

## TITLE 28

### ETHICS

#### Chapter

1. General Provisions
2. Solicitation, Conflicts of Interest and Dealings With Relatives
3. Judicial Review
4. Whistleblower Protection Act

#### CHAPTER 1

### GENERAL PROVISIONS

#### Section

1. Short title
2. Purpose
3. Definitions

#### § 1. Short title

This act shall be known and may be cited as the Cherokee Nation Ethics Act of 2012.

LA 31-89, eff. April 8, 1989. Amended LA 34-07, eff. September 13, 2007; LA 25-12, eff. July 24, 2012; LA 40-12, eff. October 16, 2012.

#### § 2. Purpose

The purpose of this act is to codify the issues relating to conflicts of interest pertaining to employees and appointed and elected officials of Cherokee Nation, use of businesses owned wholly or partially by Cherokee Nation employees and appointed and elected officials, contracting with relatives of elected officials, and the parameters under which Cherokee Nation employees and officials must operate with respect to conflicts of interest.

The Cherokee Nation Constitution in Article X, Section 10, provides that, "No official, member or officer of the Council, Cabinet Member, employee of any official, Council, Cabinet, or subdivisions thereof, or any person employed in any capacity by the Cherokee Nation shall receive from any individual, partnership, corporation, or entity doing business with the Cherokee Nation directly or indirectly, any interest, profit, benefits, or gratuity, other than wages, salary, per diem, or expenses specifically provided by law." This act is in part intended to specify those situations "provided by law" under which a transaction which would otherwise be prohibited by this section of the Constitution will be permitted.

LA 31-89, eff. April 8, 1989. Amended LA 34-07, eff. September 13, 2007; LA 25-12, eff. July 24, 2012; LA 40-12, eff. October 16, 2012.

### § 3. Definitions

A. **"Hiring Authority"** is the branch of government, instrumentality, official, board or commission or CEO or other executive officer ultimately responsible for hiring decisions including but not limited to Principal Chief and Deputy Principal Chief, Tribal Council, Supreme Court and other entities or instrumentalities including Gaming, Tax, Election and other boards and commissions for their respective branch of government instrumentalities or boards or commissions any entities in which Cherokee Nation is the sole or majority stockholder or owner and all entities that are fifty-one percent (51%) or more owned by Cherokee Nation.

B. **"Immediate Family"** shall include parents, children (including adopted children but not including foster children even when living in the same household), spouses (including common law spouses or those with whom the subject individual shares a conjugal relationship), siblings (one or more persons having one common parent), step-parents and step-children and wards over which the subject individual has guardianship or anyone living in the same household as the individual.

C. **"Instrumentalities"** means Cherokee Nation Government and any entities in which Cherokee Nation is the sole or majority stock holder or owner and all entities that are fifty-one percent (51%) or more owned by Cherokee Nation.

D. **"Interest, Profit, Benefit or Gratuity"** as used in Article 10, Section 10 of the Cherokee Nation Constitution shall not include any benefit paid on behalf of and for the betterment of a Cherokee Nation citizen, regardless of the payee of the benefit.

E. **"Official"** means any elected or appointed person to any governmental entity, instrumentality, commission or board of Cherokee Nation Government or its instrumentalities any entities in which Cherokee Nation is the sole or majority stock holder or owner and all entities that are fifty-one percent (51%) or more owned by Cherokee Nation as defined by this act.

B.<sup>1</sup> **"Relative"** shall include the following: parents, children (including adopted children but not including foster children even when in current placement with the individual), spouses (including common law spouses or those with whom the subject individual shares a conjugal relationship), siblings (one or more persons having one common parent), step-parents and step-children, step-siblings, parents-in-law, siblings-in-law, grandparents-in-law, grandchildren-in-law, aunts, uncles, nephews, nieces, grandparents, and grandchildren, wards over which the subject individual has an existing guardianship, and anyone living in the same household as the individual. These relationships include those created by adoption as well as by marriage or blood. Provided, however, that for the purposes of this act a divorce of husband and wife or permanent termination of the conjugal relationship shall terminate all relationship by affinity that existed by reason of the marriage or conjugal relationship.

