

COURT OF INDIAN OFFENSES
FILED
In the Office of the Court Clerk

IN THE COURT OF INDIAN OFFENSES
FOR THE SOUTHERN PLAINS REGION
APPELLATE DIVISION

OCT 19 2015

Docket Page Recorded
In Journal on Page
By Court Clerk *[Signature]*

IN RE:

ADMINISTRATIVE ORDER)
ADOPTING APPELLATE RULES OF) Administrative Order No. 2016-03
THE SOUTHERN PLAINS COURT TO)
GOVERN APPEALS FROM OTHER CFR)
COURTS IN THE ABSENCE OF ADOPTED)
UPDATED APPELLATE RULES)

ORDER

Until the Court Clerk of a Court of Indian Offenses serving a specific Tribal Nation or group of Tribal Nations files with the Southern Plains Appellate Court Clerk comprehensive approved Appellate Rules of Procedure which have been updated within the previous five years, the Court of Indian Offenses for the Southern Plains Region, Appellate Division will utilize the Southern Plains Appellate Rules dated December 15, 2010 in all Appeals from CFR courts being served by the Southern Plains Court Appellate Division. The Clerk is directed to post those Appellate Rules under separate heading linked to the Southern Plains CFR Court website: <http://www.bia.gov/WhoWeAre/RegionalOffices/SouthernPlains/WeAre/ciospr/index.htm> and distribute a copy of this order to all courts where the Southern Plains Appellate Division is designated as the appellate tribunal.

Dated: October 9, 2015

[Signature]
Shannon L. Edwards
Chief Magistrate

COURT OF INDIAN OFFENSES
SOUTHERN PLAINS REGION

**PART I. RULES OF THE COURT OF INDIAN OFFENSES AND INDIAN APPEALS
FOR THE SOUTHERN PLAINS REGION**

TITLE I. THE COURTS

Rule 1.1 Term and Location.

The headquarters of the Court of Indian Offenses and Indian Appeals for the Southern Plains Region, also known as the CFR Court, shall be at the Bureau of Indian Affairs, Southern Plains Region, Anadarko, Oklahoma. The Court is open for the transaction of judicial business on all business days throughout the year except holidays unless otherwise ordered by the Magistrate.

Rule 1.2 Officers of the Court

Officers of the Courts shall include:

- Appointed Magistrates
- Court Clerks and Court interpreters
- BIA/Tribal Law Enforcement Officers, probation officers, and other persons when carrying out orders of the Court
- Attorneys and Advocates representing parties before the Courts
- Bailiffs; and
- Prosecutor

Rule 1.3 Authority of the Court

The Court shall have, but not be limited to, the following authority:

- To punish for contempt, any of its officers or other persons present at judicial proceedings;

- Any person who has been issued an internship license (limited license to practice law) by the Supreme Court of the State of Oklahoma for so long a period as said license is valid.
- Any member of a federally recognized Indian tribe who has been certified by a paralegal training program, as a paralegal or paraprofessional lawyer's assistant or the equivalent.
- Any member of a federally recognized Indian tribe who has been actively employed in one or more law offices under the supervision of one or more attorneys for a period of two (2) years upon the recommendation of their supervising attorney.
- Any person appointed by the Regional Director of the Southern Plains Region and approved by the effected tribes as a Magistrate of the Court of Indian Offenses.

Rule 4.2 Ethics

Persons who practice before this Court and the Magistrates thereof shall be governed by the American Bar Association's Canons of Ethics and Canons of Judicial Ethics.

Rule 4.3 Withdrawal

Counsel shall not be allowed to withdraw from a case after they have made any appearance in the case without leave of the Court. This rule is designed to prevent unnecessary and unfair hardship to the clients and should be so applied.

Rule 4.4 Courtroom Decorum

The Canons of Professional Ethics were adopted by the American Bar Association as a general guide, because as stated in the preamble, "No code or set of rules can be framed, which will particularize all the duties of the lawyer in the varying phases of litigation or in all the relations of professional life." The preamble further admonishes that "the enumeration of particular duties should not be construed as a denial of the existence of others equally imperative, though not specifically mentioned."

In that spirit, all lawyers should become familiar with their duties and obligations as defined and classified generally in the Canons, the common law decisions, the statutes, and the usages, customs, and practice of the bar.

