



## Legislation Text

File #: CNCA-51, Version: 2

### TITLE 51 OFFICERS AND EMPLOYEES

#### (INCLUDES 2016 POCKET PART)

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#### Section

### CHAPTER 1 GENERAL PROVISIONS

1. Salaries for future terms of elected officials
2. Compensation from other sources-Compensation information publicly available- Health insurance and retirement options-Insurance policies-Recalculation of salaries

#### § 1. Salaries for future terms of elected officials

For all duly elected officials serving on August 2011, and thereafter the annual salaries for the Principal Chief, Deputy Principal Chief, and Council Members of the Cherokee Nation shall be based on the report submitted from a citizen committee.

1. The Citizens Committee shall be comprised of two (2) appointees by the Principal Chief, two (2) appointees by the Council of the Cherokee Nation, and a fifth member selected by the four appointees.
2. The Citizens Committee shall be paid Five Hundred Dollars (\$500.00) per committee member to cover all expenses they incur to attend up to three of their meetings which will be a maximum of One thousand Five Hundred Dollars (\$1,500.00) per committee member.
3. The Citizens Committee shall convene prior to the filing period for elected offices in the election year of the Principal Chief to make its findings and report and meet every four (4) years thereafter. The committee shall submit their report prior to July 1<sup>st</sup>.
4. The Citizens Committee shall consider relevant comparative salary levels such as, but not limited to, salary information from other Tribal Governments, state and local governments, and the private sector. The Citizens Committee may use the Cherokee Nation's Human Resources and the Council of the Cherokee Nation's Financial Officer as sources of information.

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5. The report of the citizen committee shall set the salaries for all elected officials of the Cherokee Nation unless rejected by Legislative Act within thirty (30) days, of the committee's report.

#### History

**Source.** LA 42-03, eff. December 30, 2003.

**Amended.** LA 40-07, eff. November 20, 2007.

**Amended.** LA 05-11, eff. February 22, 2011.

**Amended.** LA 10-12, eff. March 13, 2012.

**Amended.** LA 01-15, eff. March 11, 2015.

### **§ 2. Compensation from other sources-Compensation information publicly available-Health insurance and retirement options-Insurance poli- cies-Recalculation of salaries**

A. All elected officials shall not receive compensation from any other source for work directly related to their duties involving Cherokee Nation Boards or instrumentalities unless otherwise prescribed by law.

B. Information concerning the total amount of compensation of all elected officials of Cherokee Nation including expenses and the value of benefits shall be made available to any citizen of Cherokee Nation upon request at no charge. This information shall be kept and maintained by the Treasurer of Cherokee Nation.

C. All elected officials shall enjoy the same benefits of health insurance and retirement options as those offered to employees of Cherokee Nation except unemployment benefits and 401k.

D. The Treasurer or his or her designee shall let for bid insurance policies of Cherokee Nation consistent with this act.

E. All elected officials shall not be considered employees of Cherokee Nation.

F. The calculation as to when to set the average for Cherokee Nation officials elected in the 2003 Cherokee Nation General Election shall be the salaries of the officials listed in 19 CNCA § 21 and 51 CNCA §§ 1 and 11 as of January 1, 2003. The average is to be recalculated on January 1, 2007 and every four (4) years thereafter in accordance with the procedure described in 51 CNCA § 1.1.

#### History

**Source.** LA 28-01, eff. August 13, 2001.

**Amended.** LA 18-03, eff. August 14, 2003.

**Amended.** LA 42-03, eff. December 30, 2003.

#### Section

## CHAPTER 2

### OFFICE OF THE PRINCIPAL CHIEF

- 51. Salary of Principal Chief
- 52. Travel expenses-Allowance for local travel
- 53. Reimbursement of expenses for travel outside Cherokee Nation
- 54. Repealed
- 55. Control of National Seal
- 56. Authority to grant pardons
- 57. Procedure-Application for pardon
- 58. Offer of reward for information leading to apprehension of criminals at large
- 59. State burial ceremony-Stipend

### **§ 51. Salary of Principal Chief**

The salary of the Principal Chief of Cherokee Nation shall be the average of the salaries that are paid to

the Chiefs and Governor of the Five Civilized Tribes and the Chief of the Eastern Band of Cherokees based on a survey conducted of available information; provided that this amount shall not exceed One Hundred Twenty-Five Thousand Dollars (\$125,000.00) or fall below Seventy-Five Thousand Dollars (\$75,000.00).

**Source.** LA 07-85, eff. July 13, 1985.

**Amended.** LA 07-96, eff. April 2, 1996.

**Amended.** LA 28-01, eff. August 13, 2001.

#### History

**Amended.** LA 18-03, eff. August 14, 2003.

**Amended.** LA 42-03, eff. December 30, 2003.

### § 52. Travel expenses-Allowance for local travel

The Principal Chief shall receive Five Hundred Dollars (\$500.00) per month for travel within the fourteen-county area of Cherokee Nation.

**Source.** LA 07-85, eff. July 13, 1985.

#### History

### § 53. Reimbursement of expenses for travel outside Cherokee Nation

The Principal Chief, when on official business for Cherokee Nation, shall be reimbursed for all actual and necessary expenses incurred for travel outside the fourteen-county area of Cherokee Nation of Oklahoma. Proper receipts must be documented and submitted to the Accounting Department of Cherokee Nation of Oklahoma.

The nature and amount of all such reimbursable expenses shall be published annually in the *Cherokee Phoenix*.

#### History

**Source.** LA 07-85, eff. July 13, 1985.

**Amended.** LA 20-87, eff. April 13, 1987.

**Amended.** LA 31-88, eff. December 10, 1988.

### 51 CNCA § 54 Repealed

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### § 54. Repealed by LA 34-07, eff. September 13, 2007

#### History

The repealed section, relating to employment of relatives of the Principal Chief, was derived from LA 07-85 and LA 16-87.

### § 55. Control of National Seal

The Principal Chief shall have control of the National Seal, and in all cases, when necessary, may direct the proper application, use, and preservation of the same.

### § 56. Authority to grant pardons

The Principal Chief shall have authority to grant, after conviction, pardons to persons convicted of crimes and sentenced to at least one (1) year in a correctional institution; or he may commute the punishment of persons convicted of crimes and sentenced to at least one (1) year in a correctional institution, to imprisonment for any term, upon such conditions and restrictions as he may think proper.

### § 57. Procedure-Application for pardon

All applications made to the Principal Chief for the pardon or commutation of sentence of any person

convicted of a crime, shall be accompanied with a recommendation of credible persons, that the convict is a proper subject for executive clemency; and shall also be accompanied by the evidence in the case, or a certified copy thereof, if accessible, and a full statement of the facts in the case, and the grounds of application. The Principal Chief shall, after notice to the victim, carefully consider the evidence, the circumstances, and the facts in the case, and decide and order accordingly.

#### **§ 58. Offer of reward for information leading to apprehension of criminals at large**

Whenever, in his opinion, the public good requires it, the Principal Chief may offer, and pay from the Treasury of the Nation, a suitable reward, not exceeding One Thousand Dollars (\$1,000.00) in any one case, to any person who shall provide information leading to the apprehension of a person subsequently convicted of a crime or a person who has escaped from a penal institution.

#### **§ 59. State burial ceremony-Stipend**

A. Cherokee Nation shall offer to conduct a memorial befitting a former or current Chief or Principal Chief which shall be conducted as a funeral service or as a separate event in accordance with the wishes of the family of the deceased. The cost of the memorial shall be incurred one hundred percent (100%) by Cherokee Nation.

B. A stipend to the family or burial and incidental expenses at a rate no less than our burial assistance program rate, the precise payment to be determined by the Principal Chief.

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C. The Principal Chief or his designee shall commence planning for the memorial “immediately” upon the notice of death. If the deceased is the current Principal Chief, the current Deputy Chief shall conduct all duties related to the provisions of this act that direct actions by the Principal Chief.

#### **History**

**Source.** LA 50-12, eff. December 17, 2012.

#### **Section**

### **CHAPTER 3**

### **OFFICE OF THE DEPUTY PRINCIPAL CHIEF**

- 71. Salary of the Deputy Principal Chief
- 72. Travel expenses-Allowance for local travel
- 73. Reimbursement of expenses for travel outside Cherokee Nation
- 74. Repealed

#### ***FILLING VACANCY IN OFFICE OF DEPUTY PRINCIPAL CHIEF***

- 81. Purpose
- 82. Vacation of office generally
- 83. Manner of resignation by Deputy Principal Chief-Proceedings upon receipt of resignation by Principal Chief
- 84. Filling of vacancies by vote of Tribal Council-Generally
- 85. Vacancies occurring within thirty days of scheduled election
- 86. Term of officer elected by Council
- 87. Compensation of officer elected by Council
- 88. Oath of officer elected by Council
- 89. Transfer of records, accounts, moneys, etc.

#### **§ 71. Salary of Deputy Principal Chief**

The salary of the Deputy Principal Chief of Cherokee Nation shall be the average of the salaries that are paid to the Deputy Principal Chief or the comparable office of the Five Civilized Tribes and the Eastern Band of Cherokees, based on a survey conducted of available information; provided that this amount shall not exceed Eighty Thousand Dollars (\$80,000.00) or fall below Forty-Five Thousand Dollars (\$45,000.00).

#### History

**Source.** LA 07-85, eff. July 13, 1985.

**Amended.** LA 07-96, eff. April 2, 1996.

**Amended.** LA 28-01, eff. August 13, 2001.

**Amended.** LA 18-03, eff. August 14, 2003.

**Amended.** LA 42-03, eff. December 30, 2003.

### § 72. Travel expenses-Allowance for local travel

The Deputy Principal Chief shall receive Five Hundred Dollars (\$500.00) per month for travel within the fourteen-county area of Cherokee Nation.

#### History

**Source.** LA 07-85, eff. July 13, 1985.

### § 73. Reimbursement of expenses for travel outside Cherokee Nation

The Deputy Principal Chief, when on official business for Cherokee Nation, shall be reimbursed for all actual and necessary expenses incurred for travel outside the fourteen-county area of Cherokee Nation of Oklahoma. Proper receipts must be documented and submitted to the Accounting Department of Cherokee Nation of Oklahoma.

The nature and amount of all such reimbursable expenses shall be published annually in the Cherokee Phoenix.

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#### History

**Source.** LA 07-85, eff. July 13, 1985.

**Amended.** LA 21-87, eff. April 13, 1985.

**Amended.** LA 32-88, eff. December 10, 1988.

### § 74. Repealed by LA 34-07, eff. September 13, 2007

#### History

The repealed section, relating to employment of relatives of the Deputy Principal Chief, was derived from LA 07-85 and LA 15-87.

### § 81. Purpose

## FILLING VACANCY IN OFFICE OF DEPUTY PRINCIPAL CHIEF

The purpose of 51 CNCA §§ 81 through 89 is to provide procedures for filling vacancies in the Office of Deputy Principal Chief pursuant to Article VI, Section 4 [now Article VII, Section 4] of the Cherokee Nation Constitution.

#### History

**Source.** LA 10-85, eff. August 12, 1985.

### § 82. Vacation of office generally

The office of Deputy Principal Chief shall become vacant on the happening of either of the following events before the expiration of the term of such office:

1. The death of the incumbent or his resignation; or
2. His removal from office or failure to qualify as required by law.

#### History

Source. LA 10-85, eff. August 12, 1985.

