

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

SENATE BILL NO. 1013

BY: MILES-LaGRANGE

AS INTRODUCED

AN ACT RELATING TO CIVIL PROCEDURE; AMENDING 12 O.S. 1991, SECTIONS 22, 653, 698, 706, 706.2, AND 706.3, SECTION 23, CHAPTER 251, O.S.L. 1991, 12 O.S. 1991, SECTIONS 990A, 993, 1006, 1031.1, 1032, 1038, AND 1770, WHICH RELATE TO DISTRICT COURT CLERKS, APPLICATION FOR TRIAL, JUDGMENTS, LIENS, CASH DEPOSITS, AND APPEALS; DELETING REQUIREMENT OF JUDGMENT DOCKET; SPECIFYING TIME FOR NEW TRIAL APPLICATION AND STATING EXCEPTIONS; PROVIDING FOR PREPARATION AND FILING OF JUDGMENTS AND ORDERS; STATING JURISDICTIONAL PREREQUISITES FOR APPEAL AND PROVIDING EXCEPTIONS; PROVIDING FOR ENFORCEABILITY OF CERTAIN JUDGMENTS, DECREES AND APPEALABLE ORDERS UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR CONTENTS OF JUDGMENTS, DECREES AND APPEALABLE ORDERS; PROVIDING FOR APPLICATIONS FOR COSTS, ATTORNEY'S FEES AND INTEREST; PROVIDING FOR JUDGMENT NOTWITHSTANDING VERDICT; MODIFYING PROCEDURES FOR CREATION, EXECUTION, FILING, INDEXING AND RELEASE OF CERTAIN JUDGMENT LIENS; TERMINATING LIEN UPON DEPOSIT OF CASH; ALLOWING FOR REQUEST OF ADDITIONAL CASH DEPOSIT; DECLARING VALIDITY OF CERTAIN JUDGMENTS; PROVIDING FILING TIME FOR MATTERS TAKEN UNDER ADVISEMENT; DESCRIBING PREMATURE PETITION IN

ERROR AND PROVIDING FOR SUPPLEMENTAL PETITION IN
ERROR; SPECIFYING TIME FOR CERTAIN APPEALS;
PROVIDING FOR POST-TRIAL STAYS; SPECIFYING ORDERS
APPEALABLE BEFORE FINAL DETERMINATION; ALLOWING
ENFORCEMENT OF STAY; REQUIRING DISMISSAL OF
FRIVOLOUS APPEALS; PROVIDING TIME FOR MODIFICATION
OR VACATION OF JUDGMENT; PROVIDING FOR CORRECTION
OF JUDGMENT OR ORDER; PROVIDING TIME FOR
MODIFICATION OR VACATION OF JUDGMENTS FOR CERTAIN
CAUSES; MODIFYING PROCEDURES FOR RELEASE OF SMALL
CLAIMS JUDGMENT; REPEALING 12 O.S. 1991, SECTIONS
25.1, 32.3, 696.1, 697.1, 968.1, 969.1, 970.1,
971.1 AND 974.1, WHICH RELATE TO JUDGMENT DOCKET,
CERTAIN COURT ORDERS, CERTAIN JURY TRIAL JUDGMENTS,
CERTAIN SPECIAL VERDICTS, CERTAIN STAYS OF
EXECUTION, CERTAIN INSTRUMENTS DEPOSITED WITH COURT
CLERK, EXECUTION OF CERTAIN UNDERTAKING, APPROVAL
OF CERTAIN SURETIES AND AUTOMATIC STAYS OF
EXECUTION; PROVIDING FOR CODIFICATION; PROVIDING
FOR RECODIFICATION; AND PROVIDING AN EFFECTIVE
DATE.

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

SECTION 1. AMENDATORY 12 O.S. 1991, Section 22, is amended to read as follows:

Section 22. The clerk of the district court shall keep an appearance docket, a trial docket, a journal, ~~a judgment docket,~~ and such other records as may be ordered by the court or required by law.

SECTION 2. AMENDATORY 12 O.S. 1991, Section 653, is amended to read as follows:

Section 653. A. Unless unavoidably prevented, ~~the~~ an application for a new trial, if made, must be filed within ten (10) days after the ~~verdict, report or decision is rendered regardless of whether or not the term has ended,~~ judgment, decree or appealable order prepared in conformance with Section 4 of this act has been filed, except for:

1. In the ~~cause~~ case of newly discovered material evidence, ~~material for the party applying,~~ which ~~he~~ the moving party could not, with reasonable diligence, ~~have discovered and produced at the trial;~~ or impossibility

2. Impossibility of preparing a record for an appeal.

B. Where the judgment, decree or appealable order states the matter was taken under advisement, the motion for new trial, if made, must be filed within ten (10) days from the date of mailing of a file-stamped copy of the judgment, decree or appealable order to the moving party, as indicated on the Certificate of Mailing.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 696.2 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. After the granting of a judgment, decree or appealable order, it shall be reduced to writing in conformance with Section 4 of this act, signed by the court, and filed with the court clerk. The court may direct counsel for any party to the action to prepare a draft for the signature of the court, in which event, the court may prescribe procedures for the preparation and timely filing of the judgment, decree or appealable order, including, but not limited to, the time within which it is to be submitted to the court. If a written judgment, decree or appealable order is not submitted to the court by the party directed to do so within the time prescribed by

the court, then any other party may reduce it to writing and submit it to the court.

