

# **DISCUSSION OF SELECTED OKLAHOMA APPELLATE COURT CASES:**

- **FALSE AFFIDAVITS**
- **REFORMATION OF DEEDS**
- **DEFAULT JUDGMENTS**

**Presented For the:**  
**“2019 Oklahoma Judicial Conference”**  
**At:**  
**OKC, OK: July 19, 2019**

- **COMMENTS BY SUPREME COURT**  
**JUSTICE NOMA D. GURICH**

- **“THREE AMIGOS” PANEL:**

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## **THE HONORABLE JUSTICE NOMA GURICH**

**Noma D. Gurich has served as a Justice on the Supreme Court of Oklahoma since February 15, 2011. She has been a member of the Oklahoma judiciary for 29 years. She is currently serving as Chief Justice. Justice Gurich was born in South Bend, Indiana. She received a bachelor's degree Magna Cum Laude in political science in 1975 from Indiana State University. She earned her Juris Doctorate from the University Of Oklahoma College Of Law in 1978. She has been honored as distinguished alumnus by Indiana State, her high school and was inducted into the University of Oklahoma College of Law Order of the Owl Hall of Fame in 2016. After ten years as a litigator in the private practice of law in Oklahoma City, she was appointed to the Oklahoma Workers' Compensation Court where she served from 1988 to 1998, including 4 years as Presiding Judge. She was appointed and elected to serve as a District Judge in Oklahoma County from 1998 to 2011, where she also served as Presiding Administrative Judge for two years. She also served as the Presiding Judge of two Multi-County Grand Juries. She has the distinction of being appointed to judicial office by four governors. Justice Gurich was honored by the Oklahoma Bar Association Women in Law Section with a Mona Salyer Lambird Spotlight Award in 2003. She was named the 2011 Judge of the Year by the Oklahoma Chapter of the American Board of Trial Advocates. She has been honored by The Journal Record Woman of the Year program three times and inducted into the Journal Record Woman of the Year Circle of Excellence. She received a 2013 Byliner Award by the OKC Association of Women in Communications, and a 2013 Valuable Volunteer Award by the Foundation for Oklahoma City Public Schools. She is a graduate of the 2016 Salt & Light Leadership Training Class 8. Justice Gurich is a member of the OU College of Law Board of Visitors. Since 1998, she has been a member of the Kiwanis Club of Oklahoma. Justice Gurich is the Kiwanis Advisor for the Southeast High School (OKC) Key Club. Justice Gurich is an active member of St. Luke's United Methodist Church where she is a volunteer Mobile Meals driver and TV camera operator. She has also participated in mission trips to Russia and Alaska.**

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**Dale L. Astle is a commercial real estate attorney and serves as outside legal counsel for Bluestem Escrow and Title, LLC, Tulsa, Oklahoma. He received an Associate of Science degree from Northern Oklahoma College, a Bachelor of Science degree from Oklahoma State University and a Juris Doctor degree from University of Oklahoma College of Law.**

**He is past president of the Oklahoma Land Title Association and is a member of the Tulsa County Bar Association, the Oklahoma Bar Association and the Tulsa Title and Probate Lawyers Association. He is a fellow in the American College of Real Estate Lawyers. He is past chairman of the Real Property Law Section of the Oklahoma Bar Association and has been a continuously active member of the Title Examination Standards Committee of the Oklahoma Bar for 38 years.**

**Dale was selected for inclusion in “Oklahoma Super Lawyers” and “Chambers USA”. He has also served as a member of the Executive Committee of the Abstractors and Title Insurance Agents Section of the American Land Title Association and as chairman of the ALTA Public Relations Committee.**

**He is a frequent presenter in seminars and educational conferences, has taught Real Estate Transactions as an adjunct professor at the University of Tulsa College of Law and has written numerous articles covering various topics related to real estate law and Oklahoma land titles.**

**He is the author of “*Equal Credit Opportunity Act – New Compliance Requirements*”, Volume 48, Oklahoma Bar Journal, Number 3, “*An Analysis of the Evolution of Oklahoma Real Property Law Relating to Lis Pendens and Judgment Liens*”, Volume 32, Oklahoma Law Review, Number 4, “*Homestead Rights Relating To Purchase Money Mortgages*”, Volume 63, Oklahoma Bar Journal, Number 37, “*Title Insurance*”, Vernon’s Oklahoma Forms 2d, Real Estate, “*Official Conveyances and Antecedent Records*,” Patton and Palomar on Land Titles, Third Edition and “*Transfer-on-Death Deeds in Oklahoma*”, Volume 82, Oklahoma Bar Journal, Number 651.**

