STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 816 By: Smith of the Senate

and

Steidley of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to county officers; amending 12 O.S. 1991, Sections 35.1, as amended by Section 2, Chapter 400, O.S.L. 1997 and 158.1 (12 O.S. Supp. 1997, Section 35.1), which relate to processing of passports and to private process servers; modifying certain amounts to be retained by court clerk; increasing certain fees; changing time period for renewal of certain license; deleting language requiring certain filing and payment of certain fee; amending 19 O.S. 1991, Sections 220 and 298, as last amended by Section 2, Chapter 233, O.S.L. 1997 (19 O.S. Supp. 1997, Section 298), which relate to the court clerk's revolving fund and recordable instruments; requiring certain monies to be expended in certain manner; requiring county clerk to attach certain information to instrument under certain circumstances; amending 21 O.S. 1991, Section 345, as amended by Section 16, Chapter 239, O.S.L. 1993 (21 O.S. Supp. 1997, Section 345), which relates to crimes against the revenue and property of the state; updating language; making additional officer subject to criminal penalty; amending 43 O.S. 1991, Sections 9 and 103, which relate to marriage records and to venue in divorce, annulment, and separate maintenance actions; modifying requirements for storage of certain records; providing for assignment of certain actions for trial; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 1991, Section 35.1, as amended by Section 2, Chapter 400, O.S.L. 1997 (12 O.S. Supp. 1997, Section 35.1), is amended to read as follows:

Section 35.1 A. The duties of the court clerk may include ~~the process~~ processing of passports as permitted and prescribed by federal law and regulation if the court clerk files a written

election with the Administrative ~~Director~~ Office of the Courts to process passports. Upon the filing of the election to process passports as an official duty and service, the court clerk shall execute all passport applications presented.

B. ~~Ten percent (10%) of the amounts~~ Amounts collected pursuant to subsection A of this section shall be retained by the court clerk and deposited in the Court Clerk's Revolving Fund pursuant to the provisions of Section 220 of Title 19 of the Oklahoma Statutes. ~~All other fees collected hereunder shall be paid into the court fund of the county.~~

SECTION 2. AMENDATORY 12 O.S. 1991, Section 158.1, is amended to read as follows:

Section 158.1 A. Service and return of process in civil cases may be by an authorized licensed private process server. The presiding judge of the judicial administrative district in which the county is located, or ~~such~~ an associate district judge or district judge of the county as may be designated by the presiding judge, shall be authorized to issue a license to make service of process in civil cases to ~~a person~~ persons deemed qualified to do so. ~~The authority of the licensee shall be statewide.~~

B. Any person eighteen (18) years of age or older, of good moral character, and found ethically and mentally fit may obtain ~~such~~ a license by filing an application therefor with the court clerk on a verified form to be prescribed by the Administrative ~~Director~~ Office of the Courts.

C. The applicant filing for ~~such~~ a license shall ~~pay~~:

1. Pay a license fee of Thirty-five Dollars ($35.00), and the regular docketing, posting, mailing, and filing fees prescribed by law. The license shall contain the name, address, a brief description of the licensee, and, at the discretion of the district court clerk, a recent photograph of the licensee. The license shall state that the licensee is an officer of the court only for the purpose of service of process and only within the county in which the license is issued. The license shall be carried by the licensee while on duty as a private process server.

At the end of one (1) calendar year from the date of issuance of the initial license, the license shall be renewed for a period of one (1) year. The license shall be renewed each succeeding year. A fee of Five Dollars ($5.00) ~~per year~~ shall be charged for ~~renewal of~~ each license renewal. Upon an annual filing of a certified copy of a license issued pursuant to the provisions of this paragraph and payment of a filing fee of Ten Dollars ($10.00) to the court clerk of any county within this state, a licensed process server may serve process in that county for the district court having jurisdiction for that county; or

2. Pay a license fee of One Hundred Fifty Dollars ($150.00), and the regular docketing, posting, mailing, and filing fees prescribed by law. The license shall contain the name, address, a brief description of the licensee, and, at the discretion of the district court clerk, a recent photograph of the licensee. The license shall state that the licensee is an officer of the court only for the purpose of service of process. The authority of the licensee shall be statewide. The license shall be carried by the licensee while on duty as a private process server. At the end of one (1) calendar year from the date of issuance of the initial license, the license shall be renewed for a period of three (3) years. The license shall be renewed each succeeding three (3) years. A fee of Fifteen Dollars ($15.00) per renewal shall be charged for each license renewal.

All fees collected pursuant to this section shall be deposited in the court fund.

