

PAWNEE NATION OF OKLAHOMA

Administrative Procedures Act

Approved by Council Resolution #16-23
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Pawnee Nation Administrative Procedures Act

CHAPTER 1. PURPOSE, APPLICABILITY, and DEFINITIONS

§ 1 Purpose

(a.) The Pawnee Nation of Oklahoma has an interest assuring that administrative procedures carried out by its government, and implemented through its administrative bodies pursuant to the Pawnee Nation Constitution and Tribal Law, are consistent with the principles of common sense, justice, fairness and are in keeping with our Nations unique culture, heritage and traditions. This ACT is set to improve the administration of justice by prescribing fair administrative procedures following the major principles:

- (i.) Administrative adjudicatory hearings, whether Formal or Informal, shall be fundamentally fair, particularly in regard to such matters as notice, the opportunity to be heard, and the preparation of the Agency Record;
- (ii.) Responsible deciding Agency officials in quasi-judicial cases shall be personally familiar with the evidence presented in that proceeding; and,
- (iii.) Adequate provision shall be made for judicial review of administrative decisions.

(b.) The Pawnee Nation of Oklahoma has jurisdiction to adopt and enforce the ACT to insure that all persons are provided with due process of law when a liberty or property interest is at stake. Tribal jurisdiction of all such persons and over tribal territory is necessary to protect the economy, health, safety, and welfare of the Tribal community including Tribal Members, Tribal family members, employees, patrons and others visiting our lands within our jurisdiction.

§ 2 Applicability

a. This Title shall apply to Agencies that hold a Hearing to determine the legal rights, duties, or privileges of specific Persons.

§ 3 Definitions

For the purpose of this ACT -

(a.) "agency" means each authority of the Pawnee Nation of Oklahoma, whether or not it is within or subject to review by another agency, but does not include -

- (i.) the Nasharo Council;
- (ii.) the courts of the Pawnee Nation of Oklahoma;
- (iii.) the Tribal Development Corporation, an entity of the Pawnee Nation;

or except as to the requirements of § 3 of this title and-

- (iv.) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them

(b.) "person" includes an individual, partnership, corporation, association, or public or private organization other than an agency;

(c.) "party" includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes;

(d.) "rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the

future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefore or of valuations, costs, or accounting, or practices bearing on any of the foregoing;

(e.) "rule making" means agency process for formulating, amending, or repealing a rule;

(f.) "order" means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing;

(g.) "adjudication" means agency process for the formulation of an order;

(h.) "license" includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission;

(i.) "licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license;

(j.) "sanction" includes the whole or a part of an agency -

- (i.) prohibition, requirement, limitation, or other condition affecting the freedom of a person;
- (ii.) withholding of relief;
- (iii.) imposition of penalty or fine;
- (iv.) destruction, taking, seizure, or withholding of property;
- (v.) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees;
- (vi.) requirement, revocation, or suspension of a license; or
- (vii.) taking other compulsory or restrictive action;

- (k.) "relief" includes the whole or a part of an agency -
- (i.) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy;
 - (ii.) recognition of a claim, right, immunity, privilege, exemption, or exception; or
 - (iii.) taking of other action on the application or petition of, and beneficial to, a person;
- (l.) "agency proceeding" means an agency process as defined by paragraphs (e.), (g.), and (i.) of this section;
- (m.) "agency action" includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act; and
- (n.) "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this subchapter.
- (o.) "Agency Record" means the official account of an Agency Hearing.
- (p.) "Contested Matter" means a matter before an Agency in which the Agency makes a determination of the legal rights, duties, or privileges of specific person. This term includes all cases of Permitting where a Permit is revoked, suspended, or modified, or in which the granting of an application is contested by a Person having standing to contest such matter under Tribal Law.
- (q.) "Declaratory Judgment" or "Declaratory Ruling" means a judgment affirming a right or establishing the legal status or interpretation of a Tribal Law or instrument. It is binding but it does not include an executive element (an order that something be done); instead it simply declares or defines rights

to be observed or wrongs to be eschewed by litigants, or expresses the Tribal Court's or Agency's view on a contested question of law.