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**EDUCATION:**

- **University of Oklahoma [B.A. (PoliSci-Urban Admin.) 1971];**
- **State Univ. of N.Y. at Stony Brook [M.S. (Urban and Policy Sciences) 1974]; &**
- **Oklahoma City University [J.D. (Law) 1978].**

**PRACTICE AREAS:**

- **Mineral/Surface Title Matters: Curative, Litigation, Expert Consultant/Witness, and Opinions**
- **Mediations and Arbitrations**
- **HOA and Condo Restrictions Interpretation and Enforcement**

## **SUCCESSFUL APPELLATE CASES AND SAMPLE ENGAGEMENTS:**

- **Appellant Counsel: Inadequate Legal Description (Riverbend Land, LLC v. State of Oklahoma, ex rel, Oklahoma Turnpike Authority, 2019 OK CIV APP 31)**
- **Amicus Brief: Enforcement of Ancient Probate (Bebout v. Ewell, 2017 OK 22)**
- **Expert Opinion: Reformation of Deeds (Scott v. Peters, 2016 OK 16)**
- **Secured AG Opinion: Safe Distance Between Residences and Well Sites (2009 OK AG 5)**
- **Arbitrator: Horizontal Well Damages to Vertical Wells**
- **Court-appointed Receiver for 5 Abstract Companies**
- **Arbitration Assistance: Defended Billion Dollar PSA Title Dispute**

## **SPECIAL ACTIVITIES:**

- **OBA Title Examination Standards Committee (Chairperson: 1988-Present)**
- **Oklahoma City University School of Law adjunct professor: “Oklahoma Land Titles” (1982-Present)**
- **Vernons 2d: Oklahoma Real Estate Forms and Practice, (2000 - Present) General Editor and Contributing Author**

## **SELECTED PUBLICATIONS:**

- ***“Constructive Notice: Oklahoma’s Hybrid System Affecting Surface and Mineral Interests”, 80 OBJ 40 (January 2018)***
- ***“The Oklahoma Marketable Record Title Act (aka The Re-Recording Act): An Argument That This 30-Year Curative Act Can Extinguish Co-Tenancies”, 87 OBJ 27, (October 15, 2015)***
- ***“Marketable Record Title: A Deed Which Conveys Only The Grantor’s ‘Right, Title And Interest’ Can Be A ‘Root Of Title’”, 85 OBJ 1104 (May 17, 2014)***



# **SCOTT WILLIAM McEACHIN**

**Scott McEachin is a sole practitioner in Tulsa, Oklahoma. His practice is limited, almost exclusively, to oil and gas title examination. He received a Bachelor of Arts degree in History and Political Science from the University of California at Santa Barbara and a Juris Doctor degree from the University of Oklahoma College of Law.**

**Mr. McEachin has been an attorney with Apco Oil Corporation in Oklahoma City and with Hondo Oil and Gas Company in Roswell, New Mexico. He was affiliated with several law firms before beginning his private practice in 1992.**

**He is a member of the Real Property Section of the Oklahoma Bar Association, and he served as its Chair in 1989. He is a member of the Title Examination Standards Committee.**

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# ***JUDICIAL CONFERENCE 2019***

## ***1. JUDICIAL PHILOSOPHY: SETTING THE STAGE - QUOTES & JOKES***

***(See: [www.EppersonLaw.com](http://www.EppersonLaw.com) for  
more!)***

- **RESPECT FOR THE COURTS**

- **“If respect for the courts and for their judicial process is gone or steadily weakened, no law can save us as a society. Lawyers, whatever their views on controversial decisions, must inspire respect for the judiciary.”**

- **William T. Gossett, American lawyer; president, American Bar Association Speech, Canadian Bar Association, Ottawa, September 3, 1969**

- **TRIAL v. APPELLATE JUDGES**

*The young judge spends the first third of his life in fear that he might be reversed by the court of appeals, the middle third in the conviction that the court of appeals was always wrong and the last third not caring whether it was right or wrong.*

