

SHORT TITLE: Civil procedure; amendment of pleadings and process;  
effective date.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 481

By: Henry

AS INTRODUCED

An Act relating to civil procedure; amending 12 O.S. 1991, Section 2015, as amended by Section 3, Chapter 351, O.S.L. 1993 (12 O.S. Supp. 1996, Section 2015), which relates to amended and supplemental pleadings; modifying gender references; expanding power of court to permit amendment of certain pleadings and process under certain circumstances; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 1991, Section 2015, as amended by Section 3, Chapter 351, O.S.L. 1993 (12 O.S. Supp. 1996, Section 2015), is amended to read as follows:

Section 2015.

AMENDED AND SUPPLEMENTAL PLEADINGS

A. AMENDMENTS. A party may amend ~~his~~ the party's 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~~ the party's

pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice ~~se~~ 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 When issues not raised by the pleadings or by the pretrial conference order, where the order has superseded the pleadings, are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings or the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 ~~se~~ 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~~ the evidence would prejudice ~~him~~ the party in maintaining ~~his~~ an 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. 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; or

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

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

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 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~~ the party 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.

E. SUPPLEMENTAL AUTHORITY TO AMEND. In addition to the procedures specified in subsections A through D of this section, the court may, before or after judgment, in furtherance of justice, and on such terms as may be proper, amend any pleading, process or proceeding by adding or striking out the name of any party, or correcting a mistake in the name of a party, or a mistake in any other respect, or by inserting other allegations material to the case, or conform the pleading or proceeding to the facts proved, when such amendment does not change the nature of the transaction or occurrence that is the subject of the claim or defense; and when any proceeding fails to conform in any respect to the provisions of this Code, the court may permit the same to be made conformable thereto by amendment.

SECTION 2. This act shall become effective November 1, 1997.

46-1-0786

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