STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 751 By: Henry of the Senate

and

Toure of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to civil procedure; amending 6 O.S. 1991, Section 1024, as amended by Section 87, Chapter 111, O.S.L. 1997 (6 O.S. Supp. 1998, Section 1024), which relates to acquisition of control of trust company; updating language; providing for appeal to the Supreme Court; increasing time to file appeal; amending 12 O.S. 1991, Sections 131, 651, 653, as last amended by Section 1, Chapter 102, O.S.L. 1997, 654, 655, 727, as amended by Section 2, Chapter 320, O.S.L. 1997, 842, 1031, 1031.1, as last amended by Section 9, Chapter 102, O.S.L. 1997, 1033, Section 1, Chapter 287, O.S.L. 1995, 1172.1, 1173, 1173.4, and 1183, as amended by Sections 4, 6, and 15, Chapter 338, O.S.L. 1995, and 1190, as last amended by Section 16, Chapter 338, O.S.L. 1995, 2004, as amended by Section 4, Chapter 339, O.S.L. 1996, 2004.1, as last amended by Section 2, Chapter 374, O.S.L. 1998, 2006, as amended by Section 4, Chapter 253, O.S.L. 1995, 3226, as last amended by Section 3, Chapter 61, O.S.L. 1996, 3230, as last amended by Section 5, Chapter 61, O.S.L. 1996 (12 O.S. Supp. 1998, Sections 653, 727, 1031.1, 1101.1, 1173, 1173.4, 1183, 1190, 2004, 2004.1, 2006, 3226, and 3230), which relate to venue of actions, new trials, interest on judgments of courts of record, discovery of assets, vacation and modification of judgments by trial court, offers of judgment, garnishment, the Oklahoma Pleading Code, and the Oklahoma Discovery Code; updating language; changing venue of certain actions; clarifying and conforming language; modifying time periods for application for new trial by motion and petition; updating statutory references; providing for postjudgment interest on certain costs and attorney fees; clarifying date on which postjudgment interest begins to accrue and prejudgment interest ends; providing method for calculation and accrual of postjudgment interest when rate of interest is specified in contract; allowing subpoena of judgment debtor by attorney of judgment creditor; providing for certain costs and fees of judgment creditors; limiting certain attorney's fees; modifying procedure for setting aside default judgment; conforming language; excluding costs and attorneys fees from offer of judgment; providing for amendment of prejudgment or postjudgment garnishment;

providing for issuance of alias or additional summons; providing for reduction of garnishment under certain circumstances; updating language; increasing time to commence certain discovery on garnishee; modifying procedure and increasing time for garnishee response to certain request; requiring leave of court for plaintiff to seek production of evidence prior to filing of an action; modifying method for computation of certain time periods; modifying provisions which may be included in certain protective order; clarifying when a party is required to obtain leave of court for taking of deposition; limiting time for taking of deposition and providing exception; amending Section 5, Chapter 194, O.S.L. 1995 (42 O.S. Supp. 1998, Section 49), which relates to ambulance service provider liens; clarifying when certain action may be brought; amending 51 O.S. 1991, Section 163, which relates to the Governmental Tort Claims Act; changing venue for certain actions brought against certain municipalities; amending 68 O.S. 1991, Section 225, as last amended by Section 3, Chapter 385, O.S.L. 1998 (68 O.S. Supp. 1998, Section 225), which relates to appeals under the Uniform Tax Procedure; providing for determination of timely mailing of certain tax documents; requiring taxpayer to make certain payment or file certain bond when making certain appeal; amending 76 O.S. 1991, Section 19, as last amended by Section 14, Chapter 251, O.S.L. 1995 (76 O.S. Supp. 1998, Section 19), which relates to patient access to medical records; clarifying language; providing for patient access to certain medical records; limiting patient access to copies of certain medical records; allowing charge for actual cost of mailing certain medical records; repealing 12 O.S. 1991, Sections 690, 691, 692, 693, 694, and 695, which relate to confessions of judgment; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 6 O.S. 1991, Section 1024, as amended by Section 87, Chapter 111, O.S.L. 1997 (6 O.S. Supp. 1998, Section 1024), is amended to read as follows:

Section 1024. A. For purposes of this section:

1. "Control" means the power, directly or indirectly, to direct the management or policies of a trust company or to vote twenty-five percent (25%) or more of any class of voting securities of a trust company;

2. "Person" means an individual, corporation, partnership, <u>limited liability company,</u> trust, association, joint venture, pool,

syndicate, sole proprietorship, unincorporated association, ~~or~~ and any other legal entity ~~not specifically listed~~; and

3. "Trust company" shall not include any trust department of banks authorized to engage in the trust company business.

B. No person, acting directly or indirectly or through or in concert with one or more other persons, shall acquire control of any trust company through a purchase, assignment, transfer, pledge, or other disposition of voting stock of ~~such~~ a trust company unless the Commissioner has been given sixty (60) days' prior written notice of ~~such~~ the proposed acquisition and, within that time period, the Commissioner has not issued a notice disapproving the proposed acquisition or extending for up to another thirty (30) days the period during which ~~such~~ the disapproval may be issued. The period for disapproval may be further extended if the Commissioner determines that any acquiring party has not furnished all the information required under subsection F of this section or that in the judgment of the Commissioner any material information submitted is substantially inaccurate. An acquisition may be made prior to expiration of the disapproval period if the Commissioner issues written notice of the intent of the Commissioner not to disapprove the action.

C. Upon receiving any notice under this section, the Commissioner shall forward a copy thereof to interested persons unless the Commissioner determines that the Commissioner must act immediately upon the notice in order to prevent the probable failure of the trust company involved in the proposed acquisition.

