

# An Act

## **Legislative Act 18-23**

### **AN ACT AMENDING TITLE 51 OF THE CHEROKEE NATION CODE ANNOTATED PERTAINING TO THE FILLING OF A VACANCY IN THE POSITION OF THE ATTORNEY GENERAL**

#### **BE IT ENACTED BY THE CHEROKEE NATION:**

#### **Section 1. Title and Codification**

This act shall be known as the 2023 Amendment to the Attorney General Act and shall be codified as 51 CNCA § 110 of the Cherokee Nation Code Annotated.

#### **Section 2. Purpose**

The purpose of this Legislative Act is to amend Section 110 of the Attorney General Act to comply with the Article VII, Section 13 Constitution of the Cherokee Nation requiring that an appointee to the Office of the Attorney General be confirmed by the Tribal Council for a term of five (5) years of office.

#### **Section 3. Legislative History**

CNCA Title 51 Chapter 4 § 110  
Legislative Act 12-07, effective March 7, 2007

#### **Section 4. Substantive Provisions**

##### **§ 101. Short title**

This act shall be known and may be cited as the Attorney General Act.

##### **§ 102. Purpose**

The purpose of this act is to assign to the Cherokee Nation's Attorney General those "other duties as the Council may prescribe by law" as provided for in Article VII, Section 13 of the Cherokee Nation Constitution drafted in 1999 and ratified in 2003. The Council recognizes the duties and powers delegated to the Attorney General by said Constitution and finds that nothing herein shall be construed to diminish or abridge those duties and powers delegated to the Attorney General by said Constitution.

##### **§ 103. Definitions.**

For purposes of this Act:

- A. **“Administration”** shall mean the Executive Branch of the Cherokee Nation as provided for in Article VII of the Cherokee Nation Constitution.
- B. **“Agency”** shall mean commission, departments, Government-owned companies, or other instrumentalities of the Cherokee Nation.
- C. **“Council”** or **“Tribal Council”** shall mean the Council of the Cherokee Nation as provided for in Article VI of the Cherokee Nation Constitution.
- D. **“Government-owned company”** or **“Instrumentalities”** means those entities in which the Cherokee Nation is the sole or majority stock holder or owner, including, but not limited to: Cherokee Nation Enterprises, Cherokee Nation Businesses, and the Cherokee Nation Industries.
- E. **“Nation”** shall mean the Cherokee Nation.
- F. **“Person”** means an agency, individual, a corporation, an estate, a trust, a general partnership, a limited partnership, a limited liability company, an association, or any other legal, commercial, government-owned company, or governmental entity.
- G. **“Stale”** means a state, territory, or possession of the United States, a federally recognized Indian tribe, the District of Columbia or the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

#### **§ 104. Seal**

The Attorney General shall have a seal for the Office of Attorney General. The design of the seal is subject to the approval of the Principal Chief.

#### **§ 105. Functions and duties of Attorney General**

- A. Pursuant to Article VII, Section 13 of the Cherokee Nation Constitution, the Attorney General "shall represent the Cherokee Nation in all criminal cases in the courts of the Nation, and in all civil actions wherein the Cherokee Nation is named as a party, and shall have such other duties as the Council may prescribe by law."
- B. In addition to the duties prescribed by the Constitution, the duties of the Attorney General as the chief legal officer of the Nation shall be:

1. To supervise Cherokee Nation's representation in all litigation in which Cherokee Nation, an agency, or officer thereof is interested, and shall direct all special attorneys appointed pursuant to this title and all contract attorneys in the discharge of their respective duties; the conduct of litigation in which Cherokee Nation, an agency, department or officer thereof is a party, or is interested, is reserved to the Attorney General, provided that the Attorney General may waive this requirement for specific legal issues which do not implicate governmental interests;
2. To initiate or appear, at his or her discretion, in any action in which the interests of the Nation or the People of the Nation are at issue, and prosecute and defend in any court or before any commission, board or officers or other adjudicatory body,

administrative tribunal or body of any nature, in all civil or criminal legal or quasi-legal matters, any cause or proceeding, in which the Nation may be interested; and when so appearing in any such cause or proceeding, the Attorney General may, if the Attorney General deems it advisable and to the best interest of the Nation, take and assume control of the prosecution or defense of the Nation's interests therein, provided that this section includes the authority to initiate or appear in any action involving a government-owned company;

