

Petition—Assault and Battery-Civil

INSTRUCTIONS FOR FILING

IMPORTANT INFORMATION PLEASE READ!!!

1. Documents must be typed DOUBLE-SPACED and on LETTER SIZE PAPER (8 ½” x 11”).
2. Documents must be signed in front of the Court Clerk or a notary public when you are ready to file.
3. Filing fees, copy fees, etc. can be made by DEBIT CARD, CASHIER’S CHECK or MONEY ORDER and must be payable to “Comanche Nation Tribal Court”. Filing fees MUST be paid at the time of filing your petition. If you are unsure of the amount of the filing fees, contact the Court Clerk.
4. Submit original Documents, a copy fee will apply to all copies made by the court clerk over 50 pages in length. If the Court Clerk makes your copies, you will be charged a copy fee of \$10.00 for any copies over 50 pages.
5. Documents must have the FULL ADDRESS including street, city, state & zip of the parties to be served. Obtaining this information is **your** responsibility.
6. The forms are a guide to use in preparing the documents. DO NOT fill in the blanks and submit for filing. IT MUST BE RE-TYPED.
7. Petitions filed MUST have a copy of the relevant birth certificate and tribal enrollment card/CDIB and be submitted with the petition when filed. Obtaining these documents is **YOUR** responsibility.
8. Proof of Service of a Petition is MANDATORY for your case to proceed. Obtaining proof of service is **your** responsibility.

Court Clerks WILL NOT accept documents

that do not conform to these Instructions.

CIVIL	
Petition or Complaint	Filing Fee
Civil (\$10,000 or Less)	\$120.00
Civil (Over \$10,000)	\$195.00
Forcible Entry and Detainer (\$5000 or Less)	\$100.00
Forcible Entry and Detainer (\$Over \$5000)	\$120.00
Foreign Judgment	\$85.00
Misc. Civil (Non-Monetary)	\$105.00
Replevin (\$5000 or Less)	\$85.00
Replevin (Over \$5000)	\$180.00
Additional Court Costs	
Summons (each) Per Person Summoned	\$15.00
SUMMONS BY PUBLICATION (Actual Publication is to be done independently at your own additional expense through a proper publishing source)	\$35.00
SERVICE Outside of Territorial Jurisdiction (by certified mail through the Court Clerk)	\$15.00
SERVICE (Independently done, may incur additional expense of Private Process Server. Proof of Service must be filed with the Court)	
Jury Trial Requested	\$500.00
Jury Trial Bond	\$1,500.00
COPY FEES (filer must provide all necessary copies of filings or a copy fee will apply to all copies made by the court clerk over 50 pages in length)	\$10.00 flat fee for copies made by the court clerks over 50 pages.

Pleadings

INTRODUCTORY COMMENT—PLEADINGS

Allowable Pleadings. Pleadings are statements by the parties of their respective claims and defenses. Pleadings serve the important purpose of informing an adverse party of the nature of the claim or defense asserted and the relief demanded.

Pleadings include:

1. A petition and answer;
2. A reply to a counterclaim denominated as such;
3. An answer to a cross-claim if the answer contains a cross-claim denominated as such;
4. A third-party petition, if a person not an original party is summoned; and
5. A third-party answer.

No other pleadings are allowed, except that the court may, in its discretion, order a reply to an answer or third-party answer. Motions and responses to motions are not "pleadings".

A claim for relief whether an original claim, counterclaim, cross claim or third-party claim must contain:

1. A short and plain statement of the claim showing that the pleader is entitled to relief, and
2. A demand for the relief to which the pleader deems himself entitled. It is not necessary for the petition to identify the particular theory or theories of recovery under the notice system of pleading.

Except in actions sounding in contract, every pleading demanding money damages in excess of the amount required for diversity of citizenship jurisdiction specified in 28 U.S.C. § 1332 must set forth only that the amount of damages sought are in excess of the jurisdictional amount without demanding any specific amount of money. If the amount demanded is less than the jurisdictional amount, the pleading must specify the amount of money damages sought. The jurisdictional amount specified in 28 U.S.C. § 1332 is \$75,000, exclusive of interest and costs. If the amount the plaintiff specifies is less than the jurisdictional amount, the defendant may file a motion to clarify damages prior to the pretrial order.