(r.) "Final Decision" means (1) an Agency determination at the conclusion of a Hearing, (2) a Declaratory Ruling issued by an Agency, or (3) an Agency determination after Reconsideration. The term does not include a ruling of an Agency granting or denying a petition for Reconsideration.

(s.) "Formal Hearing" means an in-person, trial-type proceeding, which may include cross-examination of witnesses, and which is recorded and/or transcribed.

(t.) "Hearing" means an Agency proceeding to determine legal rights or responsibilities of the parties. Hearings may either be Formal or Informal.

(u.) "Hearing Official" means an individual or individuals designated by an Agency or by Tribal Law to conduct a Hearing and issue Proposed and Final Decisions on behalf of the Agency.

(v.) "Informal Hearing" means an investigation by inquiry and taking of evidence through means other than an in-person trial type hearing.

CHAPTER 2. HEARINGS

§ 1 Right to Hearing

A Person may request a Hearing when permitted by Tribal Law or Agency rules or regulations, or when there is a Contested Matter. The Agency or Hearing Official will determine whether a Formal or Informal Hearing is required on a case-by-case basis. Unless otherwise provided by Tribal Law, Hearings are open only to those parties with an interest in the Contested Matter, persons compelled to appear in person before an Agency, and their counsel, unless otherwise provided by Agency rules.

§ 2 Factors for Determining Type of Hearing.

The Agency or Hearing Official shall consider the following factors to determine whether a Formal or Informal Hearing is necessary-

- (a.) Factors weighing in favor of a Formal Hearing:
 - (i.) The credibility or truthfulness of witnesses may be at issue; or,
 - (ii.) An evidentiary hearing would likely yield a more reliable determination.
- (b.) Factors weighing in favor of an Informal Hearing:
 - (i.) The matter may be determined through an interpretation of Tribal Law without reference to the facts in a particular case;
 - (ii.) The parties may request reconsideration of the Proposed Decision and submit additional documentation; or,
 - (iii.) The decision rests solely on inspections, tests, or document review.

§ 3 Formal Hearing.

- (a.) The Agency or Hearing Official will give all parties advance notice of a Formal Hearing of at least twenty (20) days. The notice shall include:
 - (i.) The time, place, and nature of the proceeding;
 - (ii.) A statement of the legal authority and jurisdiction under which the Hearing is to be held;
 - (iii.) A reference to applicable sections of Tribal Law;
 - (iv.) Whether the Tribal Rules of Civil Procedure and Evidence will be used as general guides for the Formal Hearing. These rules do not need to be used provided that the hearing is conducted in a manner that provides for the determination of the facts in an orderly and reasonable manner; and,

- (v.) A short and plain statement of the issues and matters asserted.
- (b.) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues noticed.
- (c.) The Hearing Official may:
 - (i.) Administer oaths and affirmations, examine witnesses, and receive evidence, but no person shall be compelled to divulge information which he or she could not be compelled to divulge in Tribal Court;
 - (ii.) Rule upon offers of proof and receive relevant evidence;
 - (iii.) Dispose of procedural matters by decision;
 - (iv.) Hold conferences for settlement or simplification of the issues; and,
 - (v.) Take any other action authorized by Tribal Law consistent with this chapter.
- (d.) Findings of fact shall be based exclusively on the evidence presented and on matters officially noticed.
- (e.) Any oral or documentary evidence, including hearsay, may be received, but the Hearing Official shall exclude any irrelevant, immaterial, or unduly repetitious evidence.
- (f.) Oral proceedings shall be recorded and transcribed. A copy of the entire Agency Record or any part thereof shall be furnished to any party upon their written request thereof and payment of the costs thereof.
- (g.) The Agency Record shall include:
 - (i.) All pleadings, motions, intermediate rulings;
 - (ii.) Evidence received or considered;