### **§ 83. Manner of resignation by Deputy Principal Chief-Proceedings upon receipt of resignation by Principal Chief**

A resignation by the Deputy Principal Chief shall be made in writing to the Principal Chief. The Principal Chief shall, upon receipt of said resignation, immediately notify the Members of the Tribal Council.

#### History

Source. LA 10-85, eff. August 12, 1985.

### **§ 84. Filling of vacancies by vote of Tribal Council-Generally**

A. Vacancies in the office of Deputy Principal Chief shall be filled by the Tribal Council. The Tribal Council shall elect a Member of the Tribal Council as successor to serve the remainder of the term.

B. Upon receipt of the vacancy notice from the Principal Chief, the Tribal Council shall, at the next regularly scheduled Council session, produce a slate

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of nominees for the office of Deputy Principal Chief. The slate of nominees shall consist of all current elected Council Members; provided that any Council Member may request that his name not appear on the slate of nominees; and provided, further, that each nominee shall qualify for the office of Deputy Principal Chief as provided for in 26 CNCA § 33.

C. Upon completion of the slate of nominees, the Tribal Council shall proceed to vote for said nominees. Each council Member shall cast one (1) vote for one (1) nominee by secret ballot.

D. The nominee receiving the lowest number of votes shall be removed from the slate until one (1) nominee receives a two-thirds (2/3) majority vote. In the event that more than one nominee receives the lowest number of votes, those having the same number of low votes shall be removed from the slate or until two (2) nominees remain, voting will then continue until one (1) nominee receives a two-thirds (2/3) majority vote of those present.

E. No motion for adjournment shall be made or received until such time as the voting has been completed with one (1) nominee receiving a two-thirds (2/3) majority and the results of the voting announced and recorded.

#### History

Source. LA 10-85, eff. August 12, 1985.

Source. LA 17-85, eff. December 14, 1985.

### **§ 85. Vacancies occurring within thirty days of scheduled election**

If a vacancy occurs within thirty (30) days prior to an election day at which it may be filled, no internal election shall be made unless it be necessary to carry out said election and the canvass of the same according to law; in that case an internal election by the Tribal Council may be made at any time prior to said election with the person elected to hold office until after said election or until his successor is elected and qualified.

#### History

Source. LA 10-85, eff. August 12, 1985.

### **§ 86. Term of officer elected by Council**

The elected officer shall hold office until the end of the term for which the officer whom he succeeds was elected or appointed, and until his successor is elected and qualified.

**Source.** LA 10-85, eff. August 12, 1985.

#### History

### § 87. Compensation of officer elected by Council

Any officer elected as provided for herein shall receive the same rate of pay as the incumbent.

**Source.** LA 10-85, eff. August 12, 1985.

#### History

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### § 88. Oath of officer elected by Council

Any officer elected as provided for herein shall, before entering upon the duties of his office, take and subscribe to the following oath or affirmation: "I, , do solemnly swear, or affirm, that I will faithfully execute the

duties, of Deputy Principal Chief of the Cherokee Nation, and will, to the best of my ability, preserve, protect, and defend the Constitutions of Cherokee Nation and the United States of America. I swear or affirm further, that I will do everything within my power to promote the culture, heritage and traditions of Cherokee Nation."

#### History

**Source.** LA 10-85, eff. August 12, 1985.

### § 89. Transfer of records, accounts, moneys, etc.

Upon the death, resignation, suspension or removal from office, or upon the expiration of his term, of any officer elected as provided for herein, all public moneys, books, records, accounts, papers, documents and property of other kind in his hands, or held by him by virtue of his office, shall be delivered to his successor.

**Source.** LA 10-85, eff. August 12, 1985.

#### History

#### Section

- 101. Short title
- 102. Purpose
- 103. Definitions
- 104. Seal

## CHAPTER 4

## OFFICE OF ATTORNEY GENERAL

- 105. Functions and duties of Attorney General
- 106. Costs of litigation

- 107. Appearance not waiver of immunity of Nation
- 108. Prosecutors and other assistants to Attorney General-Delegation of authority
- 109. Interests of Cherokee Nation in pending suits
- 110. Disqualification of officers and employees of Office of Attorney General
- 111. Vacancy in position of Attorney General
- 112. Employment of attorneys, authority of boards or officials-Defense of actions by Attorney General
- 113. Legal representation of agency or official of Executive Branch-Contracts
- 114. Nation officer or employee-Legal defense services-Defense duties-Evidence

## § 101. Short title

This act shall be known and may be cited as the Attorney General Act.

### History

**Source.** LA 12-07, eff. March 19, 2007.

## § 102. Purpose

The purpose of this act is to assign to the Cherokee Nation's Attorney General those "other duties as the Council may prescribe by law" as provided for in Article VII, Section 13 of the Cherokee Nation Constitution drafted in 1999 and ratified in 2003. The Council recognizes the duties and powers delegated to the Attorney General by said Constitution and finds that nothing herein shall be construed to diminish or abridge those duties and powers delegated to the Attorney General by said Constitution.

### History

**Source.** LA 12-07, eff. March 19, 2007.

## § 103. Definitions

For the purposes of this act:

1. **"Administration"** shall mean the Executive Branch of Cherokee Nation as provided for in Article VII of the Cherokee Nation Constitution.
2. **"Agency"** shall mean commissions, departments, government-owned companies, or other instrumentalities of Cherokee Nation.
3. **"Council"** or **"Tribal Council"** shall mean the Council of Cherokee Nation as provided for in Article VI of the Cherokee Nation Constitution.
4. **"Government-owned company"** or **"instrumentalities"** means those entities in which Cherokee Nation is the sole or majority stockholder or owner, including, but not limited to: Cherokee Nation Enterprises, Cherokee Nation Businesses, and Cherokee Nation Industries.

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5. **"Nation"** shall mean Cherokee Nation.
6. **"Person"** means an agency, individual, a corporation, an estate, a trust, a general partnership, a limited partnership, a limited liability company, an association, or any other legal, commercial, government-owned company, or governmental entity.
7. **"State"** means a state, territory, or possession of the United States, a federally-recognized Indian tribe, the District of Columbia or the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

### History

**Source.** LA 12-07, eff. March 19, 2007.

## § 104. Seal

The Attorney General shall have a seal for the Office of Attorney General. The design of the seal is subject to the approval of the Principal Chief.

### History

**Source.** LA 12-07, eff. March 19, 2007.

## § 105. Functions and duties of Attorney General

A. Pursuant to Article VII, Section 13 of the Cherokee Nation Constitution, the Attorney General "shall



represent the Cherokee Nation in all criminal cases in the courts of the Nation, and in all civil actions wherein the Cherokee Nation is named as a party, and shall have such other duties as the Council may prescribe by law.”

B. In addition to the duties prescribed by the Constitution, the duties of the Attorney General as the chief legal officer of the Nation shall be:

1. To supervise Cherokee Nation’s representation in all litigation in which Cherokee Nation, an agency, or officer thereof is interested, and shall direct all special attorneys appointed pursuant to this title and all contract attorneys in the discharge of their respective duties; the conduct of litigation in which Cherokee Nation, an agency, department or officer thereof is a party, or is interested, is reserved to the Attorney General, provided that the Attorney General may waive this requirement for specific legal issues which do not implicate governmental interests;
2. To initiate or appear, at his or her discretion, in any action in which the interests of the Nation or the People of the Nation are at issue, and prosecute and defend in any court or before any commission, board or officers or other adjudicatory body, administrative tribunal or body of any nature, in all civil or criminal legal or quasi-legal matters, any cause or proceeding, in which the Nation may be interested; and when so appearing in any such cause or proceeding, the Attorney General may, if the Attorney General deems it advisable and to the best interest of the Nation, take and assume control of the prosecution or defense of the Nation’s interests therein, provided that this section includes the authority to initiate or appear in any action involving a government-owned company;

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3. To prosecute all actions necessary under Title 10 of the Cherokee Nation Code Annotated for the protection and welfare of children and juveniles in the Cherokee Nation Courts, and to intervene, at the discretion of the Attorney General, in any action in any state court wherein intervention is permitted pursuant to the federal Indian Child Welfare Act, 25 U.S.C. § 1901 et seq.;
4. To give an official opinion upon all questions of law submitted to the Attorney General by any Member of the Tribal Council, the Principal Chief, the Deputy Principal Chief, or by the Group Leader or equivalent of any Cherokee Nation board, commission or executive branch department, and only upon matters in which the requesting party is officially interested. Said opinions shall have the force of law in Cherokee Nation until a differing opinion or order is entered by a Cherokee Nation Court;
5. To prepare drafts of regulations, and of contracts and other instruments in which the Cherokee Nation government is interested and to render opinions on the legal sufficiency of all contracts and other instruments in which the Cherokee Nation is interested and the best interests of the people of the Cherokee Nation are served;
6. To prepare legislation and resolutions as the Attorney General deems appropriate and to provide review of all legislation in whatever form in order to provide a written opinion thereon as to the possibility of conflicts with other laws and the Constitutionality of said bills;
7. To enforce the proper application of monies appropriated by the Tribal Council and to prosecute breaches of trust in the administration of such funds;
8. To institute actions to recover Nation monies illegally expended, to recover Nation property;
9. To keep and file copies of all opinions of the Office of Attorney General, and to keep an index of all such opinions according to subject and section of the law construed or applied and to cause to be published such of his or her opinions as he or she considers valuable for preservation and to prescribe the manner for the publication of the opinions;
10. To keep a register or docket of all actions, demands and investigations prosecuted, defended or conducted by the Attorney General on behalf of the Nation. Said register or docket shall give the style of the case or investigation, where pending, court number if any, the substance of the matter, result and the names of the assistant(s) who handled the matter;
11. To keep a complete office file of all cases and investigations handled by the Attorney General on behalf of the Nation;
12. To furnish legal advice to Nation officials and all executive departments, boards, commissions, agencies, instrumentalities and officers of Cherokee Nation concerning any matter arising in

connection with the exercise of their official powers and duties, and to supervise and direct the legal business of every executive department, board, commission, agency, instrumentality and officer of Cherokee Nation, provided that this section does not include advice and representation to such officials in their individual capacity, nor does it include advice to tribal citizens who are not officials of the Nation, and provided further that, in order to preserve the

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independence of the Office of Attorney General and to avoid actual and perceived conflicts of legal advice, the Office of Attorney General shall not provide legal advice on day-to-day operations of the Office of Principal Chief or Deputy Principal Chief;

13. To investigate any report by the Treasurer or the Office of Audit and Compliance filed with the Attorney General and prosecute all actions, civil or criminal, relating to such reports or any irregularities or derelictions in the management of public funds or property which are violations of the laws of the Nation;

14. To investigate and prosecute all actions, civil or criminal, relating to civil actions or crimes against or within the jurisdiction of Cherokee Nation, provided that any such criminal actions shall be investigated in coordination with the Marshal Service, and when deemed appropriate by the Attorney General, with any federal or local law enforcement agency and to convene grand juries in such manner and for such purposes as provided by law, provided that such grand juries shall be composed of citizens of Cherokee Nation;

15. To probate, at the request of Cherokee Nation Real Estate Services, restricted estates;

16. To settle any case or controversy on behalf of the Nation, except that a settlement involving injunctive relief which substantially impacts the operation or programs of a Nation agency or would impose obligations requiring the expenditure of funds in excess of unallocated unencumbered monies in the agency's appropriations or beyond the current fiscal year shall be reviewed prior to its finalization by the Principal Chief and the Tribal Council. The purpose of the review is to determine the budgetary, programmatic and operational impact of the proposed settlement;

17. To oversee all Nation activities related to child-support enforcement as designated by law;

18. Coordinate with the Marshal's Service the following duties:

- a. bailiff duties;
- b. transportation of prisoners;
- c. protection of the Courthouse and the court staff;
- d. protection of witnesses, parties and prosecutors;
- e. service of process;
- f. and to obey the lawful orders and directions of the Courts.

