

Cherokee Nation Code Annotated
Title 22: Criminal Procedure
Chapter 25: Miscellaneous Provisions
§ 1327. Disposition of exhibits
Cite as: 22 CNCA § 1327

A. All exhibits which have been introduced, filed, or held in custody of the Nation in any criminal action or proceeding may be disposed of as provided for in this section.

B. The Court may, on application of the party entitled thereto, or an agent designated in writing by the owner, order all such exhibits, other than documentary exhibits, as may be released from the custody of the Court or the Nation, without prejudice to the Nation, delivered to such party at any time after the final determination of the action or proceedings; provided, however, where the action or proceeding has resulted in an order granting probation, such delivery may be made any time after the final determination of an appeal of such order, or after the time for such appeal has elapsed. Provided, further, if the owner of such exhibit is the victim of the offense for which such exhibit is held, said owner may make application to the Court at any time prior to the final disposition of the action or proceeding for the return of the exhibit. The applicant shall notify the last person in possession of such exhibit prior to such exhibit being seized by the Nation of the hearing by mailing a copy of the notice by certified mail return receipt requested at the last-known address of such person, unless such person has signed an on ownership affidavit pursuant to 22 CNCA § 1321 disclaiming any ownership rights to such exhibit. If the last person in possession of the property is unable to be served notice by said certified mail, notice shall be provided by one (1) publication in a newspaper of general circulation in the county where the property is held in custody. The applicant shall notify the Prosecuting Attorney and the Court when notice has been served to the last person in possession of such property or published pursuant to this section. The hearing shall be held not less than ten (10) days or more than twenty (20) days after the Court has been notified that the notice has been served or published. In the event the Court orders the release of said exhibit to the owner, the Prosecuting Attorney shall photograph or mark said exhibit with an identification number and return the exhibit to the owner within ten (10) days of the court order. The Court may authorize ten (10) days additional time for the return of such exhibit if the Prosecuting Attorney shows cause that additional time is needed to photograph or mark such exhibit. Such photograph or marked exhibit may be presented as the exhibit in any further action or proceeding. If the party entitled to such exhibits is unknown, or fails to apply for the return of such exhibits, the procedure for their disposition shall be as follows:

1. After the expiration of six (6) months from the time the conviction becomes final, or if the action or proceeding has not resulted in a conviction, at any time after the judgment has become final, the Court in which the case was tried shall make an order specifying what exhibits may be released from the custody of the Court without prejudice to the Nation. Upon receipt of such an order, the property shall be transferred to the Marshal, Sheriff or other proper governmental agency for sale to the public. At least ten (10) days prior to such sale, notice of the sale shall be sent by certified mail return receipt requested to the last person in possession of such exhibit prior to such exhibit being seized by the Nation at the last-known address of such person;

2. At any time prior to the time fixed for the transfer, the owner or any person entitled to the possession of any of such exhibits may obtain from the Court an order returning them to him;

3. Articles not returned to their owners or to persons entitled to their possession at or prior to the time set for the transfer shall be sold by the proper receiving agency for cash. The articles shall be sold singly or in combinations. The money received from such sales shall be placed in the appropriate fund of the governmental agency responsible for the sale;

4. Where the exhibit consists of money or currency and is unclaimed at the time of the transfer, it shall not be transferred but shall be immediately deposited in the appropriate fund of the governmental agency in possession of such property; and

5. If any property is transferred to the Marshal or other governmental agency pursuant to this section it may be sold in the manner provided by law for the sale of surplus personal property. If the Marshal or other proper governmental agency determines that any such property transferred to it for sale is needed for a public use, such property may be retained by the agency and need not be sold.

C. The Court may, on application of the party entitled thereto, or an agent designated in writing by the owner, order such documentary exhibits as may be released from the custody of the Court without prejudice to the Nation delivered to such party any time after the final determination of the action or proceeding; provided, however, where the action or proceeding has resulted in an order granting probation, such delivery may be made any time after the final determination of an appeal of such order, or after the time for such appeal has elapsed. Provided, further, if the owner of such exhibit is the victim of the offense for which such exhibit is held, said owner may make application to the Court at any time prior to the final disposition of the action or proceeding for the return of the exhibit. The applicant shall notify the last person in possession of such exhibit prior to such exhibit being seized by the Nation of the hearing by mailing a copy of the notice by certified mail return receipt requested at the last-known address of such person, unless such person has

signed a nonownership affidavit pursuant to 22 CNCA § 1321 disclaiming any ownership rights to such exhibit. If the last person in possession of the property is unable to be served notice by said certified mail, notice shall be provided by one publication in a newspaper of general circulation in the county where the property is held in custody. The applicant shall notify the Prosecuting Attorney and the Court when notice has been served to the last person in possession of such property or published pursuant to this section. The hearing shall be held not less than ten (10) days or more than twenty (20) days after the Court has been notified that the notice has been served or published. In the event the Court orders the release of said exhibit to the owner, the Prosecuting Attorney shall photograph or mark said exhibit with an identification number and return the exhibit to the owner within ten (10) days of the court order. The Court may authorize ten (10) days additional time for the return of such exhibit if the Prosecuting Attorney shows cause that additional time is needed to photograph or mark such exhibit. Such photograph or marked exhibit may be presented as the exhibit in any further action or proceeding. If the party entitled to such documentary exhibits is unknown, or fails to apply for the return of said exhibits, the procedure for their disposition shall be as follows:

1. After the expiration of six (6) months from the time the conviction becomes final, or if the action or proceeding has not resulted in a conviction, at anytime after the judgment has become final, the Court in which the case was tried shall make an order requiring such exhibits to be destroyed; provided, that no such order shall be made authorizing the destruction of any documentary exhibit if the destruction of such exhibit would prejudice the Nation; and

2. No exhibit shall be destroyed or otherwise disposed of until sixty (60) days after the Clerk of the Court has posted a notice conspicuously in three public places in the county, referring to the order for the disposition, describing briefly the exhibit, and indicating the date after which the exhibit will be destroyed or otherwise disposed of.

D. The provisions of subsection (B) of this section shall not apply to any dangerous or deadly weapons, narcotic or poisonous drugs, explosives, or any property of any kind or character whatsoever the possession of which is prohibited by law. Any such property filed as an exhibit or held by the Nation shall be, by order of the Trial Court, destroyed or sold or otherwise disposed of under the conditions prescribed in such order. This act shall not be interpreted to authorize the return of any property, the possession of which is prohibited by law.

Historical Data

LA 10-90, eff. November 13, 1990.