

FILED

2018 FEB -5 AM 9:40

CHEROKEE NATION
SUPREME COURT
KENDALL BIRD, COURT CLERK

IN THE SUPREME COURT OF THE CHEROKEE NATION

In re: Effect of *Cherokee Nation v. Nash* and)
Vann v. Zinke, District Court for the District of)
Columbia, Case No. 13 -01313 (TFH) and Petition) Case No. 2017-07
For Writ of Mandamus requiring the Cherokee Nation)
Registrar to Begin Processing)
Citizenship Applications,)

**RESPONSE TO PETITIONER'S MOTION
TO DEEM OBJECTION CONFESSED**

Comes now Twila Pennington, Randy White, Marcus Thompson, Norman Crowe, Vicki Bratton, Kathy Robinson, in their individual capacities and Council Member Harley Buzzard and David Walkingstick, in their individual and official capacities, all citizens of the Cherokee Nation ("Citizens") by and through their undersigned attorney, Stephen P. Gray, submit a reply to Petitioner's *Special Limited Entry of Appearance and Motion to Deem Petitioners' Limited Entry of Appearance and Objection Confessed* and move the Court to deny Petitioner's motion because Citizens have not exceeded the period prescribed by Cherokee law to respond to such pleadings.

CITIZENS FILED A TIMELY RESPONSE UNDER RULE 40 OF THE SUPREME COURT OF THE CHEROKEE NATION.

Citizens admit that Petitioners filed their Objection on December 29, 2017, and on the same day mailed Citizens a copy of the Objection with postage fully prepaid. Citizens deny having only until January 22, 2018, to reply to the Objection and also deny that a response was not prompt or diligent. Furthermore, Citizens deny that they have caused an unnecessary delay in this proceeding and deny that the Objection should be deemed confessed.

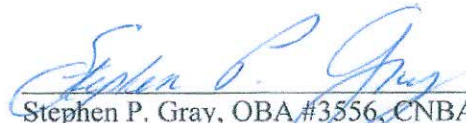
Under Cherokee law, Citizens filed a prompt response and did not cause undue delay in this proceeding. Cherokee law states that “motions and responses thereto shall be filed promptly and within such time as not to delay the proceedings.” CN Supreme Court Rule 40. The law gives no specific time limit nor does it mention a precise date on which to file a reply. Where Cherokee law is silent on certain issues, the Court *may* look to the Federal Rules of Civil Procedure for Guidance. CN Supreme Court Rule 103. Rule 12(a)(1)(C) of the Federal Rules of Civil Procedure states that a party has twenty-one (21) days to serve a reply to a motion. However, this rule is not a mandatory limitation under Cherokee law. The Court has the discretion to determine whether to apply this rule or make its own determination regarding timeliness under Rule 40 of the Rules of the Supreme Court of the Cherokee Nation. Furthermore, Cherokee law states that these rules are to be “liberally construed to effectuate the purposes and provisions of the appendix.” CN Supreme Court Rule 1. Article XIII, Section 4 of the Constitution of the Cherokee Nation identifies that the purpose of procedural rules is “to insure any litigant appearing before it receives due process of law and impartial justice, together with prompt and speedy relief.”

Citizens’ response was filed on January 29, 2018, with the Cherokee Nation Supreme Court Clerk. This has not delayed proceedings, as response was filed within four (4) weeks of being served the motion. This is well within the limitations set forth by Cherokee Law for a prompt filing. Petitioners argue that the Federal Rules of Civil Procedure must be applied in this case and that the response deadline was January 22, 2018, 21 days after service of the motion. However, applicability of the Federal Rules of Civil Procedure is discretionary and is not in accordance with the purpose of the Court’s procedural rules. The purpose is to ensure due process of law through a prompt and speedy trial. The rule regarding a prompt response,

therefore, must be construed liberally to ensure due process. In this case, fairness and due process is best attained by denying that the objection has been confessed and permitting Citizens' response on January 29, 2018. It would be an unfair violation of due process to deny Citizens' response when there was no concrete date set in Cherokee law and Citizens filed a response within four (4) weeks of service.

Thus, the Court should find that on January 29, 2018, Citizens filed a prompt response to Petitioner's Objection and the Court should deny the Petitioner's motion that the objection be confessed. Accordingly, the Court should grant Citizen's Motion to Intervene, set aside its Preliminary Order and issue an order of Mandamus for Hembree to present the DC case to the Council for its fully informed decision whether it is in the best interest of the Nation to appeal or settle the case.

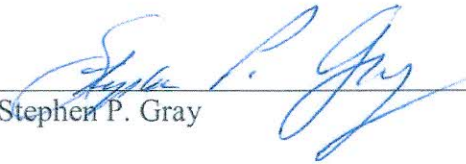
Respectfully Submitted,


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Certificate of Delivery

I, Stephen P. Gray, do hereby certify that on the 5th day of February, 2018, pursuant to CNDC Rule 7, I emailed a true and complete copy of the foregoing document to the persons listed below:

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Stephen P. Gray