

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 SENATE BILL 326

By: Daniels

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5  
6 AS INTRODUCED

7 An Act relating to the Oklahoma Pleading Code;  
8 amending 12 O.S. 2011, Sections 2008, as last amended  
9 by Section 3, Chapter 9, 1st Ex. Sess. O.S.L. 2013,  
10 and 2009, as last amended by Section 5, Chapter 9,  
11 1st Ex. Sess., O.S.L. 2013 (12 O.S. Supp. 2020,  
12 Sections 2008 and 2009), which relate to general  
13 rules and special matters; modifying requirements for  
14 certain claims and averments; defining term;  
15 conforming language; making language gender neutral;  
16 and providing an effective date.

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

18 SECTION 1. AMENDATORY 12 O.S. 2011, Section 2008, as  
19 last amended by Section 3, Chapter 9, 1st Ex. Sess., O.S.L. 2013 (12  
20 O.S. Supp. 2020, Section 2008), is amended to read as follows:

21 Section 2008.

22 GENERAL RULES OF PLEADING

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

26 1. A short and plain statement, made with particularity of all  
27 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 or she  
8 deems himself or herself entitled. Every pleading demanding relief  
9 for damages in money in excess of the amount required for diversity  
10 jurisdiction pursuant to Section 1332 of Title 28 of the United  
11 States Code shall, without demanding any specific amount of money,  
12 set forth only that the amount sought as damages is in excess of the  
13 amount required for diversity jurisdiction pursuant to Section 1332  
14 of 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 or her defenses to each claim asserted and shall  
22 admit or deny the averments upon which the adverse party relies. If  
23 he or she is without knowledge or information sufficient to form a  
24 belief as to the truth of an averment, he or she shall so state and

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

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

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

1 11. Injury by fellow servant;

2 12. Laches;

3 13. License;

4 14. Payment;

5 15. Release;

6 16. Res judicata;

7 17. Statute of frauds;

8 18. Statute of limitations;

9 19. Waiver; and

10 20. Any other matter constituting an avoidance or affirmative  
11 defense.

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

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

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

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



1 party to sue or be sued in a representative capacity, he or she  
2 shall do so by negative averment, which shall include such  
3 supporting particulars as are peculiarly within the pleader's  
4 knowledge, and he or she shall have the burden of proof on that  
5 issue.

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

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

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

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

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

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

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

1 paragraph 2 of subsection A of Section 2008 of this title.

2 SECTION 3. This act shall become effective November 1, 2021.

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