The purpose of this rule is to emphasize, not to supplant, certain portions of those ethical principles applicable to the lawyer's conduct in the courtroom. In addition to all other requirements, therefore, lawyers appearing in this Court shall:

- Always be punctual in attendance at Court.
- Refrain from addressing one another in Court by their first names;
- Refrain from leaving the courtroom while Court is in session, unless it is absolutely necessary, and then only if the Court's permission has been first obtained;
- See that only one of them is on his/her feet at a time, unless an objection is being made;
- Refrain from approaching Jurors who have completed a case unless authorized by the Court;
- Refrain from implying dilatory tactics;
- Hand all papers intended for the Court to see to the Bailiff or Court Clerk, who, in turn will pass them up to the Magistrate;
- Hand to the Bailiff or Court Clerk, any exhibits to be marked which have not previously been identified;
- Advise clients, witnesses, and others concerning rules of decorum to be observed in Court;
- Stand when interrogating witnesses, unless otherwise instructed by the Court. However, when interrogating a witness concerning an exhibit the Court may, upon request, grant permission to approach the witness stand or the exhibit, as the case may be, for that purpose;
- Never conduct or engage in experiments involving any use of their own persons or bodies except to illustrate in argument what has been previously admitted in evidence;
- Avoid disparaging personal remarks or acrimony toward opposing counsel;

- Rise when addressing, or being addressed by, the Magistrate;
- Any attorney who appears in court intoxicated or under the influence of intoxicants, drugs or narcotics may be summarily held in contempt.

When presenting a matter to the Court, it shall be the responsibility of the attorneys to ensure the Magistrates are provided with, or have access to, all tribal, federal and state laws and regulations of the Bureau of Indian Affairs applicable to the conduct of persons within the boundaries of the Court's jurisdiction.

TITLE V. GENERAL PROVISIONS

Reserved.

PART II. RULES OF CIVIL AND CRIMINAL PROCEDURE

TITLE I. JURISDICTIONAL STATEMENT

Rule 1.1 Jurisdiction of the Court

The Court of Indian Offenses and Court of Indian Appeals operate exclusively from the Code of Federal Regulations, Title 25, Part 11 and the properly approved laws, ordinances, resolutions and constitutions adopted by the Indian Nations/Tribes within the jurisdiction of the Bureau of Indian Affairs, Southern Plains Region, as well as the Court's Adopted Court, Procedural and Appellate Rules.

TITLE II. SCOPE OF RULES

Rule 2.1 Scope of Rules

These rules shall govern the procedure in the trial Court of Indian Offenses for the Southern Plains Region in all actions, suits and proceedings of civil nature, and in criminal matters to the extent no different rule is specified.

These rules shall be liberally construed to secure a just, speedy, and inexpensive determination of every action.

There shall be one form of action known, except in criminal cases, as a "civil action."

Any procedures or matters not specifically set forth herein may, in the discretion of the Court, be handled in accordance with Federal Rules of Civil Procedure insofar as such are not inconsistent with these rules.

TITLE III. COMMENCEMENT OF AN ACTION

Rule 3.1 Commencement of Action

All civil and criminal actions are commenced by filing a complaint or petition. The Court shall have civil jurisdiction from such time as the petition is filed and properly served upon the defendant and a return of service is filed with the Court Clerk.

Rule 3.2 Criminal Complaints

Criminal complaints shall contain a statement of the essential facts charging that a named individual(s) has committed a particular offense. All criminal prosecutions shall be initiated by a complaint filed with the Court by a BIA/Tribal Law Enforcement Officer and/or Prosecutor. Complaints shall contain:

- The signature of the complaining witness, or witnesses, sworn before the Magistrate, Court Clerk, Prosecutor, or any law enforcement officer.
- A written statement by the complaining witness or witnesses having personal knowledge of the violation, describing in ordinary language the nature of the offense committed including the time and place as nearly as may be ascertained;
- The name or description of the person alleged to have committed the offense;
- A description of the offense charged and the section of the code allegedly violated.

Rule 3.3 Assignment of Numbers to Cases

A case number shall be assigned by the Court Clerk in accordance with established procedures and shall be noted on the initial pleading.

