

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

SENATE BILL 968

By: Daniels

AS INTRODUCED

An Act relating to the Oklahoma Pleading Code;
amending 12 O.S. 2011, Sections 2008, as last amended
by Section 3, Chapter 9, 1st Ex. Sess. O.S.L. 2013,
and 2009, as last amended by Section 5, Chapter 9,
1st Ex. Sess., O.S.L. 2013 (12 O.S. Supp. 2017,
Sections 2008 and 2009), which relate to general
rules and special matters; modifying requirements for
certain claims and averments; defining term;
conforming language; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12 O.S. 2011, Section 2008, as
last amended by Section 3, Chapter 9, 1st Ex. Sess., O.S.L. 2013 (12
O.S. Supp. 2017, Section 2008), is amended to read as follows:

Section 2008.

GENERAL RULES OF PLEADING

A. CLAIMS FOR RELIEF. A pleading which sets forth a claim for
relief, whether an original claim, counterclaim, cross-claim or
third-party claim, shall contain:

1. A short and plain statement, made with particularity of all
material facts known to the pleading party that support the claim

1 ~~showing~~, that creates a reasonable inference that the pleader is
2 plausibly entitled to relief. For the purposes of this paragraph, a
3 material fact is a fact that is necessary to the claim and without
4 which the claim could not be supported. As to facts pleaded on
5 belief, the pleading party shall set forth with particularity the
6 factual information supporting the pleading party's belief; and

7 2. A demand for judgment for the relief to which he deems
8 himself entitled. Every pleading demanding relief for damages in
9 money in excess of the amount required for diversity jurisdiction
10 pursuant to Section 1332 of Title 28 of the United States Code
11 shall, without demanding any specific amount of money, set forth
12 only that the amount sought as damages is in excess of the amount
13 required for diversity jurisdiction pursuant to Section 1332 of
14 Title 28 of the United States Code, except in actions sounding in
15 contract. Every pleading demanding relief for damages in money in
16 an amount that is required for diversity jurisdiction pursuant to
17 Section 1332 of Title 28 of the United States Code or less shall
18 specify the amount of such damages sought to be recovered. Relief
19 in the alternative or of several different types may be demanded.

20 B. DEFENSES; FORM OF DENIALS. A party shall state in short and
21 plain terms his defenses to each claim asserted and shall admit or
22 deny the averments upon which the adverse party relies. If he is
23 without knowledge or information sufficient to form a belief as to
24 the truth of an averment, he shall so state and this statement has

1 the effect of a denial. Denials shall fairly meet the substance of
2 the averments denied. When a pleader intends in good faith to deny
3 only a part or a qualification of an averment, he shall specify so
4 much of it as is true and material and shall deny only the
5 remainder. Unless the pleader intends in good faith to controvert
6 all the averments of the preceding pleading, he may make his denials
7 as specific denials of designated averments or paragraphs or he may
8 generally deny all the averments except such designated averments or
9 paragraphs as he expressly admits; but, when he does so intend to
10 controvert all its averments, he may do so by general denial subject
11 to the obligations set forth in Section 2011 of this title.

12 C. AFFIRMATIVE DEFENSES. In pleading to a preceding pleading,
13 a party shall set forth affirmatively:

- 14 1. Accord and satisfaction;
- 15 2. Arbitration and award;
- 16 3. Assumption of risk;
- 17 4. Contributory negligence;
- 18 5. Discharge in bankruptcy;
- 19 6. Duress;
- 20 7. Estoppel;
- 21 8. Failure of consideration;
- 22 9. Fraud;
- 23 10. Illegality;
- 24 11. Injury by fellow servant;

12. Laches;
13. License;
14. Payment;
15. Release;
16. Res judicata;
17. Statute of frauds;
18. Statute of limitations;
19. Waiver; and
20. Any other matter constituting an avoidance or affirmative defense.

