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SHORT TITLE: Court clerks; clarifying orders subject to certain fees; providing for deposit of certain funds; effective date.

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

SENATE BILL NO. 258

By: Smith

AS INTRODUCED

An Act relating to court clerks; amending 28 O.S.

1991, Section 152, which relates to court costs and filing fees; clarifying orders subject to certain fee; amending 58 O.S. 1991, Sections 34, 414 and 693, which relate to mailing and proof of mailing, notice and order for sale of certain property, and settlement and distribution of estates; stating persons responsible for mailing certain notice and order; modifying language; providing for deposit of certain funds; and providing an effective date.

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

SECTION 1. AMENDATORY 28 O.S. 1991, Section 152, is amended to read as follows:

Section 152. A. In any civil case filed in district court, the court clerk shall collect, at the time of filing, the following flat fees, none of which shall ever be refundable, and which shall be the only charge for court costs, except as is otherwise specifically provided for by law:

1. Actions for divorce, alimony without divorce, separate maintenance, custody or support \$62.00

2. Any ancillary proceeding to modify or vacate a divorce decree ~~or prior order~~ providing for custody or support \$30.00
3. Probate and guardianship \$62.00
4. Annual guardianship report \$20.00
5. Any proceeding for sale or lease of real or personal property or mineral interest in probate or guardianship \$30.00
6. Any proceeding to revoke the probate of a will \$30.00
7. Judicial determination of death \$35.00
8. Adoption \$62.00
9. Civil actions and condemnation \$62.00
10. Garnishment \$10.00
11. Continuing wage garnishment \$50.00
12. Any other proceeding after judgment \$20.00
13. All others, including but not limited to actions for forcible entry and detainer, judgments from all other courts, including the Workers' Compensation Court \$62.00

B. Of the ~~amount~~ amounts collected pursuant to subsection A of this section, the sum of Three Dollars (\$3.00) shall be deposited to the credit of the county Law Library Fund pursuant to Section 1201 et seq. of Title 20 of the Oklahoma Statutes.

C. In any case ~~where the~~ in which a litigant claims ~~he has to~~ have a just cause of action, and that, by reason of poverty, ~~he the~~ litigant is unable to pay the fees and costs provided for in this section and is financially unable to employ counsel, upon the filing of an affidavit in forma pauperis executed before any officer authorized by law to administer oaths ~~by such litigant in such~~ ~~action~~ to that effect and upon satisfactory showing to the court that ~~said~~ the litigant has no means and is, therefore, unable to pay the applicable fees and costs and to employ counsel, no fees or costs shall be required. The opposing party or parties may ~~in any~~

~~event~~ file with the court clerk of the court having jurisdiction of the cause an affidavit similarly executed contradicting the allegation of ~~such~~ poverty. In all such cases, the court shall promptly set for hearing the determination of ~~the~~ eligibility ~~of the original affiant~~ to litigate without payment of fees or costs. Until a final order is entered determining that the ~~ineligibility of such~~ affiant ~~has been entered~~ is ineligible, the clerk shall permit ~~such~~ the affiant to litigate without payment ~~for~~ of fees or costs. Any litigant executing a false affidavit or counter affidavit pursuant to the provisions of this section shall be guilty of perjury.

SECTION 2. AMENDATORY 58 O.S. 1991, Section 34, is amended to read as follows:

Section 34. ~~Except as otherwise provided in this act, when~~ When mailing is required by this act, ~~such~~ Section 21 et seq. of this title, the mailing shall be made by the court clerk or a deputy court clerk or by the attorney for the party and proof of ~~such~~ the mailing shall be by affidavit of ~~such~~ the court clerk or deputy court clerk or attorney filed in the case. Any mailing made pursuant to this act after June 22, 1988, which is in compliance with the provisions of this section at the time this act becomes effective, shall be deemed to be in compliance with this section.

SECTION 3. AMENDATORY 58 O.S. 1991, Section 414, is amended to read as follows:

Section 414. The court shall cause copies of the order to show cause to be published once in a newspaper and ~~said~~ the hearing shall not be less than ten (10) days from the date of the ~~said~~ publication of ~~such~~ the notice. The court clerk, deputy court clerk, or an attorney shall mail a copy of ~~such~~ the order to all the then known heirs, legatees, devisees, or guardians thereof, whose addresses are known, at least ten (10) days prior to the date set for hearing. A copy of ~~said~~ the order shall be mailed to any guardian of a ward who

is an heir, legatee or devisee. The hearing shall not be held less than ten (10) days from the date of mailing of ~~such~~ the order.

