

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)
CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1588

By: Vaughn of the House

and

Hendrick of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to courts; amending 28 O.S. 1991, Section 151, as last amended by Section 8, Chapter 339, O.S.L. 1996 (28 O.S. Supp. 1996, Section 151), which relates to court costs and filing fees; authorizing a cost collection program; authorizing electronic filing of documents; providing for promulgation of rules; amending 12 O.S. 1991, Section 27, which relates to receipt of amount of judgment and costs; authorizing the court clerk to collect amount of judgment or costs; amending 12 O.S. 1991, Section 30, which relates to case files; authorizing court clerk to correct incorrect case number or other incorrect identifying data; amending Section 9, Chapter 351, O.S.L. 1993 (12 O.S. Supp. 1996, Section 696.2), as amended by Section 2 of Enrolled House Bill No. 1778 of the 1st Session of the 46th Oklahoma Legislature, which relates to judgments, decrees and appealable orders; providing that mailing and certificate of mailing is not required in certain circumstances as of certain date; amending 12 O.S. 1991, Section 2005, as amended by Section 2, Chapter 351, O.S.L. 1993 (12 O.S. Supp. 1996, Section 2005), which relates to the Oklahoma Pleading Code; authorizing electronic filing of papers; providing for promulgation of rules; amending 20 O.S. 1991, Section 1006, as amended by Section 3, Chapter 197, O.S.L. 1995 (20 O.S. Supp. 1996, Section 1006), which relates to destruction of records; changing time period required before destruction of court reporters' notes; amending 20 O.S. 1991, Section 1304, as last amended by Section 1, Chapter 78, O.S.L. 1996 (20 O.S. Supp. 1996, Section 1304), which relates to claims against the court fund; expanding allowable claims; requiring approval by the Supreme Court; authorizing pilot program for use of electronic equipment in certain courtrooms; stating purpose; providing for promulgation of rules; amending 20 O.S. 1991, Section 1404, which relates to grounds for removal of judicial officer; adding grounds for removal; amending 20 O.S. 1991, Sections 1651 and 1658, which relate to the Council on Judicial Complaints; authorizing reprimands or admonitions; making certain reprimands and admonitions public information at the discretion of the Council; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 28 O.S. 1991, Section 151, as last amended by Section 8, Chapter 339, O.S.L. 1996 (28 O.S. Supp. 1996, Section 151), is amended to read as follows:

Section 151. A. It shall be the duty of the clerks of the district court and other trial courts of record of this state to charge and collect the fees imposed by this title, and none others, in all cases, except those in which the defendant is charged with a misdemeanor or traffic violation, and except cases under the Small Claims Procedure Act, Section 1751 et seq. of Title 12 of the Oklahoma Statutes.

B. 1. Payment for any fee ~~herein~~ provided for in this title may be made by a nationally recognized credit card issued to the applicant. The court clerk may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of the payment as a service charge for the acceptance and verification of the credit card. For purposes of this subsection, "nationally recognized credit card" means any instrument or device, whether known as a credit card, credit plate, charge plate, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining goods, services, or anything else of value and which is accepted by over one thousand merchants in this state. The court clerk shall determine which nationally recognized credit cards will be accepted as payment for fees.

2. Written procedures for acceptance or rejection of credit cards shall be established by the Office of the State Auditor and Inspector with approval and direction to court clerks to be issued by the Administrative Office of the Courts.

C. Payment for any fee ~~herein~~ provided for in this title may be made by a personal or business check. The court clerk, at the court clerk's discretion, may:

1. Add an amount equal to the amount of the service charge incurred, not to exceed three percent (3%) of the amount of the check as a service charge for the acceptance and verification of the check; or

2. Add an amount of no more than Five Dollars (\$5.00) as a service charge for the acceptance and verification of a check. For purposes of this subsection, "personal or business check" shall not mean a money order, cashier's check, or bank certified check.

D. The Supreme Court is authorized to institute a cost collection program for collection of fees provided for in this title.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3004 of Title 20, unless there is created a duplication in numbering, reads as follows:

The Supreme Court is authorized to provide for electronic filing of documents in the Supreme Court and the district courts. The Administrative Office of the Courts shall promulgate rules for the filing of documents transmitted by electronic device. Rules for electronic filing must have the approval of the Supreme Court.

