

FILED

IN THE DISTRICT COURT OF THE CHEROKEE NATION

2018 FEB 12 AM 11:21

DAVID COMINGDEER,

Plaintiff,

v.

CHEROKEE NATION,

Defendant.

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Case No. CV 2016-180

(Jury Trial Demanded)

CHEROKEE NATION
DISTRICT COURT
KRISTI MONCOOYEA
COURT CLERK

**OBJECTION TO CHEROKEE NATION'S
MOTION TO DEEM OBJECTION CONFESSED**

Comingdeer objects to Cherokee Nation's ("Nation") Motion to Deem Confessed ("Motion").

Contemporaneously filed herewith is Comingdeer' Objection to the Nation's Motion to Dismiss.

ARGUMENT

One of the errors in Nation's Motion is its argument that Cherokee law is incomplete with regard to the exact time Comingdeer had to reply to the Nation's Motion to Dismiss. Based on this faulty premise, the Nation attempts to apply a Local Federal District Court Rule ("Rule"), which requires a response to a motion within fourteen (14) days after being served.¹

This Rule is inapplicable for the several reasons:

1) The Federal Rules of Civil Procedure are irrelevant because this Court has a specific rule for responding to motions. DC Rule 120 (SC Ad 2013-02, September 3 2013) 20 CNCA App. Rule 1 et sq. provides,

¹U.S. District Court for the Eastern District of Oklahoma Rule 7.1(d).

Unless otherwise provided in these rules or by order of the District Court, motions and responses thereto *shall be filed promptly and within such time as not to delay the proceedings*. Promptness and diligence are favored in all filings in the District Court.

2) The Nation has not adopted the Local Rules of a federal district court. The Nation adopted the Federal Rules of Civil Procedure, ("FRCP") if and only if, the Nation had no applicable rule.

The Cherokee Nation Supreme Court by SC-AD-13-04 Order (filed December 12, 2013) provided that:

Rule 103. Applicability of Federal Rules of Evidence and Civil Procedure

All proceedings hereunder shall be conducted in accordance with the Court's Rules herein. In the event these Rules are incomplete in evidence and/or civil procedure issues then the Court may look to the Federal Rules of Evidence and /or Civil Procedure for guidance.

Also Cherokee law 12 CNCA 1 provides the Nation's rules supersede the FRCP.²

3) This Court has not set any hearings in this case, so how could Comingdeer have possibly delayed the proceedings herein? In fact, according to the Amended Scheduling Order in this case, dispositive motions are not due be filed until May 14, 2018. *See* January 4, 2018 Amended Scheduling Order. Due to the nature and complexity of the proceedings on issues regarding the Nation's sovereignty, Comingdeer promptly responded to the Nation's Motion to Dismiss with an eight (8) page objection and brief.³

CONCLUSION

The Court should deny the Nation's Motion because the federal rules of civil procedure do not apply herein, Comingdeer filed his objection to the Nation's Motion to Dismiss promptly

² 12 CNCA § 1. 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.

³ The Nation filed its Motion to Dismiss on January 19, 2018 and Comingdeer filed his Objection to Dismiss on February 9, 2018- twenty-one (21) days later. Under the Nation's argument, Comingdeer's Objection was seven (7) days late which is filed promptly and within such time as not to delay the proceeding.

under the applicable Cherokee Nation Court rules and Nation law, and Comingdeer has not delayed the proceedings. If the Supreme Court or the Nation wanted responses to motions to be within fourteen (14) days, they would have so provided.

Submitted this 9th day February, 2018.

/ss/
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Certificate of Delivery

I, Chad Smith, hereby certify that on the 9th day of February, 2018, a copy of the above document was emailed pursuant to SC Rule 7 to the following:

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