

ENROLLED HOUSE
BILL NO. 1468

By: Benson of the House

and

Henry and Miles-LaGrange
of the Senate

An Act relating to civil procedure; amending 12 O.S. 1991, Sections 2004.1, 2005 and 2015, which relate to the Oklahoma Pleading Code; modifying procedures for the issuance and service of subpoenas and for responding to them; regulating the use of facsimile transmission for the filing of papers; modifying relation back of amendments of pleadings; amending 12 O.S. 1991, Sections 3234 and 3235, which relate to the Oklahoma Discovery Code; modifying procedures for obtaining document production from a nonparty; authorizing courts to order examinations by nonphysicians; amending 16 O.S. 1991, Section 15, as amended by Section 1, Chapter 119, O.S.L. 1992 (16 O.S. Supp. 1992, Section 15), which relates to judgment liens; modifying when a judgment lien is binding against third persons; 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, decrees 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, decree 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 effective dates.

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

SECTION 1. AMENDATORY 12 O.S. 1991, Section 2004.1, is amended to read as follows:

Section 2004.1 SUBPOENA

A. ~~SUBPOENA FOR ATTENDANCE OF WITNESSES~~; FORM; ISSUANCE.

1. Every subpoena shall:

- a. be issued by the clerk under the seal of the court, ~~shall~~;
- b. state the name of the court and the title of the action, ~~and shall~~; and
- c. command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified. A subpoena shall issue from the clerk of the court where the action is pending, and it may be served at any place within the state.

2. A witness shall be obligated upon service of a subpoena to attend a trial or hearing at any place within the state and to attend a deposition or produce or allow inspection of documents at a location that is authorized by subsection B of Section 3230 of this title.

3. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

~~B. SUBPOENA FOR PRODUCTION OF DOCUMENTARY EVIDENCE. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may:~~

- ~~1. Quash or modify the subpoena if it is unreasonable and oppressive; or~~
- ~~2. Condition denial of the motion upon the advancement, by the person in whose behalf the subpoena is issued, of the reasonable cost of producing the books, papers, documents, or tangible things.~~

~~C. 1.~~ SERVICE. Service of a subpoena upon a person named therein shall be made by delivering or mailing a copy thereof to such person and, if the person's attendance is demanded, by tendering to him the fees for one (1) day's attendance and the mileage allowed by law. Service of a subpoena may be accomplished by any person who is eighteen (18) years of age or older. Prior

notice of any commanded production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by subsection B of Section 2005 of this title.

2. Service of a subpoena by mail may be accomplished by mailing a copy thereof by certified mail with return receipt requested and delivery restricted to the person named in the subpoena. The person serving the subpoena shall make proof of service thereof to the court promptly and, in any event, before the witness is required to testify at the hearing or trial. If service is made by a person other than a sheriff or deputy sheriff, such person shall make affidavit thereof. If service is by mail, the person serving the subpoena shall show in his proof of service the date and place of mailing and attach a copy of the return receipt showing that the mailing was accepted. Failure to make proof of service does not affect the validity of the service, but service of a subpoena by mail shall not be effective if the mailing was not accepted by the person named in the subpoena. Costs of service shall be allowed whether service is made by the sheriff, his deputy, or any other person. When the subpoena is issued on behalf of a state department, board, commission, or legislative committee, fees and mileage shall be paid to the witness at the conclusion of the testimony out of funds appropriated to the state department, board, commission, or legislative committee.

~~D. SUBPOENA FOR TAKING DEPOSITIONS; PLACE OF EXAMINATION.~~

~~Proof of service of a notice to take a deposition as provided in subsection C of Section 3207 and subsection A of Section 3208 of Title 12 of the Oklahoma Statutes constitutes a sufficient authorization for the issuance by the clerk of the district court for the county in which the deposition is to be taken of subpoenas for the persons named or described therein. Proof of service of the notice may be made by filing, with the clerk of the district court for the county in which the deposition is to be taken, a copy of the notice together with a statement of the date and manner of service and the names of the persons served, certified by the person who made service. A subpoena must be served in the manner provided in subsection C of this section. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by subsection B of Section 3203 of Title 12 of the Oklahoma Statutes, but in that event the subpoena will be subject to the provisions of subsection C of Section 3203 of Title 12 of the Oklahoma Statutes and subsection B of this section.~~

~~The person to whom the subpoena is directed may, within ten (10) days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than ten (10) days after service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.~~

~~E. SUBPOENA FOR A HEARING OR TRIAL. At the request of any party subpoenas for attendance at a hearing or trial shall be issued by the clerk of the district court for the county in which the hearing or trial is held. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within this state.~~

F. C. PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

1. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney, or both, in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

2. a. A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

b. Subject to paragraph 2 of subsection D of this section, a person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