Rule 3.4 Pauper's Affidavit

A litigant seeking to proceed on a Pauper's Affidavit shall appear in person before the Magistrate of the Court and, under oath, support a condition of poverty before presenting any other documents for filing.

Rule 3.5 Service of Process

Service of process shall consist of delivering to the party served, a copy of the petition along with summons, issued by a Magistrate or Court Clerk, which advises the defendant that he is required to answer the petition within thirty (30) days or a default judgment will be entered against him.

All documents required to be filed shall be served as under this rule, and except for the complaint, may be served on the attorney of a party.

A civil action is deemed commenced by filing in the Court Clerk's Office a petition and by the Court Clerk's issuance of summons thereon. Where service by publication is proper, the action shall be deemed commenced at the date notice of publication is published. Service of all papers, except a criminal complaint may be made by mail. Where service is sought to be effected by mailing, the action shall be deemed commenced when the envelope containing summons, addressed to the defendant or to the service agent if one has been appointed, is deposited in the United States mail with postage prepaid for forwarding by certified mail with a request for a return receipt from addressee only.

Rule 3.6 Service on Minor

When the defendant is a minor, under the age of eighteen (18) years, the service must be made upon the guardian or parent.

Rule 3.7 Return of Service

The return of service shall be endorsed with the name of the person making service, the date, time, and place of service, and shall be filed with the Court Clerk.

TITLE IV. PARTIES

Rule 4.1 Parties

Every action shall be prosecuted in the name of the real party in interest except a personal representative or other person in a fiduciary position can sue in his own name without joining the party for whose benefit the action is maintained.

When an infant, or insane, or incompetent person who has not had a guardian appointed is a party, the Court shall appoint a guardian ad litem to represent such person in the suit or action.

To the greatest extent possible given the jurisdiction of the Court, all persons or parties interested in a particular action may be joined in the action, but failure to join a party over whom the Court has no jurisdiction will not require dismissal of the action unless it would be impossible to reach a just result without such party.

Rule 4.2 Intervention.

A person may intervene and be treated in all respects as a party to an action in cases in which property in which he has an interest may be affected by the action.

Rule 4.3 Substitution of Parties

If a party dies or becomes incompetent or transfers his interest or separates from some official capacity, a substitute party may be joined or substituted as justice requires.

TITLE V. PLEADINGS AND MOTIONS
Rule 5.1 Form of Pleadings.

All pleadings or instruments filed should contain a heading, a case number and be on 8 1/2 x 11 inch white paper, double spaced and substantially conform to the requirements of the Court. The Court Clerk's office may develop forms for use by the litigants. Documents prepared by hand shall be neat and legible. Substantial compliance with this rule will be sufficient for all parties not represented by counsel or a professional advocate.

Every pleading shall contain a caption heading, the name of the Court, the title of the action, the case file number (if known) and a designation as to what kind of pleading it is. All pleadings shall contain the names of the parties.

All statements of claim or defense shall be set forth in separate numbered paragraphs.

Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of a written instrument which is an exhibit to a pleading is a part thereof for all purposes.

Rule 5.2 Pleadings to be Signed

All pleadings shall be signed by a party, or their attorney/advocate, and shall contain the printed name, mailing address and telephone number or email (if any), of said person.

Rule 5.3 Copies of Pleadings and Filings.

Copies of all pleadings filed subsequent to filing of the petition shall be delivered or mailed at the time of filing to counsel for other parties in the case and to all unrepresented parties. A statement as to delivery or mailing shall be made with the pleading filed.

Rule 5.4 Originals to be Filed.

The original of any pleading or other instrument shall be filed with the Court Clerk. Pleadings may be filed with the Court Clerk via hand delivery or by telephonic facsimiles. Facsimiles received by the Court Clerk's Office after regular business hours will be filed the next business day. The filing fee shall be paid within five (5) business days of receiving the facsimile filing. If the filing fee and the original of any pleading are not received by the Court Clerk's Office within five (5) days of the filing of the facsimile, the Court Clerk shall disallow the facsimile filing and so note on the pleadings.

Rule 5.5 Respect for Courts.

No pleading filed in this Court shall contain language showing disrespect for the Court or any Magistrate thereof. Violations of this rule may be punishable in accordance with Court Rules.

Rule 5.6 Types of Pleadings.