D. Within ten (10) days after the decision of the Commissioner to disapprove any proposed acquisition, the Commissioner shall notify the acquiring party in writing of the disapproval.

E. Within ten (10) days of receipt of ~~such~~ a notice of disapproval, the acquiring party may request a hearing before the Board on the proposed acquisition. At the conclusion thereof, the

Board shall by order approve or disapprove the proposed acquisition on the basis of the record made at the hearing.

F. Any person whose proposed acquisition is disapproved after agency hearings under this section may obtain review by the Supreme Court by filing a ~~notice of appeal in such~~ petition in error with the clerk of the court within ~~ten (10)~~ thirty (30) days from the date ~~of such~~ the order is filed, and simultaneously sending a copy of ~~such notice~~ the petition by registered or certified mail to the Board. ~~The Board shall certify and file in the court the record upon which the disapproval was based.~~ The form for the petition in error, and all other procedures governing the appeal, including the time and manner for designation and completion of the record of the proceedings to be reviewed, shall be in accordance with the rules of the Supreme Court. The findings of the Board shall be set aside if found to be arbitrary or capricious.

G. Except as otherwise provided by regulation of the Board, a notice filed pursuant to this section shall contain the following information:

1. The name, address, personal history, business background, and experience of each person by whom or on whose behalf the acquisition is to be made, including the material business activities and affiliations of ~~such~~ each person during the past five (5) years, and a description of any material pending legal or administrative proceedings in which ~~such~~ each person is a party and any criminal indictment or conviction of ~~such~~ each person by a state or federal court;

2. A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the five (5) fiscal years immediately preceding the date of the notice, together with related statements of income and source and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally

accepted accounting principles consistently applied, and an interim statement of the assets and liabilities for each ~~such~~ person, together with related statements of income and source and application of funds, as of a date not more than ninety (90) days prior to the date of the filing of the notice;

3. The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made;

4. The identity, source and amount of the funds or other consideration used or to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with ~~such persons~~ each person;

5. Any plans or proposals which any acquiring party making the acquisition may have to liquidate the trust company, to sell its assets or merge it with any company or to make any other major change in its business, ~~or~~ corporate structure, or management;

6. The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on behalf of the person, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of ~~such~~ employment, retainer, or arrangement for compensation;

7. Copies of all invitations or tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition; and

8. Any additional relevant information in such form as the Board may require by regulation or by specific request in connection with any particular notice.

H. The Commissioner may disapprove any proposed acquisition upon finding that:

1. The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize in any part of the United States;

2. The effect of the proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

3. The financial condition of any acquiring person ~~is such as~~ might jeopardize the financial stability of the trust company or prejudice the interests of any depositors of the trust company;

4. The competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the trust company, or in the interest of the public, to permit such person to control the trust company; or

5. Any acquiring person neglects, fails, or refuses to furnish to the Commissioner all the information required by the Commissioner.

I. Any person who willfully violates any provision of this section, or any regulation or order of the Commissioner or Board pursuant thereto, shall forfeit and pay a civil penalty of not more than Ten Thousand Dollars ($10,000.00) per day for each day during which ~~such~~ a violation continues. The Board shall have authority to assess ~~such~~ a civil penalty, after giving notice and an opportunity to the person to submit data, views, and arguments, and after giving due consideration to the appropriateness of the penalty with respect to the size of financial resources and good faith of the person

charged, the gravity of the violation, and any data, views, and arguments submitted. The Commissioner may collect ~~such~~ a civil penalty by agreement with the person or by bringing an action in the appropriate district court, except that in ~~any such~~ a civil action, the person against whom the penalty has been assessed shall have a right to trial de novo.

SECTION 2. AMENDATORY 12 O.S. 1991, Section 131, is amended to read as follows:

Section 131. Except as provided in Section 132 of this title or Section 163 of Title 51 of the Oklahoma Statutes:

1. Actions for the following causes ~~must~~ shall be brought in the county in which the subject of the action is situated~~, except as provided in the next section. 1st, For~~

a. for the recovery of real property, or of any estate, or interest therein, or the determination in any form of any such right or interest~~. 2nd, For~~,

b. for the partition of real property~~. 3rd, For~~,

c. for the sale of real property under a mortgage, lien, or other encumbrance or charge~~. 4th, To~~, and

d. to quiet title, to establish a trust in, remove a cloud on, set aside a conveyance of, or to enforce or set aside an agreement to convey real property~~. 5th,~~; and

2. For all damages to land, crops, or improvements thereon, ~~action must~~ actions shall be brought in the county where the damage occurs.

SECTION 3. AMENDATORY 12 O.S. 1991, Section 651, is amended to read as follows:

Section 651. A new trial is a reexamination in the same court, of an issue of fact~~,~~ or of law~~, either~~ or both, after a verdict by a jury, the approval of the report of a referee, or a decision by the court. The former verdict, report, or decision shall be vacated,

and a new trial granted, on the application of the party aggrieved, for any of the following causes, affecting materially the substantial rights of ~~such~~ the party:

~~First.~~ 1. Irregularity in the proceedings of the court, jury, referee, or prevailing party, or any order of the court or referee, or abuse of discretion, by which the party was prevented from having a fair trial~~.~~;

~~Second.~~ 2. Misconduct of the jury or a prevailing party~~.~~;

~~Third.~~ 3. Accident or surprise, which ordinary prudence could not have guarded against~~.~~;

~~Fourth.~~ 4. Excessive or inadequate damages, appearing to have been given under the influence of passion or prejudice~~.~~;

~~Fifth.~~ 5. Error in the assessment of the amount of recovery, whether too large or too small, where the action is upon a contract, or for the injury or detention of property~~.~~;

~~Sixth.~~ 6. That the verdict, report, or decision is not sustained by sufficient evidence, or is contrary to law~~.~~;

~~Seventh.~~ 7. Newly-discovered evidence, material for the party applying, which ~~he~~ could not, with reasonable diligence, have been discovered and produced at the trial~~.~~;

~~Eighth.~~ 8. Error of law occurring at the trial, and ~~excepted~~ objected to by the party making the application~~.~~; or

~~Ninth.~~ 9. When, without fault of the complaining party, it becomes impossible to ~~make case made~~ prepare a record for an appeal.

