

IN THE DISTRICT COURT OF THE CHEROKEE NATION

FILED

ROBIN CARTER MAYES )  
 CANDIDATE AT-LARGE )  
 PRO SE, )  
 )  
 Petitioner, )  
 )  
 VS. )  
 )  
 CHEROKEE NATION ELECTION )  
 COMMISSION, )  
 )  
 and )  
 )  
 CHEROKEE NATION OFFICE of the )  
 ATTORNEY GENERAL, )  
 )  
 Respondents. )

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CHEROKEE NATION  
 DISTRICT COURT  
 KENNETH MCNECOOYEA  
 COURT CLERK

Case No. CV-2017-273

SPECIAL APPEARANCE AND ANSWER OF  
THE CHEROKEE NATION ELECTION COMMISSION

COMES NOW the Respondent, Cherokee Nation Election Commission (hereinafter "Commission") appearing specially for purposes of this Special Appearance and Answer only and reasserting its objection to the Jurisdiction of this Court and incorporating its Special Appearance and Supplement to Motion to Dismiss (with incorporation by reference therein) filed immediately preceding this instrument, in support thereof, and for its Special Appearance and Answer herein, hereby respectfully submits the following:

First, the Commission denies that it is correctly named in this action. Apparently, Petitioner is naming "CNO" (Cherokee Nation of Oklahoma) and no such legal entity exists since the Cherokee Nation Judicial Appeals Tribunal (now Supreme Court) found the Cherokee Nation Constitution (known as the 1999 Constitution and title "Constitution of the Cherokee Nation 1999") approved by

vote of the Citizens of the Cherokee Nation on July 26, 2003, to be effective by said Court's Decision on June 7, 2006. Therefore, the Commission of the Cherokee Nation is not a proper party to this action and should be dismissed here from.

Introductory Paragraph. It is denied that Petitioner is entitled to a Writ of Mandamus and Declaratory Judgment.

I.

Unnumbered Paragraph One. Admitted.

Unnumbered Paragraph Two. Denied. The Commission is an independent commission of the Cherokee Nation.

Unnumbered Paragraph Three. Admitted.

II.

Unnumbered Paragraph One. The Commission admits that Petitioner has filed numerous letters and complaints with the Commission, but denies the right to due process has been denied to Petitioner. In fact, all of Petitioner's letters and complaints have been acted upon by the Commission as provided by law.

A: Denied, except that any amendment enacted by the Council will of necessity involve Council members that maybe incumbents in the next election. Such is inherent in the democratic process.

B:

Unnumbered Paragraph One. Denied.

Unnumbered Paragraph Two. Admitted.

Unnumbered Paragraph Three. The first and second sentences of said paragraph are Denied. The last sentence of said paragraph is admitted, but the Cherokee Nation Constitution provides that :

"The Council shall enact an appropriate law not inconsistent with the provisions of this Constitution that will govern the conduct of all elections."

and, the Section 11(c)(12)(9) is not inconsistent with the Cherokee Nation Constitution.

C: It is denied that there has been any interference with the Commission that has prevented their ability to provide a fair, unbiased, accurate election free from political influence for all citizens and candidates in the past and pending elections. The Commission is unable to admit or deny the specific allegations of this paragraph in that the facts surrounding the allegations in this paragraph are currently under investigation and therefore the commission demands strict proof thereof in this proceeding as provided by law.

III. Admitted.

#### **CAUSES OF ACTION**

**Cause of Action One:** Denied Petitioner is entitled to a Writ of Mandamus. Denied the Petitioner has the right to appeal the Commissions Decision to the Supreme Court.

**Election Code, see 26 O.S. 1-101 et seq.** Admitted.

**Cause of Action Two: Declaratory Judgment** Denied Petitioner is entitled to Declaratory Judgment as requested by him.

**CONCLUSION** Denied that Petitioner is entitled to the relief prayed.

**CERTIFICATION OF JURISDICTION** The Commission denies that the Court has Jurisdiction over the Commission for the reason that summons was not issued and served upon the Commission as required

by Law adopted by the Council of the Cherokee Nation and by Court Rules adopted by the Supreme Court of the Cherokee Nation.

Communications Denied in that since A.J. Garcia has entered an appearance as attorney for Petitioner Mayes all filing made by opposing Counsel should be forwarded to Petitioner's attorney.

Affirmative Defenses

1. Lack of Jurisdiction of the Court.
2. Failure to State a Cause of Action.
3. Failure to Timely File an Election Contest with the Supreme Court.
4. The Action is Moot.
5. Misjoinder of Parties.

WHEREFORE, the Cherokee Nation Election Commission prays that Petitioner be denied any relief requested under his Petition on file herein.

Cherokee Nation Election  
Commission, Respondent

BY: 

HARVEY L. CHAFFIN, CNBA#0459  
Attorney for Respondent  
215 W. Shawnee  
Tahlequah, OK 74464  
918/453-2800

CERTIFICATE OF MAILING

I, Harvey L. Chaffin, do hereby certify that on this 6th day of July, 2017, I mailed by first class mail, with postage prepaid thereon, a true and correct copy of the within and foregoing Answer to A.J. Garcia, 504 East Willis Road, Tahlequah, Oklahoma 74464, attorney for Robin Mayes and to Chrissi Nimmo, Sr. Assistant Attorney General, Cherokee Nation, P.O. Box 948, Tahlequah, OK 74465.

  
Harvey L. Chaffin