A pleading may set forth two or more statements of a claim or defense alternatively either in one count or defense or in separate counts or defenses. A pleading may also state as many separate claims or defenses as a party may have regardless of the consistency of such claims and whether based on legal or equitable grounds. Each claim founded upon a separate transaction or occurrence and each defense, other than denials, shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth. All claims and defenses shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances.

The claim for relief must be signed by the claimant, or the claimant's attorney, in accordance with the signature and verification requirements. If the court determines that a pleading is signed in violation of the rule, it may impose sanctions on the pleader, including the imposition of costs and reasonable attorney's fees. The relief granted to the plaintiff, if there is no answer, cannot exceed the relief demanded in the petition, but in any other case, the court may grant the plaintiff any relief consistent with the facts or matters pleaded.

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

Petitions

INTRODUCTORY COMMENT

A petition must contain only a short and plain statement of the claim that shows the plaintiff's entitlement to relief and a demand for judgment. The petition should be simple, concise and direct, and it should give fair notice of the nature of the plaintiff's claim and the grounds on which it is based. It need not have detailed factual allegations, except with respect to the circumstances that constitute fraud or mistake and the nature of special damages, which must be stated with particularity. Specificity in pleading is no longer necessary, because of the availability of discovery.

It is not necessary for the petition to identify the particular theory or theories of recovery under the notice system of pleading. There may be differences in the standard of proof and the statutes of limitation for various theories of recovery, so, when plaintiffs file their petitions, they should be aware of the elements and limitations for every theory of recovery upon which they rely. As long as the petition gives the defendant fair notice of the claim and the grounds on which it is based, these elements and limitations need not be stated in the petition.

Jurisdiction and Venue. Tribal courts are courts of general jurisdiction. A petition also does not need to contain allegations that venue is proper or that the court has territorial jurisdiction, because these are affirmative defenses that are waived if not raised in the answer or a pre-answer motion. Although allegations concerning subject matter jurisdiction, territorial jurisdiction, or venue are often found at the beginning of petitions, they are not included in the forms that follow.

Signature. Like other papers filed in a case, petitions must be signed by at least one attorney of record, or if the plaintiff is unrepresented by an attorney, by the party. Petitions do not need to be verified, unless verification is required by a specific statutes.

An attorney is provided a lien on the client's recovery in an action. An attorney who wishes to assert a lien on the client's claim must either endorse the petition or counterclaim with the words "Lien claimed" or else serve a notice setting forth the nature and extent of the lien being claimed on the opposing parties.

Petition—Assault and battery

[Court Caption]

PETITION FOR ASSAULT AND BATTERY

Plaintiff alleges:

1. On or about *[date of incident]*, Defendant, *[name of defendant]*, approached Plaintiff, *[name of plaintiff]*, with a two foot iron bar.
2. Defendant then intentionally swung the bar at Plaintiff, striking Plaintiff on the head.
3. As a result of Defendant's conduct, Plaintiff suffered severe mental and physical pain and injury to Plaintiff's body for which Plaintiff has incurred expenses for medical attention and hospitalization. Plaintiff has also suffered temporary and permanent physical impairment, which has resulted in loss of wages and loss of future earning capacity.

Accordingly, Plaintiff demands Judgment against Defendant for actual and punitive damages in excess of Seventy Five Thousand Dollars (\$75,000), interest, and costs.

[Name of Plaintiff]

[Address]

[Phone number]

Notes

This form alleges a claim for both assault and battery. Dean Prosser differentiates a battery from an assault as follows: "The difference between them is that between physical contact and the mere apprehension of it. One may exist without the other. It is a battery to strike a man while he is asleep, although he does not discover it until afterward; it is an assault to shoot at him, frighten him and miss him."