

IN THE SUPREME COURT OF THE OSAGE NATION
PAWHUSKA, OKLAHOMA

Supreme Court
of the Osage Nation

FILED MAR 21 2017

In re:

Rule of Court¹

By

Civil Matters

CHAPTER 5: CIVIL MATTERS

Rule 1: General Rules

Except as provided by statute or unless forms are provided by the court, all papers or documents filed in any proceeding in this court system shall be as follows:

1.1 Form and Style. Papers and documents do not include exhibits or printed documents. All papers and documents must be prepared on letter size (8.5" x 11") paper with one inch top margin. Pleading shall be typed except that blanks in forms may be completed in and handwriting and notations by the court clerk or judge may be in handwriting. All pleading and requested instructions shall be double spaced, prepared on one side only. Numbered lines are not required. Typed pleadings shall be in 12 point Courier, Arial or Times New Roman font. The correct style format shall substantially comply with the following:

IN THE [TYPE] COURT OF THE OSAGE NATION
PAWHUSKA, OK

In re the [type] of:

[SUBJECT NAME] DOB: [date of birth]

[Subject Status]

[NAME],

Plaintiff/Petitioner,

v.

[NAME],

Defendant/Respondent.

CASE NO. [Case number]

[SHORT TITLE OF PLEADING]

[FULL TITLE OF PLEADING]

¹ The Chief Justice is responsible for promulgating Rules of Court under 5 ONC § 1-118.

All other papers and documents may be single spaced and lines thereof need not be numbered.

1.2 Page Numbering; Signature. The name of each document and page number shall appear on the bottom of each page in sequential order. Also, the name, Osage Nation Bar number (if applicable), address, telephone number, and email address of the attorney of record or party shall appear on all pleadings presented for filing. All pleadings shall be signed by the party or by the party's attorney of record who is admitted to practice before the court.

1.3 Caption; Names of Parties. Every pleading shall contain a caption setting forth the name of the court, the title of the action and case number. In the complaint or petition the title of the action shall include the names of all the parties but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

1.4 Filing a Civil Action. When a civil action is filed the complaint or petition and the exhibits, if any, shall be deposited with the court clerk. Sufficient copies of the complaint or petition and exhibits must be provided, as required by law or court rule, for attachment to the summons. In the absence of statutory law, a party shall submit one additional copy of the complaint or petition and exhibits at the time of filing. The party should submit any additional copies he wants file stamped.

1.5 Subsequent filings. Self-represented parties or attorneys filing motions or pleadings, after the action has been filed shall deliver or mail to opposing counsel of record or self-represented litigants copies thereof on the same day and a certificate of delivery or mailing shall be noted on the original instrument filed. Copies of all motions and briefs shall be delivered or mailed directly to the court clerk for distribution to the presiding judge.

1.6 Pleading requirements. The court clerk shall not file any pleading or motion unless it contains the following:

- (a) the number and style of the case;
- (b) a description of the pleading or motion;
- (c) the name, bar number, address, and telephone number of the filing party (unless such information is sealed by the Court) or his/her attorney of record and name of the law firm filing the document; and
- (d) the certificate of delivery or mailing.

1.7 Briefs. A brief may not exceed thirty (30) pages, excluding exhibits, unless permission is granted by the judge to whom the case is assigned. All briefs shall be filed and a copy delivered to the court clerk within the required filing period.

1.8 Assignment of Cases. The Trial Court Clerk shall assign the case to the appropriate Trial Court Judge. Thereafter, the assigned judge or judicial panel presiding judge shall have full superintending charge of the case except for various preliminary matters according to custom and practice, other court rules and laws.

If the assigned judge recuses, is disqualified or unable to hear the matter, it shall be transferred to another Trial Court Judge by the Trial Court Clerk.

1.9 Service and Proof of Service. The person serving the process shall state in his proof the name of the person served and the date, place and method of service. Except where a pleading is served with a summons, service of a pleading, motion or other instrument on a party shall be made by service on his attorney of record where there is one.

Where service of a pleading, motion or other instrument is made by delivery, the delivery shall be made or performed by any person who is 18 years of age or older. Proof of service, whether made by delivery or mail, shall be made by the certificate of an attorney of record, or if made by any other person, by the affidavit of such person. Such certificate or affidavit shall set forth the name of the person served and the date, place and method of service, and it shall be filed with the court clerk or it shall be endorsed upon the pleading, motion or instrument that is filed with the clerk. The provisions of this paragraph do not apply to the service of a summons or the pleading that is served with the summons.