SECTION 4. AMENDATORY 12 O.S. 1991, Section 653, as last amended by Section 1, Chapter 102, O.S.L. 1997 (12 O.S. Supp. 1998, Section 653), is amended to read as follows:

Section 653. A. Unless unavoidably prevented, an application for a new trial by motion, if made, must be filed not later than ten (10) days after the judgment, decree or appealable order prepared in conformance with Section 696.3 of this title has been filed~~, except:~~

~~1. In the case of newly discovered material evidence which the moving party could not, with reasonable diligence have discovered and produced at the trial; or~~

~~2. Impossibility of preparing a record for an appeal~~. More than ten (10) days after the judgment, decree, or appealable order which conforms with Section 696.3 of this title has been filed, an application for a new trial by petition may be filed in conformance with the provisions of Section 655 of this title.

B. If the moving party 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 moving party, and the court records do not reflect the mailing of a copy of the judgment, decree, or appealable order to the moving party within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or appealable order, the motion for new trial may be filed no later than ten (10) 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 moving party.

C. A motion for new trial filed after the announcement of the decision on all issues in the case but before the filing of the judgment or decree shall be deemed filed immediately after the filing of the judgment or decree.

SECTION 5. AMENDATORY 12 O.S. 1991, Section 654, is amended to read as follows:

Section 654. A. The application ~~must be~~ for a new trial by motion~~,~~ must be upon written grounds~~,~~ filed at the time of making the motion.

B. The application for a new trial by petition must be filed in conformance with Section 655 of this title. The causes enumerated in ~~subdivisions two, three, seven, and nine of Section 5033,~~ paragraphs 2, 3, 7, and 9 of Section 651 of this title must be

sustained by affidavits, showing their truth, and may be controverted by affidavits.

SECTION 6. AMENDATORY 12 O.S. 1991, Section 655, is amended to read as follows:

Section 655. Where the grounds for a new trial could not with reasonable diligence have been discovered before but are discovered more than ten (10) days after the ~~verdict or decision was rendered or made or report of the referee approved~~ judgment, decree, or appealable order was filed, or where the impossibility of preparing a record for an appeal, without fault of the complaining party, arose more than ten (10) days after the judgment ~~was rendered~~, decree, or appealable order was filed, the application may be made by petition filed in the original case, as in other cases, within thirty (30) days after such discovery or occurrence; on which a summons shall issue, be returnable and served, or publication made, as in the beginning of civil actions, or ~~such~~ service may be made on the attorney of record in the original case. The facts stated in the petition shall be considered as denied without answer, and the case shall be heard and summarily decided after the expiration of twenty (20) days from ~~such~~ the date of service and not more than sixty (60) days after ~~such~~ service, and the witnesses shall be examined in open court, or their depositions taken as in other cases; but no ~~such~~ petition shall be filed more than one (1) year after the filing of the final judgment.

SECTION 7. AMENDATORY 12 O.S. 1991, Section 727, as amended by Section 2, Chapter 320, O.S.L. 1997 (12 O.S. Supp. 1998, Section 727), is amended to read as follows:

Section 727.

POSTJUDGMENT INTEREST

A. 1. Except as otherwise provided by this section, all judgments of courts of record, including costs and attorney fees authorized by statute or otherwise and allowed by the court, shall

bear interest at a rate prescribed pursuant to ~~subsection I of~~ this section.

2. Costs and attorney fees allowed by the court shall bear interest from the earlier of the date the judgment or order is pronounced, if expressly stated in the written judgment or order awarding the costs and attorney fees, or the date the judgment or order is filed with the court clerk.

B. Judgments, including costs and attorney fees authorized by statute or otherwise and allowed by the court, against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, shall bear interest during the term of judgment at a rate prescribed pursuant to ~~subsection I of~~ this section, but not to exceed ten percent (10%), from the date of rendition. No judgment against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, inclusive of postjudgment interest, shall exceed the total amount of liability of the governmental entity pursuant to the Governmental Tort Claims Act.

C. The postjudgment interest authorized by subsection A or subsection B of this section shall accrue from the earlier of the date ~~as of which~~ the judgment is rendered as expressly stated in the judgment, ~~irrespective of~~ or the date ~~as of which~~ the judgment is filed with ~~a~~ the court clerk ~~or with a county clerk~~, and shall initially accrue at the rate in effect for the calendar year during which the judgment is rendered until the end of the calendar year in which the judgment was rendered, or until the judgment is paid, whichever first occurs. Beginning on the first day of January of the next succeeding calendar year until the end of that calendar year, or until the judgment is paid, whichever first occurs, the

judgment, together with postjudgment interest previously accrued, shall bear interest at the rate in effect for judgments rendered during ~~such~~ that calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. For each succeeding calendar year, or part of a calendar year, during which a judgment remains unpaid, the judgment, together with postjudgment interest previously accrued, shall bear interest at the rate in effect for judgments rendered during ~~such~~ that calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. A separate computation using the interest rate in effect for judgments as provided by subsection I of this section shall be made for each calendar year, or part of a calendar year, during which the judgment remains unpaid in order to determine the total amount of interest for which the judgment debtor is liable. The postjudgment interest rate for each calendar year~~,~~ or part of a calendar year~~,~~ a judgment remains unpaid shall be multiplied by the original amount of the judgment, including any prejudgment interest, together with postjudgment interest previously accrued. Interest shall accrue on a judgment in the manner prescribed by this subsection until the judgment is satisfied or released.