*(Quote 34.33)*

*[Patrick Devlin, English jurist, The Judge, 1979]*

- **JURY SERVICE**

*Jury service honorably performed is as important in the defense of our country, its Constitution and laws, and the ideals and standards for which they stand, as the service that is rendered by the soldier on the field of battle in time of war.*

*(Quote 70.19)*

*[George H. Boldt, American jurist,  
United States v. Beck (1959)]*

- **RES JUDICATA**

*Lord Westbury...it is said, rebuffed a barrister's reliance upon an earlier opinion of his Lordship: "I can only say that I am amazed that a man of my intelligence should have been guilty of giving such an opinion."*

*(Quote 95.11)*

*[Robert H. Jackson,*

*McGrath v. Kristensen, 340 U.S. 162, 177-78 (1950)]*

# • JUDGING v. LEGISLATING

*I do not believe it is the function of the judiciary to step in and change the law because the times have changed. I do well understand the difference between legislating and judging. As a judge, it is not my function to develop public policy.*

*(Quote 127.35)*

*[Sandra Day O'Connor*

*Washington Post, September 10, 1981]*



# • HEARTS OF MEN

*I often wonder whether we do not rest our hopes too much upon constitutions, upon laws and upon courts. These are false hopes; believe me, these are false hopes.*

*Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it...*

*(Quote 81.20)*

*[Learned Hand*

*Irving Dilliard, The Spirit of Liberty, 1960]*

- **COMPROMISE**

*You cannot shake hands with a  
clenched fist.*

*(Quote 137.17)*

*[Indira Gandhi, 1917 - 1984]*

## **2. PETITION FOR CERTIORARI STATISTICS**

# **What percentage of Petitions for Cert are Granted by the OK SUP Ct?**

**A. 15%**

**B. 40%**

**C. 65%**

**D. 80%**

**(Oklahoma Supreme Court Rule 1.178 -  
5 of 9 Justice must approve Cert.)**

# **What percentage of Petitions for Cert are Granted by the OK SUP Ct?**

**A. 15% (2017)**

**(Source: 5 Okla. Prac., Appellate Practice §17.13  
(2018 ed.))**

# **What percentage of Petitions for Cert which are Granted are Vacated or Reversed by the OK SUP Ct?**

- A. 100%**
- B. 95%**
- C. 65%**
- D. 55%**



**What percentage of Petitions for  
Cert which are Granted are  
Reversed by the OK SUP Ct?**

**A. 100%**

**B. 95%**

<b>Year</b>	<b>Okla. S. Ct. Cases Decided on Petitions for Certiorari from COCA</b>	<b>Number of COCA Cases Reversed or Vacated</b>	<b>Percentage of Cases Reversed or Vacated</b>
<b>2014</b>	<b>20</b>	<b>20</b>	<b>100%</b>
<b>2015</b>	<b>20</b>	<b>20</b>	<b>100%</b>
<b>2016</b>	<b>24</b>	<b>23</b>	<b>96%</b>
<b>2017</b>	<b>21</b>	<b>20</b>	<b>95%</b>
<b>2018</b>	<b>12</b>	<b>12</b>	<b>100%</b>

**(Source: Unconfirmed)**

### **3. FALSE AFFIDAVITS:**

**JONES v. STALICK**  
**(2017 OK CIV APP 67)**

• **GENERAL TOPIC:**

SUBSTITUTING REAL PARTY IN  
INTEREST INVOLVING A FRAUDULENT  
AFFIDAVIT OF HEIRSHIP

• **SPECIFIC TOPIC:**

FRAUDULENT AFFIDAVIT OF HEIRSHIP  
SUPPORTS TORT CLAIM ASSERTED BY  
REAL PARTY IN INTEREST

## •**HOLDING:**

Holder of mineral title when fraudulent heirship affidavit is filed is the real party in interest, and court will assume the real party in interest is substituted

## •**FACTS:**

When the mother died leaving 5 children, three children filed false affidavits of heirship asserting they were the sole heirs. Such heirs assigned their interest to one of the daughters (Debra). When the children of one of the other heirs (Lawrence) learned of this fraud they sued.

# • **TRIAL COURT RULING:**

A determination was made that Lawrence was the real party interest at the time that the false affidavit was filed, and that he should be added as a necessary party. His two daughters (plaintiffs) were determined to not have a claim, and Lawrence did not timely file an amended petition. The claims of Lawrence and his two daughters were dismissed.