- (iii.) A list of documents considered in camera, if any;
 - (iv.) A statement of matters officially noticed;
 - (v.) Questions and offers of proof, objections, and rulings thereon;
 - (vi.) Transcript of the proceeding;
 - (vii.) Proposed findings and exceptions; and,
 - (viii.) Any decision, opinion, or report by the Hearing Official.
- (h.) Unless precluded by Tribal Law, Contested Matters may be disposed of by stipulation, agreed settlement, consent order, or default.
- (i.) Ex parte communication will not be available to the hearing official
- (j.) The Hearing Official shall personally consider the whole Agency Record or such portions thereof as may be cited by the parties. Subsequent to the close of the Hearing and when determined to be in the interest of justice, the Hearing Official may temporarily postpone his or her Proposed or Final Decision and elect to re-open the Agency Record to request that the parties submit additional argument or evidence. After fully considering such additional written presentations, the Hearing Official shall promptly render his or her decision.

§4 Informal Hearing.

- (a.) An Informal Hearing may include or consist of a review of statements, affidavits, and documents submitted by the parties to a Hearing Official; or, an informal meeting between the parties and the Hearing Official.
- (b.) The Hearing Official will determine the form of the Informal Hearing.
- (c.) The Agency or Hearing Official will give all parties advance notice of an Informal Hearing. The notice shall include:
 - (i.) The time and place, if applicable, and nature of the proceeding;

- (ii.) A statement of the legal authority and jurisdiction under which the Hearing is to be held;
 - (iv.) A reference to the particular sections of Tribal Law involved; and,
 - (v.) A short and plain statement of the issues and matters asserted.
- (d.) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues noticed.
- (e.) The Hearing Official may:
- (i.) Examine witnesses and receive evidence, but no person shall be compelled to divulge information which he or she could not be compelled to divulge in Tribal Court;
 - (ii.) Rule upon offers of proof and receive relevant evidence;
 - (iii.) Hold conferences for settlement or simplification of the issues; and,
 - (iv.) Take any other action authorized by Tribal Law consistent with this chapter.
- (f.) Findings of fact shall be based exclusively on the evidence presented and on matters officially noticed.
- (g.) Informal Hearings are not to be recorded or transcribed. The Hearing Official will issue a summary of the proceedings with his or her Proposed Decision, when permitted under Tribal Law, and Final Decision.
- (h.) The Agency Record shall include:
- (i.) All pleadings, statements, and affidavits;
 - (ii.) Evidence received or considered;
 - (iii.) A list of documents considered in camera;
 - (iv.) A statement of matters officially noticed;

- (v.) Questions and offers of proof, objections, and rulings thereon;
- (vi.) Proposed findings and exceptions; and,
- (vii.) Any decision, opinion, and summary by the Hearing Official.

(i.) Unless precluded by Tribal Law, Contested Matters may be disposed of by stipulation, agreed settlement, consent order, or default.

(j.) The Hearing Official shall personally consider the whole Agency Record or such portions thereof as may be cited by the parties. Subsequent to the close of the Hearing and when determined to be in the interest of justice, the Hearing Official may temporarily postpone his or her Proposed or Final Decision and elect to re-open the Agency Record to request that the parties submit additional argument. After fully considering such additional written presentations, the Hearing Official shall promptly render his or her decision.

§ 5 Decisions and Requests for Reconsideration.

(a.) All Proposed and Final Decisions by a Hearing Official shall be reasoned decisions issued in writing and shall be accompanied by a summary of the facts and conclusions of law.

(b.) Parties to the Contested Matter shall be notified of the Proposed and Final Decisions by mail.

(c.) When permitted by Tribal Law, parties may request Reconsideration of the Proposed Decision.

CHAPTER 3. JUDICIAL REVIEW

§ 1. Applicability.

This chapter applies to all Agency Final Decisions except to the extent that a statute precludes judicial review. To the extent that any provision of this Chapter conflicts with any other law, this law shall govern for claims filed on or after the Effective Date.

§2. Jurisdiction.

- (a.) The Tribal Court is hereby granted jurisdiction to review a Final Decision including the Hearing Official's decision under [Title?] Ch. 2, §§ 1 and 2 concerning whether to conduct a Formal or Informal Hearing.
- (b.) An action pursuant to this Title shall be the Person's exclusive cause of action against the Tribe and the Agency.
- (c.) When it is alleged that the liability of the Agency is based upon the action of an officer, agent, servant, or employee of the Agency acting within the scope of his or her employment there shall be no separate cause of action against said officer, agent, servant or employee, and nothing in this law shall be construed to waive the sovereign immunity of the Tribe or the Agency to the extent that it extends to such an individual.