D. If a rate of interest is specified in a contract, the rate ~~therein~~ specified shall apply ~~to the judgment debt~~ and be ~~specified~~ stated in the journal entry of judgment. ~~Said~~ The rate of interest shall not exceed the lawful rate for ~~such~~ that obligation. Postjudgment interest shall be calculated and accrued in the same manner as prescribed in subsection C of this section.

PREJUDGMENT INTEREST

E. Except as provided by subsection F of this section, if a verdict for damages by reason of personal injuries or injury to personal rights including, but not limited to, injury resulting from bodily restraint, personal insult, defamation, invasion of privacy,

injury to personal relations, or detriment due to an act or omission of another is accepted by the trial court, the court in rendering judgment shall add interest on ~~said~~ the verdict at a rate prescribed pursuant to subsection I of this section from the date the suit resulting in the judgment was commenced to the earlier of the date ~~of~~ the verdict is accepted by the trial court as expressly stated in the judgment, or the date the judgment is filed with the court clerk. The interest rate for computation of prejudgment interest shall begin with the rate prescribed by subsection I of this section which is in effect for the calendar year in which the suit resulting in the judgment is commenced. This rate shall be in effect until the end of the calendar year in which the suit resulting in judgment was filed or until the date judgment is ~~rendered~~ filed, whichever first occurs. Beginning on the first day of January of the next succeeding calendar year until the end of that calendar year, or until the date the judgment is ~~rendered~~ filed, whichever first occurs, and for each succeeding calendar year thereafter, the prejudgment interest rate shall be the rate in effect for judgments rendered during each ~~such~~ calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. After the computation of all prejudgment interest has been completed, the total amount of prejudgment interest shall be added to the amount of the judgment rendered pursuant to the trial of the action, and the total amount of the resulting judgment shall become the amount upon which postjudgment interest is computed pursuant to subsection A of this section.

F. If a verdict of the type described by subsection E of this section is rendered against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, the judgment shall bear interest at the rate prescribed pursuant to subsection I of this section, but not to

exceed ten percent (10%) from the date the suit was commenced to the earlier of the date ~~of~~ the verdict is accepted by the trial court as expressly stated in the judgment or the date the judgment is filed with the court clerk. The interest rate for computation of prejudgment interest shall begin with the rate prescribed by subsection I of this section which is in effect for the calendar year in which the suit resulting in the judgment is commenced. This rate shall be in effect until the end of the calendar year in which the suit resulting in judgment was filed or until the date the judgment is rendered as expressly stated in the judgment, whichever first occurs. Beginning on the first day of January of the next succeeding calendar year until the end of that calendar year, or until the date judgment is rendered, whichever first occurs, and for each succeeding calendar year thereafter, the prejudgment interest rate shall be the rate in effect for judgments rendered during each ~~such~~ calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. After the computation of prejudgment interest has been completed, the amount shall be added to the amount of the judgment rendered pursuant to the trial of the action, and the total amount of the resulting judgment shall become the amount upon which postjudgment interest is computed pursuant to subsection B of this section. No award of prejudgment interest against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, including the amount of the judgment awarded pursuant to trial of the action, shall exceed the total amount of liability of the governmental entity pursuant to the Governmental Tort Claims Act.

G. If exemplary or punitive damages are awarded in an action for personal injury or injury to personal rights including, but not limited to, injury resulting from bodily restraint, personal insult,

defamation, invasion of privacy, injury to personal relations, or detriment due to an act or omission of another, the interest on ~~said~~ that award shall begin to accrue ~~as~~ from the earlier of the date the judgment is rendered ~~by the trial court~~ as expressly stated in the judgment, or the date the judgment is filed with the court clerk.

H. If a judgment is rendered establishing the existence of a lien against property and no rate of interest exists, the court shall allow prejudgment interest at a rate prescribed pursuant to subsection I of this section from the date the lien is filed to the date of verdict.

I. For purposes of computing either postjudgment interest or prejudgment interest as authorized by this section, interest shall be determined using a rate equal to the average United States Treasury Bill rate of the preceding calendar year as certified to the Administrative Director of the Courts by the State Treasurer on the first regular business day in January of each year, plus four percentage points.

J. For purposes of computing postjudgment interest, the provisions of this section, including the amendments prescribed by this act, shall be applicable to all judgments of the district courts rendered on or after January 1, ~~1998~~ 2000. Effective January 1, ~~1998~~ 2000, the method for computing postjudgment interest prescribed by this section shall be applicable to all judgments remaining unpaid rendered prior to January 1, ~~1998~~ 2000.

K. For purposes of computing prejudgment interest, the provisions of this section, including the amendments prescribed by this act, shall be applicable to all actions which are filed in the district courts on or after January 1, ~~1998~~ 2000, for which an award of prejudgment interest is authorized by the provisions of this section.

SECTION 8. AMENDATORY 12 O.S. 1991, Section 842, is amended to read as follows:

Section 842. A. At any time after a final judgment, order, or decree is filed, on application of the judgment creditor, a judge of the court in which the final judgment, order, or decree was rendered~~,~~ shall order the judgment debtor to appear before the judge, or a referee appointed by the judge, at a time and place specified in ~~such~~ the order, to answer concerning ~~his~~ the judgment debtor's property. The judge may, by ~~his~~ order, enjoin the judgment debtor from alienating, concealing, or encumbering any of ~~his~~ the judgment debtor's nonexempt property pending the hearing and further order of the court. Upon the judgment debtor's disclosure of any nonexempt property, ~~such~~ proceedings as provided by law may be had for the application of ~~such~~ the property ~~toward~~ to the satisfaction of ~~said~~ the judgment.