3. a. On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:
(1) fails to allow reasonable time for compliance; or
(2) requires a person to travel to a place beyond the limits allowed under paragraph 2 of subsection A of this section; or
(3) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
(4) subjects a person to undue burden; or
(5) requires production of books, papers, documents or tangible things that fall outside the scope of discovery permitted by Section 3226 of this title.

b. If a subpoena:
(1) requires disclosure of a trade secret or other confidential research, development, or commercial information; or
(2) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,
the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena. However, if the party in whose behalf the

subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

D. DUTIES IN RESPONDING TO SUBPOENA.

1. A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

2. When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

E. CONTEMPT. Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court from which the subpoena issued.

SECTION 2. AMENDATORY 12 O.S. 1991, Section 2005, is amended to read as follows:

Section 2005. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

A. SERVICE: WHEN REQUIRED. Except as otherwise provided in this title, every order required by its terms to be served, every pleading subsequent to the original petition unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party or any other person unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Section 2004 of this title.

B. SERVICE: HOW MADE. Whenever pursuant to this act service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court or final judgment has been rendered and the time for appeal has expired. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last-known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this section means:

1. Handing it to the attorney or to the party; or
2. Leaving it at his office with his clerk or other person in charge thereof; or
3. If there is no one in charge, leaving it in a conspicuous place therein; or
4. If the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person residing therein who is fifteen (15) years of age or older.

Except for service of the summons and the original petition, service by mail is complete upon mailing.

C. SERVICE: NUMEROUS DEFENDANTS. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the

defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

D. FILING. All papers after the petition required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter, but the court may on motion of a party or on its own initiative order that depositions upon oral examination and interrogatories, requests for documents, requests for admission, and answers and responses thereto not be filed unless on order of the court or for use in the proceeding. All papers filed with the court shall include a statement setting forth the names of the persons served and the date, place, and method of service.

E. FILING WITH THE COURT DEFINED.

1. The filing of pleadings and other papers with the court as required by this act shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

2. A duplicate of any paper shall be acceptable for filing with the court and shall have the same force and effect as an original. For purposes of this section a duplicate is a copy produced on unglazed white or eggshell paper by mechanical, chemical or electronic means, or by other equivalent technique, which accurately reproduces the original. A duplicate that is acceptable for filing shall not be refused because any signatures thereon are duplicates. A carbon copy shall not be considered a duplicate for purposes of this section.

3. Papers may be filed by facsimile transmission directly to the court or the court clerk as permitted by a rule of court. The Administrative Office of the Courts shall promulgate rules for the district court for the filing of papers transmitted by facsimile device. Rules for facsimile filing must have the approval of the Supreme Court.

4. The clerk shall not refuse to accept for filing any paper solely because it is not presented in proper form as required by these rules or any local rules or practices.

SECTION 3. AMENDATORY 12 O.S. 1991, Section 2015, is amended to read as follows:

Section 2015. AMENDED AND SUPPLEMENTAL PLEADINGS

A. AMENDMENTS. A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within twenty (20) days after it is served. Amendments to add omitted counterclaims or to add or drop parties may be made as a matter of course within the time specified above. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall respond to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after the service of the amended pleading, whichever period may be longer, unless the court otherwise orders.

B. AMENDMENTS TO CONFORM TO THE EVIDENCE. When issues not raised by the pleadings or by the pretrial conference order, where

the order has superseded the pleadings, are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings or the pretrial conference order. Such amendment as may be necessary to cause the pleadings or the pretrial conference order to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings or the pretrial conference order, the court may allow the pleadings or the pretrial conference order to be amended and shall do so freely when the presentation of the merits of the action will be served thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

Where the pretrial conference order has superseded the pleadings, it is sufficient to amend the order and the pleadings shall not be amended.

C. RELATION BACK OF AMENDMENTS. ~~Whenever the~~ An amendment of a pleading relates back to the date of the original pleading when:

1. Relation back is permitted by the law that provides the statute of limitations applicable to the action; or

2. The claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, ~~the amendment relates back to the date of the original pleading. An;~~ or

3. The amendment ~~changing~~ changes the party or the naming of the party against whom a claim is asserted ~~relates back~~ if the foregoing provision paragraph 2 of this subsection is satisfied and, within the period provided by ~~law~~ subsection I of Section 2004 of this title for ~~commencing the action against him~~ service of the summons and petition, the party to be brought in by amendment:

~~1-~~ a. Has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits; and

~~2-~~ b. Knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

An amendment to add an omitted counterclaim does not relate back to the date of the original answer.