# **•COURT OF CIVIL APPEALS**

## **RULING:**

The COCA held that Lawrence should have been treated as being substituted as the plaintiff/real party in interest, and reversed the trial court. The COCA held that Lawrence could not assign his tort claims and therefore affirmed the dismissal of his daughters' claims.

## **4. REFORMATION OF DEEDS:**

# **REASNOR v. DAVIS**

**(114596; UNPUBLISHED, PETITION FOR  
CERT DENIED OCTOBER 2, 2017)**

- **GENERAL TOPIC:**

**REFORMATION OF DEED**

- **SPECIFIC TOPIC:**

**STATUTE OF LIMITATION DID NOT  
BAR ACTION TO CORRECT DEED  
WORDED CONTRARY TO PARTITION  
ORDER (TENANT IN COMMON  
DEEDED INSTEAD OF ORDERED JOINT  
TENANT)**

# • HOLDING:

**Deed incorrectly conveying as tenant in common instead of joint tenant, as was directed in partition order, can be reformed within 5 years from discovery of error rather than from date of filing of deed.**

# **FACTS:**

**Partition order directed parties to convey land to grantees as joint tenants (not tenants in common). Deed omitted joint tenancy wording and was presumed to be tenants in common. Deed was filed. More than 5 years after the deed was filed, a grantee died and the error was discovered. The joint tenancy survivor sued to reform deed or enforce the order.**

# **• TRIAL COURT RULING:**

**Trial Court granted judgment to the holder of the tenant in common interest denying reformation based on the passage of the statute of limitation being 5 years from the filing of the erroneous deed. The claim was based on mutual mistake.**



# **•COURT OF CIVIL APPEALS RULING:**

**COCA reversed the trial court and directed the parties “to execute a corrected deed conforming with the partition order [to be joint tenancy] or, in the alternative, to file and record the partition order pursuant to the requirements of 12 O.S. 2011 Section 687, 16 O.S. 2011 Section 31, or other applicable statutes.”**

- **[AUTHOR'S COMMENT:**

**There are 4 other Oklahoma Supreme Court cases issued in 2016 holding the 5-year statute of limitation for mutual mistake runs from the filing of the deed and not the discovery of the error: See *Calvert v. Swinford* (2016 OK 96, and 2016 OK 100, and 2016 OK 104), and see *Scott v. Peters* (2016 OK 108) (2)]**

# **5. DEFAULT JUDGMENTS:**

# **SCHWEIGERT v. SCHWEIGERT**

**2015 OK 20, 348 P.3d 696**

- **GENERAL TOPIC:**

**DEFAULT JUDGMENT MOTION, NOTICE AND HEARING IN DIVORCE ACTION.**

- **SPECIFIC TOPIC:**

**IS A MOTION, NOTICE AND A HEARING REQUIRED, BEFORE TAKING A DEFAULT JUDGMENT, WHEN NO APPEARANCE OR ANSWER IS FILED BUT A PHYSICAL APPEARANCE IS MADE?**

# **•FACTS:**

- 1. Mother sued for divorce, seeking temporary and permanent custody of two minor children, with supervised visitation with father.**
- 2. Father was personally served (“at CeeDee’s County Store in Dustin, Oklahoma”), but did not file an entry of appearance, or an Answer.**
- 3. Father did appear at the hearing on the application for a temporary order.**
- 4. The temporary order was filed one year after the hearing.**
- 5. The temporary order acknowledged that the father “appear[ed] in person and pro se at the hearing.”**
- 6. The record fails to show a copy of the filed temporary order was sent to the father, or that he had a chance to contest its contents before it was filed.**

# **•FACTS:**

- 7. Default hearing on the final order was set by minute order on the court docket without mother filing a Motion.**
- 8. Mother did not give notice to father of the default hearing on the final order, and nothing in the record states that his address was unknown.**
- 9. District Court held a hearing on the final order by default without father's attendance.**
- 10. On the day of hearing, the trial court granted the divorce, and awarded custody of minor children to mother with supervised visitation with father, and awarded \$283.01 per month to mother for child support from father.**
- 11. Two years later, father filed a motion to vacate the divorce decree.**