SECTION 3. AMENDATORY 12 O.S. 1991, Section 27, is amended to read as follows:

Section 27. Where there is no execution outstanding, the clerk of the court in which the judgment was rendered may receive or collect the amount of the judgment ~~and~~ or costs, and receipt therefor, with the same effect as if the same had been paid to the sheriff on an execution; and the clerk shall be liable to be amerced in the same manner and amount as a sheriff for refusing to pay the same to the party entitled thereto, when requested, and shall also be liable on his official bond.

SECTION 4. AMENDATORY 12 O.S. 1991, Section 30, is amended to read as follows:

Section 30. The papers in each case shall be kept in a separate file marked with the title and number of the case. If the court clerk discovers a pleading or other paper which has been filed or submitted for filing that bears an incorrect case number or other incorrect identifying data, the court clerk shall correct the case number or other incorrect identifying data and enter a notation on the docket sheet of both cases recording the

correction. The corrected pleading or other paper shall be placed in the court file bearing the corrected case number.

SECTION 5. AMENDATORY Section 9, Chapter 351, O.S.L. 1993 (12 O.S. Supp. 1996, Section 696.2), as amended by Section 2 of Enrolled House Bill No. 1778 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 696.2 A. After the granting of a judgment, decree or appealable order, it shall be reduced to writing in conformance with Section 696.3 of this title, 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. A file-stamped copy of every judgment, decree, or appealable order shall be mailed to all parties who are not in default for failure to appear in the action by the counsel for a party or party who prepared it, or by a person designated by the trial court, promptly and no later than three (3) days after it is filed. The mailing shall be done in the manner provided in Section 2005 of Title 12 of the Oklahoma Statutes for the service of papers, and a certificate of service must be filed with the court clerk. If the judgment, decree or appealable order was prepared by the court, the court may direct a bailiff, court clerk or party to perform the mailing and certificate of service required by this subsection.

C. In any probate, guardianship, or conservatorship proceeding commenced on or after October 1, 1996, where a party, heir, devisee, legatee, or other interested party or representative of a party has received notice of a hearing which resulted in the issuance of a judgment, decree, or appealable

order and did not file an entry of appearance, no further mailing of any judgment, decree, or appealable order shall be required to be sent to such party, heir, devisee, legatee, or other interested party or representative of a party, unless otherwise specifically required by law. No certificate of mailing shall be required to be filed where no party, heir, devisee, legatee, or other interested party, or representative of a party has filed an entry of appearance.

D. The filing with the court clerk of a written judgment, decree or appealable order, prepared in conformance with Section 696.3 of this title 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.~~ E. 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 696.3 of this title, 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.~~ F. 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 6. AMENDATORY 12 O.S. 1991, Section 2005, as amended by Section 2, Chapter 351, O.S.L. 1993 (12 O.S. Supp. 1996, 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 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 or other electronic 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 or other electronic transmission device. Rules for facsimile or other electronic transmission 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 7. AMENDATORY 20 O.S. 1991, Section 1006, as amended by Section 3, Chapter 197, O.S.L. 1995 (20 O.S. Supp. 1996, Section 1006), is amended to read as follows:

Section 1006. A. Unless there is an objection by the chief judge of the district court, the court clerk is authorized to destroy all exhibits in all domestic relations cases in which there has been no activity for more than twenty (20) years, and exhibits in all other civil cases in which there has been no activity for more than ten (10) years.

B. The chief judge may direct a court reporter to destroy a court reporter's notes ~~in domestic relations cases in which there has been no activity for twenty (20) years, in all other civil and criminal cases in which there has been no activity for more than~~ after the expiration of ten (10) years from the date of a proceeding, or, if a proceeding has not resulted in an appeal upon which a request has been made to transcribe the proceeding, and in ~~misdemeanor cases in which there has been no activity for more than five (5) years~~ all notes of a court reporter may be destroyed immediately upon completion of transcription of a proceeding.

