STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

3RD CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1507 By: Toure of the House

and

Henry of the Senate

3RD CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to civil procedure; amending 12 O.S. 1991, Sections 66, as last amended by Section 2, Chapter 359, O.S.L. 1999, 140, Section 11, Chapter 351, O.S.L. 1993, as last amended by Section 4, Chapter 102, O.S.L. 1997, 735, as amended by Section 3, Chapter 320, O.S.L. 1997, 936, 990A, as last amended by Section 7, Chapter 102, O.S.L. 1997, 1653, 1802, 2004.1, as last amended by Section 1 of Enrolled Senate Bill No. 1329 of the 2nd Session of the 47th Oklahoma Legislature, 2012 and 2024 (12 O.S. Supp. 1999, Sections 66, 696.4, 735 and 990A), which relate to procedures for the disposition of civil actions; modifying procedures with respect to certain civil actions; providing for automatic stay; specifying duration of stay; modifying authorization for change of venue; providing for applicability of procedures to actions based upon certain status; prescribing procedures for proof of certain matters; prescribing authorized form of statement; providing for effect of statement; modifying procedures for certain applications; providing exception for circumstances involving post-trial motions; prescribing time limit for filing certain application; modifying provisions related to execution upon civil judgments; modifying provisions related to allowance of attorney fees; modifying authorized methods for perfection of civil appeals; authorizing legislative intervention in certain proceedings and actions and providing procedure therefore; modifying definition of mediator; authorizing issuance of orders or process in aid of discovery; requiring entry of appearance in certain actions; prescribing requirements for entry of appearance based on procedural events; prescribing requirements for certain counsel; prescribing procedures for withdrawal of counsel in certain actions; prescribing content for motions to withdraw; prescribing standards for disposition of motions; requiring notice; providing for pro se representation; requiring counsel seeking to withdraw to advise court of certain matters; specifying certain address for certain purposes; requiring notice of change of address; prescribing effect of notice; prescribing procedures related to changes of

address; modifying procedures for filing of initial responses in civil cases; prohibiting certain acts by court reporters and court reporting firms; amending 20 O.S. 1991, Section 1502, as last amended by Section 1, Chapter 237, O.S.L. 1999 (20 O.S. Supp. 1999, Section 1502), which relates to the State Board of Examiners of Certified Shorthand Reporters; expanding grounds for recommendation for actions on licenses; amending 58 O.S. 1991, Section 912, as last amended by Section 15, Chapter 339, O.S.L. 1996 (58 O.S. Supp. 1999, Section 912), which relates to probate procedure; requiring certain statements to be acknowledged; repealing 12 O.S. 1991, Section 462, which relates to testimony and appearance of certain witnesses; repealing 12 O.S. 1991, Section 1703.02, which relates to taking of certain depositions; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 1991, Section 66, as last amended by Section 2, Chapter 359, O.S.L. 1999 (12 O.S. Supp. 1999, Section 66), is amended to read as follows:

Section 66. A. Whenever an action is filed in any of the courts ~~in~~ of this state ~~by the State of Oklahoma or by direction of any department of the state, no bond, including cost, replevin, attachment, garnishment, redelivery, injunction, appeal~~ where the State of Oklahoma, or any of its departments or agencies, as defined in Section 152 of Title 51 of the Oklahoma Statutes, is a party, no bonds or other ~~obligation~~ obligations of security shall be required from the state or from any party acting under the direction of the state, either to prosecute, answer, or appeal the action. The execution of a judgment or final order of any judicial tribunal against the state, or any of its departments or agencies, is automatically stayed without the execution of a supersedeas bond until any appeal of such judgment or final order has finally been determined. In case of an adverse decision, such costs as by law are taxable against the state, or against the party acting by its direction, shall be paid out of the funds of the department under whose direction the proceedings were instituted~~; provided, that the~~

~~court shall direct the nonprevailing party to pay all costs of the action in the final order of the court~~ or defended.

B. Costs shall be paid to the court fund of the district court in which an action is filed from the first funds collected in satisfaction of any judgment obtained by this state or any party acting under the direction of this state, except when the funds are collected pursuant to a child support order or judgment. No action filed by this state or by any party acting under the direction of this state shall be dismissed with unpaid costs of the action without the prior notification of the district court clerk of the county in which the action was filed.

