

TITLE VIII

CHOCTAW RULES OF SMALL CLAIMS PROCEDURE

Rule 1	Scope of Rules, Purpose, Construction and Citation.....	3
Rule 2	Commencement of Civil Small Claims Actions.....	3
Rule 3	Form of Statement of Claim	3
Rule 4	Notice of Claim.....	5
Rule 5	Uncontested and Contested Claims	6
Rule 6	Trial.....	6
Rule 7	Jury Trials	7
Rule 8	Judgment	7
Rule 9	Limitation of Actions	8

Rule 1 Scope of Rules, Purpose, Construction and Citation

- (1) Scope: The provisions of this Title shall, except to the extent otherwise provided, govern the procedure in the Choctaw Courts, in all civil actions wherein the matter in controversy does not exceed the sum of value of one thousand dollars (\$1,000) exclusive of interest and cost, provided that at the election of the defendant, the Civil Court may hear claims under these small claims procedures in which the amount in controversy does not exceed three thousand dollars (\$3,000).
- (2) Purpose: The provisions of this title are intended to provide an abbreviated, but fair, means for the routine disposition of claims of limited value wherein neither party is required to or elects to utilize the more expansive and technical proceedings and procedures of Title VI of the Tribal Code.
- (3) Construction: These rules shall be liberally construed to secure a just, speedy and inexpensive determination of every action of a civil nature.
- (4) Citation: These rules may be known and cited as the “Choctaw Small Claims Rule” and may be abbreviated as “C.S.C.R.”

Rule 2 Commencement of Civil Small Claims Actions

- (1) A civil small claims action shall be commenced in the Civil Court, and for these proceedings shall be known as the “Small Claims Division,” by the filing of a statement of claim which shall be short and in ordinary language. The plaintiff or his agent shall verify the statement of claim by oath or affirmation and shall sign the statement of claim.
- (2) At the request of the plaintiff, the Clerk of the Civil Court shall prepare the statement of claim and other papers required to be filed in a civil action, but the Clerk’s services are not available to a corporation, partnership, association or public body in the preparation of the statement or other papers.

Rule 3 Form of Statement of Claim

- (1) The statement of claim, with verification, shall be substantially in the following form or such other form as the court shall decree:

THE CHOCTAW COURT
SMALL CLAIMS DIVISION
PEARL RIVER COMMUNITY
CHOCTAW RESERVATION
MISSISSIPPI

_____,)
Plaintiff)
)
)
)
vs.) No. _____
)
)
_____,)
Defendant)

Statement of Claim

(Here, the plaintiff, or at his request, the Clerk of the Civil Court, will insert a statement of the plaintiff's claim and the original, to be filed with the Clerk, may be verified by the plaintiff or his agent, as follows:)

Verification

_____, *being first duly sworn on oath says the foregoing is a just and true statement of the amount owing by defendant to the plaintiff, (or "of the claim made by the plaintiff upon the defendant") exclusive of any set-off or just grounds of defense.*

Plaintiff (or agent)

Subscribed and sworn to before me this the ____ day of _____, 20__.

Notary Public

- (2) A copy of any promissory note, contract, statement of account, or other evidence in establishment of any amount due and owing or obligation incurred shall be appended to the statement of claim and filed therewith.

Rule 4 Notice of Claim

- (1) Filing of Statement: Upon the filing of the statement of claim as provided in Rule 3, the Clerk shall prepare in triplicate form a Notice of Claim in the following form:

*THE CHOCTAW COURT
SMALL CLAIMS DIVISION
PEARL RIVER COMMUNITY
CHOCTAW RESERVATION
MISSISSIPPI*

_____,)
Plaintiff)
)
)
vs.) No. _____
)
)
_____,)
Defendant)

Notice of Claim

To: _____
Defendant

Home Address

Business Address

You are hereby notified that (Plaintiff) has made a claim and is requesting judgment against you in the sum of \$_____ [insert other relief requested, if any], as shown in the foregoing statement. The Choctaw Court, Small Claims Division, will hold a hearing upon this claim on _____ at _____ .m. in the Choctaw Court in the Pearl River Community, Mississippi.

You are required to be present at the hearing in order to avoid a judgment by default.

If you have witnesses, books, receipts or other papers bearing on this claim, you should bring them with you at the time of the hearing. If you wish to have witnesses summoned, see the clerk at once for assistance. If you admit the claim, but desire additional time to pay, you must come to the hearing in person and state the circumstances to the court. You may come with or without an attorney.

Dated: _____, 20__.

Clerk of the Civil Court

- (2) Notice to Plaintiff: The clerk shall furnish the plaintiff with a copy of the notice of claim which shall indicate the day and hour set for the hearing, such date to be not less than thirty (30) nor more than forty-five (45) days from the filing of the civil action.
- (3) Statement and Notice of Defendant: The clerk shall cause to be served upon the defendant in accordance with Rule 6 of this title, a copy of the statement of claim and verification, and copies of all supporting documentation attached thereto, together with a copy of the notice of claim.
- (4) Original Notice to File: The original notice of claim shall be made a part of the court file.

