

SHORT TITLE: Civil procedure; determining time certain motion shall be deemed to be filed; expanding pleading party's representations to court under certain circumstances; effective date.

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

SENATE BILL NO. 782

By: Henry

AS INTRODUCED

An Act relating to civil procedure; amending 12 O.S. 1991, Sections 653, 698, 990A and 1031.1, as amended by Sections 8, 12, 18 and 25, Chapter 351, O.S.L. 1993, 2008, 2009 and 2011 (12 O.S. Supp. 1993, Sections 653, 698, 990A and 1031.1), which relate to time of application for new trial, judgment where directed verdict should have been granted, appeal to Supreme Court, vacation or modification of judgment, rules of pleading, pleading special matters and signing of pleadings; clarifying language; determining time certain motions shall be deemed filed; deleting time limit for filing record on appeal; increasing dollar amount which must be specified in certain pleading; modifying language; deleting obsolete language; deleting presumption created by signature; expanding pleading party's representations to court under certain circumstances; providing sanctions for misrepresentations; limiting sanctions; stating contents of certain court orders; providing for application to certain pleadings, motions and papers; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 1991, Section 653, as amended by Section 8, Chapter 351, O.S.L. 1993 (12 O.S. Supp. 1993, Section 653), is amended to read as follows:

Section 653. A. ~~Unless unavoidably prevented, an~~ An application for a new trial, if made, must be filed ~~within~~ not later than ten (10) days after the judgment, decree, or appealable order prepared in conformance with Section ~~40~~ 696.3 of this ~~act~~ title has been filed, except when the moving party can prove:

1. ~~In the case of~~ The existence of newly discovered material evidence which the moving party could not, with reasonable diligence have discovered and produced at the trial; or

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.

C. A motion for new trial filed after the announcement of the decision on all issues in the case, but before the filing of the judgment or decree shall be deemed filed immediately after the filing of the judgment or decree.

SECTION 2. AMENDATORY 12 O.S. 1991, Section 698, as amended by Section 12, Chapter 351, O.S.L. 1993 (12 O.S. Supp. 1993, Section 698), is amended to read as follows:

Section 698. When a motion for a directed verdict made at the close of all of the evidence should have been granted, the court shall, at the request of the moving party, grant judgment in the moving party's favor, although a verdict has been found against 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 motion for judgment notwithstanding the verdict, if made, must be filed ~~within~~ not later

than ten (10) days after the judgment, prepared in conformance with Section 10 696.3 of this act title, 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~~ not later than 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. A motion for judgment notwithstanding the verdict filed after the announcement of the verdict but before the filing of the judgment shall be deemed filed immediately after the filing of the judgment or decree.

SECTION 3. AMENDATORY 12 O.S. 1991, Section 990A, as amended by Section 18, Chapter 351, O.S.L. 1993 (12 O.S. Supp. 1993, Section 990A), is amended to read as follows:

Section 990A. A. An appeal to the ~~Oklahoma~~ Supreme Court, 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 a judgment, decree, or appealable order prepared in conformance with Section 10 696.3 of this act title 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, decree, or appealable order 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.

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~~ court or ~~tribunals~~ tribunal in the preparation and authentication of transcripts and records in ~~cases~~ a case appealed under this act; and

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

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 judgment, decree or appealable order, unless the Supreme Court, for good cause shown, shall extend the time~~ court rule.

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

F. 1. 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~~ A 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.

2. If an appeal is dismissed on the ground that it ~~was~~ is 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~~ is 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~~ grounds for dismissal.

SECTION 4. AMENDATORY 12 O.S. 1991, Section 1031.1, as amended by Section 25, Chapter 351, O.S.L. 1993 (12 O.S. Supp. 1993, Section 1031.1), is amended to read as follows:

Section 1031.1 A. A court may correct, open, modify, or vacate a judgment, decree, or appealable order on its own initiative ~~within~~ not later than thirty (30) days after the judgment, decree, or appealable order prepared in conformance with Section ~~40~~ 696.3 of this ~~act~~ title has been filed with the court clerk. 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~~ not later than thirty (30) days after a judgment, decree, or appealable order prepared in conformance with Section ~~40~~ 696.3 of this ~~act~~ title 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~~ not later than 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. A motion to correct, open, modify, or vacate a judgment or decree filed after the announcement of the decision on all issues in

the case but before the filing of the judgment or decree shall be deemed filed immediately after the filing of the judgment or decree.

SECTION 5. AMENDATORY 12 O.S. 1991, Section 2008, is amended to read as follows:

Section 2008. GENERAL RULES OF PLEADING.