1.10 Objections to Service and Venue. Objections to the jurisdiction of the court over the person, to the issuance or service of the summons or to the venue of the action are waived and a party submits himself to the jurisdiction of the court if he asks for affirmative relief on a claim which is asserted in a permissive counterclaim, in a cross-claim, or in a third-party petition. The assertion of a compulsory counterclaim against a plaintiff does not waive any of the above objections.

1.11 Diligence in Adjudicating Case.

(a) In any case in which summons is not issued or waiver filed within ninety (90) days after the filing of the initial pleading, or service by publication is not requested by the plaintiff within thirty (30) days after return of the unserved summons, the action may be dismissed by the court without notice to the plaintiff.

(b) Where an action is not diligently prosecuted, the court may require the plaintiff to show why the action should not be dismissed. If the plaintiff does not show good cause, why the action should not be dismissed, the court shall dismiss the action without prejudice. A court shall dismiss actions in which no action has been taken for a year.

1.12 Default Judgment. In matters in default in which an appearance, general or special, has been made or a motion or pleading has been filed, default shall not be taken until a motion has been filed in the case and five (5) days' notice of the date of the hearing is mailed or delivered to the attorney of record for the party in default or to the party in default if he is

unrepresented or his attorney's address is unknown. If the addresses of both the party and his attorney are unknown, the motion for default judgment may be heard and a default judgment rendered after the motion has been regularly set on the motion docket. It shall be noted on the motion whether notice was given to the attorney of the party in default, to the party in default, or because their addresses are unknown, to neither.

Notice of taking default is not required where the defaulting party has not made an appearance. Also, notice of taking default is not required in the following cases even if the defaulting party has made an appearance:

- (a) any case, whether a matrimonial action or otherwise, in which waiver of summons and entry of appearance has been filed;
- (b) any case prosecuted under the small claims procedure for money judgment or possession of personal property;
- (c) any forcible entry and detainer case, whether or not placed on the small claims docket;
- (d) any probate or juvenile proceeding;
- (e) any case that is at issue and has been regularly set on the trial docket in which neither the other party nor his or her attorney appears at the trial;
- (f) any case as to any party who has filed a disclaimer;
- (g) any garnishment proceeding; and
- (h) any statutory proceeding following the rendition of final judgment in a case, including but not limited to, enforcement proceedings, or proceedings initiated by a motion or delayed petition for new trial, or by any motion, petition or application to correct, open, modify or vacate the judgment, whether filed in the same action or as a separate action.

1.13 Uniformity of Rulings. When a question of law, fact or procedure has been presented to a judge or judicial panel, the same question, so far as it relates to the same case, shall not thereafter knowingly be presented to another judge without apprising the subsequent judge of the former judge's ruling or, if no ruling has been made, that such question has already been presented to the first judge.

Where this rule has been violated, an order that is issued by the second judge may be vacated by him at any time before the entry of a final judgment. Either judge may determine appropriate sanctions against the party and/or the counsel of record for violations.

1.14 Time to issue judgments and orders; certification. Every judge shall issue a written judgment in all civil actions which have been submitted for final adjudication within 90 days from the date the action was taken under submission, unless additional issues are brought to the court's attention. Judges shall issue a written order on motions filed in civil actions within 60 days from the date of a motion hearing or, if no hearing was conducted, the date the matter was

taken under advisement. All orders and judgments shall contain findings of fact and conclusions of law. Forms that contain standard findings and conclusions may be developed and used.

The trial court clerks shall submit a written report to the Chief Justice a list of all cases that have not been adjudicated or pending motions not ruled on within the designated period of time. After review, the Chief Justice may take appropriate actions such as counseling, reprimand, or issue formal allegations of misconduct.

Rule 2: Motions

2.1 Generally. Motions may be made in writing prior to the hearing or orally at scheduled hearings. Motions may be accompanied by affidavits or memoranda in support of the motion. Motions filed in writing may be scheduled for a hearing at the request of the party or on the court's own motion. Failure to appear at a scheduled motions hearing, or a lack of request for same, shall be deemed a waiver. An attorney or party opposing the motion may, not less than one day before the motion hearing, serve and file a memorandum or statement citing reasons and authorities in support of opposition thereto. The party filing the motion bears responsibility for serving the opposing parties and/or interested or necessary parties copies of the motion and supporting documents as well as the motion hearing date, time, and location.

2.2 Objections and Defenses. Where various objections and defenses have been consolidated, the court should hear jurisdictional objections and defenses first. If the court grants a motion on one of the grounds stated therein, the court may decline to rule on other grounds. If an amendment is filed, the adverse party may renew any ground that the court declined to rule upon, and may object to defects in the amended pleading which did not exist in the initial pleading.

2.3 Contents. In a motion a party must specifically state the grounds therefor and the relief or order sought even where the party relies on defects or deficiencies apparent on the face of the pleading, motion or other instrument.