When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

D. EFFECT OF FAILURE TO DENY. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

E. ~~PLEADING TO BE CONCISE AND DIRECT~~ ALTERNATIVE STATEMENTS;
~~CONSISTENCY~~ INCONSISTENCY.

~~1. Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings or motions are required.~~

1 ~~2.~~ A party may set forth, and at trial rely on, two or more
2 statements of a claim or defense alternately or hypothetically,
3 either in one count or defense or in separate counts or defenses.
4 When two or more statements are made in the alternative and one of
5 them if made independently would be sufficient, the pleading is not
6 made insufficient by the insufficiency of one or more of the
7 alternative statements. A party may also state as many separate
8 claims or defenses as he has regardless of consistency and whether
9 based on legal or equitable grounds. All statements shall be made
10 subject to the obligations set forth in Section 2011 of this title.

11 F. CONSTRUCTION OF PLEADINGS. All pleadings shall be so
12 construed as to do substantial justice.

13 SECTION 2. AMENDATORY 12 O.S. 2011, Section 2009, as
14 last amended by Section 5, Chapter 9, 1st Ex. Sess., O.S.L. 2013 (12
15 O.S. Supp. 2017, Section 2009), is amended to read as follows:

16 Section 2009.

17 PLEADING SPECIAL MATTERS

18 A. CAPACITY. It is not necessary to aver the capacity of a
19 party to sue or be sued or the authority of a party to sue or be
20 sued in a representative capacity or the legal existence of an
21 organized association of persons that is made a party. When a party
22 desires to raise an issue as to the legal existence of any party or
23 the capacity of any party to sue or be sued or the authority of a
24 party to sue or be sued in a representative capacity, he shall do so

1 by negative averment, which shall include such supporting
2 particulars as are peculiarly within the pleader's knowledge, and he
3 shall have the burden of proof on that issue.

4 B. FRAUD, MISTAKE, CONDITION OF THE MIND. In accordance with
5 paragraph 1 of subsection A of Section 2008 of this title, in all
6 averments of fraud or mistake, the circumstances constituting fraud
7 or mistake shall be stated with particularity. Malice, intent,
8 knowledge, and other condition of mind of a person may be averred
9 generally.

10 C. CONDITIONS PRECEDENT. In pleading the performance or
11 occurrence of conditions precedent, if the pleading otherwise
12 satisfies the requirements of paragraph 1 of subsection A of Section
13 2008 of this title, it is sufficient to aver generally that all
14 conditions precedent have been performed or have occurred. A denial
15 of performance or occurrence shall be made specifically and with
16 particularity.

17 D. OFFICIAL DOCUMENT OR ACT. In pleading an official document
18 or official act it is sufficient to aver that the document was
19 issued or the act done in compliance with law.

20 E. JUDGMENT. In pleading a judgment or decision of a domestic
21 or foreign court, judicial or quasi-judicial tribunal, or of a board
22 or officer, it is sufficient to aver the judgment or decision
23 without setting forth matter showing jurisdiction to render it.
24

1 F. TIME AND PLACE. For the purpose of testing the sufficiency
2 of a pleading, averments of time and place are material and shall be
3 considered like all other averments of material matter.

4 G. SPECIAL DAMAGE. When items of special damage are claimed,
5 their nature shall be specifically stated. In actions where
6 exemplary or punitive damages are sought, the petition shall not
7 state a dollar amount for damages sought to be recovered but shall
8 state whether the amount of damages sought to be recovered is in
9 excess of or not in excess of the amount required for diversity
10 jurisdiction pursuant to Section 1332 of Title 28 of the United
11 States Code.

12 H. MOTION TO CLARIFY DAMAGES. If the amount of damages sought
13 to be recovered by the plaintiff is less than the amount required
14 for diversity jurisdiction pursuant to Section 1332 of Title 28 of
15 the United States Code, the defendant may file, for purposes of
16 establishing diversity jurisdiction only, a Motion to Clarify
17 Damages prior to the pretrial order to require the plaintiff to show
18 by a preponderance of the evidence that the amount of damages, if
19 awarded, will not exceed the amount required for diversity. If the
20 court finds that any damages awarded are more likely than not to
21 exceed the amount of damages required for diversity jurisdiction,
22 the plaintiff shall amend his or her pleadings in conformance with
23 paragraph 2 of subsection A of Section 2008 of this title.

SECTION 3. This act shall become effective November 1, 2018.

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