

Cherokee Nation Code Annotated

Title 22: Criminal Procedure

Chapter 22: Insanity of Accused

§ 1175.4. Post-examination competency hearing—Evidence—Presumptions—Jury trial—Presence of accused—Witnesses—Instructions

Cite as: 22 CNCA § 1175.4

A. After the doctor, doctors or technicians have made the determination required in 22 CNCA § 1175.3, a hearing on the competency of the person shall be held.

B. The Court, at the hearing on the application, shall determine, by clear and convincing evidence, if the person is incompetent. The person shall be presumed to be competent for the purposes of the allocation of the burden of proof and burden of going forward with the evidence. If the Court deems it necessary, or if the person alleged to be a person requiring treatment, or any relative, friend, or any person with whom he may reside, or at whose house he may be, shall so demand, the court shall schedule the hearing on the application as a jury trial to be held within seventy-two (72) hours of the request, excluding weekends and legal holidays, or within as much additional time as is requested by the attorney of the person whose competency is in question, upon good cause shown. The jury shall be composed of six (6) persons having the qualifications required of jurors in courts of record, summoned to determine the questions of the person's competency and need for treatment. Whenever a jury is required, the Court shall proceed to the selection of such jury in the manner as provided by law and such jury shall determine the questions of the competency and need for treatment of the person whose competency is in question. The jurors shall receive fees for attendance and mileage as are allowed by law.

C. The person whose competency is in question shall have the right to be present at the hearing on the petition unless it is made to appear to the Court that the presence of the person makes it impossible to conduct the hearing in a reasonable manner. The Court may not decide in advance of the hearing, solely on the basis of the certificate of the examining doctor or doctors, that the person whose competency is in question should not be allowed to appear. It shall be made to appear to the Court based on clear and convincing evidence that alternatives to exclusion were attempted before the Court renders his removal for that purpose or his appearance at such hearing improper and unsafe.

D. All witnesses shall be subject to cross-examination in the same manner as is provided by law. No statement, admission or confession made by the person whose competency is in question obtained during his examination for competency may be used for any purpose except for proceedings under this act. No such statement, admission or confession may be

used against such person in any criminal action whether pending at the time the hearing is held or filed against such person at any later time, directly, indirectly or in any manner or form, except that if such person is found to be competent at the time of his examination hearing, any such statement made by him may be used for purposes of impeachment.

E. If the question of competency is submitted to a jury, the Court shall instruct the jury as to the law regarding competency, and the findings they are to make. If the trial of the question is to the Court, the Court shall make the required findings.

Historical Data

LA 10–90, eff. November 13, 1990.