2.4 Motion Support. Motions raising fact issues shall be verified by a person having knowledge of the facts, if possible; otherwise, a verified statement by counsel of what the proof will show will suffice until a hearing or stipulation can be provided. Every motion shall be accompanied by a concise brief of points and authorities upon which movant relies. Unless the court directs otherwise, a brief shall not be required with respect to any of the following motions:

- (a) Motions for extensions of time, if the request is made before expiration of the time period originally prescribed, or as extended by previous orders,
- (b) Motions to continue a hearing, pretrial conference or trial,
- (c) Motions to amend pleadings or file supplemental pleadings,
- (d) Motions to appoint a guardian ad litem

- (e) Motions for physical or mental examinations
- (f) Motions to add or substitute parties,
- (g) Motions to enter or vacate default judgments,
- (h) Motions to confirm sales,
- (i) Motions to stay proceedings to enforce judgments,
- (j) Motions to shorten a prescribed time period, and
- (k) Motions to compel discovery.

2.5. Denial; Response. If the motion does not comply with the above requirements, the motion shall be denied without a hearing, and if a responsive pleading is required, the moving party shall serve his responsive pleading within twenty (20) days after notice of the court's action.

2.6 Opposition. Any party opposing a motion, except those enumerated in section 2.4 above, shall serve and file a brief of points and authorities in opposition within twenty (20) days of the service of the motion, or the motion shall be decided based upon the filings received.

2.7 Disposition. If the grounds supporting a motion are not presented for hearing when called, the court, in its discretion, may continue the hearing or rule on the motion or the motion may be denied as having been withdrawn or abandoned. Where a party consents to the denial of his motion, the motion shall be deemed to have been withdrawn. Motions that are not contested may be disposed of by the announcement of one party without the necessity of all counsel appearing. Where a motion is denied for failure to present or is deemed to have been withdrawn or abandoned, the party asserting the motion waives his objection, and if a responsive pleading is required, the moving party shall be required to serve it within twenty (20) days after notice of the court's action.

2.8 Except with the permission of the court after good cause has been shown, a party cannot present any defect or deficiency at the hearing on his motion which was not specifically stated therein, but if the court permits other grounds to be presented, the motion shall be amended in writing, by interlineation if possible, to include the new grounds. This subdivision is not applicable to hearings on new trial motions.

2.9 Motions may be decided by the court without a hearing, and where this is done, the court shall notify the parties of its ruling by mail.

2.10 The denial of a motion to dismiss for failure to state a claim upon which relief can be granted, or of a motion to strike a defense because it is insufficient, or of a motion for a summary or a partial summary judgment will not be reviewed on appeal after the action has been tried on its merits.

2.11 Joint motions shall be deemed to be joint and several as to all counts in the prior pleading and as to all parties joining in the motion, and where proper grounds are presented to the court, the court must rule on the sufficiency of each claim or defense as to each party.

2.12 A negative pregnant or a conjunctive denial is not a ground for objecting to the sufficiency of a defense, but the issues raised shall be determined at the pretrial conference.

2.13 Motions for judgment on the pleadings, motions for a more definite statement, motions to strike redundant, immaterial, impertinent, scandalous or similar matter from a pleading, and objections to the introduction of evidence that are made at the commencement of a trial to test the sufficiency of the pleadings shall not be made. If such motions or objections are made, the court shall summarily deny them without a hearing, and the making of such motions or objections shall not extend the time to serve or file a responsive pleading or take other required action.

2.14 The clerk shall furnish and keep a motion docket for each judge. When a motion is filed, the clerk shall enter it upon the trial court docket 30 days from the date of filing unless the assigned judge specifies a special docket setting.

2.15 The ruling of the court on a motion may be memorialized by an order prepared by the counsel for the prevailing party within ten (10) days or by the court. Such rulings must contain findings of fact and conclusions of law, as stated by the presiding judge.

Rule 3: Continuances

3.1 Cases may be continued or postponed only by order of the court. No continuances shall be allowed unless good cause is shown. Except as provided by law motions for continuances shall be submitted in writing to the court at least ten (10) days before the scheduled trial or hearing except when ordered *sua sponte*. Orders granting a motion for a continuance shall specify the period of the continuance.

3.2 All motions for continuance of a trial or other evidentiary hearing must be signed by the party on whose behalf the motion is made, or contain a certificate of the movant's attorney that the attorney's client has knowledge of and has approved the motions.

Rule 4: Stipulation or Settlement

No agreement or oral stipulations between parties or their counsel concerning any proceedings before the court will be regarded or enforced unless same are made in open court on the record.