LA 31-89, eff. April 8, 1989. Amended LA 34-07, eff. September 13, 2007; LA 25-12, eff. July 24, 2012; LA 40-12, eff. October 16, 2012.

<sup>1</sup> So in original.

## CHAPTER 2

### SOLICITATION, CONFLICTS OF INTEREST AND DEALINGS WITH RELATIVES

#### Section

11. Solicitation prohibited

12. Involvement in business decision—Crime defined

13. Resolution of conflict issues not defined by statute

14 to 18. Reserved

19. Employment of relatives of elected officials permitted

20. Contracting with relatives of elected officials

21. Solicitation of employment and appointment of relatives of appointed and elected officials unlawful

#### § 11. Solicitation prohibited

A. No employee or official who has an ownership interest in a business, or whose immediate family member has an ownership interest in a business may solicit for that business from Cherokee Nation or its instrumentalities. To so solicit may subject the employee to disciplinary action, up to and including immediate discharge. Such a prohibited soliciting of business on the part of an official shall constitute "willful neglect of duty" and may subject the official to removal from office pursuant to the laws and Constitution of Cherokee Nation. For purposes of this section, solicitation shall not include applying for TERO certification and placement on a TERO business list, nor shall it include responding to a request for bids.

B. Where an employee or official of Cherokee Nation sells real property to Cherokee Nation there shall be no conflict of interest, provided that the employee or official did not solicit Cherokee Nation for the purchase, where the property has previously been for sale and where the property sale is for a price that is at the prevailing market value.

LA 31-89, eff. April 8, 1989. Amended LA 34-07, eff. September 13, 2007; LA 25-12, eff. July 24, 2012; LA 40-12, eff. October 16, 2012.

#### § 12. Involvement in business decision—Crime defined

The involvement of an employee or official in a purchasing or business decision, including any attempt to influence the decision-making parties, other than in the case of an elected official in the normal annual budgetary review excluding budget modifications, in any transaction between Cherokee Nation or its instrumentalities and a business owned, in whole or part, by the employee or member of the employee's immediate family shall constitute a crime and is punishable under 21 CNCA § 10. Such involvement may also subject the employee to

disciplinary action, up to and including immediate discharge and may constitute "willful neglect of duty" and may subject an official to removal from office pursuant to the laws and Constitution of Cherokee Nation.

LA 31-89, eff. April 8, 1989. Amended LA 34-07, eff. September 13, 2007; LA 25-12, eff. July 24, 2012; LA 40-12, eff. October 16, 2012.

§ 13. Resolution of conflict issues not defined by statute

A. In situations not defined by statute any question of whether or not a conflict exists with regard to an employee shall be made pursuant to the written policies and procedures of each entity. Such determination shall be in writing and shall be made open and available to the public upon request. Should any question arise as to conflict the affected employee must seek a determination as designated in the employer's policies and procedures. Failure to request such a determination or failure to make known to the employer any questionable activity may result in disciplinary action up to and including immediate termination.

B. In situations not defined by statute any question of whether or not a conflict exists with regard to an appointed official shall be resolved by the Principal Chief. Such determination shall be in writing and shall be made open and available to the public.

C. In situations not defined by statute, any question of whether or not a conflict exists with regard to a Member of the Cherokee Nation Council shall be resolved by a majority vote of the membership of the Council. Such determination shall be made in public.

D. In situations not defined by statute, any question of whether a conflict exists with regard to the Principal Chief or Deputy Principal Chief shall be determined under Cherokee law including but not limited to proceedings authorized by Legislative Act 10-02.