SECTION 2. AMENDATORY 12 O.S. 1991, Section 140, is amended to read as follows:

Section 140. ~~In all~~ Only in cases in which it is made to appear to the court that a fair and impartial trial cannot be had in the county where the suit is pending, the court may, on application of either party, change the place of trial to some county where such objections do not exist.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 426 of Title 12, unless there is created a duplication in numbering, reads as follows:

Whenever, under any law of Oklahoma or under any rule, regulation, order or requirement made pursuant to the law of Oklahoma, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn statement, declaration, verification, certificate, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), the matter may with like force and effect be supported, evidenced, established or proved by the unsworn statement in writing of the person made and signed under penalty of perjury setting forth the date and place of

execution and that it is made under the laws of Oklahoma. The statement under penalty of perjury may be in substantially the following form:

"I state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct.

_____ _____

(Date and Place) (Signature)"

The signed statement under penalty of perjury shall constitute a legally binding assertion that the contents of the statement to which it refers are true. This statute shall not affect any requirement for acknowledgment of an instrument affecting real property.

SECTION 4. AMENDATORY Section 11, Chapter 351, O.S.L. 1993, as last amended by Section 4, Chapter 102, O.S.L. 1997 (12 O.S. Supp. 1999, Section 696.4), is amended to read as follows:

Section 696.4 A. A judgment, decree or appealable order may provide for costs, ~~attorney's~~ attorney fees and interest or any of these items, but it need not include them. The preparation and filing of the judgment, decree or appealable order shall not be delayed pending the determination of these items. Such items may be determined by the court if a timely request is made, regardless of whether a petition in error has been filed.

B. If ~~attorney's~~ attorney fees, costs or interest, including the amount of such attorney fees, costs and the rate of interest, have not been included in the judgment, decree or appealable order, a party seeking any of these items must file an application with the court clerk along with the proof of service of the application on all affected parties in accordance with Section 2005 of this title. The application must set forth the amount requested and include information which supports that amount. The application must be filed within thirty (30) days after the filing of the judgment, decree or appealable order unless a post-trial motion pursuant to

subsection A of Section 990.2 of this title has been filed within ten (10) days after the filing of the judgment, decree or appealable order. If such a motion is filed within that time, the application for attorney fees, costs or interest shall be filed within thirty (30) days after the date an order disposing of such post-trial motion is filed. If the party filing the application did not prepare the judgment, decree, or appealable order, and Section 696.2 of this title required a copy of the judgment, decree, or appealable order to be mailed to the party filing application, and the court records do not reflect the mailing of a copy of the judgment, decree, or appealable order to the party filing the application within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or appealable order, the application may be filed no later than thirty (30) days after the earliest date on which the court records show that a copy of the judgment, decree, or appealable order or order disposing of the post-trial motion was mailed to the party filing the application. For good cause shown, the court may extend the time for filing the application upon motion filed within the time that the application could be filed. Within fifteen (15) days after the application is filed with the court, any party may file written objections to it, with a copy to the moving party.

C. An application for ~~attorney's~~ attorney fees for services performed on appeal shall be made to the appellate court either in the applicant's brief on appeal or by separate motion filed any time before issuance of mandate. If in the brief, the application shall be made in a separate portion that is specifically identified. The application shall cite authority for awarding ~~attorney's~~ attorney fees but shall not include evidentiary material concerning their amount. The appellate court shall decide whether to award ~~attorney's~~ attorney fees for services on appeal, and if fees are awarded, it shall remand the case to the trial court for a

determination of their amount. The trial court's order determining the amount of fees is an appealable order.

SECTION 5. AMENDATORY 12 O.S. 1991, Section 735, as amended by Section 3, Chapter 320, O.S.L. 1997 (12 O.S. Supp. 1999, Section 735), is amended to read as follows:

Section 735. If execution is not issued by the court clerk and filed with the county clerk as provided in Section 759 of this title, or a notice of renewal of judgment substantially in the form prescribed by the Administrative Director of the Courts is not filed with the court clerk, or a garnishment summons is not issued by the court clerk within five (5) years after the date of filing of any judgment that now is or may hereafter be ~~rendered~~ filed in any court of record in this state, or if more than five (5) years has passed from the date that the last execution on the judgment was filed with the county clerk, or the last notice of renewal of judgment was filed with the court clerk, or the date that the last garnishment summons was issued, the judgment shall become unenforceable and of no effect; provided, this section shall not apply to judgments against municipalities.