B. At any time after a final judgment, order, or decree is filed, an attorney for a judgment creditor may subpoena the judgment debtor pursuant to Section 2004 of this title to appear at any place in the county in which the judgment, order, or decree was rendered, or the judgment debtor's county of residence, to answer concerning the judgment debtor's property. The judgment debtor shall not be entitled to an attendance fee or mileage.

C. In addition to sums otherwise due under a final judgment, order, or decree if an order or subpoena is served upon the judgment debtor under this section, the judgment creditor shall be entitled to costs of service and, if represented by an attorney, to an attorney's fee of Seventy-five Dollars ($75.00); provided, attorney's fees awarded pursuant to this subsection relating to a judgment, order, or decree shall not exceed One Hundred Fifty Dollars ($150.00) in any twelve-month period.

SECTION 9. AMENDATORY 12 O.S. 1991, Section 1031, is amended to read as follows:

Section 1031. The district court shall have power to vacate or modify its own judgments or orders within the times prescribed hereafter:

~~First.~~ 1. By granting a new trial for the cause, within the time and in the manner prescribed in ~~Section 653~~ Sections 651 through 655 of this title~~.~~;

~~Second.~~ 2. ~~By a new trial granted in proceedings against defendants constructively summoned, as provided in Section 176 of this title.~~ As authorized in subsection C of Section 2004 of this title where the defendant had no actual notice of the pendency of the action at the time of the filing of the judgment or order;

~~Third.~~ 3. For mistake, neglect, or omission of the clerk or irregularity in obtaining a judgment or order~~.~~;

~~Fourth.~~ 4. For fraud, practiced by the successful party, in obtaining a judgment or order~~.~~;

~~Fifth.~~ 5. For erroneous proceedings against an infant, or a person of unsound mind, where the condition of such defendant does not appear in the record, nor the error in the proceedings~~.~~;

~~Sixth.~~ 6. For the death of one of the parties before the judgment in the action~~.~~;

~~Seventh.~~ 7. For unavoidable casualty or misfortune, preventing the party from prosecuting or defending~~.~~;

~~Eighth.~~ 8. For errors in a judgment, shown by an infant in twelve (12) months after arriving at full age, as prescribed in Section 700 of this title~~.~~; or

~~Ninth.~~ 9. For taking judgments upon warrants of attorney for more than was due to the plaintiff, when the defendant was not summoned or otherwise legally notified of the time and place of taking such judgment.

SECTION 10. AMENDATORY 12 O.S. 1991, Section 1031.1, as last amended by Section 9, Chapter 102, O.S.L. 1997 (12 O.S. Supp. 1998, Section 1031.1), is amended to read as follows:

Section 1031.1 A. A court may correct, open, modify or vacate a judgment, decree, or appealable order on its own initiative not later than thirty (30) days after the judgment, decree, or appealable order prepared in conformance with Section 696.3 of this title has been filed with the court clerk. Notice of the court's action shall be given as directed by the court to all affected parties.

B. On motion of a party made not later than thirty (30) days after a judgment, decree, or appealable order prepared in conformance with Section 696.3 of this title has been filed with the court clerk, the court may correct, open, modify, or vacate the judgment, decree, or appealable order. If the moving party 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 moving party, and the court records do not reflect the mailing of a copy of the judgment, decree, or appealable order to the moving party within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or appealable order, the motion to correct, open, modify, or vacate the judgment, decree, or appealable order 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 was mailed to the moving party. The moving party shall give notice to all affected parties. A motion to correct, open, modify, or vacate a judgment or decree filed after the announcement of the decision on all issues in the case but before the filing of the judgment or decree shall be deemed filed immediately after the filing of the judgment or decree.

C. After thirty (30) days after a judgment, decree, or appealable order has been filed, proceedings to vacate or modify the judgment, decree, or appealable order shall be by petition in conformance with Section 1033 of this title.

SECTION 11. AMENDATORY 12 O.S. 1991, Section 1033, is amended to read as follows:

Section 1033. ~~The~~ If more than thirty (30) days after a judgment, decree, or appealable order has been filed, proceedings to vacate or modify the judgment, decree, or appealable order, on the grounds mentioned in ~~subdivisions four, five, six, seven, eight and nine of the second preceding section~~ paragraphs 2, 4, 5, 6, 7, 8, and 9 of Section 1031 of this title, shall be by petition, verified by affidavit, setting forth the judgment, decree, or appealable order, the grounds to vacate or modify it, and the defense to the action, if the party applying was defendant. On ~~such~~ this petition, a summons shall issue and be served as in the commencement of ~~an~~ a civil action.

SECTION 12. AMENDATORY Section 1, Chapter 287, O.S.L. 1995 (12 O.S. Supp. 1998, Section 1101.1), is amended to read as follows:

Section 1101.1 A. Actions for personal injury, wrongful death, and certain specified actions.

1. Subject to the provisions of paragraph 5 of this subsection, after a civil action is brought for the recovery of money as the result of a claim for personal injury, wrongful death, or pursuant to Chapter 21 of Title 25 or Section 5 of Title 85 of the Oklahoma Statutes, any defendant may file with the court, at any time more than ten (10) days prior to trial, an offer of judgment for a sum certain to any plaintiff with respect to the action or any claim or claims asserted in the action. An offer of judgment shall be deemed to include any costs or attorneys fees otherwise recoverable. If an offer of judgment is filed, each plaintiff to whom an offer of judgment is made shall, within ten (10) days, file:

a. a written acceptance or rejection of such offer, or

b. a counteroffer of judgment, as described in paragraph 2 of this subsection.

