

Amended Motion to Dismiss of the Attorney General filed herein on this date and adopts such in support of this Motion.

As an amendment to an/or supplement to the prior motions of the Commission filed herein, the Commission hereby respectfully submits the following:

PLEA TO JURISDICTION OF THE COURT AND MOTION TO DISMISS

COMES NOW the Respondent, Cherokee Nation Election Commission (hereinafter "Commission") appearing specially for purposes of this Plea to Jurisdiction of the Court and Motion to Dismiss Petition for Writ of Mandamus and Declaratory Judgment of Robin Carter Mayes, Petitioner, on file herein, for lack of jurisdiction of the Court and hereby respectfully submits the following:

PROPOSITION

ISSUANCE AND SERVICE OF SUMMONS IS NECESSARY
IN THIS CASE TO GIVE THE DISTRICT COURT JURISDICTION
OVER THE COMMISSION

Section 1 of Title 12 (Civil Procedure) of the Cherokee Nation Code Annotated (hereinafter "CNCA") provides:

"A. The Federal Rules of Civil Procedure shall be used in Cherokee Nation courts in all suits of a civil nature whether cases at law or in equity unless superseded by a Cherokee Nation rule of civil procedure."

As shown in the authorities cited in the previous Motion of the Commission and incorporated herein by reference, the Federal Rules of Civil Procedure clearly require issuance and service of summons to give this court personal jurisdiction in this case and to meet due process requirements of the United States and Cherokee Nation Constitution.

The Commission filed a Special Appearance in this case and the Court has ordered that since the Commission appeared they had actual notice and deemed them served as of the date of their specially appearing Court Appearance on June 16, 2017. There is no constitutional, statutory or case law for such Order. Actually, the law is quite clear that a Defendant may appear specially to contest the jurisdiction of the Court and to contest the proper issuance and service of summons.

In this case, no summons was even issued must less served.

The Court found in its Order filed June 22, 2017, that District Court Rule 3(5) is ambiguous and conflicts with Cherokee Nation Law and Federal Rules of Civil Procedure, apparently relying on such Court Rule to find that service was sufficient.

Section 1205 of Title 12 of the CNCA relating to Declaratory Judgment (for which Petitioner has asked) provides in paragraph B. thereof that the action shall be brought in the county where the Defendant or any of them reside or may be served with summons, clearly indicating the intent of the Council that summons be served on defendants in Declaratory Judgment actions.

Supreme Court Rules and Procedures in Rule 56 provides that summons and certificates of service shall not be included in the record on appeal unless ordered by the Supreme Court, again indicating that the Supreme Court envisioned Summons and Service to exist in each case appealed from the District Court.

Further, Supreme Court Rules and Procedures in Rule 11 provides:

"A copy of the petition and a copy of the summons issued by the Clerk of the Supreme Court shall be served by the Petitioner or his/her representative by certified mail return receipt requested or by personal service by a process server licensed by the State of Oklahoma. Return of Service shall be Certified by the individual accomplishing such service and shall be filed with the Court Clerk of the Supreme Court."

The Courts reliance on District Court Rule 3.5 is misplaced.

The Supreme Court has Rule 7 which is the same identical Rule for the Supreme Court as Rule 3 for the District Courts. The Supreme Court would not logically adopt a different rule for issuance and service of summons with a petition for the District Court than that which they have for the Supreme Court.

Another indication of the Supreme Court's intent that Rule 3. not apply to Petitions, Issuance of Summons and Service is that Paragraph 2. b. requires that the filing by ". . . email must reflect the sending parties name, address, bar number, phone number, email address, case name and case number." (emphasis mine). A party filing a Petition by E-Mail will not have the case number until the Petition is filed; therefore, the Supreme Court did not intend the Rule to apply to service of process on filing of a petition, and the said Rule does not provide for it to be used to substitute for issuance and service of summons.

Clearly, the Supreme Court in Rule 7 for its Court and in Rule 3 for the District Court intended the Fax Rules to apply only to "affidavits, pleading, motions and other documents" filed after the initial petition.

A Court Rule must be in interpreted to be consistent with the

Constitution and Statutory Law unless clearly in conflict therewith. The Court admits in the Order that the Rule is ambiguous and her interpretation conflicts with Cherokee Law and the Federal Rules of Civil Procedure which the Council and the Supreme Court have adopted. Thus, the correct interpretation of such Rule is that it applies only to documents following the petition.

Literally, District Court Rule 3.5 does not apply to the initial Petition. The District Court Rule 3.5 states that the ". . . fax/email must also be served concurrently by fax, email, hand-delivery or mail on all other parties to the appeal" (emphasis mine); therefore, only applying to Pleadings filed with the District Court Clerk relating to an appeal to the Supreme Court (which this case is not).


This is not an appeal, but an original action in District Court and every Court in the United States known to this writer requires issuance and service of Summons to obtain jurisdiction, to comply with due process constitutional requirements. The Courts of the Nation should also follow this well recognized principal of law, as provided by the Cherokee Nation Council in the CNCA and the Cherokee Nation Supreme Court in the Supreme Court Rules and District Court Rules.

WHEREFORE, the Cherokee Nation Election Commission respectfully requests that the Court dismiss the Petition for Writ of Mandamus and Declaratory Judgment of Robin Carter Mayes, Petitioner, on file herein; and, further prays for such other and

further relief to which the Commission may be entitled and which the Court may deem just and equitable.

Cherokee Nation Election
Commission, Respondent

BY:



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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 918, Tahlequah, OK 74465.



Harvey L. Chaffin