Rule 5: Summons

5.1 Content. A summons must:

- (a) name the court and the parties;
- (b) be directed to the defendant;

(c) state the name and address of the plaintiff's attorney or—if unrepresented—of the plaintiff;

(d) state the time within which the defendant must appear and defend the allegations stated in the complaint or petition;

(e) notify the defendant that a failure to appear and defend with the time stated will result in a default judgment against the defendant for the relief demanded in the complaint or petition;

(f) be signed by the clerk; and

(g) bear the court's seal.

5.2 Amendments. The court may permit the party to amend the summons or order the clerk to correct an administrative error and reissue the summons.

5.3 Issuance. On or after filing the complaint or petition, the plaintiff may present a summons to the clerk for signature and seal. If the summons is properly completed, the clerk must sign, seal, and issue it to the plaintiff for service on the defendant. A summons—or a copy of a summons that is addressed to multiple defendants—must be issued for each defendant to be served.

5.4 Service. A summons must be served with a copy of the complaint or petition. The plaintiff is responsible for having the summons and complaint or petition served within the time allowed by Court Rule and shall furnish the necessary copies to the person who makes service.

5.5 Types of Service. The plaintiff shall serve the summons and complaint or petition in one of the following ways:

(a) Personal Service. Any person who is at least 18 years old and not a party may personally serve a summons and complaint or petition by leaving a copy of the summons and complaint with any responsible person at the defendant's residence or place of employment. Personal service may also be accomplished by leaving a copy of the summons and complaint with the defendant at any location where he is found. In either case, the person being served is not required to physically accept the documents from the person serving. The person serving the documents may leave the documents being served within arm's reach of the accepting party and communicate to them that they are being served. At the plaintiff's request, the court may authorize service to be made by law enforcement or by a person specially appointed by the court. Costs of service shall be paid by the plaintiff unless the court has waived fees for an indigent party.

(c) Certified or registered mail/return receipt requested. If a party lives outside Osage County, the plaintiff may attempt service by delivering copies of the summons and complaint or petition to the defendant's address by certified mail or registered mail, return

receipt requested. The returned signature card or print-out from the United States Postal Service online tracking system shall constitute proof of service.

(d) **Waiving Service.** An individual, corporation, or association that is subject to service has a duty to avoid unnecessary expenses of serving the summons. The plaintiff may notify such a defendant that an action has been commenced and request that the defendant waive service of a summons. The notice and request must:

- (1) be in writing and be addressed to the individual defendant or for a defendant subject to service, to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process;
- (2) name the court where the complaint or petition was filed;
- (3) be accompanied by a copy of the complaint or petition, two (2) copies of a waiver form, and a prepaid means for returning the form;
- (4) inform the defendant of the consequences of waiving and not waiving service;
- (5) state the date when the request is sent;
- (6) give the defendant a reasonable time of at least 30 days after the request was sent—or at least 60 days if sent to the defendant outside of the United States—to return the waiver; and
- (7) be sent by first-class mail or other reliable means.

If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff, the court shall impose on the defendant the expenses later incurred in making service, and the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.

A defendant who, before being served with process, timely returns a waiver need not serve an answer to the complaint or petition until 60 days after the request was sent—or until 90 days after it was sent to the defendant outside of the United States.

When the plaintiff files a waiver, proof of service is not required and these rules apply as if a summons and complaint or petition had been served at the time of filing the waiver.

Waiving service of a summons does not waive any objection to personal jurisdiction or to venue.

(e) **Service by Publication.** If the original summons is returned without being served upon any or all of the defendants, the presiding judge, upon the plaintiff's request, may issue an order to serve defendants by publication; provided, the plaintiff files a motion and affidavit to proceed with publication, which must include with specificity efforts to personally serve the defendant(s) and why such efforts were unsuccessful, efforts to serve the defendant(s) by

certified or registered mail/return receipt requested and why such efforts were unsuccessful, and what steps the plaintiff exercised to locate the defendant(s).

(1) When authorized by the Court, the Court Clerk shall cause the summons to be published once a week for three consecutive weeks in a newspaper of general circulation authorized by law to publish legal notices which is published in Osage County. If no newspaper authorized by law to publish legal notices is published, the notice shall be published in some such newspaper of general circulation which is published in an adjoining county. All named parties and their unknown successors who may be served by publication may be included in one notice.

(2) Service by publication is complete when made in the manner and for the time prescribed above and proved by the affidavit of any person having knowledge of the publication. No default judgment may be entered on such service until proof of service by publication is filed with and approved by the Court

SO ORDERED THIS 21st day of March, 2017.

A handwritten signature in blue ink, appearing to read 'M. Drent', is written over a horizontal line.

Meredith D. Drent
Chief Justice