§3. Right of Review.

- (a.) A Person dissatisfied with a Final Decision of an Agency is entitled to Tribal Court review thereof, unless decisions by the Agency are expressly exempt from judicial review by Tribal Law.
- (b.) After the exhaustion of administrative remedies, a Person challenging the issuance of a penalty by an Agency is entitled to Tribal Court review thereof, unless penalties by the Agency are expressly exempt from judicial review by Tribal Law.
- (c.) If a Person does not comply with an Agency Final Decision, including the issuance of a penalty or citation, the Agency may institute an enforcement action.
- (i.) Prior to filing an enforcement action with the Tribal Court, the Agency that issued the Final Decision to a Person who is non-compliant must issue that Person a notice that includes a description of the non-compliance (e.g., failure to pay a fine) and the date by which the non-compliance must be resolved.

- (ii.) Enforcement actions shall be instituted by the Agency's filing of a complaint with the Tribal Court clerk in the Pawnee Nation Tribal Court. The complaint shall be filed within thirty (30) days of the expiration of the deadline set forth in the notice issued pursuant to (i).
- (iii.) Copies of the complaint shall be served by the Tribal Court clerk upon the non-compliant party, with a copy to the Attorney General of the Pawnee Nation of Oklahoma.

§ 4 Procedures.

- (a.) Review under this Chapter shall be instituted by the filing of a form provided by the Tribal Court clerk in the Pawnee Nation Tribal Court and complying with any filing requirements under Tribal Law.
- (b.) An appeal shall be filed within thirty (30) days of mailing to the addresses provided by the parties or hand delivery of the Final Decision by the Agency making the Final Decision. Copies of any such appeal shall be served by the Tribal Court clerk upon the Agency and all other parties before the Agency with a copy to the Attorney General of the Pawnee Nation of Oklahoma.
- (c.) The filing of an appeal shall not stay enforcement of the Final Decision. Where other Tribal Laws provide for a stay, it may be stayed by the Agency or Tribal Court only as provided therein.
- (d.) Within thirty (30) days after service of the appeal, or within such further time as the Tribal Court may allow, the Agency shall accumulate the Agency Record on appeal and shall certify to the Tribal Court that it is a true and correct copy of the original documents on file with the Agency, and shall file the Agency Record with the Tribal Court. The Agency shall organize the Agency Record in such a manner that allows the Tribal Court to easily locate significant materials, such as binding and consecutively numbering pages of the Agency Record with a Table of Contents indicating the identity of separate documents. A copy of the certified Agency Record shall be provided by the Agency to all parties at no charge.

§5 Pre-Hearing Conference.

(a.) Within thirty (30) days of the filing of the Agency Record on appeal, the Tribal Court shall schedule and conduct a pre-hearing conference to address the following matters:

- (i.) Correction of the Agency Record, if needed;
- (ii.) Clarification of the issues;
- (iii.) The treatment of documents submitted in camera during the Hearing;
- (iv.) Preparation of stipulations;
- (v.) Scheduling of briefs or other written argument;
- (vi.) Setting the hearing date and such other deadlines as the court deems appropriate;
- (vii.) Setting a date for an additional pre-hearing conference, if necessary; or
- (viii.) Other matters that may facilitate the resolution of the matter.

(b.) At the conclusion of the pre-hearing conference, the Tribal Court may issue any necessary orders.

(c.) The Tribal Court may extend or shorten deadlines in the interest of fairness or expediting the proceedings.

§ 6 Briefing.

(a.) No later than sixty (60) days from the filing of the Agency Record, the appellant shall file two (2) copies of a typed or clearly legible copies of a brief that shall clearly and concisely set forth the specific reasons for requesting judicial review of the Final Decision. The brief shall not exceed twenty-five (25) double-spaced pages in length, unless permission is granted by the Tribal

Court, and shall include citations to any legal authorities relied upon and specific references to the Agency Record.