If the plaintiff fails to file a timely response, the offer of judgment shall be deemed rejected. The fact an offer of judgment is made but not accepted or is deemed rejected does not preclude subsequent timely offers of judgment.

2. In the event a defendant files an offer of judgment, the plaintiff may, within ten (10) days, file with the court a counteroffer of judgment directed to each defendant who has filed an offer of judgment. If a counteroffer of judgment is filed, each defendant to whom the counteroffer of judgment is made shall, within ten (10) days, file a written acceptance or rejection of the counteroffer of judgment. If a defendant fails to file a timely response, the counteroffer of judgment shall be deemed rejected. The fact a counteroffer of judgment is made but not accepted or deemed rejected does not preclude subsequent counteroffers of judgment if subsequent offers of judgment are made.

3. In the event the plaintiff rejects the offer(s) of judgment and the judgment awarded the plaintiff, exclusive of any costs or attorneys fees otherwise recoverable, is less than the final offer of judgment, then the defendant filing the offer of judgment shall be entitled to recover reasonable litigation costs and reasonable attorneys fees incurred by that defendant from the date of filing of the final offer of judgment until the date of the verdict. Such costs and fees may be offset from the judgment entered against the offering defendant; provided, however, that prior to any such offset, the plaintiff's attorney may:

a. exercise any attorneys lien claimed in an amount not to exceed twenty-five percent (25%) of the judgment, and

b. recover the plaintiff's reasonable litigation costs, not to exceed an additional fifteen percent (15%) of the judgment or Five Thousand Dollars ($5,000.00), whichever is greater.

4. In the event a defendant rejects the counteroffer(s) of judgment and the judgment awarded to the plaintiff is greater than the final counteroffer of judgment, the plaintiff shall be entitled to recover reasonable litigation costs and reasonable attorneys fees incurred by the plaintiff from the date of filing of the final counteroffer of judgment until the date of the verdict. Such costs and fees may be added to the judgment entered in favor of the plaintiff.

5. The provisions of this subsection shall apply only where the plaintiff demands in a pleading or in trial proceedings more than One Hundred Thousand Dollars ($100,000.00), or where the defendant makes an offer of judgment more than One Hundred Thousand Dollars ($100,000.00). Any offer of judgment may precede the demand.

B. Other actions.

1. After a civil action is brought for the recovery of money or property in an action other than for personal injury, wrongful death or pursuant to Chapter 21 of Title 25 or Section 5 of Title 85 of the Oklahoma Statutes, any defendant may file with the court, at any time more than ten (10) days prior to trial, an offer of judgment for a sum certain to any plaintiff with respect to the action or any claim or claims asserted in the action. An offer of judgment shall <u>not</u> be deemed to include any costs and attorneys fees otherwise recoverable. If an offer of judgment is filed, the plaintiff or plaintiffs to whom the offer of judgment is made shall, within ten (10) days, file:

a. a written acceptance or rejection of the offer, or

b. a counteroffer of judgment, as described in paragraph 2 of this subsection.

If a plaintiff fails to file a timely response, the offer of judgment shall be deemed rejected. The fact an offer of judgment is made but not accepted or is deemed rejected does not preclude subsequent timely offers of judgment.

2. In the event a defendant files an offer of judgment, the plaintiff may, within ten (10) days, file with the court a counteroffer of judgment to each defendant who has filed an offer of judgment and the claim or claims which are the subject thereof. If a counteroffer of judgment is filed, each defendant to whom a counteroffer of judgment is made shall, within ten (10) days, file a written acceptance or rejection of the counteroffer of judgment. If a defendant fails to file a timely response, the counteroffer of judgment shall be deemed rejected. The fact a counteroffer of judgment is made but not accepted or is deemed rejected does not preclude subsequent counteroffers of judgment if subsequent offers of judgment are made.

3. If no offer of judgment or counteroffer of judgment is accepted and the judgment awarded the plaintiff, exclusive of any costs or attorneys fees otherwise recoverable, is less than one or more offers of judgment, the defendant shall be entitled to reasonable litigation costs and reasonable attorneys fees incurred by the defendant with respect to the action or the claim or claims included in the offer of judgment from and after the date of the first offer of judgment which is greater than the judgment until the date of the judgment. Such costs and fees may be offset from the judgment entered against the offering defendant.

4. If no offer of judgment or counteroffer of judgment is accepted and the judgment awarded the plaintiff, exclusive of any costs or attorneys fees otherwise recoverable, is greater than one or more counteroffers of judgment, the plaintiff shall be entitled to recover the reasonable litigation costs and reasonable attorneys fees incurred by the plaintiff with respect to the action or the claim or claims included in the counteroffer of judgment from and after the date of the first counteroffer of judgment which is less than the judgment until the date of the judgment. Such costs and fees may be added to the judgment entered in favor of the plaintiff.

5. An award of reasonable litigation costs and reasonable attorneys fees under paragraph 3 of this subsection shall not preclude an award under paragraph 4 of this subsection, and an award under paragraph 4 of this subsection shall not preclude an award under paragraph 3 of this subsection.

6. This subsection shall not apply to actions brought pursuant to Chapter 21 of Title 25 or Section 5 of Title 85 of the Oklahoma Statutes.

C. Evidence of an offer of judgment or a counteroffer of judgment shall not be admissible in any action or proceeding for any purpose except in proceedings to enforce a settlement arising out of an offer of judgment or counteroffer of judgment or to determine reasonable attorneys fees and reasonable litigation costs under this section.