C. No pleadings or judgments shall be destroyed under the provisions ~~hereof~~ of this section.

SECTION 8. AMENDATORY 20 O.S. 1991, Section 1304, as last amended by Section 1, Chapter 78, O.S.L. 1996 (20 O.S. Supp. 1996, Section 1304), is amended to read as follows:

Section 1304. A. Claims against the court fund shall include only such expenses as may be lawfully incurred for the operation of the court in the county. Payment of the expenses may be made after the claim therefor is approved by the district judge who is a member of the governing board of the court fund and either the local court clerk or the local associate district judge who is a member of said governing board. No expenditures falling into any category listed in paragraphs 2, 6 ~~and~~, 7 and 17 of subsection B of this section, may be made without prior written approval of the Chief Justice of the Supreme Court. The Supreme Court may provide by rule the manner in which expenditures in the restricted categories shall be submitted for approval. When allowing the expenditures in paragraphs 6 and 7 of subsection B of this section, the Chief Justice shall direct that resort first be had to the surplus funds in the court fund in the county involved.

B. The term "expenses" shall include the following items and none others:

1. Principal and interest on bonds issued prior to January 1, 1968, pursuant to Sections 771 through 778 of Title 19 of the Oklahoma Statutes, ~~Sections 771 through 778;~~

2. Compensation of bailiffs and part-time help;

3. Juror fees and mileage, as well as overnight accommodation and food expense for jurors kept together as set out in Section 81 et seq. of Title 28 of the Oklahoma Statutes, ~~Section 81 et seq.;~~

4. Witness fees and mileage for witnesses subpoenaed by the defense as set out in Section 81 et seq. of Title 28 of the Oklahoma Statutes, except expert witnesses for county indigent defenders shall be paid a reasonable fee for their services;

5. Office supplies, books for records, postage and printing;

6. Furniture, fixtures and equipment;

7. Renovating, remodeling and maintenance of courtrooms, judge's chambers, clerk's offices and other areas primarily used for judicial functions;

8. Judicial robes;

9. Attorney's fees for indigents in the trial court and on appeal;

10. Compensation or reimbursement for services provided in connection with an adult guardianship proceeding as provided by Section 4-403 of Title 30 of the Oklahoma Statutes. Compensation from the court fund for attorneys appointed pursuant to the Oklahoma Guardianship Act, Section 1-102 et seq. of Title 30 of the Oklahoma Statutes, shall be substantially the same as for attorneys appointed in juvenile proceedings pursuant to Title 10 of the Oklahoma Statutes. The compensation, if any, for guardians ad litem appointed pursuant to the Oklahoma Guardianship Act shall not exceed One Hundred Dollars (\$100.00);

11. Transcripts ordered by the court;

12. Necessary telephone expenses, gas, water and electrical utilities for the part of the county courthouse occupied by the court and other areas used for court functions;

13. The cost of publication notice in juvenile proceedings as provided in Section 1105 of Title 10 of the Oklahoma Statutes and in termination of parental rights proceedings brought by the state as provided in Section 1131 of Title 10 of the Oklahoma Statutes;

14. Interpreter fees;

15. Necessary travel expenses of the office of county indigent defender approved by the court fund governing board;

16. Rent for county indigent defender's office outside of the county courthouse;

17. Rent for courtroom facilities outside the courthouse;

18. Any other expenses now or hereafter expressly authorized by statute; and

~~18.~~ 19. Necessary training for the judges and court personnel on the court integrated computer system.

C. No county courthouse building commission shall be created after March 1, 1968, and no disbursements shall be permitted from

any court fund under the provisions of Sections 771 through 778 of Title 19 of the Oklahoma Statutes, ~~Sections 771 through 778,~~ except by county courthouse commissions created prior to March 1, 1968, provided, nothing in Section 1301 et seq. of this title shall prevent the construction of additional courtrooms within existing courthouse facilities, from funds other than the court fund.

D. Items of equipment, furniture, fixtures, printing or supplies that are available in the quantities desired from a contract vendor's list for order or purchase by the court fund through the facilities of the Central Purchasing Office of the State of Oklahoma may not be purchased by any court fund at prices higher than those approved by the Central Purchasing Office.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1512 of Title 20, unless there is created a duplication in numbering, reads as follows:

The Supreme Court is authorized to establish a pilot project for use of videotape equipment in courtrooms for production of videotape records for transcripts where court reporters are not available. The Administrative Office of the Courts shall promulgate rules for the use of video equipment in courtrooms. Rules for use of video equipment in courtrooms must have the approval of the Supreme Court.