The delivery or mailing of process to the Attorney General of Oklahoma, or an agency or officer who would have been a proper defendant if named, satisfies the requirements of ~~paragraphs 1 and 2 hereof~~ subparagraphs a and b of this paragraph with respect to the State of Oklahoma or any agency or officer thereof to be brought into the action as a defendant.

D. SUPPLEMENTAL PLEADINGS. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor. A supplemental pleading relates back to the date of the original pleading if it arises out of the conduct, transaction, or occurrence set forth in the original pleading.

SECTION 4. AMENDATORY 12 O.S. 1991, Section 3234, is amended to read as follows:

Section 3234. A. SCOPE. Any party may serve on any other party a request:

1. To produce and permit the party making the request, or someone acting on his behalf, to inspect and copy any designated documents including, but not limited to, writings, drawings, graphs, charts, photographs, motion picture films, phonograph records, tape and video recordings, records and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form, or to inspect and copy, test or sample any tangible things which constitute or contain matters within the scope of subsection B of Section 3226 of this title and which are in the possession, custody or control of the party upon whom the request is served; or

2. To permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing or sampling the property or any designated object or operation thereon, within the scope of subsection B of Section 3226 of this title.

B. PROCEDURE. The request to produce or permit inspection or copying may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with the summons and petition or after service of the summons and petition upon that party. The request shall set forth and describe with reasonable particularity the items to be inspected either by individual item or by category. The request shall specify a reasonable time, place and manner of making the inspection and performing the related acts.

The party, upon whom the request is served, shall serve a written response within thirty (30) days after the service of the request, except that a defendant may serve a response within forty-five (45) days after service of the summons and petition upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities shall be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under subsection A of Section 3237 of this title with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

C. ~~1. INSPECTION OF PROPERTY OF NONPARTY.~~

~~Upon motion of any party showing that he has a substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials and upon notice to the other parties to the action and to the person in possession, custody or control of the property involved, a court may make any order in regard to property in the possession, custody or control of a person who is not a party to the action that it could make under subsection A of this section in regard to property in the possession, custody or control of a party to the action.~~

~~2. PROCEDURE. Upon filing the motion to discover, the party requesting discovery shall give notice to all other parties by~~

~~-serving a copy of the motion and notice for hearing upon each party or his attorney. The person in possession or control of the property shall be served as required for service of summons. The notice shall state the date, time and place of the hearing on the motion and the date shall be not less than ten (10) days after the service on the person in possession, custody or control. The court in its discretion may set a shorter time. If the motion is granted the order shall specify the time, place, manner, scope and conditions of making the inspection and performing any related acts permitted under subsection A of this section. The order may further provide that adverse parties may perform any act that the requesting party could have performed after the requesting party has completed his discovery.~~

~~D. OTHER METHODS. This section does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land PERSONS NOT PARTIES. A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Section 2004.1 of this title.~~

SECTION 5. AMENDATORY 12 O.S. 1991, Section 3235, is amended to read as follows:

Section 3235. A. SCOPE WHEN ELEMENT OF CLAIM OR DEFENSE. When the physical, including the blood group, or mental condition of a party or of a person in custody or under the legal control of a party, is in controversy in any proceeding in which the person relies upon that condition as an element of his claim or defense, an adverse party may take a physical or mental examination of such person.

B. PROCEDURE WHEN ELEMENT OF CLAIM OR DEFENSE. The party desiring to take the physical or mental examination of another party or of a person in custody or control of another party within the scope of subsection A of this section shall serve his request upon the person to be examined and all other parties. The request shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made.

No request shall be served until thirty (30) days after service of summons and petition upon the defendant. The request shall set a time for the examination not less than five (5) days after service of the notice.

If the party or person in custody or control of the party who is to be examined objects to the physical or mental examination then he shall file a motion objecting to the examination and setting out the reasons why his mental or physical condition is not in controversy or such person may apply for a protective order under the provisions of subsection C of Section 3226 of this title. The burden of proof is upon the person objecting to the examination or requesting a protective order. The court may set the conditions for examination or refuse to permit such examination if the mental or physical condition is not in controversy. If the party or the person in custody or control of the party refuses to obey the court order to submit to a physical or mental examination the court may impose those sanctions provided for in paragraph 4 of subsection A and paragraph 2 of subsection B of Section 3237 of this title.

If the motion is granted to prohibit the examination, the court may impose those sanctions provided for in paragraph 4 of subsection A of Section 3237 of this title upon the party requesting the examination.

C. ORDER FOR EXAMINATION. When the physical, including the blood group, or mental condition of a party, or a person in the custody or under the legal control of a party, is in controversy but

does not meet the conditions set forth in subsection A of this section, the court in which the action is pending may order the party to submit to a physical or mental examination by a ~~physician~~ suitably licensed or certified examiner or to produce for such examination the agent, employee or person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties. The order shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made.