D. Upon the filing of ~~the~~ an application for a license, the court clerk shall give five (5) days' notice of hearing by causing the notice to be posted in the courthouse. A copy of ~~said~~ the notice shall be mailed to the district attorney, the sheriff, and the chief of police or marshal in the county seat and shall contain the name of the applicant and the time and place the presiding judge or ~~such~~ the associate district judge or district judge ~~as is~~ designated by the presiding judge, will act upon ~~said~~ the application.

E. If, at the time of consideration of the ~~new~~ application or ~~application for a license~~ renewal, there are no protests and the applicant appears qualified, the application for ~~said~~ the license shall be granted by the presiding judge or such associate district judge or district judge as is designated by the presiding judge and, upon executing bond running to the State of Oklahoma in the amount of Five Thousand Dollars ($5,000.00) for faithful performance of his or her duties and filing ~~said~~ the bond with the court clerk, the applicant shall be authorized and licensed to serve civil process statewide.

F. If any citizen of the county files a written protest setting forth objections to the licensing of the applicant, the district court clerk shall so advise the presiding judge or such associate district judge or district judge as is designated by the presiding judge, who shall set a later date for hearing of application and protest. ~~Said~~ The hearing shall be held within thirty (30) days and after notice to all persons known to be interested.

G. ~~Upon an annual filing of a certified copy of a license issued pursuant to the provisions of this section and payment of a filing fee of Ten Dollars ($10.00) to the court clerk of any county within this state, a licensed process server may serve process in that county for the district court having jurisdiction over said county.~~

~~H.~~ Proof of service of process shall be shown by affidavit as provided for by subsection G of Section 2004 of this title.

~~I.~~ H. The district attorney of the county wherein a license authorized under this act has been issued may file a petition in the district court to revoke the license issued to any licensee, as authorized pursuant to the provisions of this section, alleging the violation by the licensee of any of the provisions of the law. After at least ten (10) days' notice by certified mail to the licensee, the chief or presiding judge, sitting without jury, shall hear ~~said~~ the petition and enter an order thereon. If ~~said~~ the license is revoked, the licensee shall not be permitted to reapply for a license for a period of five (5) years from the date

of revocation. Notwithstanding any other provisions of this section, any licensee whose license has been revoked one time shall pay the sum of One Thousand Dollars ($1,000.00) as a renewal fee. If a second revocation occurs, the chief or presiding judge shall not allow an applicant to renew the license.

~~J.~~ I. The ~~district~~ court clerk shall keep posted at all times in his office the list of licensed private process servers. Any person in need of a process server's services may designate one from the names on the list, before presenting summons to the court clerk for issuance, without necessity for individual judicial appointment.

SECTION 3. AMENDATORY 19 O.S. 1991, Section 220, is amended to read as follows:

Section 220. A. Beginning July 1, 1991, there is hereby created with the county treasurer of each county within ~~the State of Oklahoma~~ this state a revolving fund to be designated the "Court Clerk's Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received as grants from the federal government and any other monies designated by law for deposit into ~~said~~ the fund. All monies accruing to the credit of ~~said~~ the fund are hereby appropriated and may be budgeted and expended by the court clerk in the ~~lawful operation of his or her office~~ manner and for the purposes set forth for the court fund as specified in Title 20 of the Oklahoma Statutes.

B. There shall be no monies, other than federal funds, deposited into the fund created herein, unless expressly authorized by the Legislature.

SECTION 4. AMENDATORY 19 O.S. 1991, Section 298, as last amended by Section 2, Chapter 233, O.S.L. 1997 (19 O.S. Supp. 1997, Section 298), is amended to read as follows:

Section 298. A. Every county clerk in ~~each county of~~ this state shall require that the mandates of the Legislature be complied with, as expressed in Sections 287 and 291 of this title, and for that purpose, every instrument offered which may be accepted by the county clerk for recording, affecting specific

real property whether of conveyance, encumbrance, assignment, or release of encumbrance, lease, assignment of lease or release of lease, shall be an original or certified copy of an original instrument and clearly legible in accordance with the provisions of subsection B of this section, and shall by its own terms describe the property by its specific legal description, and provide such information as is necessary for indexing as required in Sections 287 and 291 of this title, and on each such instrument shall be listed the mailing address of the grantee, mortgagee, assignee or other designated party to which the instrument is to be delivered after recording. If an instrument offered to a county clerk for recording contains more than twenty-five legal descriptions requiring separate entries in the indexes required by Sections 287 and 291 of this title, the descriptions shall be sorted by addition, block, and lot if platted property, or by township, range, and section if described by governmental survey description. Any instrument offered to a county clerk for recording containing more than twenty-five legal descriptions per page, counted as each description which could require a separate line entry in the numerical index, shall be accompanied by an additional filing fee of One Dollar ($1.00) per legal description in excess of twenty-five legal descriptions per page to be paid to the county clerk. Unless the person offering a nonconforming instrument for filing is willing to reform the instrument to conform to statutory requirements, for which purpose it may be withdrawn and refiled during the same business day, the county clerk may refuse to record the same in the records of deeds, leases or mortgages or to index the same upon the index records referred to in Sections 287 or 291 of this title, or to file or record the same in the office of the county clerk.