SECTION 6. AMENDATORY 12 O.S. 1991, Section 936, is amended to read as follows:

Section 936. In any civil action to recover for labor or services rendered on an open account, a statement of account, account stated, note, bill, negotiable instrument, or contract relating to the purchase or sale of goods, wares, or merchandise, ~~or for labor or services,~~ unless otherwise provided by law or the contract which is the subject to the action, the prevailing party shall be allowed a reasonable attorney fee to be set by the court, to be taxed and collected as costs.

SECTION 7. AMENDATORY 12 O.S. 1991, Section 990A, as last amended by Section 7, Chapter 102, O.S.L. 1997 (12 O.S. Supp. 1999, Section 990A), is amended to read as follows:

Section 990A. A. An appeal to the Supreme Court of Oklahoma, if taken, must be commenced by filing a petition in error with the Clerk of the Supreme Court of Oklahoma within thirty (30) days from the date a judgment, decree, or appealable order prepared in conformance with Section 696.3 of this title is filed with the clerk of the trial court. If the appellant did not prepare the judgment, decree, or appealable order, and Section 696.2 of this title required a copy of the judgment, decree, or appealable order to be mailed to the appellant, and the court records do not reflect the mailing of a copy of the judgment, decree, or appealable order to the appellant within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or appealable order, the petition in error may be filed within thirty (30) days after the earliest date on which the court records show that a copy of the judgment, decree, or appealable order was mailed to the appellant.

B. The filing of the petition in error may be accomplished either by delivery or ~~by certified mail with return receipt requested~~ <u>mailing by certified or first-class mail, postage prepaid</u> to the Clerk of the Supreme Court. The date of filing or 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 rule, which shall 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 or tribunals in the preparation and authentication of transcripts and records in cases appealed under this act; and

3. The procedure to be followed for the completion and submission of the 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 rule.

E. Except for the filing of a petition in error as provided herein, all steps in 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 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 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 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 for dismissal.

G. 1. No designation of record shall be accepted by the district court clerk for filing unless it contains one of the following:

a. where a transcript is designated: A signed acknowledgment from the court reporter who reported evidence in the case indicating receipt of the request for transcript, the date received, and the amount of deposit received, if applicable, in substantially the following form: I, _____, court reporter for the above styled case, do hereby acknowledge this request for transcript on this ____ day of____, 19__, and have received a deposit in the sum of $____., or

b. where a transcript is not designated: A signed statement by the attorney preparing the designation of record stating that a transcript has not been ordered and a brief explanation why, in substantially the following form: I, _____, attorney for the appellant, hereby state that I have not ordered a transcript because:

(1) a transcript is not necessary for this appeal, or

(2) no stenographic reporting was made.

2. This section shall not apply to counter-designations of record filed by appellees.

SECTION 8. AMENDATORY 12 O.S. 1991, Section 1653, is amended to read as follows:

Section 1653. A. When a declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.

B. The venue of ~~said~~ the action shall be established ~~by existing statutes~~ as otherwise provided by law; provided, however, where the action involves an individual defendant the venue shall be in the county of ~~his or her~~ the defendant's residence or where ~~he or she~~ the defendant may be served with summons. If ~~such~~ the action involves ~~more than one such individual defendant,~~ two or more

defendants who reside in different counties, the venue shall be in any county where any ~~of such defendants reside~~ defendant resides or may be served with summons.

C. In any proceeding which involves the validity of a municipal ordinance or regulation, ~~such~~ the municipality shall be made a party, and shall be entitled to be heard, and if a statute or regulation is alleged to be unconstitutional, the Attorney General of the state shall also be served with a copy of the proceeding and be entitled to be heard. Immediately upon receipt of a copy of a proceeding in which a statute is alleged to be unconstitutional, the Attorney General shall immediately deliver a copy of the proceeding to the Speaker of the House of Representatives and the President Pro Tempore of the Senate who may intervene on behalf of their respective house of the Legislature and who shall be entitled to be heard. Intervention by the Speaker of the House of Representatives or President Pro Tempore of the Senate shall not constitute waiver of legislative immunity.

SECTION 9. AMENDATORY 12 O.S. 1991, Section 1802, is amended to read as follows:

Section 1802. As used in the Dispute Resolution Act:

1. "Initiating party" means the party who first seeks mediation.

2. "Mediation" means the process of resolving a dispute with the assistance of a mediator outside of a formal court proceeding.

3. "Mediator" means any person certified pursuant to the provisions of the Dispute Resolution Act or the District Court Mediation Act to assist in the resolution of a dispute.

