

**Cherokee Nation Code Annotated**

**Title 22: Criminal Procedure**

**Chapter 22: Insanity of Accused**

**§ 1175.2. Application for determination of competency—Service—Notice—  
Suspension of criminal proceedings**

Cite as: 22 CNCA § 1175.2

A. No person shall be subject to any criminal procedures after he is determined to be incompetent except as provided in 22 CNCA §§ 1175.1 through 1175.8. The question of the incompetency of a person may be raised by the person, the Defense Attorney, or the Prosecuting Attorney, by an application for determination of competency. The application for determination of competency shall allege that the person is incompetent to undergo further proceedings, and shall state facts sufficient to raise a doubt as to the competency of the person. The Court, at any time, may initiate a competency determination on its own motion, without an application, if the Court has a doubt as to the competency of the person.

If the Court so initiates such an application, it may appoint the Prosecuting Attorney for the purpose of proceeding with the application. If the Prosecuting Attorney opposes the application of the Court, and by reason of a conflict of interest could not represent the Court as applicant, then the Court shall appoint private Counsel. Said private Counsel shall be reasonably compensated by the Court Fund.

B. A copy of the application for determination of competency and a notice, as hereinafter described, shall be served personally at least one (1) day before the first hearing on the application for a competency determination. The notice shall contain the following information:

1. The definition provided by 22 CNCA § 1175.1 of competency and incompetency;
2. That, upon request, the hearing on the application may be conducted as a jury trial as provided in 22 CNCA § 1175.4;
3. That the petitioner and any witnesses identified in the application may offer testimony under oath at the hearings on the petition and that the defendant may not be called to testify against his will, unless the application is initiated by the defendant;
4. That if the person whose competency is in question does not have an attorney, the Court will appoint an attorney for the person who shall represent him until final disposition of the case;

5. That if the person whose competency is in question is indigent or poor, the Court will pay the attorney fees; and

6. That the person whose competency is in question shall be afforded such other rights as are guaranteed by Nation and federal law and that such rights include a trial by jury, if demanded. The notice shall be served upon the person whose competency is in question, upon his father, mother, husband, or wife or, in their absence, someone of the next of kin, of full age, if any said persons are known to be residing within the county, and upon any of said relatives residing outside of the county, and within the state, as may be ordered by the Court, and also upon the person with whom the person whose competency is in question may reside, or at whose house he may be. The person making such service shall make affidavit of the same and file such notice, with proof of service, with the District Court. This notice may be served in any part of this Nation.

C. Any criminal proceedings against a person whose competency is in question shall be suspended pending the determination of the competency of the person.

#### Historical Data

LA 10–90, eff. November 13, 1990.