B. All documents filed of record in the office of the county clerk pursuant to subsection A of this section or pursuant to any other law shall be an original or a certified copy of an original document. Such documents shall be clearly legible, in the English language, using xerographically reproducible dark ink, on paper of a color that is xerographically reproducible by the copying

equipment in use by the county clerk. Unless otherwise provided by law, such documents shall measure no larger than eight and one-half (8 1/2) inches by fourteen (14) inches. All documents shall provide an area free of printed information sufficient in size to accommodate affixation of the documentary stamps required by Section 3201 of Title 68 of the Oklahoma Statutes, any certification of the payment of mortgage taxes required by Section 1901 et seq. of Title 68 of the Oklahoma Statutes, and the recording information affixed by the county clerk upon acceptance of a document for recordation. If an instrument submitted to the county clerk for recording does not contain sufficient space for the affixation of such stamps and recording information without covering language contained in the instrument, the county clerk ~~may~~ shall attach an additional page to the document to provide for the affixation of such stamps and recording information. The top margin of all documents shall be at least one (1) inch and all other margins shall be at least one-half (1/2) inch.

C. Despite any provision in this section to the contrary, the county clerk shall accept for filing any document that fails to meet the requirements of ~~subsections A and~~ subsection B of this section if:

1. The document is an original or a certified copy of an original;

2. The document is legible without the aid of magnification or other enhancement of the text;

3. The document is xerographically reproducible by the copying equipment in use by the county clerk;

4. The document meets all other statutory requirements for recordation; and

5. The person offering the instrument for recording pays the additional fee provided in Section 32 of Title 28 of the Oklahoma Statutes for nonconforming documents.

D. This section shall not apply to plats, filings under the Uniform Commercial Code, or any other instruments that may be filed pursuant to any other law.

E. All documents accepted for filing, including all documents filed before the effective date of this act, shall be deemed to comply with the requirements of this section and, except as otherwise provided by law, impart constructive notice of the contents of such document to third parties unless a person claiming adversely to any such document files an affidavit setting forth the basis of such claim in the office of the county clerk of the county where the property is located within six (6) months from the effective date of this act.

SECTION 5. AMENDATORY 21 O.S. 1991, Section 345, as amended by Section 16, Chapter 239, O.S.L. 1993 (21 O.S. Supp. 1997, Section 345), is amended to read as follows:

Section 345. Every ~~register of deeds~~ county clerk, court clerk, judge of the district court, district attorney, county commissioner, or sheriff ~~or coroner~~, who willfully fails or refuses to perform the duties of his or her office according to law, is guilty of a misdemeanor.

SECTION 6. AMENDATORY 43 O.S. 1991, Section 9, is amended to read as follows:

Section 9. The judge or clerk of the district court issuing any marriage license shall make a complete record of the application, license, and certificate thereon, in connected form, each subjoining the other on an optical disc, microfilm, microfiche, or in a book kept by ~~him~~ the judge or clerk for that purpose, properly indexed; and the record of the license shall be made before it is delivered to the person procuring the same, and the record of the certificate shall be made upon the return of the license~~: Provided~~; provided, that all records pertaining to the issuance of such license shall be open to public inspection during office hours~~. Provided~~; provided further, that after recording of the original license and completed certificate as hereinbefore required, it shall be returned to the persons to whom the same was issued, with the issuing officer's certificate on the back thereof showing the book and page where the same has been recorded.

SECTION 7. AMENDATORY 43 O.S. 1991, Section 103, is amended to read as follows:

Section 103. The venue of actions for divorce, annulment of marriages, and separate maintenance may be in the following counties:

~~(a)~~ 1. An action for divorce or annulment of a marriage may be ~~brought~~ filed in the county in which the plaintiff has been a resident for the thirty (30) days immediately preceding the filing of the petition or in the county in which the defendant is a resident~~.~~; provided, the action may be assigned for trial in any county within the judicial district by the chief judge of the district; and

~~(b)~~ 2. An action for separate maintenance may be brought in the county in which either party is a resident at the time of the filing of the petition.

SECTION 8. This act shall become effective November 1, 1998.

46-2-3119 KSM (<time=system>)