B. Where a matter is taken under advisement, the court shall state in the written judgment, decree or appealable order that the matter was taken under advisement. Promptly after the filing of such judgment, decree or appealable order, the court shall cause file-stamped copies of the judgment, decree or appealable order to be mailed to all parties who have entered an appearance or who have appeared in the action. The copies shall state the date of mailing. The person who mailed the copies of the judgment, decree or appealable order shall file a Certificate of Mailing showing to whom copies of the judgment, decree or appealable order were mailed, the addresses to which they were mailed, and the date of mailing.

C. The filing with the court clerk of a written judgment, decree or appealable order, prepared in conformance with Section 4 of this act and signed by the court, shall be a jurisdictional prerequisite to the commencement of an appeal. The following shall not constitute a judgment, decree or appealable order: A minute entry; verdict; informal statement of the proceedings and relief awarded, including, but not limited to, a letter to a party or parties indicating the ruling or instructions for preparing the judgment, decree or appealable order.

D. A judgment, decree or appealable order, whether interlocutory or final, shall not be enforceable in whole or in part unless or until it is signed by the court and filed; except that the adjudication of any issue shall be enforceable when pronounced by the court in the following actions: Divorce, separate maintenance, annulment, post-decree matrimonial proceedings, paternity, custody, adoption, termination of parental rights, mental health, guardianship, juvenile matters, or habeas corpus proceedings. The time for appeal shall not begin to run until a written judgment, decree or appealable order, prepared in conformance with Section 4

of this act, is filed with the court clerk, regardless of whether the judgment, decree, or appealable order is effective when pronounced or when it is filed.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 696.3 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. Judgments, decrees and appealable orders that are filed with the clerk of the court shall contain:

1. A caption setting forth the name of the court, the names and designation of the parties, the file number of the case and the title of the instrument;

2. A statement of the disposition of the action, proceeding or motion, including a statement of the relief awarded to a party or parties and the liabilities and obligations imposed on the other party or parties;

3. The signature and title of the court; and

4. Any other matter approved by the court.

B. Judgments, decrees and appealable orders that are filed with the clerk of the court may contain a statement of costs, attorney's fees and interest, or any of them, if they have been determined prior to the time the judgment, decree or appealable order is signed by the court in accordance with this section.

C. The clerk shall endorse on the judgment, decree or appealable order the date it was filed and the clerk's signature and title.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 696.4 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. A judgment, decree or appealable order may provide for costs, attorney's fees and interest or any of these items, but it need not include them. The preparation and filing of the judgment, decree or appealable order shall not be delayed pending the

determination of these items. Such items may be determined by the court if a timely request is made, regardless of whether a petition in error has been filed.

B. If attorney's fees, costs or interest have not been included in the judgment, decree or appealable order, a party seeking any of these items must file an application with the court clerk along with the proof of service of the application on all affected parties in accordance with Section 2005 of this title. The application must set forth the amount requested and include information which supports that amount. The application must be filed within thirty (30) days after the filing of the judgment, decree or appealable order. If the judgment, decree or appealable order shows that the matter was taken under advisement, the application must be filed within thirty (30) days after the date of mailing of copies of the judgment, decree or appealable order as shown by the Certificate of Mailing. For good cause shown, the court may extend the time for filing the application upon motion filed within the time that the application could be filed. Within fifteen (15) days after the application is filed with the court, any party may file written objections to it, with a copy to the moving party.

C. An application for attorney's fees for services performed on appeal shall be made to the appellate court by separate motion filed with the applicant's brief on appeal. The trial court shall determine the amount of attorney's fees to be awarded.

SECTION 6. AMENDATORY 12 O.S. 1991, Section 698, is amended to read as follows:

Section 698. When a motion for a directed verdict ~~which was~~ made at the close of all of the evidence should have been granted, the court shall, at the request of the moving party, ~~render~~ grant judgment in ~~his~~ the moving party's favor ~~though,~~ although a verdict has been found against ~~him~~ the moving party, but the court may order a new trial where it appears that the other party was prevented from

proving a claim or defense by mistake, accident or surprise. The ~~request~~ motion for judgment ~~may~~ notwithstanding the verdict, if made, must be filed within ten (10) days after the ~~verdict, report or decision is rendered regardless of whether or not the term has ended, and the~~ judgment, prepared in conformance with Section 4 of this act, is filed with the court clerk. A motion for judgment notwithstanding the verdict may be joined with a motion for a new trial. Where the judgment states the matter was taken under advisement, the motion for judgment notwithstanding the verdict, if made, must be filed within ten (10) days from the date of mailing of a file-stamped copy of the judgment to the moving party, as indicated on the Certificate of Mailing.