3. To prosecute all actions necessary under Title 10 of the Cherokee Nation Code Annotated for the protection and welfare of children and juveniles in the Cherokee Nation Courts, and to intervene, at the discretion of the Attorney General, in any action in any state court wherein intervention is permitted pursuant to the federal Indian Child Welfare Act, 25 U.S.C. § 1901 et seq.;

4. To give an official opinion upon all questions of law submitted to the Attorney General by any Member of the Tribal Council, the Principal Chief, the Deputy Principal Chief, or by the Group Leader or equivalent of any Cherokee Nation board, commission or executive branch department, and only upon matters in which the requesting party is officially interested. Said opinions shall have the force of law in Cherokee Nation until a differing opinion or order is entered by a Cherokee Nation Court;

5. To prepare drafts of regulations, and of contracts and other instruments in which the Cherokee Nation government is interested and to render opinions on the legal sufficiency of all contracts and other instruments in which the Cherokee Nation is interested and the best interests of the people of the Cherokee Nation are served;

6. To prepare legislation and resolutions as the Attorney General deems appropriate and to provide review of all legislation in whatever form in order to provide a written opinion thereon as to the possibility of conflicts with other laws and the Constitutionality of said bills;

7. To enforce the proper application of monies appropriated by the Tribal Council and to prosecute breaches of trust in the administration of such funds;

8. To institute actions to recover Nation monies illegally expended, to recover Nation property;

9. To keep and file copies of all opinions of the Office of Attorney General, and to keep an index of all such opinions according to subject and section of the law construed or applied and to cause to be published such of his or her opinions as he or she considers valuable for preservation and to prescribe the manner for the publication of the opinions;

10. To keep a register or docket of all actions, demands and investigations prosecuted, defended or conducted by the Attorney General on behalf of the

Nation. Said register or docket shall give the style of the case or investigation, where pending, court number if any, the substance of the matter, result and the names of the assistant(s) who handled the matter;

11. To keep a complete office file of all cases and investigations handled by the Attorney General on behalf of the Nation;

12. To furnish legal advice to Nation officials and all executive departments, boards, commissions, agencies, instrumentalities and officers of Cherokee Nation concerning any matter arising in connection with the exercise of their official powers and duties, and to supervise and direct the legal business of every executive department, board, commission, agency, instrumentality and officer of Cherokee Nation, provided that this section does not include advice and representation to such officials in their individual capacity, nor does it include advice to tribal citizens who are not officials of the Nation, and provided further that, in order to preserve the independence of the Office of Attorney General and to avoid actual and perceived conflicts of legal advice, the Office of Attorney General shall not provide legal advice on day-to-day operations of the Office of Principal Chief or Deputy Principal Chief;

13. To investigate any report by the Treasurer or the Office of Audit and Compliance filed with the Attorney General and prosecute all actions, civil or criminal, relating to such reports or any irregularities or derelictions in the management of public funds or property which are violations of the laws of the Nation;

14. To investigate and prosecute all actions, civil or criminal, relating to civil actions or crimes against or within the jurisdiction of Cherokee Nation, provided that any such criminal actions shall be investigated in coordination with the Marshal Service, and when deemed appropriate by the Attorney General, with any federal or local law enforcement agency and to convene grand juries in such manner and for such purposes as provided by law, provided that such grand juries shall be composed of citizens of Cherokee Nation;