19. To direct and supervise all activities of the Attorney General's Office;

20. To prepare the budget for the Attorney General's Office;

21. To promulgate such rules, regulations, policies, and procedures as the Attorney General deems necessary to fulfill the duties of the Office;

22. To promulgate rules, regulations, policies, and procedures for the qualifications and conduct of employees of the Attorney General's Office, which may include rules for conduct and corresponding disciplinary actions for breaches of conduct which are more stringent than those of the Cherokee Nation Human Resources Policies and Procedures;

23. To carry firearms upon authorization of the Cherokee Nation Marshal;

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24. To designate an individual to act as Attorney General in the absence of the Attorney General so long as said designation does not exceed six (6) months; and

25. To engage in other activities as may be prescribed in other sections of the Cherokee Nation Code.

**Source.** LA 12-07, eff. March 19, 2007.

#### **History**

#### **United States Code**

Congressional findings, see 25 U.S.C. § 1901, et seq.

### **§ 106. Costs of litigation**

A. Except as otherwise provided by law or written agreement, the cost of litigation in any case for which representation is provided pursuant to this act shall be paid out of the Attorney General's budget.

B. Costs of litigation shall include, but are not limited to, court fees and costs, deposition expenses, travel and lodging, witness fees and other similar costs; except that this act shall not be construed as authorizing the payment by the Nation or any agency thereof of any judgment making an award of monetary damages.

**Source.** LA 12-07, eff. March 19, 2007.

#### **History**

### **§ 107. Appearance not waiver of immunity of Nation**

The appearance of the Attorney General or his or her designee(s) in any matter, proceeding or action in any court, before any commission, board or officer or other adjudicatory body, shall not be construed to waive the sovereign immunity of Cherokee Nation.

**Source.** LA 12-07, eff. March 19, 2007.

#### **History**

### **§ 108. Prosecutors and other assistants to the Attorney General-Delegation of authority**

A. Pursuant to Article VII, Section 13 of the Cherokee Nation Constitution, the Attorney General is empowered "to designate such prosecutors and other assistants as deemed necessary to carry out the duties of office." The Attorney General may from time to time make such provisions as he or she considers appropriate authorizing the performance of any function of the Attorney General by any other officer or employee of the Office of Attorney General.

B. Investigators designated by the Attorney General shall be certified by an accredited police academy and will be deputized by the Marshal.

C. The Attorney General shall appoint and fix the duties of all prosecutors, assistants, and other employees of the Office of Attorney General as the Attorney General deems necessary to perform the duties imposed upon the

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Attorney General. The compensation of the Attorney General shall not be decreased during his or her term of office.

D. The Attorney General is further authorized to appoint special assistants or special attorneys, including those from external law firms and entities, to fulfill the functions of the Attorney General where deemed necessary and appropriate to secure the best interests of the Nation.

#### **History**

**Source.** LA 12-07, eff. March 19, 2007.

### **§ 108. Interests of Cherokee Nation in pending suits**

Any attorney, officer, or employee of the Office of Attorney General may be sent by the Attorney General to any tribe, state or district in the United States to attend to the interests of Cherokee Nation in a suit

pending in a court of the United States, a tribe or state, or to attend to any other interest of Cherokee Nation.

**Source.** LA 12-07, eff. March 19, 2007.

#### **History**

### **§ 109. Disqualification of officers and employees of the Office of Attorney General**

The Attorney General shall promulgate rules and regulations which require the disqualification of any attorney, officer or employee of the Office of Attorney General, from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or political conflict of interest, or the appearance thereof. Such rules and regulations may provide that a willful violation of any provision thereof shall result in removal from office.

#### **History**

**Source.** LA 12-07, eff. March 19, 2007.

### **§ 110. Vacancy in position of Attorney General**

In case of a vacancy in the position of Attorney General by reason of removal, death, resignation or disability lasting for more than six (6) months, the Attorney General position shall be filled by appointment by the Principal Chief with confirmation by the Council with the replacement to fill out the remainder of the original term.

**Source.** LA 12-07, eff. March 19, 2007.

#### **History**

### **§ 111. Employment of attorneys, authority of boards or officials-Defense of actions by Attorney General**

Except as otherwise provided by this act, no Nation officer, agency, board or commission shall have authority to employ or appoint attorneys to advise or represent said officer, agency, board or commission in any matter without prior written approval of the Attorney General. Nothing herein shall prevent the

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Tribal Council or the Principal Chief, without approval from the Attorney General, from employing, contracting with, or otherwise seeking counsel with an attorney to provide day-to-day advice and counsel on matters within the purview of their respective powers and authorities.

#### **History**

**Source.** LA 12-07, eff. March 19, 2007.

### **§ 112. Legal representation of agency or official of Executive Branch- Contracts**

A. An agency or official of the Executive Branch may obtain legal representation by one or more attorneys by means of one of the following:

1. Employing an attorney if authorized by the Attorney General;
2. Seeking representation by the Office of Attorney General; or
3. If the Office of Attorney General is unable to represent the agency or official due to a conflict of interest, or the Office of Attorney General is unable or lacks the personnel or expertise to provide the specific representation required by such agency or official, contracting with a private attorney or attorneys pursuant to this section.

B. When entering into a contract for legal representation by one or more private attorneys, an agency or official of the Executive Branch shall select an attorney or attorneys and gain approval of said attorney or attorneys from the Attorney General. The Attorney General must approve a schedule of fees for

services. An agency or official may agree to deviate from the schedule of fees only with the approval of the Attorney General.

C. Before entering into a contract for legal representation, regardless of cost, by one or more private attorneys, an agency or official of the executive branch shall furnish a copy of the proposed contract to the Attorney General and, if not fully described in the contract, notify the Attorney General of the following:

1. The nature and scope of the representation including, but not limited to, a description of any pending or anticipated litigation or of the transaction(s) requiring representation;
2. The reason or reasons for not obtaining the representation from the Office of Attorney General;
3. The anticipated cost of the representation including the following:
  - a. the basis for or method of calculation of the fee, including, when applicable, the hourly rate for each attorney, paralegal, legal assistant, or other person who will perform services under the contract, and
  - b. the basis for and method of calculation of any expenses which will be reimbursed by the agency or official under the contract, and
  - c. an estimate of the anticipated duration of the contract.

D. Before entering into a contract for legal representation by one or more private attorneys, an agency or official of the Executive Branch shall obtain the approval of the Attorney General. Any amendment, modification, or extension of a contract covered by this section shall also require approval by the Attorney General.

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## 51 CNCA § 113

E. When an agency or official of the Executive Branch enters into a contract for professional legal services pursuant to this section, the agency shall also comply with all other applicable procurement and finance regulations and procedures. All costs of contract legal representation, including costs of litigation occurring pursuant to the contract, shall be borne by the agency entering the contract.

F. Nothing herein shall prevent the Tribal Council or the Principal Chief, without approval from the Attorney General, from employing, contracting with, or otherwise seeking counsel with an attorney to provide day-to-day advice and counsel on matters within the purview of their respective powers and authorities.

**Source.** LA 12-07, eff. March 19, 2007.

### History

#### § 113. Nation officer or employee-Legal defense services-Defense duties-Evidence

A. The Attorney General shall defend any employee, elected or appointed Nation officer or employee of any Nation office, institution, agency, board or commission of any branch of Nation government in any civil action or special proceeding in the courts of the Nation, a state, or of the United States, by reason of any alleged act done or omitted in the scope of the employee's authority and in the course of his or her employment. The employee named in the action may employ private counsel at his own expense to assist in his defense, however, such employment of private counsel shall not preclude the Attorney General from intervening in the action on the Nation's behalf. Failure of an employee to request representation shall not prohibit the Attorney General from intervening to protect the Nation's interests in any cause of action.

B. The Attorney General shall not represent a Nation employee if that employee acted outside the scope of his or her authority.

C. The Attorney General may intervene in any such action or proceeding and appear on behalf of the Nation, or any of its officers or employees, where the Attorney General deems the Nation to have an interest in the subject matter of the litigation. However, in cases in the Nation's courts where one branch of the Nation's government is an opposing party in a suit brought by another branch of the Nation's government, the Attorney General shall not represent either party but may intervene to provide an opinion concerning the Nation's interests in the matter.

D. 1. When an original action seeking either a writ of mandamus or prohibition against a District Judge, Associate District Judge, or Special Judge of the District Court is commenced or when a cause of action challenging the authority of any Nation Court is commenced in state or federal court, the Attorney General shall represent such judicial officer(s) if, and only if, directed to do so, in writing, by the Chief Justice of the

Cherokee Nation Supreme Court, upon the Chief Justice's finding that such representation is necessary to protect either the function or integrity of the judiciary. Such finding by the Chief Justice shall be final and binding.

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2. In the event that the Attorney General is or shall be disqualified from representing such judicial officer, the Attorney General shall immediately notify, in writing, the Chief Justice. The Chief Justice then may appoint counsel to represent the judicial officer. The appointed counsel shall determine the method of preparation and presentation of such defense. The appointed counsel shall not be held civilly liable for the exercise of such discretion. The appointed counsel shall, upon approval by the Chief Justice, be entitled to be compensated by the Court for services rendered.

#### History

**Source.** LA 12-07, eff. March 19, 2007.

## CHAPTER 5

### OFFICE OF THE SECRETARY OF STATE

#### Section

201. Books of the Secretary of State's office open to inspection

202. Secretary of State not to hold other position which would conflict with duties

#### § 201. Books of the Secretary of State's office open to inspection

The books, papers and transactions of the Secretary of State's office shall at all times be open to the inspection of the Executive, Legislative and Judicial officers of the Nation.

#### § 202. Secretary of State not to hold other position which would conflict with duties

The Secretary of State shall not, during his term of office, accept, or be elected or appointed to any other office or position of trust or profit, whereby he may be prevented from exercising a uniform and uninterrupted supervision of the office.

## CHAPTER 6

### OFFICE OF THE TREASURER [RESERVED]

## CHAPTER 7 MARSHAL SERVICE

#### Section

401. Short title

402. Purpose

403. Definitions

404. Appointment of Marshal

405. Duties and authority of the Office of the Marshal

406. Vacancy in office of Marshal

407. Compensation of Marshal

408. Deputy Marshals-Delegation of authority

409. References in Cherokee Nation Code Annotated to peace officers, etc.

410. Reserve force Deputy Marshals

## § 401. Short title

This act shall be known and may be cited as the Cherokee Nation Marshal Act.

### History

Source. LA 17-07, eff. April 23, 2007.

## § 402. Purpose

The purpose of this act is to prescribe by law the duties and authority of the Cherokee Nation Office of Marshal as required by the Cherokee Nation Constitution drafted in 1999 and ratified in 2003. The Council recognizes the duties and powers delegated to the Office of the Marshal by said Constitution and finds that nothing herein shall be construed to diminish or abridge those duties and powers delegated to the Office of the Marshal by said Constitution.

### History

Source. LA 17-07, eff. April 23, 2007.

## § 403. Definitions

A. **“Administration”** means the Executive Branch of Cherokee Nation as provided for in Article VII of the Cherokee Nation Constitution.

B. **“Agency”** means commissions, departments, government-owned companies, or other instrumentalities of Cherokee Nation.