SECTION 7. AMENDATORY 12 O.S. 1991, Section 706, is amended to read as follows:

Section 706. ~~A.—Judgments~~ This section applies to all judgments of courts of record of this state, and judgments of courts of record of the United States not subject to the registration procedures of the Uniform Federal Lien Registration Act, Section 3401 et seq. of Title 68 of the Oklahoma Statutes, which award the payment of money, regardless of whether such judgments also include other orders or relief.

A. Creation of Lien. A judgment to which this section applies shall be ~~liens~~ a lien on the real estate of the judgment debtor within a county only from and after a ~~certified copy of such judgment with an affidavit of judgment~~ Statement of Judgment made by the judgment creditor or his attorney, substantially in the form provided in Section 2 of this act attached on the front of, and incorporating by reference, such judgment prescribed by the Administrative Director of the Courts, has been filed in the office of the county clerk in that county. ~~No judgment, whether rendered by a court of the state or of the United States, shall be a lien on the real estate of a judgment debtor in any county until it has been~~

~~filed in this manner. Execution shall be issued only from the court in which the judgment is rendered. Such judgment lien shall only affect the real estate of judgment debtors whose names appear on both the affidavit of judgment and the attached judgment.~~

1. Presentation of such affidavit of judgment with a certified copy attached of the judgment described in such affidavit, Statement of Judgment and tender of the filing fee, shall, upon acceptance by the county clerk, constitute filing under this section.

2. A lien created pursuant to this section shall only affect the real estate of judgment debtors whose names appear in the Statement of Judgment.

B. Judgment Index. A judgment index shall be kept by each county clerk in which the name of each person named as a judgment debtor in a Statement of Judgment filed with such county clerk shall appear in alphabetical order.

1. It shall be the duty of the county clerk, immediately after the filing of the Statement of Judgment, to make in the judgment index a separate entry in alphabetical order of the name of each judgment debtor named therein, which entry shall also contain the name(s) of the judgment creditor(s), the name of the court which granted the judgment, the number and style of the case in which such judgment was filed, the amount of the judgment (including interest, costs and attorney's fees if shown on the Statement of Judgment), the date of the filing of the judgment with the court clerk of the court which granted it, and the date of filing of the Statement of Judgment with the county clerk.

2. It shall also be the duty of the county clerk, immediately after the filing of a Release of Judgment Lien, to make a notation in each entry made in said judgment index made when any Statement of Judgment was filed with respect to the judgment being released, of the date of filing of such Release with the county clerk, the name

of the judgment creditor on whose behalf the Release is filed and whether such Release states that it is only a partial Release.

C. Execution of Judgment. Execution shall be issued only from the court which granted the judgment being enforced.

D. Release of Lien of Judgment. The lien of a judgment upon the real estate of judgment debtor in any county is released only upon the filing in the office of the county clerk in that county of a Release of Judgment Lien, or a copy thereof certified by the court clerk of the court which granted the judgment.

1. A judgment lien may be released, in whole or in part, by the filing with the county clerk of a Release of Judgment Lien made by the judgment creditor or his attorney.

a. A Release of Judgment Lien shall recite the name of the court which granted the judgment, the number and style of the case, the name of each judgment debtor with respect to whom the lien is being released, the name of each judgment creditor in favor of whom the lien was created, or otherwise adequately identify the judgment lien being released and judgment debtor(s) against whom the lien is indexed. The Administrative Director of the Courts shall prescribe a form of Release of Judgment which may be used at the option of the judgment creditor.

b. If the release is only partial, it shall also contain a description of the lands then being released from the judgment lien or identify the particular judgment debtors, if less than all, with respect to whom the lien is then being released, or both, as the case may be.

c. A Release of Judgment Lien may also be filed with the court clerk of the court which granted the judgment

but such filing with the court clerk does not release any judgment lien created pursuant to this section.

2. The lien of any judgment ~~when~~ which has been satisfied by payment or otherwise discharged and which has not been released by the judgment creditor shall be released by the court upon written motion ~~by the judgment debtor.~~

a. The motion shall be accompanied by an affidavit stating the grounds for the motion, and shall contain or be accompanied by a notice to the judgment creditor that, if the judgment creditor does not file with the court a response or objection to the motion within fifteen (15) days after the mailing of a copy of the motion to the judgment creditor, the court will order the judgment lien released. ~~Notice~~

b. A copy of the motion shall be mailed by the party seeking release of the lien to the judgment creditor at the last-known address of the judgment creditor, and to the attorney of record of the judgment creditor by the person seeking the discharge, if any. There shall be attached to the filed motion, and to each copy of the motion to be mailed, a Certificate of Mailing showing to whom copies of the motion were mailed, the addresses to which they were mailed, and the date of mailing.