# **• TRIAL COURT RULING:**

- 1. Trial court denied father's Motion to Vacate which asserted fraud and lack of due process.**
- 2. Trial court found father had not filed an entry of appearance as required by 12 O.S. §2005.2.A. ("Every party to any civil proceeding in the district courts shall file an entry of appearance by counsel or personally as an unrepresented party...").**
- 3. Trial court held such failure exempted mother from filing a Motion and from giving father notice of the hearing for default judgment resulting in issuance of the final order.**

# **•COURT OF CIVIL APPEALS RULING:**

- 1. COCA affirmed Trial Court denial of Motion to Vacate.**
- 2. Father filed Petition for Certiorari, and Cert was granted.**



# **• SUPREME COURT RULING:**

- “The dispositive question is whether a party must file a Motion for Default and give the adverse party notice under Rule 10 of the Rules of the District Courts (12 O.S. 2011 Ch.2, app. (Rule 10)), when the adverse party fails to file an answer or an entry of appearance, but physically appears at a hearing.”**
- “We answer in the affirmative.”**

# **SUPREME COURT'S RATIONALE**

- 1. The trial court's decision of the proper application of Rule 10 to undisputed facts is an unmixed question of law, and, therefore, will be reversed if error.**

## **2. Rule 10 provides:**

**“In matters in default in which an appearance, general or special, has been made or a motion or pleading has been filed, default shall not be taken until a motion therefore has been filed in the case and five (5) days notice of the date of the hearing is mailed or delivered to the attorney of record for the party in default or to the party in default if he is unrepresented or his attorney's address is unknown. If the addresses of both the party and his attorney are unknown, the motion for default judgment may be heard and a default judgment rendered after the motion has been regularly set on the motion and demurrer docket.”\*\***

**“Notice of taking default is not required where the defaulting party has not made an appearance...”**

**3. The Supreme Court held (¶ 14):**

**“Because Section 2005.2 was not adopted, and therefore did not exist, until after Rule 10, Rule 10’s language of making an appearance cannot be limited to filing an entry of appearance pursuant to Section 2005.2.”**

4. ¶10 Mother contends that the phrase “made an appearance” is the equivalent of filing an entry of appearance pursuant to Title 12, Section 2005.2.
5. ¶12 An appearance is any act, including participation in a hearing for a temporary order, which brings the person under the court’s jurisdiction.

**6. ¶13 “To make” has a different meaning than “to file.” “To file” something means to “deposit in custody or among the records of the court,” *Black’s* at 566, in this case “filing an entry of appearance.” “To make” or “made” does not require the normality of filing a document.**

## **7. The “Conclusion” held (¶ 16):**

**“Mother’s failure to file a motion for default and give notice to Father pursuant to Rule 10 after Father had appeared at the hearing for temporary order was an irregularity in the proceeding. The district court erred in denying Father’s motion to vacate the divorce decree. The district court’s order denying the motion to vacate is reversed and the cause is remanded to the district court. On remand, the district court is directed to revisit the motion to vacate in light of this opinion. The Court of Civil Appeals’ opinion is vacated.”**

8. This dicta was included (§15):

*“This [Rule 10] language mandates that a motion must be filed in all instances, even when a party fails to make an appearance, and the motion must recite what notice was given, and, if none were given, the reason therefore. Mother’s failure was an irregularity in the proceedings that left the district court without means of determining whether she was required to give notice, and, if so, whether the notice conformed to due process prerequisites of entering judgment.”*





## **AUTHOR’S COMMENTS AND QUESTIONS:**

*1. If the statute (12 O.S. §2005.2) provides the party “shall file an appearance”, in order to entitle the defaulting party to a motion, a hearing and a notice of this hearing, before a default judgment is granted, can the courts ignore such specific later legislative dictate and follow its own earlier lesser requirement?*

# AUTHOR'S COMMENTS AND QUESTIONS:

2. *While it is clear that if a defendant appears at a hearing in person, he cannot deny being served, how does the Supreme Court transform such limitation on the Defendant into a limitation on the Plaintiff, when the Plaintiff seeks a default judgment?*

# AUTHOR'S COMMENTS AND QUESTIONS:

3. *This language, in ¶ 15, appears to be dicta and unnecessary and, in fact, contrary to the explicit holding:*

*“This [Rule 10] language mandates that a motion must be filed in all instances, even when a party fails to make an appearance.”*