Rule 5 Uncontested and Contested Claims

- (1) Judgment of Default: On the return date, if the defendant fails to appear or if the defendant appears but does not contest the claim or any portion thereof, the plaintiff may move for and secure a judgment by default. Upon motion of the plaintiff, if the claim is for a liquidated amount of one thousand dollars (\$1,000) or less, the foregoing verification and proof of service of process shall entitle the plaintiff to a judgment by default without further proof. If the amount is unliquidated or in excess of \$1,000, the plaintiff shall additionally be required to present proof of his claim in advance of the granting of a default judgment.
- (2) Contested Claim: Defendants contesting all or any portion of a claim brought under these rules, as well as defendants raising a set-off or counterclaim, may do so under these rules by appearing before the court at the time and date scheduled thereof. If, at that time, the defendant asserts a counterclaim or set-off, the judge may require a formal statement in writing of any counterclaim or set-off to be filed or may waive the requirement. If the plaintiff requires time to prepare his defense against the counterclaim or set-off, the judge may continue the case for a reasonable period for that purpose.
- (3) Election to Proceed Formally: Prior to, or at return time, defendants contesting claims brought under these rules and plaintiffs against whom a set-off or counterclaim have been brought may move the court for leave to proceed further under the Choctaw Rules of Civil Procedure or to conduct full or limited discovery thereunder. The court may make such inquiry as it deems necessary and shape discovery and further proceedings appropriately to individual case needs, keeping in mind the relative situation of the respective parties, provided, that the court may not authorize the plaintiff to proceed under the Choctaw Rules of Civil Procedure on any claim originally filed under the Choctaw Small Claims Procedure wherein the defendant was not represented by legal counsel at the time this rule is sought to be invoked.

Rule 6 Trial

- (1) On the return day specified, as provided under Rule 4, or at such later time as the judge sets, the action shall go to trial. Immediately prior to trial, the judge shall make an earnest effort to settle the dispute by conciliation. If he fails to persuade the parties to settle the dispute without trial, he shall proceed with the hearing on the merits as provided in subsection (2) of this rule, subject to the Rule 9 provision for jury trial.

- (2) The parties and the witnesses shall be sworn. The judge shall conduct the trial in such manner as to do substantial justice between the parties according to applicable law and the customs and usages of the Tribe, and is not bound by rules of practice, procedure, pleading, or evidence, except for rules related to privileged communications.
- (3) If the defendant fails to appear, judgment shall be entered for the plaintiff by default as provided in Rule 5(1) or on the presentation of proof by the plaintiff alone. If the plaintiff fails to appear, the action may be dismissed for want of prosecution or the defendant may proceed to a trial on the merits or the case may be continued or returned to the files for further proceedings at a later date, as the judge may direct in the interest of justice. If both parties fail to appear, the judge may return the case to the files or order the action dismissed for want of prosecution or make any other just and proper disposition thereof, as justice requires.

Rule 7 Jury Trials

- (1) There shall be no absolute right to a trial by jury unless given by a statute of the United States. Any party may request a trial by jury on any or all issues of fact, provided the request is made no later than ten (10) days before the trial. The judge must determine whether a jury trial is a matter of right in each specific case in which it is requested. Even if not a matter of right, the judge may, in his discretion, allow a jury trial. In all actions not triable by a jury the judge may try any issue with an advisory jury or order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.
- (2) The provisions of Rules 15, 22 and 23 of the Choctaw Rules of Civil Procedure governing jury selections and compositions, shall apply to jury trials.

Rule 8 Judgment

- (1) In all civil actions, judgment shall consist of an order of the court awarding money, damages or an order directing the surrender of certain property to the injured party or the performance of some other act for the benefit of the injured party. When the injury inflicted was the result of carelessness of the defendant, the judgment shall fairly compensate the injured party for the loss. When the injury was deliberately inflicted, the judgment shall impose an additional penalty on the defendant. When the injury was inflicted as a result of an accident and both the plaintiff and the defendant were at fault, the judgment shall compensate the injured party for a reasonable part of the loss.
- (2) When judgment for money damages is to be rendered in a civil action and the party against whom it is to be rendered requests it, the judge shall inquire fully into his earnings and financial status and may stay the entry of judgment, and stay execution, except in cases involving wage claims, and order partial payments in such amounts, over such periods, and upon such terms, as seems just in the circumstances and will assure definite and steady reduction in the judgment until it is completely satisfied. Upon a showing that the party has failed to meet an installment payment without just cause, the stay of execution shall be vacated.
- (3) When a stay of execution has not been ordered or when a stay of execution has been vacated, a party in whose favor a judgment has been entered may avail himself of all remedies provided for in subsection (5) of this rule.

- (4) When a judgment rendered in a civil action is founded in whole or in part on a claim for wages for personal services, the judge shall, upon motion of the party obtaining judgment, order the appearance of the party against whom the judgment has been entered, but not more often than once each week for four weeks, for oral examination under oath as to his financial status and his ability to pay the judgment, and the judge shall make such other orders as seems just and proper to cause the payment of the judgment upon reasonable terms.
- (5) When the court shall have ordered payment of money damages and the losing party refuses to make payment, as provided by the court, and has sufficient monies in his Individual Indian Monies Account to pay all or part of the judgment, the disbursing agent in control of such account shall pay over to the injured party the amount of the judgment or such lesser amount as may be held to the credit of the party. A judgment shall be considered a lawful debt in all proceedings to distribute an Indian decedent's estate.
- (6) The court may enforce judgments in civil actions by issuance of an execution to a police officer against any personal property of the losing party located within the Choctaw Indian Reservation returnable not less than ten (10) days after the date of issuance. No judgment shall be enforceable more than five (5) days from the date thereof unless renewed by order of the court.

Rule 9 Limitation of Actions

The court shall have no jurisdiction over any civil action wherein the statement of claim or complaint is filed more than two (2) years after the claim arose.