D. ~~PHYSICIAN REPRESENTATIVE MAY BE PRESENT.~~ The physician A representative of the person to be examined may be present at the examination.

E. REPORT OF ~~EXAMINING PHYSICIAN~~ EXAMINER.

1. If requested by the party or the person examined under this section, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the ~~examining physician~~ examiner setting out his findings, including results of all tests made, diagnoses and conclusions, together with the like reports of all earlier examinations of the same condition. After delivery, the party causing the examination shall be entitled upon request to receive from the party or person against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that he is unable to obtain it. The court on motion may enter an order against a party requiring delivery of a report on such terms as are just. If a ~~physician~~ an examiner fails or refuses to make a report the court may exclude his testimony if offered at the trial.

2. If the physician or psychotherapist-patient privilege has not already been waived as provided in the Oklahoma Evidence Code requesting and obtaining a report of the examination made or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same physical or mental condition.

3. This subsection applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subsection does not preclude discovery of a report of an ~~examining physician~~ examiner or the taking of a deposition of the ~~physician~~ examiner in accordance with the provisions of any other section of the Oklahoma Discovery Code.

SECTION 6. AMENDATORY 16 O.S. 1991, Section 15, as amended by Section 1, Chapter 119, O.S.L. 1992 (16 O.S. Supp. 1992, Section 15), is amended to read as follows:

Section 15. Except as hereinafter provided, no acknowledgment or recording shall be necessary to the validity of any deed, mortgage, or contract relating to real estate as between the parties thereto; but no deed, mortgage, contract, bond, lease, or other instrument relating to real estate other than a lease for a period not exceeding one (1) year and accompanied by actual possession, shall be valid as against third persons unless acknowledged and recorded as herein provided. No judgment lien shall be binding against third persons ~~without actual notice thereof~~ unless the judgment lienholder has filed his judgment in the office of the county clerk as provided by and in accordance with Section 706 of Title 12 of the Oklahoma Statutes.

SECTION 7. 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 8. 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 10 of this act has been filed, except for:

1. In the ~~cause case~~ 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 9. 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 10 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 10 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; habeas corpus proceedings; or proceedings for temporary restraining orders, temporary injunctions, permanent injunctions, conservatorship, probate proceedings, special executions in foreclosure actions, quiet title actions, partition proceedings or contempt citations. The time for appeal shall not begin to run until a written judgment, decree or appealable order, prepared in conformance with Section 10 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.

E. The preparation of orders, decisions and awards and the taking of appeals in workers' compensation cases shall be governed by the provisions of Title 85 of the Oklahoma Statutes.

SECTION 10. 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 name and title of the clerk.

SECTION 11. 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, if made to the appellate court, shall be made to the appellate court by separate motion filed with the applicant's brief on appeal.

SECTION 12. 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 10 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 13. 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, which has not become unenforceable by operation of law, 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 certified mail 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 ordered released 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, 1993, 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 14. 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 together with accrued interest 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 together with accrued interest shall be refunded to the depositor or depositors.~~

SECTION 15. 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 16. 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, Chapter 251, O.S.L. 1991, Chapter 251, O.S.L. 1990 or with the law which was effective prior to the effective date of this act January 1, 1991, shall have the same force and effect as any other properly rendered or granted judgment, decree or appealable order.

SECTION 17. The provisions of Section 16 of this act shall be codified in the Oklahoma Statutes as Section 729 of Title 12, unless there is created a duplication in numbering.

SECTION 18. 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 10 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 19. 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. Post-Trial Motions Filed Within Ten (10) Days. 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. Post-Trial Motions Filed After Ten (10) Days. 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. Matters Taken Under Advisement. If a judgment, decree or final order has been taken under advisement, all times referred to in this section shall run from the date of mailing of a file-stamped copy of the judgment, decree or final order to the appealing party, as indicated on the Certificate of Mailing, rather than from the date of filing.

D. Costs, Attorney's Fees and Interest. The filing of a motion for costs, attorney's fees or interest shall not extend or affect the time to appeal.

SECTION 20. 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, conservatorship or guardianship proceedings, mental health, quiet title actions and partition proceedings 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 21. 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 22. 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 τi

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 τi

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 10 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 23. 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 24. 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 25. 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 10 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 10 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 26. 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 27. 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 28. 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 29. 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 30. RECODIFICATION 12 O.S. 1991, Section 1006, as amended by Section 23 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 31. Sections 1 through 6 of this act shall become effective September 1, 1993.

SECTION 32. Sections 7 through 30 of this act shall become effective October 1, 1993.

Passed the House of Representatives the 12th day of May, 1993.

Speaker of the House of
Representatives

Passed the Senate the 25th day of May, 1993.

President of the Senate