E. If it is deemed that a conflict exists, such conflict may be resolved by discontinuing the transaction(s) that resulted in the conflict, and/or by transfer of the employee to another department and/or by any other action deemed appropriate by the applicable reviewing body, including any appropriate disciplinary action. In the case of the Cherokee Nation Council, any disciplinary action shall be determined by two-thirds (2/3) vote of the membership of the Council.

F. Cherokee Nation and its instrumentalities shall within sixty (60) calendar days of the effective date of this act promulgate policies and procedures for resolving conflicts pursuant to this section.

LA 31-89, eff. April 8, 1989. Amended LA 34-07, eff. September 13, 2007; LA 25-12, eff. July 24, 2012; LA 40-12, eff. October 16, 2012.

§§ 14 to 18. Reserved

§ 19. Employment of relatives of elected officials permitted

There shall be no prohibition in employing relatives of elected or appointed officials or employees of Cherokee Nation so long as it is for wages, salary,

per diem or expenses. However, in no instance may a relative within the first degree be employed within the direct chain of command of another immediate family member.

LA 31-89, eff. April 8, 1989. Amended LA 34-07, eff. September 13, 2007; LA 25-12, eff. July 24, 2012; LA 40-12, eff. October 16, 2012.

#### § 20. Contracting with relatives of elected officials

No elected or public official, Member or Officer of the Council, Cabinet Member, or relative within the first degree of such individual shall be authorized to contract with Cherokee Nation or its entities or instrumentalities or any entity where the tribe owns fifty-one percent (51%) or more shall contract with any primary contractor or sub-contractor who is contracting with Cherokee Nation. Individual employment contracts are exempt from this provision.

LA 31-89, eff. April 8, 1989. Amended LA 34-07, eff. September 13, 2007; LA 25-12, eff. July 24, 2012; LA 40-12, eff. October 16, 2012.

#### § 21. Solicitation of employment and appointment of relatives of appointed and elected officials unlawful

A. It shall be unlawful for any elected official, any District Court Judge, or any Supreme Court Justice to appoint or vote for the appointment or employment of any of his or her relatives to any position within the Nation or the Nation's instrumentalities.

B. It shall be unlawful for any elected official, any District Court Judge, or any Supreme Court Justice to campaign, urge or endorse for appointment or employment any of his or her relatives to any position within the Nation or the Nation's instrumentalities.

C. Where a relative of any elected official, any District Court Judge, or any Supreme Court Justice is employed or appointed to any position within the Nation or its instrumentalities, it shall be unlawful for any official, any District Court Judge, or any Supreme Court Justice to campaign or urge for or against or to otherwise affect or attempt to affect any terms or conditions of that relative's appointment or employment, including but not limited to salary, position, disciplinary action, and termination of employment; provided that this section shall not affect the ability of a District Court Judge or Supreme Court Justice to decide employment cases concerning relatives of other officials, Judges or Justices.

D. Any elected official, District Court Judge, or Supreme Court Justice who shall violate any provision of this section shall be deemed guilty of a crime involving official misconduct and willful neglect of duty, and may be subject to removal from office as prescribed in the Constitution and laws of Cherokee Nation.

E. Nothing in this act shall prohibit the Nation or its instrumentalities from promulgating policies and procedures intended to prevent conflicts of interest within the chain of command or within a department based on the relationships of employees not otherwise covered by this act.

LA 31-89, eff. April 8, 1989. Amended LA 34-07, eff. September 13, 2007; LA

25-12, eff. July 24, 2012; LA 40-12, eff. October 16, 2012.

## CHAPTER 3

### JUDICIAL REVIEW

#### Section

##### 31. Right to judicial review not abrogated

##### § 31. Right to judicial review not abrogated

Nothing in this title shall serve to abrogate or dilute an employee's or official's right otherwise granted by law to review by the Cherokee Nation Courts of any action affecting his or her position unless otherwise provided by this act.

LA 31-89, eff. April 8, 1989. Amended LA 34-07, eff. September 13, 2007; LA 25-12, eff. July 24, 2012; LA 40-12, eff. October 16, 2012.