D. This section shall apply whether or not litigation costs or attorneys fees are otherwise recoverable.

E. The provisions of this section are severable, and if any part or provision thereof shall be held void, the decision of the court shall not affect or impair any of the remaining parts or provisions thereof.

F. This section shall apply to all civil actions filed after the effective date of this act.

SECTION 13. AMENDATORY 12 O.S. 1991, Section 1172.1, is amended to read as follows:

Section 1172.1 A. A garnishee summons shall not be issued in any action prior to judgment until:

1. Defendant has been served with a notice, to which the affidavit required by Section 1172 of this title is attached, which notifies the defendant that the issuance of a garnishee summons is requested and that ~~he~~ the defendant may object to the issuance of ~~such a~~ the summons by filing a written objection with the court clerk and delivering or mailing a copy to the plaintiff's attorney

within five (5) days of the service of ~~said~~ the notice. The service of ~~such a~~ the notice on the defendant satisfies the notice requirement of Section 1174 of this title;

2. If no written objection is filed within the five-day period, and if the undertaking has been executed as provided herein, the court clerk shall issue the garnishee summons;

3. Should a written objection be filed within the five-day period, the court shall, at the request of either party, set the matter for a prompt hearing with notice to the adverse party. If, at ~~such~~ the hearing, the plaintiff proves the probable merit of ~~his~~ the plaintiff's cause and the truth of the matters asserted in ~~his~~ the affidavit and if the plaintiff executes an undertaking, as provided herein, the court may issue the garnishee summons; and

4. An undertaking on the part of the plaintiff has been executed by one or more sufficient sureties, approved by the clerk or the court and filed in the clerk's office, in a sum not less than double the amount of the plaintiff's claim, to the effect that the plaintiff shall pay to the defendant all damages which ~~he~~ the defendant may sustain by reason of ~~such~~ the garnishment, together with a reasonable attorney's fee, if the order be wrongfully obtained.

B. If the court finds that the defendant cannot be given notice as provided by paragraph 1 of subsection A of this section, although a reasonable effort was made to notify ~~him~~ the defendant, and at the hearing the plaintiff proves the probable merit of ~~his~~ the plaintiff's cause of action and the truth of the matters asserted in ~~his~~ the affidavit and the plaintiff has executed an undertaking as provided herein, the court may issue a garnishee summons~~. In such case~~ after which the defendant may move to have the garnishee summons quashed. Notice of ~~said~~ a motion to quash, with the date of the hearing, shall be served on the attorney for the plaintiff. The motion shall be heard promptly, and in any case within five (5) days

after the date that it is filed. The court must grant the defendant's motion unless, at the hearing on defendant's motion, the plaintiff proves the probable merit of ~~his~~ the plaintiff's cause and the truth of the matters asserted in ~~his~~ the affidavit. The court clerk may issue an order to pay the money into the court after the hearing, at the direction of the court.

C. A prejudgment or postjudgment garnishment may be amended as in other civil actions. Upon request of the garnishor, alias or additional summons shall issue against the garnishee.

SECTION 14. AMENDATORY 12 O.S. 1991, Section 1173, as amended by Section 4, Chapter 338, O.S.L. 1995 (12 O.S. Supp. 1998, Section 1173), is amended to read as follows:

Section 1173. A. Any judgment creditor may obtain a noncontinuing lien on earnings. For the purposes of this section, "earnings" means any form of payment to an individual including, but not limited to, salary, commission, or other compensation, but does not include reimbursements for travel expenses for state employees.

B. A noncontinuing earnings garnishment shall be commenced by filing the affidavit provided for by Section 1172 of this title.

C. The form for the summons required by this section shall be prescribed by the Administrative Office of the Courts.

D. The summons shall be served upon the garnishee, together with a copy of the judgment creditor's affidavit, a garnishee's answer form, notice of garnishment and request for hearing, and claim for exemptions, in the manner provided for in Section 2004 of this title and shall be returned with proof of service within ten (10) days of its date.

E. The garnishee's answer shall be on a form prescribed by the ~~Office of the~~ Administrative ~~Director~~ Office of the Courts.

F. Within seven (7) days after the end of the defendant's then-current pay period or thirty (30) days from the date of service of the garnishment summons, whichever is earlier, the garnishee shall

file the answer with the court clerk and the garnishee shall pay the amount withheld from the pay period to the judgment creditor's attorney or to the judgment creditor, if there is no attorney, with a copy of the answer which shall state:

1. Whether the garnishee was the employer of or indebted or under any liability to the defendant named in the notice in any manner or upon any account for earnings or wages, specifying, as applicable, the beginning and ending dates of the pay period existing at the time of the service of the affidavit and summons, the total amounts earned in the pay period, and all of the facts and circumstances necessary to a complete understanding of the indebtedness or liability. When the garnishee shall be in doubt respecting ~~any such~~ the liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the court;

2. If the garnishee shall claim any setoff, defense, other indebtedness, liability, lien, or claim to the property, the facts and circumstances in the affidavit;

3. At the garnishee's option, any claim of exemption from execution on the part of the defendant~~,~~ or other objection known to the garnishee against the right of the judgment creditor to apply the indebtedness or property disclosed;

4. If the garnishee shall disclose any indebtedness or the possession of any property to which the defendant or any other person makes claim, at the garnishee's option, the names and addresses of ~~such~~ other claimants and, so far as known, the nature of the claims; and

5. That the garnishee has mailed or hand-delivered a copy of the notice of garnishment and exemptions, application for hearing, and the manner and date of compliance.

G. The garnishment summons served on the garnishee under this section is a lien on the defendant's property due at the time of

service or the effective date of the summons to the extent the property is not exempt from garnishment.