15. To probate, at the request of Cherokee Nation Real Estate Services, restricted estates;

16. To settle any case or controversy on behalf of the Nation, except that a settlement involving injunctive relief which substantially impacts the operation or programs of a Nation agency or would impose obligations requiring the expenditure of funds in excess of unallocated unencumbered monies in the agency's appropriations or beyond the current fiscal year shall be reviewed prior to its finalization by the Principal Chief and the Tribal Council. The purpose of the review is to determine the budgetary, programmatic and operational impact of the proposed settlement;

17. To oversee all Nation activities related to child-support enforcement as designated by law;
18. Coordinate with the Marshal's Service the following duties:
  - a. bailiff duties;
  - b. transportation of prisoners;
  - c. protection of the Courthouse and the court staff;
  - d. protection of witnesses, parties and prosecutors;
  - e. service of process;
  - f. and to obey the lawful orders and directions of the Courts.
19. To direct and supervise all activities of the Attorney General's Office;
20. To prepare the budget for the Attorney General's Office;
21. To promulgate such rules, regulations, policies, and procedures as the Attorney General deems necessary to fulfill the duties of the Office;
22. To promulgate rules, regulations, policies, and procedures for the qualifications and conduct of employees of the Attorney General's Office, which may include rules for conduct and corresponding disciplinary actions for breaches of conduct which are more stringent than those of the Cherokee Nation Human Resources Policies and Procedures;
23. To carry firearms upon authorization of the Cherokee Nation Marshal;
24. To designate an individual to act as Attorney General in the absence of the Attorney General so long as said designation does not exceed six (6) months; and
25. To engage in other activities as may be prescribed in other sections of the Cherokee Nation Code.

#### **§ 106. Costs of litigation**

- A. Except as otherwise provided by law or written agreement, the cost of litigation in any case for which representation is provided pursuant to this act shall be paid out of the Attorney General's budget.
- B. Costs of litigation shall include, but are not limited to, court fees and costs, deposition expenses, travel and lodging, witness fees and other similar costs; except that this act shall

not be construed as authorizing the payment by the Nation or any agency thereof of any judgment making an award of monetary damages.

**§ 107. Appearance not waiver of immunity of Nation**

The appearance of the Attorney General or his or her designee(s) in any matter, proceeding or action in any court, before any commission, board or officer or other adjudicatory body, shall not be construed to waive the sovereign immunity of Cherokee Nation.

**§ 108. Prosecutors and other assistants to the Attorney General—Delegation of authority**

A. Pursuant to Article VII, Section 13 of the Cherokee Nation Constitution, the Attorney General is empowered "to designate such prosecutors and other assistants as deemed necessary to carry out the duties of office." The Attorney General may from time to time make such provisions as he or she considers appropriate authorizing the performance of any function of the Attorney General by any other officer or employee of the Office of Attorney General.

B. Investigators designated by the Attorney General shall be certified by an accredited police academy and will be deputized by the Marshal.

C. The Attorney General shall appoint and fix the duties of all prosecutors, assistants, and other employees of the Office of Attorney General as the Attorney General deems necessary to perform the duties imposed upon the Attorney General. The compensation of the Attorney General shall not be decreased during his or her term of office.

D. The Attorney General is further authorized to appoint special assistants or special attorneys, including those from external law firms and entities, to fulfill the functions of the Attorney General where deemed necessary and appropriate to secure the best interests of the Nation.

**§ 108. Interests of Cherokee Nation in pending suits**

Any attorney, officer, or employee of the Office of Attorney General may be sent by the Attorney General to any tribe, state or district in the United States to attend to the interests of Cherokee Nation in a suit pending in a court of the United States, a tribe or state, or to attend to any other interest of Cherokee Nation.

**§ 109. Disqualification of officers and employees of the Office of Attorney General**

The Attorney General shall promulgate rules and regulations which require the disqualification of any attorney, officer or employee of the Office of Attorney General, from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or political conflict of interest, or the appearance thereof. Such rules and regulations may provide that a willful violation of any provision thereof shall result in removal from office.