# **AUTHOR'S COMMENTS AND QUESTIONS:**

***4. If the defaulting party has “made” a physical appearance, but has not “filed” an entry of appearance or other pleading, what is the defaulting party entitled to receive: (A) Motion for default and/or (B) Hearing on such Motion, and/or (C) Notice of such Hearing?***

# AUTHOR'S COMMENTS AND QUESTIONS:

5. *If the original Summons and Petition were served personally -- as occurred in Schweigert -- but the pro se defendant's address is unknown, must the motion for default also be served personally? Or by publication? Or not at all?*

# **AUTHOR'S COMMENTS AND QUESTIONS:**

***6. If the original Summons and Petition were served personally, and the pro se Defendant's address is known, must the Motion for Default also be served personally? Or by certified/return receipt requested? Or by publication? Or not at all?***

# **AUTHOR'S COMMENTS AND QUESTIONS:**

***7. Is this holding of Schweigert limited to this category of special proceeding, known as a divorce?***

***No, see the collection action case:***

***Asset Acceptance v. Pham, 2018 OK CIV APP 26, 415 P.3d 47***

# **ASSET ACCEPTANCE v. PHAM** **(2018 OK CIV APP 26)**

- **GENERAL TOPIC:**

**DEFAULT JUDGMENT MOTION AND  
HEARING IN COLLECTION ACTION**

- **SPECIFIC TOPIC:**

**IS A MOTION, NOTICE AND A HEARING  
REQUIRED, BEFORE TAKING A DEFAULT  
JUDGMENT, WHEN NO APPEARANCE OR  
ANSWER IS FILED, AND WHERE NO  
PHYSICAL APPEARANCE IS MADE?**



# •**HOLDING:**

**Where a pro se Defendant communicates with the Plaintiff's attorney, such contact triggers the need for a: (1) motion, notice and hearing before default judgment, and (2) disclosure of contact to the Court.**

- **FACTS:**

**Lender filed action for collection of unpaid debt, and advised debtor the Plaintiff would not proceed until meeting all requirements under FDCPA. Defendant did not “enter an appearance or file any answer...”, or otherwise “make an appearance”. Plaintiff and Defendant exchanged communications about the debt, and Plaintiff ended contact telling Defendant “We will proceed with this matter.” Then it secured a default judgment, without official notice to defendant.**

**When garnishment started, Defendant filed Petition to Vacate Judgment and filed Answer/Counterclaim.**

# • **TRIAL COURT RULING:**

**Trial Court entered default judgment for lender and denied Petition to Vacate, relying on Rule 10 which provides: “Notice of taking default is not required when the defaulting party has not made an appearance.” Defendant appealed.**

- **COURT OF CIVIL APPEALS RULING:**

**COCA reversed and remanded: (1) holding there must always -- in all circumstances -- be a motion, notice, and a hearing before taking default, but there was none, and (2) holding that due to the statement in the Summons that “all collection efforts, including our proceeding with this lawsuit,**

**will cease until we respond as required by law,” the Plaintiff was required to disclose their intent to the debtor to seek a default, but there was no such notice given, (3) holding that the Plaintiff must advise the court of (a) no notice to Defendant of intent to seek default, and (b) offer of settlement negotiations, and (4) holding Plaintiff failed to give an explanation for differences in actual debt of \$245 versus claimed debt of \$1,300.**

COCA relies on Schweigert: [¶17]:

“This language mandates that a motion must be filed in all instances, even when a party fails to make an appearance, and the motion must recite what notice was given, and, if none were given, the reason therefore.” [emphasis added by court]

## **AUTHOR'S COMMENT:**

- (1) Rule 10 provides: “Notice of taking default is not required where the defaulting party has not made an appearance.” But Schweigert declares (§ 15) “This [Rule 10] language mandates that a motion must be filed in all instances, even when a party fails to make an appearance.” Which holding is correct?**
- (2) There is no discussion of how the Plaintiff failed to “respond as required by law.” The Plaintiff confirmed the lender’s name, and the amount of the debt. (FDCPA, 15 U.S.C. 1692(g) Debt Validation)**



- (3) The Plaintiff told the Defendants: “We will proceed with this matter,” which arguably advises of the intent to proceed to take a default judgment.**
- (4) It is the Defendant’s duty to dispute the amount of the debt, and not the Plaintiffs.**
- (5) Disclosure of such settlement negotiations are not admissible per 12 §2408.**