There shall be a complaint or petition by the plaintiff and an answer by the defendant. If the defendant presents a counterclaim, the plaintiff shall file a response. The Court may grant additional leave to plead further in the interest of narrowing and defining issues or as justice may require.

Rule 5.7 Claims for Relief

A pleading which sets forth a claim for affirmative relief shall contain:
 A short, plain statement of the grounds upon which the Court's jurisdiction depends,

- A short, plain statement of the claim showing that the pleader is entitled to relief, and
- A demand for judgment for the relief. Such claim for relief can be in the alternative or for several types of relief.

Rule 5.8 Defenses and Objections

A defendant or other party against whom a claim has been made for affirmative relief shall have thirty (30) days from the date of service upon him to answer or respond to the claim.

Motions to dismiss or to make the opposing parties' pleadings more definite may be made prior to answering a claim and an answer will not be due until ten (10) days after the disposition of the motion by the Court.

Failure to challenge the assertion of personal jurisdiction of the Court over any defendant shall constitute consent to personal jurisdiction of the Court. The defense of lack of jurisdiction shall be raised as an affirmative defense or in a Motion to Dismiss filed before the answer is due, through a special appearance.

A party shall state the grounds, upon which he bases his defense to claims pleaded against him/her, and shall admit or deny the claims and statements upon which the adverse party relies. If he is without information or knowledge regarding a statement or claim, he shall so state and such shall be deemed to be a denial. A claim to which a responsive pleading is required shall be deemed admitted unless denied; if no responsive pleading is required the claims of the adverse party shall be deemed denied.

Rule 5.9 Alternative Pleadings of Claims and Defenses

Claims and defenses may be simply stated and may be pled in the alternative or hypothetical form, on one or several counts or defenses. Claims and defenses need not be consistent with one another, and may be based on legal or equitable grounds or both.

Rule 5.10 Affirmative Defenses

Matters constituting a defense or avoidance shall be affirmatively set forth.

Rule 5.11 Construction of Pleadings

All pleadings shall be construed so as to do substantial justice.

Rule 5.12 Filing an Appearance – Effect

Within the time to answer as set forth in the summons, a defendant may file an appearance which shall extend the time to plead or answer an additional twenty (20) days from the time to answer as set forth in the summons. The filing of such an appearance waives all objections to the service of process and the venue of the action.

Rule 5.13 Counterclaim

A party against whom a claim is made may assert in his answer any claims he/she has against the party claiming against him/her and both claims shall be resolved at trial.

Rule 5.14 Amendment of Pleadings

A party may amend his/her pleadings once before the opposing party has replied or if no reply is required, not less than twenty (20) days before the case is scheduled for trial. The opposing party may respond, if appropriate, and the trial date may be delayed if necessary.

When issues or evidence not raised in the pleadings are heard at trial, the judgment may conform to such issues or evidence without the necessity of amending the pleadings.

Rule 5.15 Motions

An application to the Court for an order shall be by motion and shall be in writing, unless made orally during a hearing or trial, and shall set forth the relief sought and the grounds shall be stated with particularity.

The presiding Magistrate for good cause shown may enlarge the prescribed period of time within which any required response may be done.

Written motions and notice of hearing thereon, other than ones which may be heard ex parte, shall be served on all parties to the case.

Rule 5.16 Motions for Temporary Restraining Orders

No temporary restraining order shall be granted upon motion in a civil case without notice to the adverse party unless it clearly appears from the facts shown by affidavit that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon. A show cause hearing with notice to the adverse party shall be scheduled to be heard within ten (10) days.

A restraining order or preliminary injunction shall only issue upon the giving of security by the applicant in such amount as the Magistrate deems proper for the payment of such costs and damages as may be incurred and suffered by any party who is found to have been wrongfully restrained or enjoined.

Rule 5.17 Preliminary Injunctions

No preliminary injunction, following a temporary restraining order granted shall be issued without notice to the adverse party.

Before or after the commencement of the hearing of an application for a preliminary injunction, the Court may order the trial of the action on the merits to be advanced and consolidated with the hearing on the application.