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

1. A short and plain statement of the claim showing that the pleader is entitled to relief; and

2. A demand for judgment for the relief to which he deems himself entitled. Every pleading demanding relief for damages in money in excess of ~~Ten Thousand Dollars (\$10,000.00)~~ Fifty Thousand Dollars (\$50,000.00) shall, without demanding any specific amount of money, set forth only that the amount sought as damages is in excess of ~~Ten Thousand Dollars (\$10,000.00)~~ Fifty Thousand Dollars (\$50,000.00) except in actions sounding in contract. Every pleading demanding relief for damages in money in an amount of ~~Ten Thousand Dollars (\$10,000.00)~~ Fifty Thousand Dollars (\$50,000.00) or less shall specify the amount of such damages sought to be recovered. Relief in the alternative or of several different types may be demanded.

B. DEFENSES; FORM OF DENIALS. A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this statement has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert

all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, he may do so by general denial subject to the obligations set forth in Section 2011 of this title.

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

1. Accord and satisfaction;
2. Arbitration and award;
3. Assumption of risk;
4. Contributory negligence;
5. Discharge in bankruptcy;
6. Duress;
7. Estoppel;
8. Failure of consideration;
9. Fraud;
10. Illegality;
11. Injury by fellow servant;
12. Laches;
13. License;
14. Payment;
15. Release;
16. Res judicata;
17. Statute of frauds;
18. Statute of limitations;
19. Waiver; and
20. Any other matter constituting an avoidance or affirmative

defense.

When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if

justice so requires, shall treat the pleading as if there had been a proper designation.

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

E. PLEADING TO BE CONCISE AND DIRECT; CONSISTENCY.

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

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

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

SECTION 6. AMENDATORY 12 O.S. 1991, Section 2009, is amended to read as follows:

Section 2009.PLEADING SPECIAL MATTERS.

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

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

B. FRAUD, MISTAKE, CONDITION OF THE MIND. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

C. CONDITIONS PRECEDENT. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

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

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

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

G. SPECIAL DAMAGE. When items of special damage are claimed, their nature shall be specifically stated. In actions where exemplary or punitive damages are sought, the petition shall not state a dollar amount for damages sought to be recovered but shall state whether the amount of damages sought to be recovered is in excess of or not in excess of ~~Ten Thousand Dollars (\$10,000.00)~~ Fifty Thousand Dollars (\$50,000.00).

SECTION 7. AMENDATORY 12 O.S. 1991, Section 2011, is amended to read as follows:

Section 2011. SIGNING OF PLEADINGS.

A. Signature. Every pleading, motion, ~~and or~~ other paper ~~of a~~ party ~~represented by an attorney~~ shall be signed by at least one attorney of record in his individual name, whose ~~address and~~ Oklahoma Bar Association identification number shall be stated or, if the party is not represented by an attorney, shall be signed by the party. A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. ~~The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other~~ An unsigned paper is not signed, it shall be stricken unless it is signed promptly after the omission of the signature is corrected promptly after being called to the attention of the pleader or movant attorney or party.

B. ~~If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee. By presenting to the~~

court, whether by signing, filing, submitting, or later advocating, a pleading, motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

1. It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

2. The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

3. The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

4. The denials of factual contentions are warranted on the evidence or, if specifically identified, are reasonably based on a lack of information or belief.

C. Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subsection B of this section has been violated, the court may impose an appropriate sanction upon the attorneys, law firms, or parties that are responsible for the violation, subject to the following conditions:

1. Initiation:

a. By motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subsection B of this section. It shall be served as provided in Section 2005 of this title, but shall not be filed with or presented to the court unless, within twenty-one (21) days after

service of the motion or such other period as the court may prescribe, the challenged pleading, motion, or other paper is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees,

b. On court's initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subsection B of this section and direct an attorney, law firm, or party to show cause why it has not violated subsection B of this section.

2. Sanction limitations. A sanction imposed for violation of this section shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs A and B of this section, the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

- a. Monetary sanctions may not be awarded against a represented party for a violation of paragraph 2 of subsection B of this section, and
- b. Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of

the claims made by or against the party which is, or  
whose attorneys are, to be sanctioned.

3. Order. When imposing sanctions, the court shall describe  
the conduct determined to constitute a violation of this rule and  
explain the basis for the sanction imposed.

D. Inapplicability to discovery. Subsections A through C of  
this section do not apply to disclosures, requests, responses,  
objections, and motions that are subject to the provisions of  
Sections 3226 through 3237 of this title.

SECTION 8. This act shall become effective September 1, 1994.

44-2-1655

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