# **IMPLEMENTATION OF SCHWEIGERT & ASSET ACCEPTANCE BY TRIAL COURTS**

# **OKLAHOMA COUNTY DISTRICT COURT RULE NO. 16 FOR DEFAULT JUDGMENT**

*(June 12, 2018 changes underlined and bold):*

***RULE NO. 16      DEFAULT JUDGMENT***

**A. Judgment in a case, (except family and domestic cases) in which service has been made, but in which there has been no appearance, may be taken at any time after the answer date before the assigned judge.**

**The following documents shall be provided to the assigned judge at the time the journal entry of default judgment is presented for signature:**

**1. Motion for Default Judgment. All Motions for Default Judgment must state the following:**

- a. Whether the defaulting party has filed any pleading/document;**
- b. Whether the defaulting party has appeared in open court; and**
- c. What notice was given, and, if none were given, the reason therefore.**

- 2. Proof of service;**
- 3. Service member's affidavit in accordance with the Service member's Civil Relief Act of 2003 and Department of Defense Status Report in all civil cases involving individuals;**
- 4. Proof of breach of last payment;**
- 5. Copy of the contract, mortgage, note or account;**
- 6. Amount of debt, principle and interest;**
- 7. Assignments, if applicable; and**
- 8. Any other item specifically requested by the assigned judge.**

**B. If the assigned judge is absent at the time fixed in the notice to take default judgment, the matter shall stand continued to the next motion day of the Court over which said judge presided, or it may be heard or continued by another judge in the absence or inability of the assigned judge to hear it.**

# **OKLAHOMA CITY COMMERCIAL LAWYERS ASSOCIATION**

**COUNTY-BY-COUNTY**

**DEFAULT JUDGMENT**

**PROCEDURES (APPROXIMATELY!)**



**The results of a recent informal survey (by Oklahoma City Commercial Law Attorney's Society) of the default judgment proceedings followed in Oklahoma's 77 counties found a wide range of practices:**

**1) Is a Motion for Default Judgment required before presenting the Default Judgment?**

- a. Yes -13 (in Oklahoma County, some Judges do and some don't)**
- b. No - 24**
- c. Unknown - 40**

## **2) When is a Hearing required for a Motion for Default Judgment:**

- a. Always - 6**
- b. If court so determines - 3**
- c. Only if an Entry of Appearance, Answer or Correspondence received or filed - 25**
- d. Unknown - 43**

COUNTY	SIGN BY MAIL?	FILE MDJ BEFORE PRESENTING?	SET MDJ FOR HEARING?
Adair	Yes	No	Rule 13 – if court so determines
Alfalfa	Yes		
Atoka	Yes	No; MDJ not required for DJ, but must attach supporting docs and present court file	Only if EOA or written correspondence rec'd/filed
Beaver	No, but need to announce that you have looked at court file and no answer has been filed (Local Rule 20(a))	No	"hearing of defaults" held on 2 <sup>nd</sup> and 4 <sup>th</sup> Tuesday of each month at 10:00 a.m., but don't have to actually set it (Local Rule 13)
Beckham	Yes		
Blaine	Yes		
Bryan	Yes	Rules don't specify	
Caddo	No		
Canadian	CS=yes; CJ=no	No	Yes if contact made w/ def (Rule 16)
Carter	No	Yes	Yes if contact made w/ def
Cherokee	Yes	No; MDJ not required for DJ, but do need to attach supporting docs (Rule 15)	Rule 19 – if court so determines
Choctaw	No		
Cimarron	No, No, but need to announce that you have looked at court file and no answer has been filed (Local Rule 20(a))	No	"hearing of defaults" held on 1 <sup>st</sup> and 3 <sup>rd</sup> Thursday of each month at 10:00 a.m., but don't actually have to set for hearing (Rule 13)
Cleveland	Yes	No; MDJ not required for DJ; Affidavit for fees required for CS	Only if EOA or written correspondence rec'd/filed
Coal	I don't think so	No; MDJ not required for DJ, but must attach supporting docs and present court file	Only if EOA or written correspondence rec'd/filed
Comanche	No	No	Only if EOA or written correspondence rec'd/filed
Cotton	Yes		
Craig	No		