c. ~~If there is no~~ the judgment creditor does not file a response or objection from the judgment creditor to the motion within twenty (20) fifteen (15) days after the mailing of the notice a copy of the motion, the court shall order the judgment lien released. ~~If a judgment creditor files a release, the court clerk shall show the judgment released.~~

d. When a judgment lien is ~~released~~ ordered by the court, the court ~~clerk~~ shall ~~prepare~~ cause a ~~certificate of release for the judgment debtor on~~ Release of Judgment Lien, in the form ~~for certificate of release~~ provided by the Administrative Director of the Courts, to be prepared. Instructions shall be printed on ~~the certificate of release~~ such form advising the judgment debtor to file the ~~certificate of release~~ Release in the office of the county clerk of the county in which the real estate is situated in order to obtain the release of the lien of the judgment upon the real estate of the judgment debtor in such county. ~~The lien of the judgment shall be released once the certificate of release is filed in the office of the county clerk.~~

e. The party filing the ~~application~~ motion for release shall pay all costs of the proceeding and any recording fees and other costs.

E. Effect of Filing or Recording a Judgment. The filing or recording of a judgment itself in the office of a county clerk on or after October 1, 1991, shall not be effective to create a general money judgment lien upon real estate, but a certified copy of a judgment may be recorded in such office for the purpose of giving notice of its contents, whether or not recording is required by law.

F. Acceptance by County Clerk. The county clerk shall accept for filing and file any Statement of Judgment or Release of Judgment Lien without requiring any formalities of execution other than those provided in this section.

SECTION 8. AMENDATORY 12 O.S. 1991, Section 706.2, is amended to read as follows:

Section 706.2 In the event of an appeal ~~to the Supreme Court of Oklahoma~~ from a money judgment granted by a court of this state, the

lien of such judgment, and any lien by virtue of an attachment issued and levied in the action in which such judgment was ~~rendered~~ granted, shall cease when the judgment debtor or debtors deposit with the clerk of the court in which such judgment was ~~rendered~~ granted cash sufficient to cover the whole amount of the judgment, including interest, costs, and any attorneys fees, together with costs and interest on the appeal. Such cash deposit shall be accompanied by a written statement executed by the judgment debtor or debtors that such deposit is made to discharge the lien of the judgment and any lien by virtue of an attachment issued and levied in the action.

Upon receipt of such a cash deposit and written statement, it shall be the duty of the court clerk to immediately record receipt of the statement and the amount of the cash deposit upon the appearance docket in the cause ~~and upon the judgment docket opposite the entry of the judgment~~. It also shall be the duty of the court clerk to place the cash deposit in ~~a separate~~ the court clerk's official depository account and to hold the deposit in an interest-bearing account, unless otherwise ordered by the court, pending final determination of the action. The court clerk shall mail notice of receipt of the cash deposit to the judgment creditor at the last-known address of the judgment creditor, which shall contain a statement that, if the judgment creditor does not file with the court a response or objection to the motion within fifteen (15) days after the mailing of the motion to the judgment creditor, the judgment lien may be released.

If ~~requested by the judgment debtor, without~~ no objection ~~from~~ is filed with the court by the judgment creditor within ~~ten (10)~~ fifteen (15) days after the mailing of ~~this~~ the notice, the court clerk, upon request of the judgment debtor, shall prepare a ~~certificate of release~~ Release of Judgment Lien for the judgment debtor on the form ~~for certificate of release~~ provided by the

Administrative Director of the Courts. Instructions shall be printed on the ~~certificate of release~~ Release of Judgment Lien advising the judgment debtor to file the ~~certificate of release~~ Release in the office of the county clerk of the county in which the real estate is situated. The lien of the judgment upon real estate of the judgment debtor in a county shall be released when the ~~certificate of release~~ Release of Judgment Lien is filed in the office of the county clerk of that county. The ~~party filing the application for release~~ judgment debtor making the deposit shall pay all costs and recording fees relating to the release procedure.

Upon final determination of the action, the court ~~clerk shall apply~~ may order the deposit to be applied to any judgment ~~that might be rendered~~ granted against the depositor or depositors, and refund any balance in excess of the judgment to the depositor or depositors ~~or, in.~~ In the event the action is finally determined in favor of the depositor or depositors, ~~to refund~~ the whole amount of the cash deposit shall be refunded to the depositor or depositors.

SECTION 9. AMENDATORY 12 O.S. 1991, Section 706.3, is amended to read as follows:

Section 706.3 If ~~an~~ during the appeal of a money judgment ~~is pending before the Supreme Court of Oklahoma, and payment of the amount of judgment,~~ money has been deposited by the judgment debtor pursuant to Section 706.2 of this title and the deposit has become insufficient, the judgment creditor may, ~~after giving reasonable notice set by the court to the judgment debtor or debtors,~~ request ~~that~~ the trial court to order the deposit of additional cash; ~~and if it appears.~~ The request shall be in the form of a written motion which shall recite the facts which support the request.