## **§ 110. Vacancy in position of Attorney General**

In case of a vacancy in the position of Attorney General by reason of removal, death, resignation or disability lasting for more than six (6) months, the Attorney General position shall be filled by appointment by the Principal Chief with confirmation by the Tribal Council in accordance with Article VII, Section 13 of the Constitution of the Cherokee Nation. ~~with the replacement to fill out the remainder of the original term.~~

## **§ 111. Employment of attorneys, authority of boards or officials—Defense of actions by Attorney General**

Except as otherwise provided by this act, no Nation officer, agency, board or commission shall have authority to employ or appoint attorneys to advise or represent said officer, agency, board or commission in any matter without prior written approval of the Attorney General. Nothing herein shall prevent the Tribal Council or the Principal Chief, without approval from the Attorney General, from employing, contracting with, or otherwise seeking counsel with an attorney to provide day-to-day advice and counsel on matters within the purview of their respective powers and authorities.

## **§ 112. Legal representation of agency or official of Executive Branch—Contracts**

A. An agency or official of the Executive Branch may obtain legal representation by one or more attorneys by means of one of the following:

1. Employing an attorney if authorized by the Attorney General;
2. Seeking representation by the Office of Attorney General; or
3. If the Office of Attorney General is unable to represent the agency or official due to a conflict of interest, or the Office of Attorney General is unable or lacks the personnel or expertise to provide the specific representation required by such agency or official, contracting with a private attorney or attorneys pursuant to this section.

B. When entering into a contract for legal representation by one or more private attorneys, an agency or official of the Executive Branch shall select an attorney or attorneys and gain approval of said attorney or attorneys from the Attorney General. The Attorney General must approve a schedule of fees for services. An agency or official may agree to deviate from the schedule of fees only with the approval of the Attorney General.

C. Before entering into a contract for legal representation, regardless of cost, by one or more private attorneys, an agency or official of the executive branch shall furnish a copy of the proposed contract to the Attorney General and, if not fully described in the contract, notify the Attorney General of the following:

1. The nature and scope of the representation including, but not limited to, a



description of any pending or anticipated litigation or of the transaction(s) requiring representation;

2. The reason or reasons for not obtaining the representation from the Office of Attorney General;

3. The anticipated cost of the representation including the following:

a. the basis for or method of calculation of the fee, including, when applicable, the hourly rate for each attorney, paralegal, legal assistant, or other person who will perform services under the contract, and

b. the basis for and method of calculation of any expenses which will be reimbursed by the agency or official under the contract, and

c. an estimate of the anticipated duration of the contract.

D. Before entering into a contract for legal representation by one or more private attorneys, an agency or official of the Executive Branch shall obtain the approval of the Attorney General. Any amendment, modification, or extension of a contract covered by this section shall also require approval by the Attorney General.

E. When an agency or official of the Executive Branch enters into a contract for professional legal services pursuant to this section, the agency shall also comply with all other applicable procurement and finance regulations and procedures. All costs of contract legal representation, including costs of litigation occurring pursuant to the contract, shall be borne by the agency entering the contract.

F. Nothing herein shall prevent the Tribal Council or the Principal Chief, without approval from the Attorney General, from employing, contracting with, or otherwise seeking counsel with an attorney to provide day-to-day advice and counsel on matters within the purview of their respective powers and authorities.

#### **§ 113. Nation officer or employee—Legal defense services—Defense duties—Evidence**

A. The Attorney General shall defend any employee, elected or appointed Nation officer or employee of any Nation office, institution, agency, board or commission of any branch of Nation government in any civil action or special proceeding in the courts of the Nation, a state, or of the United States, by reason of any alleged act done or omitted in the scope of the employee's authority and in the course of his or her employment. The employee named in the action may employ private counsel at his own expense to assist in his defense, however, such employment of private counsel shall not preclude the Attorney General from intervening in the action on the Nation's behalf. Failure of an employee to request representation shall not prohibit the Attorney General from intervening to protect the Nation's interests in any cause of action.



B. The Attorney General shall not represent a Nation employee if that employee acted outside the scope of his or her authority.