4. "Party" means an individual person, company, or governmental agency.

5. "Resolution" means the final determination of the dispute, arrived at by the parties upon their own initiative or by anyone

authorized in writing to act in their behalf or with the help of a mediator.

6. "Responding party" means the party who is named by the initiating party as the other party in a dispute where mediation is sought.

SECTION 10. AMENDATORY 12 O.S. 1991, Section 2004.1, as last amended by Section 1 of Enrolled Senate Bill No. 1329 of the 2nd Session of the 47th Oklahoma Legislature, is amended to read as follows:

Section 2004.1

SUBPOENA

A. SUBPOENA; FORM; ISSUANCE.

1. Every subpoena shall:

a. state the name of the court from which it is issued and the title of the action; and

b. command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified.

2. A subpoena shall issue from the court where the action is pending, and it may be served at any place within the state. If the action is pending outside of this state, the district court for the county in which the deposition is to be taken shall issue the subpoena, and upon application, any other order or process that may be appropriate in aid of discovery in that action. Proof of service of a notice to take deposition constitutes a sufficient authorization for the issuance by the clerk of subpoenas for the persons named or described therein; provided, any person aggrieved by the issuance or enforcement of the subpoena may obtain judicial

review upon the filing of a civil action and payment of the required fees.

~~2.~~ 3. A witness shall be obligated upon service of a subpoena to attend a trial or hearing at any place within the state and to attend a deposition or produce or allow inspection of documents at a location that is authorized by subsection B of Section 3230 of this title.

~~3.~~ 4. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service. As an officer of the court, an attorney authorized to practice law in this state may also issue and sign a subpoena on behalf of a court of this state.

~~4.~~ 5. Leave of court for issuance of a subpoena for the production of documentary evidence shall be required if the plaintiff seeks to serve a subpoena for the production of documentary evidence on any person who is not a party prior to the expiration of thirty (30) days after service of the summons and petition upon any defendant.

B. 1. SERVICE. Service of a subpoena upon a person named therein shall be made by delivering or mailing a copy thereof to such person and, if the person's attendance is demanded, by tendering to that person the fees for one (1) day's attendance and the mileage allowed by law. Service of a subpoena may be accomplished by any person who is eighteen (18) years of age or older. A copy of any subpoena that commands production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by subsection B of Section 2005 of this title. If the subpoena commands production of documents and things or inspection of premises from a nonparty before trial but does not require attendance of a witness, the subpoena shall specify a date for the production or inspection that is at least seven (7)

days after the date that the subpoena and copies of the subpoena are served on the witness and all parties, and the subpoena shall include the following language: "In order to allow objections to the production of documents and things to be filed, you should not produce them until the date specified in this subpoena, and if an objection is filed, until the court rules on the objection."

2. Service of a subpoena by mail may be accomplished by mailing a copy thereof by certified mail with return receipt requested and delivery restricted to the person named in the subpoena. The person serving the subpoena shall make proof of service thereof to the court promptly and, in any event, before the witness is required to testify at the hearing or trial. If service is made by a person other than a sheriff or deputy sheriff, such person shall make affidavit thereof. If service is by mail, the person serving the subpoena shall show in the proof of service the date and place of mailing and attach a copy of the return receipt showing that the mailing was accepted. Failure to make proof of service does not affect the validity of the service, but service of a subpoena by mail shall not be effective if the mailing was not accepted by the person named in the subpoena. Costs of service shall be allowed whether service is made by the sheriff, the sheriff’s deputy, or any other person. When the subpoena is issued on behalf of a state department, board, commission, or legislative committee, fees and mileage shall be paid to the witness at the conclusion of the testimony out of funds appropriated to the state department, board, commission, or legislative committee.

C. PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

1. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney, or both, in breach of

this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable ~~attorney's~~ attorney fee.