(b.) The appellee's brief shall be filed within thirty (30) days of the filing of the appellant's brief and shall conform with the page limit and other rules set forth above.

(c.) The appellant shall have the right to submit a reply brief within ten (10) days of the filing of the appellee's brief. The reply brief shall not exceed ten (10) double-spaced pages in length and shall be limited to the issues raised in the appellee's brief.

(d.) At the conclusion of its hearing, if any, the Tribal Court may order additional briefs, as the court deems necessary.

(e.) The Tribal Court, on its own or by way of motion by either party, may modify the foregoing briefing timetable as necessary and appropriate to accommodate its own calendar or that of the movant, provided that doing so would not cause undue hardship to the non-moving party.

§ 7 Tribal Court Oral Argument.

(a.) If necessary, an oral argument shall be held within ten (10) days of the filing due date of the reply brief, unless the Tribal Court orders otherwise. The Tribal Court may decide the matter on the filings.

(b.) All actions brought pursuant to this Title shall be heard by the Tribal Court and not a jury. No costs shall be taxed against the Tribe or its enterprises.

§ 8 Scope of Review.

(a.) The Tribal Court's review shall be limited to the Agency Record before the court, any briefs filed by the parties, and oral argument presented by the parties.

(b.) The Tribal Court shall not substitute its judgment for that of the Agency as to the weight of the evidence or credibility of any witnesses.

(c.) Upon a showing of exceptional circumstances, the Tribal Court must remand the matter to the Agency to review new or additional evidence, provided that such new or additional evidence has been shown not to have been available for consideration at the Hearing through no fault of any party, that such new evidence is relevant and probative of the party's appeal, and that failure to consider such evidence would be prejudicial; or, the Hearing Official improperly excluded the evidence from the Agency's review.

(d.) If the Tribal Court determines that a Formal Hearing was required and a Formal Hearing was not conducted, it shall remand the matter to the Agency for further proceedings.

(e.) The Tribal Court shall affirm the Final Decision unless the court finds that the Final Decision is:

- (i.) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with Tribal Law; or,
- (ii.) In excess of statutory jurisdiction or authority.

§ 9 Rulings.

(a.) The Tribal Court shall issue a written reasoned decision supported by reference to the Agency Record.

(b.) If the Tribal Court finds that the Agency's Final Decision was arbitrary and capricious, it may render a judgment under subsection (c.) of this Section or remand the matter to the Agency for further proceedings in accordance with the Court's decision.

(c.) If a particular Agency action is required by Tribal Law, the Tribal Court, on sustaining the appeal, may render a judgment that modifies the Agency decision, orders the particular Agency action, or orders the particular Agency to take such action as may be necessary to effect the particular action.

(d.) If the Tribal Court upholds an enforcement action brought by an Agency, the Tribal Court may take such action as necessary to compel compliance.

§ 10 Appeal of Tribal Court Decision.

The decision of the Tribal Court may be appealed to the Supreme Court of the Pawnee Nation. The decision of the Supreme Court of the Pawnee Nation shall be final.

§ 11 Application of the Law.

Any matter brought pursuant to this Title shall be determined in accordance with Tribal Law. The court may be guided, but shall not be bound, by the common law of other jurisdictions.

CHAPTER 4. RULE MAKING

§1 Notice.

- (a.) This section applies, according to the provisions thereof, except to the extent that there is involved - a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.
- (b.) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include -
- (i.) a statement of the time, place, and nature of public rule making proceedings;
 - (ii.) reference to the legal authority under which the rule is proposed; and
 - (iii.) either the terms or substance of the proposed rule or a description of the subjects and issues involved.
- (c.) Except when notice or hearing is required by Tribal Law, this subsection does not apply -
- (i.) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or
 - (ii.) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(d.) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose.

(e.) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except -

- (i.) a substantive rule which grants or recognizes an exemption or relieves a restriction;
- (ii.) interpretative rules and statements of policy; or
- (iii.) as otherwise provided by the agency for good cause found and published with the rule.

(f.) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.