If the court finds that the cash deposited is insufficient to cover the whole amount of the judgment, including interest, costs, and any attorneys fees, together with costs and interest on the appeal, the court shall order the deposit of additional cash. If

the additional cash is not deposited within a reasonable time set by the court, the judgment ~~shall be revived and attachment may be issued on the judgment~~ creditor may thereafter file a Statement of Judgment, which shall create a lien effective upon its filing with the county clerk as provided in Section 706 of this title, and may enforce the judgment against the property of the judgment debtor including the cash previously deposited with the court clerk.

SECTION 10. AMENDATORY Section 23, Chapter 251, O.S.L. 1991, is amended to read as follows:

Section 23. Any judgment, decree or appealable order of a district court rendered or granted on or after January 1, 1991, and before the effective date of this act, which substantially complies with this act or with the law which was effective prior to the effective date of this act, shall have the same force and effect as any other properly rendered or granted judgment, decree or appealable order.

SECTION 11. The provisions of Section 10 of this act shall be codified in the Oklahoma Statutes as Section 728 of Title 12, unless there is created a duplication in numbering.

SECTION 12. AMENDATORY 12 O.S. 1991, Section 990A, is amended to read as follows:

Section 990A. A. An appeal to the Oklahoma Supreme Court ~~may,~~ if taken, must be commenced by filing a petition in error with the Clerk of the Oklahoma Supreme Court within thirty (30) days from the date ~~the final order or a judgment, decree or appealable order~~ prepared in conformance with Section 4 of this act is filed with the clerk of the trial court. Where such judgment, decree or appealable order states the matter was taken under advisement, the petition in error, if filed, must be filed within thirty (30) days from the date of mailing of a file-stamped copy of such judgment to the appealing party, as indicated on the Certificate of Mailing.

B. The filing of the petition in error may be accomplished either by delivery or by sending it by certified mail with return receipt requested to the Clerk of the Supreme Court. The date of mailing, as shown by the postmark affixed by the post office or other proof from the post office of the date of mailing, shall constitute the date of filing of the petition in error. If there is no proof from the post office of the date of mailing, the date of receipt by the Clerk of the Supreme Court shall constitute the date of filing of the petition in error.

~~B.~~ C. The Supreme Court shall provide by court rules, which will have the force of statute, and be in furtherance of this method of appeal:

1. For the filing of cross-appeals;

2. The procedure to be followed by the trial courts or tribunals in the preparation and authentication of transcripts and records in cases appealed under this act; and

3. The procedure to be followed for the completion and submission of the appeal taken hereunder.

~~C.~~ D. In all cases the record on appeal shall be complete and ready for filing in the Supreme Court within the time prescribed by rules of that court but within a period of not more than six (6) months from the date of filing of the ~~order or~~ judgment, decree or appealable order, unless the Supreme Court, for good cause shown, shall extend the time.

~~D.~~ E. Except for the filing of a petition in error as provided herein, all steps in perfecting an appeal are not jurisdictional.

F. If a petition in error is filed before the time prescribed in this section, it shall be dismissed as premature; however, if the time to commence the appeal accrues before the appeal is dismissed, the appellant may file a supplemental petition in error, without the payment of any additional costs. Such supplemental petition in error shall state when the time for commencing the appeal began and

shall set out all matters which have occurred since the filing of the original petition in error and which should be included in a timely petition in error. When a proper supplemental petition in error is filed, the appeal shall not be dismissed on the ground that it was premature.

If an appeal is dismissed on the ground that it was premature, the appellant may file a new petition in error within the time prescribed in this section for filing petitions in error or within thirty (30) days after notice is mailed to the parties which states that the appeal was dismissed on the ground that it was premature, whichever date is later. A notice that an appeal was dismissed on the ground that it was premature shall include the date of mailing and the ground for dismissal.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 990.2 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. Where a post-trial motion for a new trial, for judgment notwithstanding the verdict, or to correct, open, modify, vacate or reconsider a judgment, decree or final order, other than a motion involving costs, attorney's fees or interest, is filed within ten (10) days after the judgment, decree or final order is filed with the court clerk, an appeal shall not be commenced until an order disposing of the motion is filed with the court clerk. The unsuccessful party may then appeal from the order disposing of the motion within thirty (30) days after the date such order was filed. If the decision on the motion was against the moving party, the moving party may appeal from the judgment, decree or final order, from the ruling on the motion, or from both, in one appeal, within thirty (30) days after the filing of the order disposing of the motion. Successive appeals from the original judgment, decree or final order and the order disposing of the motion shall not be allowed.