C. **“Council”** or **“Tribal Council”** means the Council of Cherokee Nation as provided for in Article VI of the Cherokee Nation Constitution.

D. **“Deputy Marshal”** means a police officer, regardless of rank, employed by the Marshal Service and/or deputized by the Marshal.

E. **“Government-owned company”** means an entity wholly-owned by Cherokee Nation or any agency, instrumentality, or subdivision thereof.

F. **“Marshal”** or **“the Marshal”** means the “Office of Marshal” as created by the 1999 Cherokee Nation Constitution, Article VII, § 14.

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### OFFICERS & EMPLOYEES

G. **“Marshal Service”** means the Executive Branch agency developed, managed, directed, and overseen by the Marshal.

H. **“Nation”** means Cherokee Nation.

I. **“Person”** means an agency, individual, corporation, estate, trust, general partnership, limited partnership, limited liability company, association, or any other legal, commercial, government-owned company, or governmental entity.

J. **“State”** means a state, territory, or possession of the United States, a federally-recognized Indian tribe, the District of Columbia or the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

### History

Source. LA 17-07, eff. April 23, 2007.

## § 404. Appointment of Marshal

The Marshal shall be appointed by the Principal Chief and confirmed by the Council for a term of five (5) years. The Marshal shall be authorized to deputize law enforcement officers, as needed, for the effective enforcement of tribal laws within the jurisdiction of Cherokee Nation. The Marshal shall be a Cherokee citizen possessing at a minimum a degree from a four-year college or university and an additional five years of experience in a supervisory capacity in law enforcement or a related field.

Source. LA 17-07, eff. April 23, 2007.

## History

### § 405. Duties and authority of the Office of the Marshal

A. Pursuant to Article VII, Section 14 of the Cherokee Nation Constitution, the “duties and authority of the Marshal shall be prescribed by law.” That section also empowers the Marshal to “deputize such officers as necessary to carry out the law enforcement needs of the Cherokee Nation.”

B. In addition to the duties prescribed by the Constitution, the duties and authority of the Office of the Marshal shall be to:

1. Plan, develop, implement and manage an overall law enforcement strategy for the effective enforcement of tribal law to include but not be exclusive to budgetary fiscal management, job duties, job requirements, and training requirements of employees as well as the hiring, firing and disciplining of employees to effectively preserve the peace, protect the people within the Nation’s jurisdiction, protect the property of Cherokee Nation and its citizens properly living within the Nation’s jurisdiction; and
2. Deputize officers as needed to carry out the law enforcement activities of Cherokee Nation and authorize those deputies to carry firearms, wear prescribed uniform, badge and credentials, execute or serve warrants, summons and other orders relating to a crime committed, investigate criminal offenses using all applicable laws and regulations, make an arrest with a warrant or without a warrant if the offense is committed in the deputy’s presence or the offense is a felony and the deputy has reasonable

## MARSHAL SERVICE

## 51 CNCA § 405

grounds to believe the person being arrested has committed the felony and perform any other law enforcement-related duty;

3. Attend upon the courts, obey the court’s orders, to serve all summons and other processes which may be placed in his hands according to the tenor of the mandates therein contained, and to take all necessary and lawful measures in the execution of the judgment of the courts committed to him to execute and to arrest and cause to be tried, all persons who may be charged with criminal offenses and to provide for bailiff services and protection of the court;

4. Promulgate such rules, regulations, policies and procedures as the Marshal deems necessary to fulfill the duties of the Office and the rules of conduct of employees of the Marshal Service, which may include rules for conduct and corresponding disciplinary actions for breaches of conduct which are to be reviewed annually and kept compliant with new enforcement codes and case laws;

5. Provide a law enforcement strategy, requirements, standards, qualifications and budget that is compliant to Cherokee Nation laws and regulations and equal to or better than the codes and rules of 25 Code of Federal Regulations and 25 United States Code dealing with wages, firearms and, authority of tribal law enforcement officers;

When an arrest shall be made of a person charged with a crime, the Marshal or Deputy shall notify the Judge having jurisdiction of the case of such arrest without delay; provided, that any accused person shall be allowed to give bail for his appearance at court at the time set for his trial by giving bond to the Court, the amount to be fixed by the Judge presiding in that case.

6. Recommend to the Principal Chief that the Nation enter written agreements, renegotiate agreements, or withdraw from agreements with other law enforcement agencies and jurisdictions as the Marshal deems necessary to extend police protection for Nation property and citizens across jurisdictional lines and shall perform all functions and duties as needed;

7. Board and care for prisoners of Cherokee Nation and negotiate and enter contracts therefor;

8. Coordinate investigations with the Cherokee Nation Office of Attorney General and other applicable federal and state prosecuting attorney’s office to provide for effective enforcement of applicable laws;

9. Preserve the peace, protect the property of Cherokee Nation and the property of those living within the Nation’s jurisdiction and protect the people within the Nation’s jurisdiction;

10. Maintain responsibility for and have charge over all Nation police functions within the jurisdiction



of Cherokee Nation to prevent and suppress all affrays, breaches of the peace, riots and insurrections which may come to the knowledge of the Marshal;

11. Designate an individual to act as Marshal in the absence of the Marshal so long as said designation does not exceed six (6) months;

12. Keep a complete office file of all cases and investigations handled by the Marshal Service on behalf of the Nation;

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### **OFFICERS & EMPLOYEES**

13. Oversee the Security Department of the Executive Branch of the Nation, not to include those security departments operated by the Nation's government-owned companies;

14. Establish, oversee, regulate and license registered security officers and promulgate such rules, regulations and policies as necessary;

15. Perform all other duties and functions which may be prescribed in other sections and titles of the Cherokee Nation Code.

#### **History**

**Source.** LA 17-07, eff. April 23, 2007.

**Amended.** LA 35-12, eff. October 19, 2012.

## **§ 406. Vacancy in office of Marshal**

In case of vacancy in the position of Marshal by reason of removal, death, resignation or disability lasting for more than six (6) months, the Office of the Marshal shall be filled by appointment by the Principal Chief with confirmation by the Council. Such appointment shall be to serve out the term of the prior appointment.

#### **History**

**Source.** LA 17-07, eff. April 23, 2007.

## **§ 407. Compensation of Marshal**

The compensation of the Marshal shall not be decreased during his or her term.

**Source.** LA 17-07, eff. April 23, 2007.

#### **History**

## **§ 408. Deputy Marshals-Delegation of authority**

A. Pursuant to Article VII, Section 14, of the Cherokee Nation Constitution, the Marshal is empowered "to deputize such officers as necessary to carry out the law enforcement needs of the Cherokee Nation." The Marshal may from time to time make such provisions as he or she considers appropriate authorizing the performance of any function of the Marshal by any other officer or employee of the Marshal Service.

B. The Marshal is authorized to develop the organizational structure of the Marshal Service, including any special teams, squads or units as the Marshal deems necessary to perform the duties imposed upon the Marshal.

#### **History**

**Source.** LA 17-07, eff. April 23, 2007.

## **§ 409. References in Cherokee Nation Code to peace officers, etc.**

All references in current statutes to peace officers, sheriffs, deputy sheriffs, marshals, policemen, or constables are hereby deemed references to the Marshal and those individuals deputized by the Marshal, and all references to the Director of the Marshal Service shall be deemed references to the Marshal.

## MARSHAL SERVICE

## 51 CNCA § 410

**Source.** LA 17-07, eff. April 23, 2007.

### History

### Cross References

Carrying concealed weapon, see 21 CNCA § 1289.8.

Carrying weapons or firearms into establishments wherein beer and intoxicating liquor are consumed, see 21 CNCA § 1272.1.

### § 410. Reserve force Deputy Marshals

A. The Marshal may appoint as many reserve force Deputy Marshals as are necessary to preserve the peace and dignity of the Nation. A current list of each person holding such appointment shall be maintained by the Marshal and shall be available to the public.

B. Reserve force Deputy Marshals may perform duties which encompass a particular act or a series of acts at the Marshal's discretion.

C. The Marshal or a Deputy Marshal shall accompany a reserve force Deputy Marshal in the performance of all duties assigned to such reserve force Deputy Marshal unless such reserve force Deputy Marshal has completed the required one-hundred-sixty (160) hour basic police course. Such reserve force Deputy Marshals shall complete a one-hundred-sixty (160) hour basic police course within twelve (12) months after they have been commissioned as an individual reserve force Deputy Marshal.

D. Reserve force Deputies may receive compensation for their services. The Marshal may pay reserve force Deputies for travel expenses. The Marshal Service may pay for additional training courses attended by reserve force Deputies.

E. A reserve force Deputy Marshal shall be authorized to serve civil process.

### History

**Source.** LA 17-07, eff. April 23, 2007.

### Section

501. Short title

502. Purpose

503. Definitions

## CHAPTER 8 DELEGATE TO CONGRESS

504. Qualifications for the delegate to Congress

505. Selection

506. Term of office

507. Duties and authority of the office

508. Vacancies in office

509. Funding

510. Removal from office

### § 501. Short title

This act shall be known and may be cited as the Delegate To Congress Act.

### History

**Source.** LA 14-07, eff. April 19, 2007.

## § 502. Purpose

The purpose of this act is to prescribe by law the duties and authority of the Delegate to the United States House of Representatives (Congress) as required by the Cherokee Nation Constitution drafted in 1999 and ratified in 2003. The Council recognizes the duties and powers delegated to the Office of the Delegate to Congress by said Constitution and finds that nothing herein shall be construed to diminish or abridge those duties and powers delegated to the Office of the Delegate by said Constitution.

### History

**Source.** LA 14-07, eff. April 19, 2007.

## § 503. Definitions

For purposes of this act:

1. **“Administration”** shall mean the Executive Branch of Cherokee Nation as provided for in Article VII of the Cherokee Nation Constitution.
2. **“Council”** or **“Tribal Council”** shall mean the Council of Cherokee Nation as provided for in Article VI of the Cherokee Nation Constitution.
3. **“Delegate”** shall mean a person appointed by the Principal Chief and confirmed by the Council as provided for in Article VI of the Cherokee Nation Constitution.
4. **“Nation”** shall mean Cherokee Nation.

### History

**Source.** LA 14-07, eff. April 19, 2007.

## § 504. Qualifications for the Delegate to Congress

The Delegate shall be:

### DELEGATE TO CONGRESS

### 51 CNCA § 509

1. a citizen of Cherokee Nation;
2. a citizen of the United States of America;
3. twenty-five (25) years of age as of the date of the selection;
4. on the date of confirmation, a candidate for no other office.

### History

**Source.** LA 14-07, eff. April 19, 2007.

## § 505. Selection

The Constitution, Article VI, Section 12, provides that the Cherokee Delegate shall be “appointed by the Principal Chief and confirmed by the Council.”

### History

**Source.** LA 14-07, eff. April 19, 2007.

## § 506. Term of office

The term for the Cherokee Delegate shall coincide with the term of the Office of the Principal Chief.

**Source.** LA 14-07, eff. April 19, 2007.

### History

## § 507. Duties and authority of the office of the Delegate to Congress

The duties and authority pursuant to Article VI, Section 12 of the Cherokee Nation Constitution and applicable federal law or House Rule respectively, of the Delegate shall be as follows:

1. Endeavor to participate in Congressional activities;
2. Advocate the best interests of the Cherokee People at all times;

3. Make regular reports to the Council and Principal Chief on Congressional activities and administrative matters relating to federal law and policy; and
4. Produce an annual report to the Cherokee People.

#### History

Source. LA 14-07, eff. April 19, 2007.