## CHAPTER 4

### WHISTLEBLOWER PROTECTION ACT

#### Section

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##### § 401. Short title

This Act shall be known and may be cited as the Whistleblower Protection Act of the Cherokee Nation.

LA 13-04, eff. April 19, 2004. Amended LA 20-16, eff. August 17, 2016.

#### § 402. Purpose

The purpose of this Act is to establish protection against retaliation, reprisal and other similar activities against employees or other officials of the Cherokee Nation from retaliatory action for voluntarily disclosing information about dishonest or illegal activities occurring at a Cherokee Nation organization, department, agency, or division.

LA 13-04, eff. April 19, 2004. Amended LA 20-16, eff. August 17, 2016.

#### § 403. Definitions

A. **"Employer"** means the Cherokee Nation and the public body defined herein; employer also means any individual, partnership, association, corporation or any person or group of persons acting directly or indirectly on behalf of the Cherokee Nation, and shall also include any public or privately owned corporation that provides goods or services as a result of contractual relations with the Cherokee Nation. It applies to all branches of the Cherokee Nation Government, and or any Corporation, Commission, Board, or any other political subdivision of the Nation; it includes any Cherokee Nation authority, commission, or board or any other agency or instrumentality thereof. Employer shall also include agents, contractors or subcontractors of an employer.

B. **"Employee"** means any individual who performs service for or under the control and direction of an employer for wages or other remuneration. Employee shall also include applicants for employment, former employees or an authorized representative of an employee.

C. **"Official"** means any elected or appointed individual of the Employer

D. **"Public Body"** means the government of the Cherokee Nation:

a. The Legislative, the Council of the Cherokee Nation and their employees,

b. The Judiciary, the Cherokee Nation Supreme Court and the district courts of the Nation and their employees,

c. The Executive, the Principal and Deputy Principal Chiefs' offices, and any organizational unit of the Executive including regulatory and non-regulatory organizational unit of the Executive including regulatory and non-regulatory Commissions and Boards organized and approved by the council of the Cherokee Nation and their officials and employees.

d. Any corporation or commission organized for profit or non-profit purposes that is owned or organized in whole or part by the Cherokee Nation.

E. **"Supervisor"** means any individual within employer's organization who has the authority to direct and control the work performance of the affected employee or who has authority to take corrective action regarding the violation of the law, rule, or regulation of which the employee complains.

F. **"Retaliatory Action"** means the discharge, suspension, demotion, harassment, blacklisting or the refusal to hire an employee, or other adverse employment

action taken against an employee in the terms and conditions of employment, or other actions which interfere with an employee's ability to engage in protected activity set forth in 28 CNCA § 406 as a result of the employee's engagement in a protected activity.

LA 13-04, eff. April 19, 2004. Amended LA 20-16, eff. August 17, 2016.

#### § 404. Protected activity

An employer shall not take any retaliatory action against an employee because the employee does any of the following in respect to Cherokee Nation or entities doing business with the Cherokee Nation:

1. Discloses, threatens to disclose or is about to disclose to a supervisor or to a public body, an activity, policy or practice of the employer, a co-employer or another employer, that the employee reasonably believes is in violation of a law, or a rule or regulation promulgated pursuant to law;
2. Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation promulgated pursuant to law by the employer or another employer;
3. Discloses, threatens to disclose or is about to disclose to a supervisor or to a public body or any law enforcement agency, an activity, policy or practice of the employer, a co-employee or another employer, that the employee reasonably believes is incompatible with clear mandate of public policy concerning the public health, safety or welfare or protection of the environment;
4. Assists, or participates in a proceeding to enforce the provisions of this law, or;
5. Objects to, opposes or refuses to participate in any activity, policy or practice which the employee reasonably believes:
  - a. Is in violation of a law, or rule or regulation promulgated pursuant to law;
  - b. Is fraudulent or criminal, or;
  - c. Is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment.
6. Protected activity does not include false information provided by the employee.