B. The time to appeal from a judgment, decree or final order is not extended or affected by the filing of a motion to correct, open, modify, vacate or reconsider the judgment, decree or final order that is filed more than ten (10) days after the judgment, decree or final order is filed with the clerk of the trial court, and an appeal that is commenced before such a motion is filed is not premature. If the motion is filed after a petition in error is filed, the moving party shall advise the Supreme Court the motion was filed. If a petition in error is filed after such a motion is filed, the appellant shall advise the Supreme Court in the petition in error that the motion is pending. When the trial court disposes of the motion where a petition in error has been filed, the successful party shall advise the Supreme Court of the action taken on the motion.

C. The filing of a motion for costs, attorney's fees or interest shall not extend or affect the time to appeal.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 990.3 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. Where only the payment of money is awarded, no execution or other proceeding shall be taken for the enforcement of the judgment, decree or final order until ten (10) days after the judgment, decree or order is filed with the court clerk.

B. Where relief other than the payment of money is awarded or where relief in addition to the payment of money is awarded, the enforcement of the judgment, decree or final order shall be stayed until ten (10) days after the judgment, decree or order is filed with the court clerk, but the court, in its discretion, may impose any conditions on the parties that are necessary for the protection of the property or interests that are the subject of the action, including distribution of part or all of the property involved where the court requires the filing of a supersedeas bond.

C. This section shall not apply in actions for divorce, separate maintenance, annulment, post-decree matrimonial proceedings, paternity, custody, adoption, termination of parental rights, juvenile matters, probate proceedings, habeas corpus proceedings, special executions in foreclosures, or actions involving temporary or permanent injunctions, but the court, in its discretion, may impose any conditions that are necessary to protect the interests of the parties in such actions.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 990.4 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. Except as provided in subsection C of this section, a party may obtain a stay of the enforcement of a judgment, decree or final order:

1. While a post-trial motion is pending;
2. During the time in which an appeal may be commenced;
3. While an appeal is pending.

Such stay may be obtained by filing with the court clerk a written undertaking and the posting of a supersedeas bond or other security as provided in this section. In the undertaking the appellant shall agree to satisfy the judgment, decree or final order, and pay the costs and interest on appeal, if it is affirmed. The undertaking and supersedeas bond or security may be given at any time. The stay is effective when the bond and the sufficiency of the sureties are approved by the trial court or the security is deposited with the court clerk. The enforcement of the judgment, decree or order shall no longer be stayed, and the judgment, decree or order may be enforced against any surety on the bond or other security:

1. If neither a post-trial motion nor a petition in error is filed, and the time for appeal has expired;
2. If a post-trial motion is no longer pending, no petition in error has been filed, and the time for appeal has expired;

3. If an appeal is no longer pending.

B. The amount of the bond or other security shall be as follows:

1. When the judgment, decree or final order is for payment of money:

a. The bond shall be double the amount of the judgment, decree or final order, unless the bond is executed or guaranteed by a surety as hereinafter provided. The bond shall be for the amount of the judgment, decree or order including costs and interest on appeal where it is executed or guaranteed by an entity with suretyship powers as provided by the laws of Oklahoma.

b. Instead of filing a supersedeas bond, the appellant may obtain a stay by depositing cash with the court clerk in the amount of the judgment or order plus an amount that the court determines will cover costs and interest on appeal. The court shall have discretion to accept United States Treasury notes or general obligation bonds of the State of Oklahoma in lieu of cash. If the court accepts such notes or bonds, it shall make appropriate orders for their safekeeping and maintenance during the stay.

2. When the judgment, decree or final order directs execution of a conveyance or other instrument, the amount of the bond shall be determined by the court. Instead of posting a supersedeas bond or other security, the appellant may execute the conveyance or other instrument and deliver it to the clerk of the court for deposit with a public or private entity for safekeeping, as directed by the court in writing.

3. When the judgment, decree or final order directs the delivery of possession of real or personal property, the bond shall be in an amount, to be determined by the court, that will protect

the interests of the parties. The court may consider the value of the use of the property, any waste that may be committed on or to the property during the pendency of the stay, the value of the property, and all costs. When the judgment, decree or final order is for the sale of mortgaged premises and the payment of a deficiency arising from the sale, the bond must also provide for the payment of the deficiency.

4. When the judgment or final order directs the assignment or delivery of documents, they may be placed in the custody of the clerk of the court in which the judgment or order was rendered, for deposit with a public or private entity for safekeeping during the pendency of the stay, as directed by the court in writing, or the bond shall be in such sum as may be prescribed by the court.

C. Subsections A and B of this section shall not apply in actions involving temporary or permanent injunctions, actions for divorce, separate maintenance, annulment, paternity, custody, adoption, or termination of parental rights, or in juvenile matters, post-decree matrimonial proceedings or habeas corpus proceedings. The trial or appellate court, in its discretion, may stay the enforcement of any provision in a judgment, decree or final order in any of the types of actions or proceedings listed in this subsection during the pendency of the appeal or while any post-trial motion is pending upon such terms as to bond or otherwise as it considers proper for the security of the rights of the parties. If a temporary or permanent injunction is denied or dissolved, the trial or appellate court, in its discretion, may restore or grant an injunction during the pendency of the appeal and while any post-trial motions are pending upon such terms as to bond or otherwise as it considers proper for the security of the rights of the parties.