### § 508. Vacancies in office

The Principal Chief may, in case of a vacancy by reason of removal, death, resignation or permanent disability of the Delegate, appoint a successor with confirmation by the Council to fill the vacancy to serve the remainder of the term or until the disability be removed.

#### History

Source. LA 14-07, eff. April 19, 2007.

### § 509. Funding

The Principal Chief shall submit an annual budget to the Council to fund the office of the Delegate to Congress to include the Delegate's salary, benefits, and

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expenses, including an office and staff until such time as the position is funded by the United States House of Representatives.

### § 510. Removal from office

The Delegate to Congress shall be subject to removal from office for cause in accordance with Article VI, Section 9 and Article XI of the Constitution of the Cherokee Nation.

Source. LA 14-07, eff. April 19, 2007.

#### History

## CHAPTER 9

### IMPEACHMENT PROCEDURES FOR ELECTED AND APPOINTED OFFICIALS

#### Section

601. Short title

602. Purpose

603. Definitions

604. Grounds for impeachment

605. Initiation of impeachment

606. Presentation of impeachment

607. Presiding Office of the Court of Impeachment

608. Oath-Concurrence of Councilors

609. Judgment-Criminal liability

610. Designation of offense

611. Court of Impeachment

612. Hearing and summons

613. Powers of Court of Impeachment-Orders and judgments-Power to enforce

614. Costs-How paid-Cost of accused if acquitted

615. Expenses-How paid

### § 601. Short title

This act shall be known and may be cited as the Impeachment Procedures for Elected and Appointed

Officials Act of 2011.

#### History

**Source.** LA 10-02, eff. March 15, 2002.

**Amended.** LA 05-12, eff. February 28, 2012.

### § 602. Purpose

The purpose of this act is to establish procedures for impeachment of the Principal Chief, the Deputy Principal Chief, Tribal Council Members, Attorney General or Marshal, hereinafter "Officials."

#### History

**Source.** LA 10-02, eff. March 15, 2002.

**Amended.** LA 05-12, eff. February 28, 2012.

### § 603. Definitions

A. "Articles of Impeachment" means the written accusations of one or more of the grounds for impeachment, prepared and sworn to by the Special Prosecutor, after his or her investigation and determination that probable cause exists that an impeachable offense has occurred.

B. "Corruption in office" means the act of an official or fiduciary person who unlawfully and wrongfully uses his or her station or character to procure some benefit for himself or herself or for another person, contrary to duty and the rights of others.

C. "Habitual drunkenness" means one who frequently and repeatedly becomes intoxicated by excessive indulgence in intoxicating liquor so as to

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acquire a fixed habit and an involuntary tendency to become intoxicated as often as the temptation is presented even though he remains sober for days or even weeks at a time.

D. "Impeachment" means the prosecution through the Special Prosecutor of an elected official, under the Constitution, for willful neglect of duty, corruption in office, drunkenness, incompetency, or any conviction involving moral turpitude committed while in office.

E. "Incompetency" means lack of ability, legal qualification or fitness to discharge a required duty.

F. "Moral turpitude" means an act of business, vileness or depravity in private and social duties which man owes to his fellow man.

G. "Office of honor, profit or trust" means, for the purposes of this act, an elected position or a position appointed by the highest governing body of a tribe; such an office does not include employment, contract services or consulting agreements.

H. "Official" means the Principal Chief, Deputy Principal Chief and all Members of the Tribal Council, Attorney General and Marshal, including those individuals who have been appointed to serve the remainder of a term of office that has been vacated for any reason.

I. "Presiding Judge" means the Chief Justice of the Supreme Court of Cherokee Nation, or if he or she cannot serve, another Justice of the Supreme Court of Cherokee Nation, who will preside over the impeachment proceedings.

J. "Special Prosecutor" means an attorney admitted to practice law before the highest Court of the State of which he or she is a resident, and shall not be an employee, contractor or official of Cherokee Nation.

#### History

**Source.** LA 10-02, eff. March 15, 2002.

**Amended.** LA 05-12, eff. February 28, 2012.

### § 604. Grounds for impeachment

A. Officials shall be liable and subject to impeachment for willful neglect of duty, corruption in office, habitual drunkenness, incompetency or any conviction of a felony, or a crime under the laws of Cherokee

Nation that if committed in some other jurisdiction would be a felony, or a misdemeanor involving moral turpitude or offenses against Cherokee Nation committed while in office.

**B. "Willful neglect"** within the meaning of this act shall include the filing of frivolous allegations of impeachment under 51 CNCA § 605. The filing of allegations of impeachment that fails to achieve approval of at least a simple majority of the Council or to any committee or subcommittee to which the impeachment allegations are assigned, pursuant to 51 CNCA § 605, shall create the rebuttable presumption that such allegations were frivolous.

**Source.** LA 10-02, eff. March 15, 2002.

**History**

**Amended.** LA 05-12, eff. February 28, 2012.

**IMPEACHMENT**

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**§ 605. Initiation of impeachment**

A. Initiation by Council. The Council, upon allegations of an impeachable offense or offenses committed by any official may, by a vote of two-thirds (2/3) of the body, appoint a Special Prosecutor and give the Prosecutor the charges which have been alleged. The Special Prosecutor shall investigate those charges and any other transactions which are grounds for impeachment. If such investigation gives the Prosecutor probable cause to believe that activities constituting grounds for impeachment have been committed, he or she shall draft Articles of Impeachment for presentment to the Supreme Court of Cherokee Nation. In conducting this investigation the Special Prosecutor shall have the power of subpoena, the power to compel evidence and witnesses and shall have the cooperation of all entities of Cherokee Nation.

B. Recommendation by Principal Chief. The Principal Chief, upon allegations of an impeachable offense or offenses committed by any official, may appoint a Special Prosecutor and give the Prosecutor the charges which have been alleged. The Special Prosecutor shall investigate those charges and any other transactions which are grounds for impeachment. If such investigation gives the Prosecutor probable cause to believe that activities constituting grounds for impeachment have been committed, he or she shall draft allegations of impeachment for recommended action by the Council of Cherokee Nation pursuant to subsection (A) of this section by filing said allegations with the Speaker of the Council. In conducting this investigation the Special Prosecutor shall have the power of subpoena, the power to compel evidence and witnesses and shall have the cooperation of all entities of Cherokee Nation.

C. Filing of impeachment allegations. The filing of impeachment allegations pursuant to subsection (A) or (B) shall be done in writing to the Speaker of the Council with a copy sent to the official accused of the impeachable offense(s). Said allegations shall be set forth in a statement reciting the basis for the allegation and signed by the official making the allegation under penalty of perjury. The impeachment allegations shall be assigned by the Speaker of the Council to the Rules Committee, and then to such subcommittee that the Rules Committee shall deem warranted.

D. Council to control impeachment proceedings, alternative disposition of allegations. The Council shall at all times control the impeachment proceedings, including but not limited to during the investigation stage, by reserving the right to direct the Special Prosecutor to suspend or terminate his or her investigation by majority vote of the Council. Termination of the investigation may be done for any reason, including, but not limited to, resignation of the official subject of the impeachment allegations or based on a determination by the Council that some other disposition of the allegation, such as censure, is warranted.

**Source.** LA 10-02, eff. March 15, 2002.

**History**

**Amended.** LA 05-12, eff. February 28, 2012.

**§ 606. Presentation of impeachment**

The Special Prosecutor shall present the Articles of Impeachment to the Supreme Court of Cherokee Nation by filing the same in the office of the Clerk.

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Source. LA 10-02, eff. March 15, 2002.

#### History

Amended. LA 05-12, eff. February 28, 2012.

### § 607. Presiding Officer of the Court of Impeachment

When sitting as a Court of Impeachment, the Tribal Council shall be presided over by the Chief Justice of the Supreme Court of Cherokee Nation, or if he is absent or disqualified, then by one (1) of the Associate Justices of the Supreme Court of Cherokee Nation.

Source. LA 10-02, eff. March 15, 2002.

#### History

Amended. LA 05-12, eff. February 28, 2012.

### § 608. Oath-Concurrence of Councilors

When the Tribal Council is sitting as a Court of Impeachment the Councilors shall be on oath or affirmation, impartially to try the party impeached, and no person shall be convicted without the concurrence of two-thirds ( $\frac{2}{3}$ ) of the members of the Tribal Council and unless it is found, by clear and convincing evidence, that one or more of the grounds for impeachment exist.

#### History

Source. LA 10-02, eff. March 15, 2002.

Amended. LA 05-12, eff. February 28, 2012.

### § 609. Judgment-Criminal liability

An officer who is convicted of impeachment shall be removed from office, but this shall not prevent punishment of any such officer on either civil or criminal charges growing out of the same matter.

#### History

Source. LA 10-02, eff. March 15, 2002.

Amended. LA 05-12, eff. February 28, 2012.

### § 610. Designation of offense

The Articles of Impeachment shall state with reasonable certainty the offense in office for which the officer is impeached and if there be more than one, they shall be stated separately and distinctly.

#### History

Source. LA 10-02, eff. March 15, 2002.

Amended. LA 05-12, eff. February 28, 2012.

### § 611. Court of Impeachment

When Articles of Impeachment shall be presented, the Cherokee Nation Council shall, within ten (10) days thereafter, organize as a Court of Impeachment and may for the purpose of conducting the business of such Court, appoint a Clerk. The Clerk shall issue all process and keep a record of the proceedings of such Court. It may employ such stenographic, clerical and other help as may be required.

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Source. LA 10-02, eff. March 15, 2002.

#### History

Amended. LA 05-12, eff. February 28, 2012.

## **§ 612. Hearing and summons**

The Tribal Council, when sitting as a Court of Impeachment shall appoint a day for hearing the impeachment and the accused shall be required by summons by the Clerk to appear on that day. The summons shall be served by delivering a copy of the same and of the Articles of Impeachment to the accused, in person if found, or by leaving the copies at his residence with some member of his family over sixteen (16) years of age.

At said hearing the accused shall have the right to have an attorney present, at his or her own expense, present evidence, object to evidence presented, call witnesses on his or her behalf, confront and cross-examine witnesses and do any other action deemed necessary by the Presiding Judge to ensure due process.

**Source.** LA 10-02, eff. March 15, 2002.

### **History**

**Amended.** LA 05-12, eff. February 28, 2012.

## **§ 613. Powers of Court of Impeachment-Orders and judgments-Power to enforce**

The Tribal Council, sitting as a Court of Impeachment shall, through the Presiding Justice, have the power to compel the attendance of witnesses, to enforce obedience to its orders, mandates, writs, precepts and judgments to preserve order, grant continuances that are for good cause and not for the purposes of delay and to punish in a summary way contempts of, and disobedience to, its authority and to make all orders, rules and regulations which it may deem essential or necessary for the orderly transaction of its business.

### **History**

**Source.** LA 10-02, eff. March 15, 2002.

**Amended.** LA 05-12, eff. February 28, 2012.

## **§ 614. Costs-How paid-Costs of accused if acquitted**

A. If the accused is acquitted, he or she shall be entitled to costs, including attorney fees, to be taxed by the Clerk and paid by Cherokee Nation out of any funds available, and if convicted, he or she shall pay the costs, unless the Supreme Court of Cherokee Nation otherwise directs.

B. Personal liability, treble damages. If an official is convicted of impeachment based on the earlier filing of frivolous allegations of impeachment under 51 CNCA § 604(B), such convicted official shall be liable for up to triple the amount of any cost, including attorney fees, borne by the accused official subject to said earlier allegations of impeachment, as determined by the Court of Impeachment, unless the Supreme Court of Cherokee Nation otherwise directs.