2. a. A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

b. Subject to paragraph 2 of subsection D of this section, a person commanded to produce and permit inspection and copying or any party may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve written objection to inspection or copying of any or all of the designated materials or of the premises. If the objection is made by the witness, the witness shall serve the objection on all parties; if objection is made by a party, the party shall serve the objection on the witness and all other parties. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

3. a. On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(1) fails to allow reasonable time for compliance; or

(2) requires a person to travel to a place beyond the limits allowed under paragraph 2 of subsection A of this section; or

(3) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(4) subjects a person to undue burden; or

(5) requires production of books, papers, documents or tangible things that fall outside the scope of discovery permitted by Section 3226 of this title.

b. If a subpoena:

(1) requires disclosure of a trade secret or other confidential research, development, or commercial information; or

(2) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena. However, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

D. DUTIES IN RESPONDING TO SUBPOENA.

1. A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

2. When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

E. CONTEMPT. Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court from which the subpoena issued.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2005.2 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. ENTRY OF APPEARANCE. Every party to any civil proceeding in the district courts shall file an entry of appearance by counsel or personally as an unrepresented party no later than the first filing of any pleading or other paper in the case by that counsel or party. In the event a party changes, adds, or substitutes counsel, new counsel must immediately file an entry of appearance as set forth herein. The entry of appearance shall include the name and signature of counsel or the unrepresented party, the name of the party represented by counsel, the mailing address, telephone and fax numbers, Oklahoma Bar Association number, and name of the law firm, if any. Copies shall be served on all other parties of record. Filing an entry of appearance as required by this statute does not waive any defenses enumerated in subsection B of Section 2012 of Title 12 of the Oklahoma Statutes.

B. COUNSEL NOT LICENSED IN OKLAHOMA. All motions of counsel not licensed to practice in Oklahoma shall comply with the requirements of Section 5 of Article 2 of the Rules Creating and Controlling the Oklahoma Bar Association in Appendix 1 of Title 5 of the Oklahoma Statutes. The statement required by Section 5 of Article 2 shall be in the form of an affidavit attached to the motion. The motion shall show that the requirements of Section 5 of Article 2 are fulfilled. The required entry of appearance of the associate attorney shall be filed with the motion and affidavit.

C. WITHDRAWAL OF COUNSEL. A motion to withdraw may be filed at any time. All motions to withdraw shall be accompanied by a proposed order. No counsel may withdraw from a pending case without leave of the court. The counsel filing the motion shall serve a copy of the motion on the client and all attorneys of record. All motions to withdraw shall be signed by the party on whose behalf counsel has previously appeared or contain a certificate by counsel that (1) the client has knowledge of counsel's intent to withdraw, or (2) counsel has made a good faith effort to notify the client and the client cannot be located. In civil actions, the court may grant a motion to withdraw where there is no successor counsel only if the withdrawing attorney clearly states in the body of the motion the name and address of the party. The order allowing withdrawal shall notify the unrepresented party that an entry of appearance must be filed either by the party pro se or by substitute counsel within thirty (30) days from the date of the order permitting the withdrawal and that a failure of the party to prosecute or defend the case may result in dismissal of the case without prejudice or a default judgment against the party. If no entry of appearance is filed within thirty (30) days from the date of the order permitting withdrawal, then the unrepresented party, other than a corporation, is deemed to be representing himself/herself and acting pro se. In all cases, counsel seeking to withdraw shall advise the court if the

case is currently set for motion docket, pretrial conference, or trial.

D. ADDRESS OF RECORD. The address of record for any attorney or party appearing in a case pending in any district court shall be the last address provided to the court. The attorney or unrepresented party must, in all cases pending before the court involving the attorney or party, file with the court and serve upon all counsel and unrepresented parties a notice of a change of address. Any attorney or unrepresented party has the duty of maintaining a current address with the court. Service of notice to the address of record of counsel or an unrepresented party shall be considered valid service for all purposes, including dismissal of cases for failure to appear.

E. NOTICE OF CHANGE OF ADDRESS. All attorneys and unrepresented parties shall give immediate notice to the court of a change of address by filing notice with the court clerk. The notice of the change of address shall contain the same information required in the entry of appearance, shall be served on all parties, and a copy shall be provided to the assigned judge. If an attorney or an unrepresented party files an entry of appearance, the court will assume the correctness of the last address of record until a notice of change of address is received. Attorneys of record who change law firms shall notify the court clerk and the assigned judge of the status of representation of their clients, and shall immediately withdraw, when appropriate.

SECTION 12. AMENDATORY 12 O.S. 1991, Section 2012, is amended to read as follows:

Section 2012.