D. In any action not provided for in subsections A, B or C, the court may stay the enforcement of any judgment, decree or final order during the pendency of the appeal or while any post-trial

motion is pending upon such terms as to bond or otherwise as it considers proper for the security of the rights of the parties.

E. The trial court shall have continuing jurisdiction during the pendency of any post-trial motion and appeal to modify any order it has entered regarding security or other conditions in connection with a stay.

F. The execution of a supersedeas bond shall not be a condition for the granting of a stay of judgment, decree or final order of any judicial tribunal against any county, municipality, or other political subdivision of the State of Oklahoma.

G. Executors, administrators and guardians who have given bond in this state, with sureties, according to law, are not required to provide a supersedeas bond if they are granted a stay of enforcement of a judgment, decree or final order.

H. After an appeal has been decided, but before the mandate has issued, a party whose trial court judgment has been affirmed, may move the appellate court to order judgment on the bond or other security in the amount of the judgment plus interest, appeals costs and allowable appeal-related attorney's fees. After mandate has issued, a party who has posted a bond or other security may move for exoneration of the bond or other security only in the trial court; and all motions concerning the bond or other security must be addressed to the trial court.

SECTION 16. AMENDATORY 12 O.S. 1991, Section 993, is amended to read as follows:

Section 993. A. When an order:

1. discharges, vacates, or modifies or refuses to discharge, vacate, or modify an attachment~~;~~;

2. denies a temporary injunction, grants a temporary injunction except where granted at an ex parte hearing, or discharges, vacates, or modifies or refuses to discharge, vacate, or modify a temporary injunction~~;~~;

3. discharges, vacates, or modifies or refuses to discharge, vacate, or modify a provisional remedy which affects the substantial rights of a party τi

4. appoints a receiver except where the receiver was appointed at an ex parte hearing, refuses to appoint a receiver, or vacates or refuses to vacate the appointment of a receiver τi

5. directs the payment of money pendente lite except where granted at an ex parte hearing, refuses to direct the payment of money pendente lite, or vacates or refuses to vacate an order directing the payment of money pendente lite τi

6. certifies or refuses to certify an action to be maintained as a class action τi or

7. grants a new trial or opens or vacates a judgment or order, the party aggrieved thereby may appeal the order to the Supreme Court without awaiting the final determination in said cause, by filing the petition in error and the record on appeal with the Supreme Court within thirty (30) days after the order prepared in conformance with Section 4 of this act, is issued filed with the court clerk. Where the order states the matter was taken under advisement, the petition in error, if filed, must be filed within thirty (30) days from the date of mailing of a file-stamped copy of the order to the appealing party, as indicated on the Certificate of Mailing. The Supreme Court may extend the time for filing the record upon good cause shown.

B. If the order discharges or modifies an attachment or temporary injunction and it becomes operative, the undertaking given upon the allowance of an attachment or temporary injunction shall stay the enforcement of said order and remain in full force until final order of discharge shall take effect.

~~C. If the order grants a temporary injunction, the party seeking to appeal shall, if the party desires to stay such order, give within ten (10) days after the order is rendered, an~~

~~undertaking, with sufficient surety, to be approved by the clerk of the trial court, in an amount fixed by the judge, to secure the party procuring the injunction any damages sustained, including reasonable attorney's fees, in case it is finally decided that the temporary injunction was properly granted. The undertaking so made shall stay the effect of the temporary injunction pending appeal.~~

~~D. C.~~ Where a receiver shall be or has been appointed, upon the appellant filing an appeal bond, with sufficient sureties, in such sum as may have been required of the receiver by the court or a judge thereof, conditioned for the due prosecution of the appeal and the payment of all costs or damages that may accrue to the state or any officer or person by reason thereof, the authority of the receiver shall be suspended until the final determination of the appeal, and if the receiver has taken possession of any property, real or personal, it shall be returned and surrendered to the appellant upon the filing and approval of the bonds.

SECTION 17. AMENDATORY 12 O.S. 1991, Section 1006, is amended to read as follows:

Section 1006. A. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the preparation and filing of a final judgment or decree as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the filing of a final judgment or decree. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the final judgment or decree adjudicating all the claims and

the rights and liabilities of all the parties is filed with the court clerk.