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**Source.** LA 10-02, eff. March 15, 2002.

### **History**

**Amended.** LA 05-12, eff. February 28, 2012.

## **§ 615. Expenses-How paid**

This act shall be used as authorization to expend funds for the purposes of implementing the procedures and requirements mandated herein.

### **History**

**Source.** LA 10-02, eff. March 15, 2002.

**Amended.** LA 05-12, eff. February 28, 2012.



## CHAPTER 10

### EMPLOYEE ADMINISTRATIVE PROCEDURES

#### Section

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- 1024. Review by Supreme Court
- 1025. Transmission of record to reviewing Court-Stipulations
- 1026. Review without jury-Additional testimony
- 1027. Setting aside, modifying or reversing of orders-Remand-Affirmance
- 1028. Remedies for termination without cause
- 1029. Time computations

#### § 1001. Short title

This act shall be known and may be cited as the Employee Administrative Procedures Act.

#### History

**Source.** LA 12-96, eff. December 1, 1996, as amended by LA 20-96.

#### Cross References

Employee Appeals Board-Change of name, see 40 CNCA § 702. Notice of hearings, see 40 CNCA § 504.

#### § 1002. Purpose

The purpose of this act is to establish a timely and fair procedure for appeals of employment terminations by employees of Cherokee Nation, which provides to the employees due process and other protections guaranteed by the federal Indian Civil Rights Act of 1968 and the Cherokee Nation Constitution, Article II [now Article III], including notice and an opportunity for a hearing.

### 51 CNCA § 1002

#### History

**Source.** LA 12-96, eff. December 1, 1996, as amended by LA 20-96.

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United States Code

Constitutional rights of Indians, definitions, see 25 U.S.C. § 1301, et seq.

§ 1003. Definition

As used in the Employee Administrative Procedures Act:

1. **“Act”** shall mean the Employee Administrative Procedures Act.
2. **“Administrative proceeding”** means the formal process employed by the Employee Appeals Board for consideration of an employee termination appeal resulting in a final administrative decision.
3. **“Board”** shall mean the Employee Appeals Board.
4. **“Cause to terminate employment”** shall have the meaning as defined in 51 CNCA § 1011.
5. **“District Court”** shall mean the trial court of Cherokee Nation.
6. **“Employee Appeals Clerk”** shall mean a designated person in the Executive Offices of Cherokee Nation.
7. **“Employee of Cherokee Nation”** or **“employee”** shall mean a person who has been directly employed by Cherokee Nation on a regular permanent full-time basis for at least one (1) continuous year immediately prior to termination of employment, including such employees who have renewable contracts with the Cherokee Nation. For purposes of employee termination appeals under this act this term shall not include employees of any corporation for profit or other business entity owned and operated by Cherokee Nation, such as, but not limited to, Bingo Outpost, Cherokee Nation Enterprises and Cherokee Nation Industries; nor to specialized authorities and entities created by the Legislature, such as, but not limited to, the Arkansas Riverbed Trust Authority.
8. **“Final administrative decision”** means a final decision made by an Employee Appeals Hearing Officer pursuant to this act and which is subject to judicial review.
9. **“Former employee”** shall mean an employee as defined in paragraph 4 of this section who was terminated from employment.
10. **“Human Resources Director”** shall mean the Human Resources Director of Cherokee Nation.
11. **“Order”** means all or part of a formal or official decision made by the Employee Appeals Board or Supreme Court.
12. **“Parties to an appeal”** shall mean an employee who has been terminated from employment with Cherokee Nation and the Human Resources Director or his or her designee acting as the client representative of the employer.
13. **“Supreme Court”** shall mean the three (3) Justices of the Supreme Court acting en banc as an appellate court.
14. **“Termination of employment”** shall mean the involuntary severance of an employee from Cherokee Nation employment, including a decision to

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not renew a contract with an employee, provided that such term shall not include a temporary or permanent layoff for lack of funds or work.

History

**Source.** LA 12-96, eff. December 1, 1996, as amended by LA 20-96.

**Amended.** LA 20-96, eff. November 6, 1996.

Oklahoma Statutes

Administrative Procedures Act, definitions, see 75 O.S. § 250.3.

§ 1004. Cherokee Nation Employee Appeals Board

The Cherokee Nation Employee Appeals Board is hereby established to serve in the capacity of an administrative body to hear appeals by former employees of decisions to terminate said persons.

History

**Source.** LA 12-96, eff. December 1, 1996, as amended by LA 20-96.

§ 1005. Board qualification

The Employee Appeals Board shall be composed of three (3) Hearing Officers appointed by the Principal Chief and confirmed by Cherokee Nation Council. Qualifications of the Board members shall be as follows:

1. The person must be currently licensed to practice law by the Oklahoma Supreme Court and be a member of the Cherokee Nation bar;
2. The person must have a working knowledge of this act;
3. The person must not be an owner, stockholder, employee or officer of, nor have any other business relationship with, any corporation, partnership, or other business or entity that is subject to regulation by Cherokee Nation;
4. The person must be separate and apart from the Legal Division or Office of General Counsel of Cherokee Nation;
5. The person must not be responsible to or subject to the supervision or direction of a Cherokee Nation employee or agent engaged in the performance of investigative or prosecuting functions for Cherokee Nation; and
6. The person must not have been engaged in the performance of investigative or prosecuting functions for Cherokee Nation regarding the terminated employee.

#### History

**Source.** LA 12-96, eff. December 1, 1996, as amended by LA 20-96.

**Amended.** LA 20-96, eff. November 6, 1996.

Proposed orders, see 75 O.S. § 311.

#### Oklahoma Statutes

### 51 CNCA § 1006

#### § 1006. Employee Appeals Board term

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The first term of office for each Board member shall commence on October 1, 1996 and expire on September 30, 1999. Thereafter, commencing on October 1, 1999, the terms shall run every four years.

#### History

**Source.** LA 12-96, eff. December 1, 1996, as amended by LA 20-96.

#### § 1007. Employee Appeals Board officers

The Employee Appeals Board shall select a Chairman and a Vice-Chairman from its membership. Term of office shall be for one (1) year from October 1 until the following September 30. Any officer selected after October 1 of any given year shall serve the remainder of the one-year term expiring on the following September 30.

#### History

**Source.** LA 12-96, eff. December 1, 1996, as amended by LA 20-96.

#### § 1008. Appeals heard by Employee Appeal Board en banc

Any party to an appeal shall have a matter decided by Employee Appeal Board members en banc.

#### History

**Source.** LA 12-96, eff. December 1, 1996, as amended by LA 20-96.

**Amended.** LA 01-12, eff. January 18, 2012.

#### § 1009. Employee Appeals Board Clerk

A person designated by the Principal Chief shall act as the Employee Appeals Board Clerk. The responsibilities of the Employee Appeals Board Clerk shall include maintenance of the appeal casefile,

issuance of notices, and such other duties as required by the Employee Appeals Board.

#### History

**Source.** LA 12-96, eff. December 1, 1996, as amended by LA 20-96.

**Amended.** LA 20-96, eff. November 6, 1996.

### § 1010. Termination for cause

A. An employee of Cherokee Nation may be terminated for cause without prior warning, counseling, or reprimand, based on one (1) of the following grounds:

1. Any reason involving moral turpitude affecting or potentially affecting conduct while on duty, including without limitation any violation of the Cherokee Nation Code of Ethics; falsification of time cards, time sheets, tribal records or other documents; theft, embezzlement or misappropriation or destruction of property or funds; or use of official position for

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personal profit or advantage; provided that a criminal conviction shall not be a prerequisite for termination based on any conduct which could subject the employee to criminal prosecution;

2. Engaging in conduct while on duty which affects or could affect the safety of the work environment and co-workers or which could affect public safety, including possession of weapons, explosives or dangerous materials on the job without written authorization; drinking alcoholic beverage or using controlled drugs without a legal prescription during work while on duty or reporting to work under the influence of alcohol or drugs without a legal prescription; and any other conduct which poses a threat to the public safety;

3. Sexual harassment in the workplace;

4. Harassment of an employee because of political affiliations, religion, race, gender, age, disability, or national origin;

5. Conviction of a felony;

6. Mental or physical abuse to a child; and

7. Engaging in criminal sexual activity or sexual misconduct that has impeded the effectiveness of the individual's performance of duties.

B. An employee of Cherokee Nation may be terminated for cause, provided that the employee has received prior warning, counseling, and reprimand on one or more previous occasions, based on any one or any combination of the following grounds:

1. Repeated negligence in performance of duty;

2. Willful neglect of duty;

3. Other willful misconduct related to a violation of standards of conduct for employees of Cherokee Nation as defined in the Cherokee Nation Human Resources Manual.

#### History

**Source.** LA 12-96, eff. December 1, 1996, as amended by LA 20-96.

### § 1011. Initiation of termination-Employee status

A termination action may be initiated by the employee's supervisor; but policy concurrence for the action shall be obtained in advance of the action by the Human Resources Director. The written notice of dismissal must be given to the employee, and must describe the reasons involved and a statement apprising the employee of his or her right to appeal the termination. The termination action shall take effect according to the written notice of such actions given to the employee, and shall remain in effect according to the notice even though review proceedings or appeal hearings concerning such matter have been instituted and are pending and not completed.

#### History

**Source.** LA 12-96, eff. December 1, 1996, as amended by LA 20-96.

**Amended.** LA 20-96, eff. November 6, 1996.

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### § 1012. Human Resources Director review

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A. A former employee may request review and reconsideration of the termination by the Human Resources Director in writing delivered to the Human Resources Director within ten (10) working days after receipt of the termination decision. The request should include a statement of reasons why the employee believes the termination was without cause, and should include any documents not already contained in the former employee's personnel file which the former employee believes to be relevant.

B. The Human Resources Director shall thereafter review the former employee's request, documents included with the request, and relevant documents in the employee's personnel file, and issue a written decision within ten (10) working days of receipt of the request for review.

C. If the Human Resources Director revokes the termination, the former employee shall be immediately restored to Cherokee Nation employment in the same or similar job position, with pay no less than the pay received at the time of termination and benefits retroactive to the date of the termination; his personnel records adjusted as may be consistent with the revocation action.

D. If the Human Resources Director revokes the termination, the decision shall be a final unappealable decision. If the Human Resources Director upholds the termination based on cause, the decision of the Human Resources Director shall be final unless the former employee appeals the decision to the Employee Appeals Board pursuant to procedures set forth in 51 CNCA § 1013.

#### History

**Source.** LA 12-96, eff. December 1, 1996, as amended by LA 20-96.

**Amended.** LA 20-96, eff. November 6, 1996.

### § 1013. Manner of filing appeal

A former employee must deliver to the Cherokee Nation Human Resources Office and to the Employee Appeals Board Clerk a written Notice of Appeal of Termination Decision no later than ten (10) working days from the date the Human Resources Director's decision upholding the termination was received by the former employee. The Notice of Appeal shall state the date of the termination and the reasons why the former employee believes the termination was without cause.

#### History

**Source.** LA 12-96, eff. December 1, 1996, as amended by LA 20-96.

**Amended.** LA 20-96, eff. November 6, 1996.

### § 1014. Administrative record and casefiles

A. Human Resources Summary Statement. If the former employee appeals the decision to the Employee Appeals Board, the Human Resources Director or his designee shall prepare a Human Resources Summary Statement for placement in the administrative record on a form containing the following information: case number, name of appealing party; position of employee; date decision

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made; date appeal received by the Human Resources Office; statement that the former employee filed appeal within time required or that the former employee did not file his appeal within the time required; and list of any specific Cherokee Nation laws and Cherokee Nation and/or federal regulations, policies and/or standards applicable to the former employee's conduct or termination of employment.

