

Cherokee Nation Code Annotated

Title 1: Administrative Procedure

Chapter 4: Adjudication

§ 403. Disputed case procedure

Cite as: 1 CNCA § 403

A. Except for emergency adjudications and except as otherwise provided in 1 CNCA § 406, this section applies to disputed cases.

B. Except as provided in 1 CNCA § 407(C) for emergency adjudications, the agency shall give to the person to which the agency action is directed notice that is consistent with 1 CNCA § 404.

C. The agency shall make available to the person to which the agency action is directed a copy of the governing procedure.

D. The following rules apply in a disputed case:

1. Relevant evidence must be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Evidence may not be excluded solely because it is hearsay.

2. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence except that on timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.

3. Upon proper objection the presiding officer shall exclude evidence that is immaterial, irrelevant, unduly repetitious, or excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of Cherokee Nation. In the absence of proper objection, the presiding officer may exclude evidence that is objectionable.

a. Evidence is unduly repetitious under this subsection if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

b. A presiding officer's determination that evidence is unduly repetitious may be overturned only for abuse of discretion.

c. An objection is timely if made before submission of the case or on reconsideration.

4. In a disputed case, any part of the evidence may be received in written form, if doing so will expedite the hearing without substantial prejudice to the interests of a party. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

5. All evidence must be made part of the hearing record of the case, including, if the agency desires to avail itself of information or it is offered into evidence by a party, records in the possession of the agency which contain information classified by law as not public. No factual information or evidence may be considered in the determination of the case unless it is part of the agency record. If the agency record contains information that is not public, the presiding officer may conduct a closed hearing to discuss the information, issue necessary protective orders, and seal all or part of the hearing record.

6. In a disputed case the presiding officer may take official notice of all facts of which judicial notice may be taken and of other scientific and technical facts within the specialized knowledge of the agency.

a. Parties must be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data.

b. The parties must be afforded an opportunity to contest any judicially noticed facts before the decision is announced, unless the agency determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

7. The experience, technical competence, and specialized knowledge of the presiding officer may be used in the evaluation of the evidence.

E. Except for informal hearings under 1 CNCA §§ 405 and 406 and emergency hearings under 1 CNCA § 407, in a disputed case, the presiding officer, at appropriate stages of the proceedings, shall give all parties the opportunity to file pleadings, motions, objections, and offers of settlement in a timely manner. The presiding officer, at appropriate stages of the proceeding, may give all parties full opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed, recommended or final orders. If available, the original of all records must be filed with the agency, and copies of all filings shall be sent to all parties.

F. Except for informal hearings under 1 CNCA §§ 405 and 406 and emergency hearings under 1 CNCA § 407, in a disputed case, to the extent necessary for full disclosure of all relevant facts and issues, the presiding officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence.

G. Unless prohibited by law, if each party to a hearing has an opportunity to hear, speak and be heard in the proceeding as it occurs, the presiding officer may conduct all, or part of, an evidentiary hearing, or a pre-hearing conference, by telephone, television, or other electronic means.

H. All testimony of parties and witnesses must be given under oath or affirmation and the presiding officer may administer an oath or affirmation for that purpose.

I. The hearing in a disputed case is open to public observation, except for a hearing or part of a hearing that the presiding officer states to be closed on the same basis and for the same reasons that a Cherokee Nation court is empowered to close a hearing or states to be closed pursuant to a statutory provision other than this act that authorizes closure. To the extent that a hearing is conducted by telephone, television, or other electronic means, and is not closed, the availability of public observation is satisfied by giving members of the public an opportunity, at reasonable times, to hear or inspect the agency's record, and to inspect any transcript obtained by the agency.

J. Unless prohibited by law other than this [act], at the party's expense, any party may be represented by counsel or may be advised, accompanied or represented by another individual.

K. The decision in a disputed case must be in writing, based on the record, and include a statement of the factual and legal bases of the decision.

L. This section applies to agency procedure in disputed cases without further action by the agency, and prevails over a conflicting or inconsistent provision of the agency's rules.

M. The rules by which an agency conducts a disputed case may include provisions equivalent to, or more protective of, the rights of the person to which the agency action is directed than the requirements of this section.

Historical Data

LA 13-07, eff. March 19, 2007.