DEFENSES AND OBJECTIONS; WHEN AND HOW PRESENTED; BY PLEADING OR MOTION

A. WHEN PRESENTED. A defendant shall serve his answer within twenty (20) days after the service of the summons and petition upon

~~him~~ the defendant, except as otherwise provided by ~~the~~ Oklahoma law ~~of this state~~. Within twenty (20) days after the service of the summons and petition ~~upon him~~, a defendant may file ~~an appearance~~ a reservation of time which shall extend the time to respond twenty (20) days from the last date for answering. The filing of such ~~an appearance~~ a reservation of time waives defenses of paragraphs 2, 3, 4, 5, 6, and 9 of subsection B of this section. A party served with a pleading stating a cross-claim against ~~him~~ that party shall serve an answer thereto within twenty (20) days after the service ~~upon him~~. The plaintiff shall serve ~~his~~ a reply to a counterclaim in the answer within twenty (20) days after service of the answer or, if a reply is ordered by the court, within twenty (20) days after service of the order, unless the order otherwise directs. The service of a motion permitted under this section or a motion for summary judgment alters these periods of time as follows, unless a different time is fixed by order of the court: if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within twenty (20) days after notice of the court's action.

B. HOW PRESENTED. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

1. Lack of jurisdiction over the subject matter;
2. Lack of jurisdiction over the person;
3. Improper venue;
4. Insufficiency of process;
5. Insufficiency of service of process;
6. Failure to state a claim upon which relief can be granted;

7. Failure to join a party under Section ~~19~~ 2019 of this ~~act~~ title;

8. Another action pending between the same parties for the same claim;

9. Lack of capacity of a party to be sued; and

10. Lack of capacity of a party to sue.

A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered 6 of this subsection to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by the rules for summary judgment. A motion to dismiss for failure to state a claim upon which relief can be granted shall separately state each omission or defect in the petition, and a motion that does not specify such defects or omissions shall be denied without a hearing and the defendant shall answer within twenty (20) days after notice of the court's action.

C. PRELIMINARY HEARINGS. The defenses specifically enumerated in paragraphs 1 through 10 of subsection B of this section, whether made in a pleading or by motion, and the motion to strike mentioned in subsection D of this section shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial. If the court determines that venue is proper, the action shall not be

dismissed for improper venue as a result of the jury's verdict or the subsequent ruling of the court on a demurrer to the evidence or a motion for a directed verdict.

D. MOTION TO STRIKE. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by this act, upon motion made by a party within twenty (20) days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense. If, on a motion to strike an insufficient defense, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for partial summary judgment and all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by the rules for summary judgment.

E. CONSOLIDATION OF DEFENSES IN MOTION. A party who makes a motion under this section may join with it any other motions herein provided for and then available to ~~him~~ the party. If a party makes a motion under this section but omits therefrom any defense or objection then available to ~~him~~ the party which this section permits to be raised by motion, ~~he~~ the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in paragraph 2 of subsection F of this section on the grounds there stated. The court in its discretion may permit a party to amend his motion by stating additional defenses or objections if such amendment is sought at least five (5) days before the hearing on the motion.

F. WAIVER OR PRESERVATION OF CERTAIN DEFENSES.

1. A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process, failure to state a claim upon which relief can be granted, or lack of capacity of a party to be sued is waived:

a. if omitted from a motion that raises any of the defenses or objections which this section permits to be raised by motion, or

b. if it is not made by motion and it is not included in a responsive pleading or an amendment thereof permitted by subsection A of Section ~~15~~ 2015 of this ~~act~~ title to be made as a matter of course. A motion to strike an insufficient defense is waived if not raised as in subsection D of this section.

2. A defense of failure to join a party indispensable under Section ~~19~~ 2019 of this ~~act~~ title may be made in any pleading permitted or ordered under subsection A of Section ~~7~~ 2007 of this ~~act~~ title or at the trial on the merits. A defense of another action pending between the same parties for the same claim or a defense of lack of capacity of a party to sue may be made in any pleading permitted or ordered pursuant to the provisions of subsection A of Section ~~7~~ 2007 of this ~~act~~ title or at the pretrial conference.

3. Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

G. FINAL DISMISSAL ON FAILURE TO AMEND. On granting a motion to dismiss a claim for relief, the court shall grant leave to amend if the defect can be remedied and shall specify the time within which an amended pleading shall be filed. If the amended pleading is not filed within the time allowed, final judgment of dismissal with prejudice shall be entered on motion except in cases of excusable neglect. In such cases amendment shall be made by the party in default within a time specified by the court for filing an amended pleading. Within the time allowed by the court for filing an amended pleading, a plaintiff may voluntarily dismiss the action without prejudice.

SECTION 13. AMENDATORY 12 O.S. 1991, Section 2024, is amended to read as follows:

Section 2024.