Creek <i>Yes - Judge Parrish signs ours by mail every time</i>	No, must present court file, but can leave at judge's office; must present NBP judgments in person (Rule CV 7)	No; MDJ not required for DJ,	Only if pleading filed
Custer	CS – yes; CJ – no	Yes, and need supporting docs	
Delaware	No; must physically pull file before presenting to judge		
Dewey	No		
Ellis			
Garfield	<i>Newby- Yes</i>		
Garvin	Yes	No	Yes if contact made w/ def
Grady	Yes	No; MDJ not required for DJ	Only if EOA or written correspondence rec'd/filed
Grant			
Greer	Yes		
Harmon	Yes		
Harper	No, but need to announce that you have looked at court file and no answer has been filed (Rule 20(a))	No	"hearing of defaults" held on 2 <sup>nd</sup> and 4 <sup>th</sup> Thursday of each month at 11:00 a.m., but don't actually have to set for hearing (Rule 13)
Haskell <i>Yes - Judge Henderson signs by mail, send him the usual evidence</i>	No (Rule 22)	No; MDJ not required for DJ, but do need supporting documents and court file (Rule 28)	Only if EOA or written correspondence rec'd/filed
Hughes			
Jackson	Yes		
Jefferson	Yes		
Johnston		Probably	
Kay	No (Rule 2.1 (B) & (C))		
Kingfisher	Yes for now (Judge Davis is retiring)		
Kiowa	Yes		
Latimer	No (Rule 22)	No; MDJ not required for DJ, but do need supporting documents and court file (Rule 28)	Only if EOA or written correspondence rec'd/filed

Leflore <i>Yes, Judge Sullivan</i>	No (Rule 22) <i>will sign by mail</i>	No; MDJ not required for DJ, but do need supporting documents and court file (Rule 28). Time record required for attorney fees	Only if EOA or written correspondence rec'd/filed
Lincoln	No	No; MDJ not required for DJ	Only if EOA or written correspondence rec'd/filed
Logan	No (Rule 9)	No; MDJ not required for DJ (Rule 9)	Only if EOA
Love		Yes	Yes if contact made w/ def
Major			
Marshall		Probably	
Mayes	No	Yes	Yes if contact made w/ def
McClain			
McCurtain	No	Yes	Yes for all Default Judgments
McIntosh			
Murray	No	Yes	Yes if contact made w/ def
Muskogee	Yes	Rules don't specify	Yes if EOA
Noble	No (Rule 2.1 (B) & (C))		
Nowata	No		
Okfuskee	Yes		
Oklahoma	Yes	No and Yes (Andrews, Timmons, Collins, and Ogden only require it filed; Andrews requires an order granting MDJ in addition to JE even if setting for hearing)	Yes if contact made w/ def (Rule 16) When contact has been made w/ def Prince requires an affidavit to be filed stating whether or not promises were made or if anything was worked out.
Okmulgee	Yes		
Osage	Yes	Yes and must provide supporting docs per Rule 16	Yes if EOA or written correspondence
Ottawa	No, must physically pull file before presenting DJ to judge		
Pawnee	Yes		

Payne	No (Rule 9)	No: MDJ not required for DJ (Rule 9)	Only if EOA
Pittsburg	Yes	Yes	Only if EOA or written correspondence rec'd/filed
Pontotoc	Yes		
Pottawatomie	Yes	No	Yes if contact made w/ def
Pushmataha	No	Yes	Yes for all defaults
Roger Mills	Yes		
Rogers	Yes	Requires plaintiff's affidavit of debt	
Seminole	Yes	Yes	
Sequoia	Yes	Rule 7 & 9 doesn't specify	Rule 13 – if court so determines
Stephens	Yes	Attorney fees by affidavit	
Texas	No, but need to announce that you have looked at court file and no answer has been filed (Local Rule 20(a))	NO	"hearing of defaults" held on 2 <sup>nd</sup> and 4 <sup>th</sup> Wednesday of each month at 10:00 a.m. , but don't actually have to set for hearing (Rule 13)
Tillman	Yes		
Tulsa	No (Local Rule CV 7); Law library does provide a service via email or fax and they will deliver judgments and orders for a small fee	No	Only if EOA or written correspondence rec'd/filed
Wagoner	Yes	No; MDJ not required for DJ, but do need to attach supporting docs (Rule 15)	Only if EOA or written correspondence rec'd/filed
Washington	Yes		
Washita	Yes		
Woods	Yes	No, but must file Plaintiff's affidavit of debt	Only if EOA or written correspondence rec'd/filed
Woodward	Yes		