SECTION 10. AMENDATORY 20 O.S. 1991, Section 1404, is amended to read as follows:

Section 1404. As used in this section, the term "judicial officer" includes the judges of all courts created by the state or municipalities of the state. In addition to the causes specified in Article VII-A, Section 1 of the Oklahoma Constitution, the acts and omissions enumerated below shall constitute grounds for the removal by the Court on the Judiciary of a judicial officer from his office, with or without disqualification to hold a judicial office in the future:

1. The acceptance of a fee, or gratuity, other than that specifically provided by law, for performing any act in a judicial officer's capacity as a judge.

2. Continued willful failure of a judicial officer to comply with rules and directives of the Supreme Court, the presiding judge of his administrative district, or the chief judge of the judicial district.

3. Participation by a judicial officer, while serving as such officer or while a candidate for judicial office, in any partisan political activity. But the term "partisan political activity," as used herein, shall not include the attendance by a judicial officer or by a candidate for a judicial office at a political gathering, upon payment of a nominal admission fee, for the sole purpose of campaigning in his own behalf for a judicial office.

4. Participation by a judicial officer, while serving as such officer or while a candidate for a judicial office, in any election campaign other than that for his own election to a judicial office.

5. A judicial officer becoming a candidate for any nonjudicial office or for another judicial office whose term is to commence before the expiration of his present term of office; provided that no judge holding a nonelective judgeship shall become a candidate in a race in which the incumbent seeks to retain an elective judicial office unless he first resign his appointive judgeship.

6. A judicial officer, while serving as such officer or while a candidate for a judicial office, making publicly known in his campaign material or speeches, or knowingly permitting others to make publicly known, either directly or by implication, his political party affiliation.

7. Violation by a judicial officer of the Code of Judicial Conduct as adopted by the Supreme Court of Oklahoma on July 15, 1974, or as may be thereafter amended.

SECTION 11. AMENDATORY 20 O.S. 1991, Section 1651, is amended to read as follows:

Section 1651. It hereby is declared to be the public policy of the State of Oklahoma to afford a means whereby complaints by any person concerning the conduct of persons occupying positions in the judicial department of government and subject to the

jurisdiction of the Court on the Judiciary may be efficiently and impartially investigated; to provide an agency which can determine whether such complaints should be made the subject of action before the Court on the Judiciary, warrant a reprimand or admonition, or should be dismissed; to provide means for procuring necessary information to enable such agency to perform its functions, including the power to issue and enforce subpoenas to testify and to produce tangible evidentiary materials; to provide for the designation of complaining authorities in those cases which should be prosecuted before the Court on the Judiciary; to better the administration of justice in this state through the means enumerated in Sections 1651 through 1661 of this ~~act~~ title.

SECTION 12. AMENDATORY 20 O.S. 1991, Section 1658, is amended to read as follows:

Section 1658. The Council shall promptly investigate all complaints received by it, and shall determine the proper disposition thereof, as provided in Sections 1651 through 1661 of this ~~act~~ title. To that end, it shall have power to hold hearings, administer oaths or affirmations, receive testimony and other evidence, issue and serve or cause to be served subpoenas requiring testimony or the production of books, records, papers or other tangible evidence. The Council is hereby authorized to require in aid of its investigatory functions the services of the Oklahoma Bureau of Investigation or of any governmentally supported investigatory agency or, upon authorization of the Board of Governors of the Oklahoma Bar Association, of the services of the Oklahoma Bar Association. In the event of contemptuous refusal to obey its lawful orders, it may take such steps as are necessary to maintain order in its session; as to contempts not affecting the maintenance of order, it shall certify the matter to the Chief Justice of the Supreme Court, who shall assign the case for trial and appropriate disposition to a judge of a district court. In such proceeding, the General Counsel of the Oklahoma Bar Association shall act as prosecutor against the alleged contemnor. All proceedings under this section shall be held in secrecy to the same extent as proceedings before a grand jury;

provided however, a reprimand or admonition to a judge who shall have previously received a reprimand or admonition shall, at the discretion of the Council, be made public.

SECTION 13. Sections 1 through 4 and 6 through 12 of this act shall become effective July 1, 1997.

SECTION 14. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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