INTERVENTION

A. INTERVENTION OF RIGHT. Upon timely application anyone shall be permitted to intervene in an action:

1. When a statute confers an unconditional right to intervene; or

2. When the applicant claims an interest relating to the property or transaction which is the subject of the action and ~~he~~ the applicant is so situated that the disposition of the action may as a practical matter impair or impede ~~his~~ the ability of the applicant to protect that interest.

B. PERMISSIVE INTERVENTION. Upon timely application anyone may be permitted to intervene in an action:

1. When a statute confers a conditional right to intervene; or

2. When an applicant's claim or defense and the main action have a question of law or fact in common.

When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

C. PROCEDURE. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Section 5 of this act. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. If the motion to intervene is granted,

the plaintiff or defendant, or both, may respond to the pleading of the intervenor within twenty (20) days after the date that the motion was granted unless the court prescribes a shorter time.

D. INTERVENTION BY STATE OF OKLAHOMA. 1. In any action, suit, or proceeding to which the State of Oklahoma or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of Oklahoma affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General of Oklahoma, and shall permit the State of Oklahoma to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State of Oklahoma shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

2. Upon receipt of notice pursuant to paragraph 1 of this subsection or otherwise informing the Attorney General that the constitutionality of a statute of this state is drawn in question, the Attorney General shall immediately deliver a copy of the proceeding to the Speaker of the House of Representatives and the President Pro Tempore of the Senate who may intervene on behalf of their respective house of the Legislature and who shall be entitled to be heard. Intervention by the Speaker of the House of Representatives or President Pro Tempore of the Senate shall not constitute waiver of legislative immunity.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1513 of Title 20, unless there is created a duplication in numbering, reads as follows:

A. A court reporter or owner of a court reporting firm shall not:

1. Enter into any contract or relationship that compromises the impartiality of court reporters or that may result in the appearance that the impartiality of a court reporter has been compromised;

2. Enter into a blanket contract, other than with a court or governmental agency, under which the court reporter or owner of a court reporting firm agrees to perform all court reporting services in two or more cases at a rate of compensation fixed in the contract;

3. Enter into a contract that requires a court reporter to provide any service that is not available to all parties to an action; or

4. Enter into a contract that gives or appears to give an exclusive advantage to any party to an action.

B. A violation of this section shall be grounds for the State Board of Certified Shorthand Reporters to refuse to renew the enrollment of a certified or licensed court reporter. A willful violation of this section shall be grounds for the Board to suspend, cancel, or revoke the enrollment of a certified or licensed court reporter.

SECTION 15. AMENDATORY 20 O.S. 1991, Section 1502, as last amended by Section 1, Chapter 237, O.S.L. 1999 (20 O.S. Supp. 1999, Section 1502), is amended to read as follows:

Section 1502. A. The State Board of Examiners of Certified Shorthand Reporters shall:

1. Conduct preliminary investigations to determine the qualifications of applicants seeking to attain the status of certified shorthand reporters;

2. Conduct at least once a year, at a place and time to be published by ample notice as directed by the Supreme Court, an examination of those persons who seek to attain the status of certified shorthand reporter. The Board may also give examinations for a certificate of proficiency and for a certificate of merit;

3. Recommend to the Supreme Court for official enrollment as certified shorthand reporters those persons who, on their examination, have established the requisite proficiency as set forth in Section 1503 of this title;

4. Conduct proceedings, on reasonable notice, the object of which is to recommend to the Supreme Court the suspension, cancellation, revocation or reinstatement of the enrollment of a certified or licensed shorthand reporter or of the status of any acting shorthand reporter, regular or temporary, on the following grounds:

a. a final conviction of a criminal offense which indicates a clear and rational likelihood that the reporter will not properly discharge the responsibilities of persons licensed under this act or Section 106.3B of this title,

b. misrepresentation in obtaining licensure,

c. any violation of or noncompliance with any rule or directive of the Supreme Court,

d. fraud, gross incompetence, or gross or habitual neglect of duty,

e. engaging in the practice of shorthand reporting using a method for which the reporter is not certified,

f. engaging in the practice of shorthand reporting while certification is suspended,

g. nonpayment of renewal dues, ~~or~~

h. failure to annually complete at least four (4) hours of continuing education approved by the State Board of Examiners of Certified Shorthand Reporters<u>, or</u>

<u>i. a violation of Section 14 of this act</u>;

5. Adopt, with the approval of the Oklahoma Supreme Court, examination standards and rules governing enrollment, discipline,

suspension, cancellation and revocation proceedings and any other matter within the Board's cognizance; and

6. Keep a current roll of certified shorthand reporters and a file on all disciplined certified shorthand reporters, official or unofficial, regular or temporary.