B. When a court has ordered a final judgment or decree under the conditions stated in subsection A of this section, the court may stay enforcement of that final judgment until the filing of a subsequent final judgment or judgments and may prescribe such conditions as are necessary to protect the interests of all parties to the action. If the court stays the enforcement of a final judgment or decree until the filing of a subsequent final judgment or decree, notice of the vacation or modification of the stay or of any condition that was imposed on the enforcement of the final judgment or decree shall be given to the parties affected by the stay or condition.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 995 of Title 12, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Supreme Court or Court of Appeals shall dismiss an appeal that is frivolous, and it may impose sanctions against the appellant, the appellant's attorney, or both. The sanctions that may be imposed may include the reasonable expenses incurred because of the filing of the appeal, including a reasonable attorney's fee. The court shall dismiss a cross-appeal or an original proceeding that is frivolous and may impose sanctions as provided by this section.

SECTION 19. AMENDATORY 12 O.S. 1991, Section 1031.1, is amended to read as follows:

Section 1031.1 ~~Within thirty (30) days after the rendition of a judgment, the~~ A. A court, of its own initiative or on motion of a party, may correct, open, modify or vacate a judgment, decree or appealable order on its own initiative within thirty (30) days after the judgment, decree or appealable order prepared in conformance with Section 4 of this act has been filed with the court clerk. The

~~court may prescribe what notice, if any, shall be given.~~ Notice of the court's action shall be given as directed by the court to all affected parties.

B. On motion of a party made within thirty (30) days after a judgment, decree or appealable order prepared in conformance with Section 4 of this act has been filed with the court clerk, the court may correct, open, modify or vacate the judgment, decree or appealable order. Where the judgment, decree or appealable order states the matter was taken under advisement, the motion to correct, open, modify, or vacate the judgment, decree or appealable order, if made, must be filed within thirty (30) days from the date of mailing of a file-stamped copy of the judgment, decree or appealable order to the moving party. The moving party shall give notice to all affected parties.

SECTION 20. AMENDATORY 12 O.S. 1991, Section 1032, is amended to read as follows:

Section 1032. The proceedings to correct mistakes or omissions of the clerk, or irregularity in obtaining a judgment or order, shall be by motion, upon reasonable notice to the adverse party or his attorney in the action. ~~The motion to vacate a judgment because of its rendition before the action regularly stood for trial can be made only within three (3) months after the rendition of said judgment.~~

SECTION 21. AMENDATORY 12 O.S. 1991, Section 1038, is amended to read as follows:

Section 1038. Proceedings to vacate or modify a judgment, decree or order, for the causes mentioned in paragraphs 4, 5 and 7 of Section 1031 of this title must be commenced within two (2) years after the filing of the judgment ~~was rendered~~, decree or order made, unless the party entitled thereto be an infant, or a person of unsound mind and then within two (2) years after removal of such disability. Proceedings for the causes mentioned in paragraphs 3

and 6 of Section 1031 of this title, shall be within three (3) years, and in paragraph 9 of Section 1031 of this title, within one (1) year after the defendant has notice of the judgment, decree or order. A void judgment, decree or order may be vacated at any time, on motion of a party, or any person affected thereby.

SECTION 22. AMENDATORY 12 O.S. 1991, Section 1770, is amended to read as follows:

Section 1770. ~~A. Judgments rendered~~ A judgment granted under the Small Claims Procedure Act shall become a lien on the real property of the judgment debtor within a county ~~only from and after the time a Statement of Judgment has been filed in the office of the county clerk of that county,~~ and may thereafter be released, by following the procedure that is prescribed for other judgments in Section 706 of this title. When requested the court clerk shall prepare a Statement of Judgment for the judgment creditor on the form of Statement of Judgment provided by the Administrative Director of Courts of Oklahoma and said Statement of Judgment shall have printed thereon instructions advising the judgment creditor to file the Statement of Judgment in the office of the county clerk.

~~B. The lien of any small claims judgment when satisfied by payment or otherwise discharged shall be released by the court clerk upon written application by the judgment debtor. The judgment creditor shall be notified of the application by ten (10) days' prior notice mailed by the court clerk to the judgment creditor at the last-known address of the judgment creditor. If there is no response or objection from the judgment creditor within ten (10) days after mailing the notice the court clerk shall show the judgment released. No court hearing shall be required unless requested by a party to the action. When requested, the court clerk shall prepare a Certificate of Release for the judgment debtor on the form of Certificate of Release provided by the Administrative Director of Courts of Oklahoma. Said Certificate of Release shall~~

~~have printed thereon instructions advising the judgment debtor to file the Certificate of Release in the office of the county clerk. The lien of the judgment will be released once the Certificate of Release is filed in the office of the county clerk.~~

~~C. The party filing the application for release shall pay all recording fees and other costs.~~

SECTION 23. REPEALER 12 O.S. 1991, Sections 25.1, 32.3, 696.1, 697.1, 968.1, 969.1, 970.1, 971.1 and 974.1, are hereby repealed.

SECTION 24. RECODIFICATION 12 O.S. 1991, Section 1006, as amended by Section 16 of this act, shall be recodified as Section 994 of Title 12 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 25. This act shall become effective October 1, 1992.

43-2-1781 KS