26: RICO

§ 1409. Civil proceedings instituted by Attorney General

Cite as: 22 CNCA § 1409

A. The Attorney General may institute civil proceedings against any person in the Cherokee Nation courts seeking relief from conduct constituting a violation of any provisions of 21 CNCA § 1403 with the right to a trial by jury at the request of either party. If the plaintiff in such a proceeding proves the alleged violation by a preponderance of the evidence, the district court, after making due provisions for the rights of innocent parties, may grant relief by entering any appropriate order of judgment, including:

1. Ordering any defendant to divest himself of any interest in any enterprise or any real property;
2. Imposing reasonable restrictions upon the future activities or investments of any defendant, including prohibiting any defendant from engaging in the same type of endeavor as the enterprise in which the defendant was engaged in violation of 21 CNCA § 1403;
3. Ordering the dissolution or reorganization of any enterprise;
4. Ordering the suspension or revocation of a license, permit, or prior approval granted to any enterprise by an agency of the Nation; or
5. Ordering the surrender of the charter of a corporation organized pursuant to the laws of the Nation or the revocation of a certificate authorizing a foreign corporation to conduct business within the Nation.

In a proceeding initiated pursuant to the provisions of this section, injunctive relief shall be granted in conformity with the principles that govern the granting of relief from injury or threatened injury in other cases, but no showing of special or irreparable injury shall be required. Pending final determination of a proceeding initiated pursuant to the provisions of this section, a temporary restraining order or a preliminary injunction may be issued upon a showing of immediate danger of significant injury, including the possibility that any judgment for money damages might be difficult to execute, and, in a proceeding initiated by an aggrieved person, upon the execution of a bond in the amount of ten percent (10%) of the value of the property against injury for an injunction improvidently granted. If the court issues an injunction or grants other relief pursuant to the provisions of this section, the plaintiff shall also recover costs, including reasonable attorney fees and costs of investigation and litigation reasonably incurred.

B. The civil penalty imposed pursuant to this section shall not exceed One Hundred Thousand Dollars (\$100,000.00), with no offset for the value of any property criminally forfeited or any fine imposed pursuant to the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act. This amount shall be applied to the costs and expenses of investigation and prosecution, and the balance, if any, shall be paid pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act.

C. A final judgment or decree rendered against the defendant in any civil or criminal proceeding pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act, shall estop the defendant in any subsequent civil action or proceeding brought by any person as to all matters as to which the judgment or decree would be an estoppel as between the parties to a civil or criminal proceeding.

D. A civil action or proceeding pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act may be commenced at any time within five (5) years after the conduct made unlawful pursuant to the provisions of 21 CNCA § 1403 terminates or the cause of action accrues. If a criminal proceeding or civil action or other proceeding is brought by the Attorney General to punish, prevent, or restrain any activity made unlawful pursuant to the provisions of 21 CNCA § 1403, the running of the period of limitations prescribed by this section with respect to any cause of action of an aggrieved person, based in whole or in part upon any matter complained of in any such prosecution, action, or proceeding shall be suspended during the pendency of such prosecution, action, or proceeding and for two (2) years following its termination.

E. Service of process in an action pursuant to the provisions of this section may be made upon any person outside the state if the person was a principal in any conduct constituting a violation of the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act in this Nation. The person shall be deemed to have thereby submitted himself to the jurisdiction of the courts of the Cherokee Nation for the purposes of this section.

F. The application of any civil remedy pursuant to the provisions of this section shall not preclude the application of any other civil or criminal remedy pursuant to the provisions of the Cherokee Nation Racketeer-Influenced and Corrupt Organizations Act or any other provision of law. Civil remedies pursuant to the provisions of this section are supplemental and not mutually exclusive.

Historical Data

Amended LA 30-21, eff. June 18, 2021.