B. Administrative record. The administrative record shall be prepared by the Human Resources Director or his designee, who shall place the following documents in the record: Human Resources Summary Statement; Disciplinary Action Form containing notice of the termination which is the subject of the appeal; the former employee's written appeal; any documents submitted by the Human Resources Director, including designated documents from the former employee's personnel files; and any other relevant documents allowed into the record by the Board. The Employee Appeals Board Clerk shall add to the record all documents submitted by the former employee, including designated documents from his/her

personnel files.

C. Establishment of casefile. The Employee Appeals Board Clerk shall maintain an Employee Appeals Board casefile for each appeal filed, which shall contain the administrative record; all notices issued by the Employee Appeals Board Clerk and all return receipts; any other documents accepted by the Appeals Board; and decision of the Appeals Board. The Human Resources Director shall initially prepare the casefile, by placing those portions of the administrative record in his or her possession in a file and delivering it to the Employee Appeals Board Clerk. The Employee Appeals Board Clerk shall assign each casefile a number beginning with the words "Emp. Ad. Appeal No.", followed by the last two digits of the year in which the appeal was filed, followed by a dash, followed by an individual number for each appeal.

D. Access to casefiles. Public inspection of the Human Resources Summary Statement and the Employee Appeals Board decision shall be allowed. Other materials contained in the casefile may be released for public inspection only if authorized by written consent of the former employee or authorized by the Employee Appeals Board Chairman pursuant to rules established by the Board.

#### History

**Source.** LA 12-96, eff. December 1, 1996, as amended by LA 20-96.

**Amended.** LA 20-96, eff. November 6, 1996.

### § 1015. Scheduling of hearing

The Hearing Officer designated to hear the case shall promptly notify the Employee Appeals Board Clerk of the scheduling of a hearing. The hearing shall be no later than thirty (30) days from date of the Appeals Board Clerk's receipt of the appeal notice, provided that for good cause the Board may grant either party an extension of time for the hearing date.

#### History

**Source.** LA 12-96, eff. December 1, 1996, as amended by LA 20-96.

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#### § 1016. Employee administrative appeal proceedings-Notice of hearing

A. In an appeal proceeding, all parties shall be afforded an opportunity for hearing after reasonable notice. The Employee Appeals Board Clerk shall send notices to the Human Resources Director by inter-office mail and to the former employee, by certified mail, return receipt requested. The notice must be served on the parties at least ten days (10) before the hearing, unless the appealing party states that he waives any objection he might have to receiving the notice. If the certified letter is returned undelivered, then a second notice shall be sent by regular mail. Service of notices will be considered to have been made on: the date of delivery indicated on the return receipt when the notice has been sent by certified mail, return receipt requested; or the date the second notice sent by regular mail is returned by the post office as undelivered, or ten (10) days after the date the second notice is sent by regular mail when the letter has not been returned by the post office, whichever occurs first.

B. The notice shall include:

1. A statement of the time, place and nature of the hearing;
2. A statement of the legal authority and jurisdiction under which the hearing is to be held;
3. A reference to the particular sections of the statutes and rules involved;
4. A copy of the Employee Appeals Board casefile; and
5. A short and plain statement of the matters asserted. If the Human Resources Department or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

C. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

D. Unless precluded by law, informal disposition may be made of any individual proceeding by stipulation, agreed settlement, consent order, or default.

#### History

**Source.** LA 12-96, eff. December 1, 1996, as amended by LA 20-96.

#### Oklahoma Statutes

Individual proceedings, notice, hearing, see 75 O.S. § 309.

### § 1017. Employee Appeals Board record

- A. The Employee Appeals Board record in an appeal proceeding shall include:
1. The Employee Appeals casefile, including all pleadings, motions and intermediate rulings;
  2. Evidence received or considered at the appeal proceeding;
  3. A statement of matters officially noticed;
  4. Questions and offers of proof, objections, and rulings thereon;
  5. Proposed findings and exceptions;

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6. Any decision, opinion, or report by the Hearing Officer presiding at the hearing; and
7. All other evidence or data submitted to the Hearing Officer in connection with consideration of the case, provided all parties have had access to such evidence.

B. Oral proceedings shall be electronically recorded. Such recordings shall be maintained for such time so as to protect the record through judicial review. Copies of the recordings shall be provided by the Employee Appeals Board at the request of any party to the proceeding. Costs of transcription of the recordings shall be borne by the party requesting the transcription. For judicial review, electronic recordings of an individual proceeding, as certified by the Employee Appeals Board, may be submitted to the reviewing court by the Board as part of the record of the proceedings under review without transcription unless otherwise required to be transcribed by the reviewing Court. In such case, the expense of transcriptions shall be taxed and assessed against the nonprevailing party. Parties to any proceeding may have the proceedings transcribed by a Court Reporter at their own expense.

#### History

**Source.** LA 12-96, eff. December 1, 1996, as amended by LA 20-96.

#### Oklahoma Statutes

Individual proceedings, notice, hearing, see 75 O.S. § 309.

### § 1018. Hearing procedures before Employee Appeals Board

A. In employee appeals hearings, the Cherokee Nation shall present its evidence to show that the termination was for cause, the former employee may then present evidence, and the Cherokee Nation shall have an opportunity to present rebuttal evidence. The burden of proof shall be on the employee to prove that the termination was not for cause, including proof that the decision to terminate was not made in good faith; or that the facts which constituted the grounds for the termination were not supported by substantial evidence; or that such facts were not reasonably believed by the employer to be true.

B. In employee appeal proceedings the Hearing Officer may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. The Hearing Officer shall give effect to the rules of privilege recognized by law in respect to: self-incrimination; confidential communications between husband and wife during the existence of the marriage relation; communication between attorney and client, made in that relation; confessions made to a clergyman or priest in his professional capacity in the course of discipline enjoined by the church to which he belongs; communications made by a patient to a licensed practitioner of one of the healing arts with reference to any physical or supposed physical disease or of knowledge gained by such practitioner through a physical examination of a patient made in a professional capacity; records and files of any official or agency of any state or of the United States which, by any statute of such state or of the United States are made confidential and privileged. No greater exclusionary effect shall be given any such rule or privilege than would

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obtain in an action in court. The Hearing Officer may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. Objections to evidential offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

C. Documentary evidence may be received during the appeal hearing, in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

D. Witnesses must be sworn to tell to the truth prior to the taking of testimony. A party may conduct cross-examinations required for a full and true disclosure of the facts during the appeal hearing.

E. Notice may be taken of judicially cognizable facts. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed.

F. Any party shall at all times have the right to counsel, provided that such counsel must be duly licensed to practice law by the Supreme Court of Oklahoma and shall be a member of the Cherokee Nation bar, and provided further that such counsel shall have the right to appear and act for and on behalf of the party he represents.

G. The hearing will be a public hearing. The public, the Human Resources Director and the former employee have the right to be present during the hearing at all times, except when the Board retires to make its decision. The Board will not be bound by technical rules of evidence in the conduct of hearings, and no informality in any proceeding, as in the manner of taking testimony, shall invalidate any order, decision, rule or regulation made, approved or confirmed by the Hearing Officer.

H. The hearing may be adjourned, postponed and continued if requested by either party, at the discretion of the Employee Appeals Board.

### History

**Source.** LA 12-96, eff. December 1, 1996, as amended by LA 20-96.

### Oklahoma Statutes

Procedures before agency, see 75 O.S. § 310.

## § 1019. Final Employee Appeals Board decisions-Contents-Notification

A. A final Employee Appeals Board decision shall:

1. Be in writing; and
2. Include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with Employee Appeals Board rules, a party submitted proposed findings of fact, the final Appeals Board order shall

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include a ruling upon each proposed finding. Findings of fact shall be based exclusively on the evidence received and on matters officially noticed in the individual proceeding unless otherwise agreed upon by the parties on the record.

B. Parties shall be notified either personally or by certified mail, return receipt requested, of any final Appeals Board order. Upon request, a copy of the order shall be delivered or mailed forthwith to each party and to his attorney of record.

### History

**Source.** LA 12-96, eff. December 1, 1996, as amended by LA 20-96.

### Oklahoma Statutes

Final agency orders, contents, notification, see 75 O.S. § 312.



## **§ 1020. Employee Appeals Board members not to communicate**

Unless required for the disposition of ex parte matters authorized by law, Employee Appeals Board members shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. An Employee Appeals Board member (1) may communicate with other members of the Board, and (2) may have the aid and advice of one or more personal assistants.

### **History**

**Source.** LA 12-96, eff. December 1, 1996, as amended by LA 20-96.

### **Oklahoma Statutes**

Agency members not to communicate, see 75 O.S. § 313.

## **§ 1021. Furnishing of information, attendance of witnesses and production of books and records-Subpoenas**

A. 1. The Employee Appeals Board shall have power to require the furnishing of such information, the attendance of such witnesses, and the production of such books, records, papers or other objects as may be necessary and proper for the purposes of the proceeding.

2. Cherokee Nation and the former employee may take the depositions of witnesses, within or without the state, in the same manner as is provided by law for the taking of depositions in civil actions in courts of record. Depositions so taken shall be admissible in any proceeding affected by this act; provided, however, all or any part of the deposition may be objected to at the time of hearing, and may be received in evidence or excluded from the evidence by the Hearing Officer in accordance with the law with reference to evidence in this act or with reference to evidence in courts of record under the law of Cherokee Nation.

B. In furtherance of the powers granted by subsection (A) of this section, any Hearing Officer, upon his or her own motion may, and upon the request of any party appearing in an individual proceeding shall:

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1. Issue subpoenas for witnesses, provided that the Employee Appeals Board Clerk shall also have such authority;

2. Issue subpoenas duces tecum to compel the production of books, records, papers or other objects, which may be served by the Cherokee Nation Marshal Service or by any person in any manner prescribed for the service of a subpoena in a civil action, provided that the Employee Appeals Board Clerk shall also have such authority; or

3. Quash a subpoena or subpoenas duces tecum so issued; provided, prior to quashing a subpoena or subpoenas duces tecum the Hearing Officer shall give notice to all parties. A subpoena or subpoenas duces tecum may not be quashed if any party objects.

C. 1. In case of disobedience to any subpoena issued and served under this section or to any lawful Hearing Officer requirement for information, or of the refusal of any person to testify to any matter regarding which he may be interrogated lawfully in a proceeding before a Hearing Officer, the Hearing Officer may apply to the Cherokee Nation District or Supreme Court or to any Judge or Justice thereof for an order to compel compliance with the subpoena or the furnishing of information or the giving of testimony. Forthwith the Court or the Judge shall cite the respondent to appear and shall hear the matter as expeditiously as possible.

2. If the disobedience or refusal is found to be unlawful, the Judge or Justice shall enter an order requiring compliance. Disobedience of such an order shall be punished as contempt of court in the same manner and by the same procedure as is provided for like conduct committed in the course of judicial proceedings.

### **History**

**Source.** LA 12-96, eff. December 1, 1996, as amended by LA 20-96.

### **Oklahoma Statutes**

Furnishing of information, attending of witnesses and production of books, records, etc., subpoena, see 75 O.S. § 315.