Should the executor or administrator file a verified petition for the sale, setting forth therein the name or names of all of the known heirs, legatees, and devisees obtainable by exercise of due diligence, all of whom shall join in such petition, or signify in writing their assent thereto, no notice shall be required and the court shall proceed forthwith to hear ~~such~~ the petition.

SECTION 4. AMENDATORY 58 O.S. 1991, Section 693, is amended to read as follows:

Section 693. ~~(a)~~ A. Whenever a final account and order of distribution ~~based thereon~~ shall direct the payment of monies to a minor, and no person shall within ninety (90) days thereafter become the legal and qualified guardian for such minor, so that the executor or administrator may ~~become entitled to his discharge~~ be discharged, the court may ~~make an order directing~~ direct the executor or administrator to ~~deposit such money in the hands of the court clerk, taking his receipt therefor~~ prepare an order directing the county treasurer to make the deposit of funds in a specified institution and for a specified term. Upon receipt of the order, the court clerk shall make a temporary deposit in the case, and forward the court's order to the county treasurer for deposit of the funds in a specified institution for a specified term, with the same effect as though taken from a legally-qualified guardian of ~~such~~ the minor; and the ~~clerk~~ treasurer shall hold ~~such~~ the monies in trust for ~~such~~ the minor until a guardian shall be appointed and call for the same, or until ~~such~~ the minor shall become of age and demand the same. ~~Provided; provided,~~ provided, that all ~~such~~ the monies in the hands of the ~~court clerk~~ treasurer at the expiration of ~~his~~ the treasurer's term of office must be turned over to ~~his~~ the successor in office.

~~(b)~~ B. Whenever a final account and order of distribution ~~based thereon~~ shall direct the payment of monies to a legatee, heir,

creditor, or claimant, whose address or whereabouts is not known, or who will not accept and receipt for said monies within ninety (90) days thereafter, so that the executor or administrator may ~~become~~ be discharged, the court may ~~make an order directing~~ direct the executor or administrator to ~~deposit such money with the court clerk, taking his receipt therefor~~ prepare an order directing the county treasurer to make the deposit of funds in a specified institution and for a specified term. Upon receipt of the order, the court clerk shall make a temporary deposit in the case, and forward the court's order to the county treasurer for deposit of the funds in a specified institution for a specified term, with the same effect as though taken from ~~such~~ the person; and the ~~clerk~~ treasurer shall hold ~~such~~ the monies in trust for ~~such~~ the person until ~~he or his~~ a legal or personal representative shall demand and accept the same. ~~Provided;~~ provided, that all such monies in the hands of the ~~court clerk~~ treasurer at the expiration of ~~his~~ the treasurer's term of office must be turned over to ~~his~~ the successor in office.

~~(e)~~ C. In the event no person qualified to receive ~~such~~ money ~~se~~ deposited with the court clerk makes demand therefor within thirty (30) days after receipt ~~thereof~~ by the court clerk, and ~~said~~ the deposit is in excess of One Hundred Dollars (\$100.00), the court clerk is authorized and directed to invest such funds in ~~a~~ one or more savings ~~account or~~ accounts or ~~certificate~~ certificates of deposit in a bank or savings and loan association whose deposits are insured by an agency of the federal government. When the person legally entitled thereto makes request upon the court clerk ~~therefor, said~~ the account or fund, together with all accumulations ~~thereto,~~ shall be paid over to ~~such~~ the person legally entitled thereto upon the court clerk taking a receipt in full for such payment, which receipt shall be filed in and become a part of the records of the case.

~~(d)~~ D. Whenever a final account and order of distribution based thereon shall direct the payment of monies to an heir or legatee who has died during the pendency of the probate proceedings, and no person shall within ninety (90) days thereafter become the legal and qualified personal representative of ~~such~~ the deceased heir or legatee, so that the executor or administrator may ~~become entitled to his discharge~~ be discharged, the court may make an order directing the executor or administrator to deposit such money in the hands of the court clerk, taking ~~his~~ a receipt therefor, with the same effect as though taken from ~~such~~ a legally-qualified personal representative of ~~such~~ the heir or legatee; and the clerk shall hold such monies in trust until a personal representative shall demand and accept the same. ~~Provided;~~ provided, that all such monies in the hands of the court clerk at the expiration of ~~his~~ the court clerk's term of office must be turned over to ~~his~~ the successor in office.

SECTION 5. This act shall become effective November 1, 1995.

45-1-0302

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