C. The Attorney General may intervene in any such action or proceeding and appear on behalf of the Nation, or any of its officers or employees, where the Attorney General deems the Nation to have an interest in the subject matter of the litigation. However, in cases in the Nation's courts where one branch of the Nation's government is an opposing party in a suit brought by another branch of the Nation's government, the Attorney General shall not represent either party but may intervene to provide an opinion concerning the Nation's interests in the matter.

D. 1. When an original action seeking either a writ of mandamus or prohibition against a District Judge, Associate District Judge, or Special Judge of the District Court is commenced or when a cause of action challenging the authority of any Nation Court is commenced in state or federal court, the Attorney General shall represent such judicial officer(s) if, and only if, directed to do so, in writing, by the Chief Justice of the Cherokee Nation Supreme Court, upon the Chief Justice's finding that such representation is necessary to protect either the function or integrity of the judiciary. Such finding by the Chief Justice shall be final and binding.

2. In the event that the Attorney General is or shall be disqualified from representing such judicial officer, the Attorney General shall immediately notify, in writing, the Chief Justice. The Chief Justice then may appoint counsel to represent the judicial officer. The appointed counsel shall determine the method of preparation and presentation of such defense. The appointed counsel shall not be held civilly liable for the exercise of such discretion. The appointed counsel shall, upon approval by the Chief Justice, be entitled to be compensated by the Court for services rendered.

#### **Section 6. Provisions as Cumulative**

The provisions of this act shall be cumulative to existing law.

#### **Section 7. Severability**

The provisions of this act are severable and if any part or provision hereof shall be held void the decision of the Court so holding shall not affect or impair any of the remaining parts or provisions of this act.

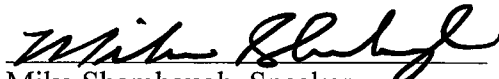
#### **Section 8. Effective Date/Emergency Declared**

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this act shall take effect and be in full force after its passage and approval.

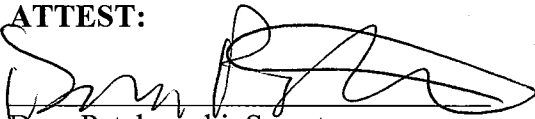
#### **Section 9. Self-Help Contributions**

To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.

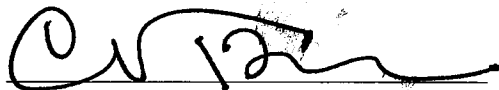
Enacted by the Council of the Cherokee Nation on the 11<sup>th</sup> day of September, 2023.

  
Mike Shambaugh, Speaker  
Council of the Cherokee Nation

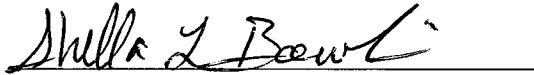
**ATTEST:**

  
Dora Patzkowski, Secretary  
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 14<sup>th</sup> day of September, 2023.

  
Chuck Hoskin, Jr., Principal Chief  
Cherokee Nation

**ATTEST:**

  
Shella Bowl, Secretary of State  
Cherokee Nation

**YEAS AND NAYS AS RECORDED:**

Sasha Blackfox-Qualls	<u>Yea</u>	Melvina Shotpouch	<u>Yea</u>
Candessa Tehee	<u>Yea</u>	Victoria Vazquez	<u>Yea</u>
Lisa Hall	<u>Yea</u>	Dora Smith Patzkowski	<u>Yea</u>
Mike Dobbins	<u>Absent</u>	Joe Deere	<u>Absent</u>
E. O. "Jr." Smith	<u>Yea</u>	Kevin Easley Jr.	<u>Yea</u>
Daryl Legg	<u>Yea</u>	Danny Callison	<u>Yea</u>
Joshua Sam	<u>Yea</u>	Julia Coates	<u>Yea</u>
Codey Poindexter	<u>Yea</u>	Johnny Kidwell	<u>Yea</u>
Mike Shambaugh	<u>Yea</u>		