LA 13-04, eff. April 19, 2004. Amended LA 20-16, eff. August 17, 2016.

#### § 405. Forum

Upon a violation of any of the provisions of this Act, an aggrieved employee or former employee may, within one (1) year of the alleged retaliatory action, institute a civil action in District Court of the Cherokee Nation. Upon the application of any party, a trial shall be directed to try the validity of any claim under this Act specified in the suit.

LA 13-04, eff. April 19, 2004. Amended LA 20-16, eff. August 17, 2016.

#### § 406. Burden of proof

A violation of this statute has occurred only if the employee demonstrates, by clear and convincing evidence that any behavior described in 28 CNCA § 407 was a contributing factor in the retaliatory action alleged in the complaint by the employee. However, relief may not be ordered under 28 CNCA § 407 if the employer demonstrates by a preponderance of the evidence that it would have taken the same unfavorable personnel action (retaliatory action) in the absence of such behavior. A showing by the preponderance of the evidence by the employer that the protected activity by the employee was false is a complete defense and complete bar to recovery by the employee.

LA 13-04, eff. April 19, 2004. Amended LA 20-16, eff. August 17, 2016.

#### § 407. Remedies, injunctive relief, costs, and attorney's fees

A. Any employee or official who alleges that "protected activity" has been violated by an employer covered under the provisions of this Act may apply to the district court of the Cherokee Nation for either or both declaratory judgment and injunctive relief to enforce the provisions. The court may order equitable relief as it considers appropriate and violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists. The court shall also, where appropriate, order:

1. An injunction to restrain continued violation of this Act;
2. The reinstatement for the employee to the same position held before the retaliatory action, or to an equivalent position;
3. The reinstatement of full fringe benefits and seniority rights;
4. The compensation for lost wages, benefits and other remuneration; and
5. The payment by the employer of reasonable costs, expert witness and attorney's fees, provided that attorney fees shall not exceed One Hundred Seventy-Five Dollars (\$175.00) per hour and shall not exceed twenty-five percent (25%) of the employee's total recovery.

B. If the employer prevails by showing the unfavorable action would have been taken in the absence of the protected activity or by showing that the protected activity was false, the employer is entitled to reasonable attorney fees, not to exceed One Hundred Seventy-Five Dollars (\$175.00) per hour.

LA 13-04, eff. April 19, 2004. Amended LA 20-16, eff. August 17, 2016.

#### § 408. Posting

An employer shall conspicuously display notices of its employee's protections and obligations under this Act.

LA 13-04, eff. April 19, 2004. Amended LA 20-16, eff. August 17, 2016.

#### § 409. Malicious violation of employee rights is a crime against public justice

Any supervisor, official or employee who maliciously retaliates or takes reprisal action against another employee or official for performance covered under "protected activities" in violation of this Act is guilty of a crime.

LA 13-04, eff. April 19, 2004. Amended LA 20-16, eff. August 17, 2016.

#### § 410. Preemption

Nothing in this Act shall be deemed to diminish the rights, privileges, or remedies of any employee under any other federal or state law or regulation or under any collective bargaining agreement or employment contract. No employee may waive through a private contract any right set forth in this statute, except as set forth in 28 CNCA § 409, and no employee may be compelled to adjudicate his or her rights under this statute pursuant to a collective bargaining agreement or any other arbitration agreement.

LA 13-04, eff. April 19, 2004. Amended LA 20-16, eff. August 17, 2016.

#### § 411. Settlement

The rights afforded employees under this statute may not be waived or modified, except through a court approved settlement agreement reached with the voluntary participation and consent of the employee and employer. An employer may not require an employee to waive, as a condition of settlement, his or her right to reasonably engage in conduct protected under 28 CNCA § 404.

LA 13-04, eff. April 19, 2004. Amended LA 20-16, eff. August 17, 2016.