### **§ 1022. Disqualification of Hearing Officer**

A Hearing Officer shall withdraw from any individual proceeding in which he or she cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of a Hearing Officer, on the ground of his inability to give a fair and impartial hearing, by filing an affidavit, promptly upon discovery of the alleged disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. If the Hearing Officer does not remove himself or herself from hearing the case, the issue shall be determined promptly by the remaining two members of the Employee Appeals Board. Upon the entry of an order of disqualification affecting a Hearing Officer, the Employee Appeals Board shall assign another in his or her stead. Upon the disqualification of all three (3) Employee Appeals Board members, the Principal Chief shall immediately appoint a Special Hearing Officer to sit in place of the disqualified members in the proceeding.

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### **History**

**Source.** LA 12-96, eff. December 1, 1996, as amended by LA 20-96.

### **Oklahoma Statutes**

Disqualification of hearing examiner or agency member, see 75 O.S. § 316.

### **§ 1023. Rehearing, reopening or reconsideration of decision**

A. A final Employee Appeals Board decision shall be subject to rehearing, reopening or reconsideration. Any application or request for such rehearing, reopening or reconsideration shall be made by any party aggrieved by the final Appeals Board order within ten (10) days from the date of the entry of such final order. The grounds for such action shall be either:

1. Newly discovered or newly available evidence, relevant to the issues;
2. Need for additional evidence adequately to develop the facts essential to proper decision;
3. Probable error committed by the Employee Appeals Board in the proceeding or in its decision such as would be ground for reversal on judicial review of the final order;
4. Need for further consideration of the issues and the evidence in the public interest; or
5. A showing that issues not previously considered ought to be examined in order properly to dispose of the matter.

B. The order of the Appeals Board Hearing Officer granting rehearing, reconsideration or review, or the petition of a party therefor, shall set forth the grounds which justify such action.

C. Nothing in this section shall prevent rehearing, reopening or reconsideration of a matter by the Employee Appeals Board on the ground of fraud practiced by the prevailing party or of procurement of the order by perjured testimony or fictitious evidence.

D. On reconsideration, reopening, or rehearing, the matter may be heard by the Employee Appeals Board Hearing Officer who heard the case. The hearing shall be confined to those grounds upon which the reconsideration, reopening or rehearing was ordered.

E. If an application for rehearing shall be timely filed, the period within which judicial review, under the applicable statute, must be sought, shall run from the final disposition of such application.

### **History**

**Source.** LA 12-96, eff. December 1, 1996, as amended by LA 20-96.

### **Oklahoma Statutes**

Rehearing, reopening or reconsideration of agency decision, see 75 O.S. § 317.

### **§ 1024. Review by Supreme Court**

A. 1. Any party aggrieved by a final order in an individual proceeding is entitled to certain, speedy, adequate and complete judicial review thereof

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pursuant to the provisions of this section and 51 CNCA §§ 1025, 1026 and 1027.

2. This section shall not prevent resort to other means of review, redress, relief or trial de novo, available because of constitutional provisions.

3. Neither a motion for new trial nor an application for rehearing shall be prerequisite to secure judicial review.

B. Proceedings for review shall be instituted by filing a petition with the Court Clerk of the Supreme Court, within thirty (30) days after the appellant is notified of the final Employee Appeals Board order as provided in 51 CNCA § 1027.

C. Copies of the petition shall be served upon the Cherokee Nation Human Resources Director and all other parties of record, and proof of such service shall be filed with the Court Clerk of the Supreme Court within ten (10) days after the filing of the petition. The Court, in its discretion, may permit other interested persons to intervene.

D. In any proceedings for review brought by a party aggrieved by a final Employee Appeals Board order the responding party may be entitled to recover against such appealing party any court costs and reasonable attorney fees, unless the Court determines that the appeal brought by the other party is frivolous.

### History

**Source.** LA 12-96, eff. December 1, 1996, as amended by LA 20-96.

**Amended.** LA 20-96, eff. November 6, 1996.

### Oklahoma Statutes

Judicial review, see 75 O.S. § 318.

## § 1025. Transmission of record to reviewing Court-Stipulations

Within thirty (30) days after service of the petition for review or equivalent process upon it, or within such further time as the reviewing Court, upon application for good cause shown, may allow, the Employee Appeals Board Clerk shall transmit to the reviewing Court the original or a certified copy of the entire record of the proceeding under review. For purposes of this section, “record” shall include such information as specified by 51 CNCA § 1017. By stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the Court for the additional costs resulting therefrom. The Court may require or permit subsequent corrections or additions to the record when deemed desirable.

### History

**Source.** LA 12-96, eff. December 1, 1996, as amended by LA 20-96.

### Oklahoma Statutes

Transmission of record to reviewing court, stipulations, see 75 O.S. § 320.

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### § 1026. Review without jury-Additional testimony

The review shall be conducted by the Supreme Court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the Employee Appeals Board, not shown in the record, testimony thereon may be taken by the Supreme Court. The Supreme Court, upon request, shall hear oral argument and receive written briefs.

### History

**Source.** LA 12-96, eff. December 1, 1996, as amended by LA 20-96.

### Oklahoma Statutes

Review without jury, additional testimony, see 75 O.S. § 321.

### **§ 1027. Setting aside, modifying or reversing of orders-Remand-Affirmance**

A. In any proceeding for the review of a final termination decision, the Supreme Court, in the exercise of proper judicial discretion or authority, may set aside or modify the order, or reverse it and remand it to the Administrative Appeals Board for further proceedings, if it determines that the substantial rights of the appellant or petitioner for review have been prejudiced because the Employee Appeals Board's findings, inferences, conclusions or decisions, are:

1. in violation of constitutional provisions; or
2. in excess of the statutory authority or jurisdiction of the Employee Appeals Board; or
3. made upon unlawful procedure; or
4. affected by other error of law; or
5. clearly erroneous in view of the reliable, material, probative and substantial competent evidence, as defined in 51 CNCA § 1019, including matters properly noticed by the Hearing Officer upon examination and consideration of the entire record as submitted; but without otherwise substituting its judgment as to the weight of the evidence for that of the Employee Appeals Board on question of fact; or
6. arbitrary or capricious; or
7. because findings of fact, upon issues essential to the decision, were not made although requested.

B. The Supreme Court, also in the exercise of proper judicial discretion or authority, may remand the case to the Employee Appeals Board for the taking and consideration of further evidence, if it is deemed essential to a proper disposition of the issue.

C. The Supreme Court shall affirm the order and decision of the Employee Appeals Board, if it is found to be valid and the proceedings are free from prejudicial error to the appellant.

D. The decision of the Supreme Court shall be final and shall not be subject to further review by any other state, tribal or federal government body or court.

## **51 CNCA § 1027**

### **History**

**Source.** LA 12-96, eff. December 1, 1996, as amended by LA 20-96.

## **OFFICERS & EMPLOYEES**

### **Oklahoma Statutes**

Review without jury, additional testimony, see 75 O.S. § 321.

Setting aside, modifying or reversing of orders, remand, affirmance, see 75 O.S. § 322.

### **§ 1028. Remedies for termination without cause**

A. If the termination is overturned based on a finding that the termination was without cause by unappealed decision of the Cherokee Nation Employee Appeals Board or by a final decision of the Supreme Court, the former employee shall be immediately restored to Cherokee Nation employment in the same or similar job position, with pay no less than the pay received at the time of termination, and with benefits retroactive to the date of the termination; and the employee's personnel records adjusted as may be consistent with the action of the Cherokee Nation Employee Appeals Board or Supreme Court. The remedies provided herein shall be exclusive, and Cherokee Nation expressly declines to waive sovereign immunity as to suit for recovery of any form of damages or other type or relief other than the relief set forth herein. All remedies listed herein shall be available to employees of corporations wholly-owned by Cherokee Nation, if said employee is successful in overturning a termination as provided through the applicable termination appeals process for that corporation.

B. Prevailing parties may be awarded costs and reasonable attorney fees as determined by the appropriate Board or Court.

### **History**

**Source.** LA 12-96, eff. December 1, 1996, as amended by LA 20-96.

**Amended.** LA 17-05, eff. April 20, 2005.

### **§ 1029. Time computations**

**Amended.** LA 03-10, eff. February 14, 2010.

In computing any period of time prescribed or allowed by this act, the day of the act, or event, from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday as defined by the Oklahoma Statutes or any other day when the receiving office does not remain open for public business until 4:00 p.m., in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday as defined by the Oklahoma Statutes, or any other day when the receiving office does not remain open for public business until 4:00 p.m.

#### **History**

**Source.** LA 12-96, eff. December 1, 1996, as amended by LA 20-96.

#### **Oklahoma Statutes**

Commission for Human Services, filing of approval and rule, publication, see 75 O.S. § 250.6.

## **CHAPTER 11**

### **DRUG TESTING FOR ELECTED OFFICIALS**

- 1101. Short title
- 1102. Purpose
- 1103. Definitions
- 1104. Drug testing provisions

### **§ 1101. Short title**

This Act shall be known and may be cited as the Elected Officials Drug Testing Act.

#### **History**

**Source.** LA 05-13, eff. March 17, 2013.

### **§ 1102. Purpose**

The purpose of this Act is to require Elected Officials of the Cherokee Nation to undergo random drug testing for prohibited drugs and to set forth possible ramifications for failure of such test or refusal to allow administration of such tests.

**Source.** LA 05-13, eff. March 17, 2013.

#### **History**

Indians 216. Westlaw Topic No. 209.  
C.J.S. Indians § 55.

### **§ 1103. Definitions**

For purposes of this Title:

#### **Library References**

1. **“Prohibited drugs”** means marijuana (THC metabolic), opiates (heroin, morphine), cocaine, phencyclidine (PCP), methamphetamines, oxycodone, am-phetamines, barbiturates, and methadone or any other illegal drugs.

2. **“Elected Officials”** means any elected or duly appointed officials from the Cherokee Nation, including the Principal Chief, Deputy Chief, and Tribal Council Members.

#### **History**

**Source.** LA 05-13, eff. March 17, 2013.

### **§ 1104. Drug testing provisions**

- A. Elected officials shall submit to random drug testing.
- B. An initial drug screening will be conducted within thirty (30) days of the effective date of the policy being adopted and randomly thereafter not to exceed more than one time per year.

## **51 CNCA § 1104**

### **OFFICERS & EMPLOYEES**

C. If any of the elected officials are suffering from life threatening illnesses, have just recovered from medical procedures or surgeries, are receiving treatments for certain conditions, or take daily prescription drugs for chronic health issues such as high blood pressure, heart disease and diabetes, they shall provide documentation, from their physician, to the drug testing laboratory or company so any positives for those drugs will not affect the purposes of this Act. This documentation shall remain confidential and not subject to the Cherokee Nation Freedom of Information Act.

D. The Council of the Cherokee Nation, which is the legislative branch of government, shall determine whether they will use an independent drug testing vendor or the one currently used for Cherokee Nation Employee Drug Testing and will develop policies for the random drug testing since they are not present at the council house on a daily basis.

E. The Chief, Deputy Chief, Cabinet members and Chief Appointees, which is the executive branch of the government, shall determine whether they will use an independent drug testing vendor or the one currently used for Cherokee Nation Employee Drug Testing and will develop policies for their random drug testing.

F. The executive and legislative branch drug testing shall be separate from each other.

G. Anyone with a life threatening, potentially terminal illness is exempt from drug testing due to the number of medications that are required for treatment, survival, and extension of life, which also includes experimental drugs and treatments.

**Source.** LA 05-13, eff. March 17, 2013.

### **History**

Indians 216. Westlaw Topic No. 209.  
C.J.S. Indians § 55.