B. In all hearings or investigations on revocation, cancellation or suspension of enrollment, each Board member shall be empowered to administer oaths and affirmations, subpoena witnesses, and take evidence anywhere in the state, after giving reasonable notice to the party whose status is sought to be affected.

SECTION 16. AMENDATORY 58 O.S. 1991, Section 912, as last amended by Section 15, Chapter 339, O.S.L. 1996 (58 O.S. Supp. 1999, Section 912), is amended to read as follows:

Section 912. A. If title to any interest in real property is held by two or more persons in joint tenancy with right of survivorship, including but not limited to mortgages owned by two or more persons in joint tenancy with right of survivorship, any surviving joint tenant or the personal representative or duly appointed attorney in fact of any surviving joint tenant, may evidence the termination of the interest of a deceased joint tenant in such real property by filing the documents described in subsection C of this section.

B. If title to any real property is held by two or more persons where at least one of them holds a life tenancy interest in such property and at least one of them holds a remainder interest in such property, any surviving life tenant or remainderman, or the personal representative or duly appointed attorney of any survivor of them may evidence the termination of the interest of any deceased life tenant in such real property by filing the documents described in subsection C of this section.

C. A person entitled, by subsection A or B of this section, to evidence the termination of the interest of a decedent in real

property pursuant to this section may do so by filing in the office of the county clerk of the county in which said real property is located, the following:

1. A certified copy of the certificate of death of the joint tenant or life tenant issued by the court clerk as prescribed in Article 3 of the Public Health Code, Section 1-301 et seq. of Title 63 of the Oklahoma Statutes, or by the State Department of Health or comparable agency of the place of the death of the joint tenant or life tenant;

2. An affidavit by the surviving joint tenant, life tenant or remainderman or the personal representative or duly appointed attorney in fact of the surviving joint tenant, life tenant or remainderman describing the real property, stating that the decedent named in such certificate of death is one and the same person as the deceased joint tenant or life tenant named in a previously recorded document which created or purported to create such joint tenancy or life tenancy in such real property and identifying such recorded document by book and page where recorded, that the survivor making or on whose behalf the affidavit is made and the decedent were husband and wife, if such is the case, and the date of death of the deceased joint tenant or life tenant. If the affidavit is filed by a personal representative or duly appointed attorney in fact, the letters of administration, letters testamentary, letters of guardianship or the power of attorney shall accompany the affidavit and be filed with the county clerk. An affidavit properly sworn before a notarial officer shall, notwithstanding the provisions of Section 26 of Title 16 of the Oklahoma Statutes, be received for record and recorded by the county clerk without having been acknowledged and, when recorded, it shall be effective as if it had been acknowledged. <u>If a statement under penalty of perjury as authorized by Section 426 of Title 12 of the Oklahoma Statutes is filed instead of an affidavit, it must be acknowledged pursuant to</u>

Section 26 of Title 16 of the Oklahoma Statutes in order to be received for record and recorded. An affidavit filed either before or after the effective date of this act which was either acknowledged or sworn or both acknowledged and sworn before a notarial officer is hereby validated and the title to such real property shall be deemed marketable unless otherwise defective; and

3. If such real property is held in joint tenancy other than by two persons only who were husband and wife or other than by two persons only who were husband and wife with one as the life tenant and the other as the remainderman, a waiver or release issued by the Oklahoma Tax Commission of the estate tax lien as to the deceased joint tenant or life tenant must be filed with the affidavit required by paragraph 2 of this subsection, unless the estate tax lien has otherwise been released by operation of law.

D. The filing of the documents described in subsection C of this section shall constitute conclusive evidence of the death of such joint tenant or life tenant and of the termination of the interest of such deceased joint tenant or life tenant in such real property. The title of such real property shall be deemed marketable unless otherwise defective.

SECTION 17. REPEALER 12 O.S. 1991, Section 462, is hereby repealed.

SECTION 18. REPEALER 12 O.S. 1991, Section 1703.02, is hereby repealed.

SECTION 19. This act shall become effective November 1, 2000.

47-2-9643 SD 6/11/15