Rule 5.18 Extraordinary Writs

Where no other plain, speedy and adequate remedy exists, relief may be obtained by obtaining any of the following extraordinary writs which may be granted by the Court in appropriate cases:

- Writ of Prohibition
- Writ of Mandamus
- Writ Quo Warranto
- Writ of Habeas Corpus

Rule 5.19 Habeas Corpus

Application for the Habeas Corpus Writ shall be made by petition, signed and verified by the applicant and shall specify:

- For whom the writ is being sought and the reason he/she is restrained of his/her liberty;
- The location of all parties, if known;
- The cause or pretense of the restraint, according to the applicant's best knowledge and belief;
- If the restraint is alleged to be illegal, the reason for the alleged illegality, if filed by a self represented litigant, the petition may be on forms supplied by the Court Clerk. Writs of Habeas Corpus may be granted by a Magistrate of this Court and upon application the writ shall be considered without delay.

Rule 5.20 Service of Writ of Habeas Corpus

All writs directed to BIA/Tribal Law Enforcement authorities shall be delivered instantaneously by the Court Clerk. If a writ be directed to any other person, the writ shall be delivered to the BIA/Tribal Law Enforcement authority to be served upon such person without delay. If the person to whom such writ is directed cannot be found, or shall refuse admittance to the police, the writ may be served by leaving it at the residence of the person to whom it is directed, or by affixing the same on some conspicuous place, either at his/her dwelling house or where the party is confined under restraint.

Return of service of the writ shall be made in the Court Clerk's Office in the same manner as required for return of service of other documents issued by the Court.

Rule 5.21 Motions for Summary Judgment

Any party may move the Court for summary judgment as to any or all of the issues presented in the case and such shall be granted by the Court if it appears that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

TITLE VI. HEARINGS AND PRETRIAL MATTERS.

Rule 6.1 Motion Docket

The Court Clerk, under the supervision of the Magistrate, shall have the responsibility for placing all pending motions on the Motion Docket. The Motion Docket shall be faxed to parties prior to the hearing.

Rule 6.2 Inadvertent Settings

Any civil or criminal matter inadvertently set for hearing on a holiday, weekend or any day when the Court is not in session shall automatically be reassigned to another date. The Court Clerk shall notify the parties of the reassignment.

Rule 6.3 Continuances

No motion, hearing or trial shall be continued upon stipulation of counsel alone, but such continuances may be allowed by order of a Magistrate. Upon receiving notice of continuance from the Magistrate, the Court Clerk shall promptly notify the parties of the continuance and of the date set by such order. No continuance shall be allowed but for good cause shown.

Rule 6.4 Hearings Automatically Continued

A motion shall be automatically continued if the Magistrate before whom it was to be heard is unable to hear it on the day specified and no other Magistrate is available to hear it.

Rule 6.5 Limitations on Argument

Arguments to the Magistrate, as well as to the jury, shall be subject to reasonable limitation as to time and number of counsel participating.

Rule 6.6 Evidence Taken at Hearings

At all hearings the testimony of witnesses shall be taken orally under oath, unless otherwise provided in these rules.

Rule 6.7 Discovery in Civil Cases

A party may submit written interrogatories to any other party who shall answer them in writing, under oath, within thirty (30) days of receipt of such. A party may take a testimony of any person, including a party, by deposition upon oral examination without leave of court. The attendance of witnesses may be compelled by subpoena. A party may request another party to produce any documents or things in his custody or possession for inspection or copying. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the pending action, if it would lead to evidence which would be admissible at trial.

A party against whom discovery is sought may move the Court for a protective order to prevent undue annoyance, harassment, embarrassment, oppression, or undue burden or expense, and the Court may order that the discovery cease or proceed only upon specified conditions.

If a party fails to respond or appear for discovery after being ordered to do so by the Court, the Court may, upon motion, order that a certain fact, claim, or defense be deemed established or strike part of a claim or defense, or dismiss or enter a judgment by default against the non-complying party.

Answers to interrogatories and depositions may be used in a motion, hearing or at trial to impeach or contradict the testimony of the person of whom obtained, or by an adverse party for any purpose.

Rule 6.8 Subpoenas

Upon request of any party, the Court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or any other physical evidence relevant to the determination of the case and not an undue burden on the person possessing the evidence. The Court Clerk may act on behalf of the Court and issue subpoenas which have been signed either by the Court Clerk or by the Magistrate of the Court and which are to be served within Indian country over which the Court has jurisdiction.