H. 1. A garnishment lien under this section has priority over any subsequent garnishment lien or garnishment summons served on the garnishee.

2. When a garnishment summons is served under this section on a garnishee while a previous garnishment lien is still in effect, the garnishee shall answer the subsequent garnishment lien or garnishment summons by stating that the garnishee is presently holding defendant's property under a previous garnishment lien or garnishment summons and by giving the date when all previous garnishment liens or garnishment summonses are expected to end.

I. 1. When a postjudgment noncontinuing earnings garnishment under Section 1173 of this title or a continuing earnings garnishment under Section 1173.4 of this title is issued against a defendant already subject to an income assignment for child support, the garnishee shall determine the maximum percentage of the defendant's disposable earnings according to the provisions of Section 1171.2 of this title and then deduct from that percentage the actual percentage of the defendant's disposable earnings actually withheld under the income assignment. The resulting percentage shall be the amount to be withheld by the garnishee, not to exceed twenty-five percent (25%).

2. For any involuntary legal or equitable procedures through which the earnings of any individual are required to be withheld for the payment of any debt which has statutory priority over this section, the amount withheld pursuant to a garnishment under this section shall be reduced by the actual sums withheld pursuant to such other involuntary process.

SECTION 15. AMENDATORY 12 O.S. 1991, Section 1173.4, as amended by Section 6, Chapter 338, O.S.L. 1995 (12 O.S. Supp. 1998, Section 1173.4), is amended to read as follows:

Section 1173.4 A. Any judgment creditor may obtain a continuing lien on earnings. For the purposes of this section, "earnings" means any form of payment to an individual including, but not limited to, salary, wages, commission, or other compensation, but does not include reimbursements for travel expenses for state employees.

B. A continuing earnings garnishment shall be commenced by filing the affidavit provided for by Section 1172 of this title.

C. The summons required by this section shall be on a form prescribed by the Administrative Office of the Courts.

D. The summons required by this section shall be served upon each of the garnishees, together with a copy of the judgment creditor's affidavit, a garnishee's answer form, notice of garnishment and request for hearing, and claim for exemptions, in the manner provided for in Section 2004 of this title and shall be returned with proof of service within ten (10) days of its date.

E. The garnishee's answer shall be on a form prescribed by the Administrative Office of the Courts.

F. Within seven (7) days after the end of each pay period, or, if the judgment debtor does not have regular pay periods, after any payment by the garnishee to the judgment debtor, the garnishee shall file an answer with the court clerk, and pay the amount withheld to the judgment creditor's attorney or to the judgment creditor, if there is no attorney, together with a copy of the answer which shall state:

1. Whether the garnishee was the employer of the defendant named in the notice, ~~or~~ was indebted to the defendant, or was under any liability to the defendant ~~named in the notice~~ in any manner or upon any account for earnings, specifying the beginning and ending dates of the pay period, if applicable, existing at the time of the service of the affidavit and summons, the total amounts earned in the entire pay period, and all of the facts and circumstances

necessary to a complete understanding of any indebtedness or liability. When the garnishee shall be in doubt respecting ~~any such~~ the liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the court;

2. If the garnishee shall claim any setoff, defense, other indebtedness, liability, lien, or claim to the property, the facts and circumstances in the affidavit;

3. At the garnishee's option, any claim of exemption from execution on the part of the defendant or other objection known to the garnishee against the right of the judgment creditor to apply the indebtedness or property disclosed;

4. If the garnishee shall disclose any indebtedness or the possession of any property to which the defendant or any other person makes claim, at the garnishee's option, the names and addresses of other claimants and, so far as known, the nature of their claims; and

5. That the garnishee has mailed or hand-delivered a copy of the notice of garnishment and exemptions, application for hearing, and the manner and date of compliance.

G. The garnishment summons served on the garnishee under this section is a lien on the defendant's property due at the time of service or the effective date of the summons, to the extent the property is not exempt from garnishment. This lien attaches to subsequent nonexempt earnings until one of the following occurs:

1. The total earnings subject to the lien equals the balance of the judgment against the defendant owing to the plaintiff;

2. The employment relationship is terminated;

3. The judgment against the defendant is vacated, modified, or satisfied in full;

4. The summons is dismissed; or

5. One hundred eighty (180) days from the date of service of the affidavit and summons have elapsed; provided, an affidavit and summons shall continue in effect and shall apply to a pay period beginning before the end of the one hundred eighty-day period even if the conclusion extends beyond the end of the period.

H. 1. A garnishment lien under this section has priority over any subsequent garnishment lien or garnishment summons served on the garnishee during the period it is in effect.

2. a. When a garnishment summons is served under this section on a garnishee while a previous garnishment lien is still in effect, the garnishee shall answer the subsequent garnishment lien or garnishment summons by stating that the garnishee is presently holding defendant's property under a previous garnishment lien or garnishment summons, and by giving the date when all previous garnishment liens or garnishment summons are expected to end.

b. The subsequent summons is not effective if a summons or lien on the same cause of action is pending at the time of service unless the subsequent summons in the same cause of action is served after the one-hundred-fiftieth day of the previous garnishment lien.

I. 1. When a postjudgment wage garnishment under Section 1173 of this title or a continuing earnings garnishment under this section is issued against a defendant already subject to an income assignment for child support, the garnishee shall determine the maximum percentage of the defendant's disposable earnings according to the provisions of Section 1171.2 of this title and then deduct from that percentage the actual percentage of the defendant's disposable earnings actually withheld under the income assignment. The resulting percentage shall be the amount to be withheld by the garnishee, not to exceed twenty-five percent (25%).

2. For any involuntary legal or equitable procedures through which the earnings of any individual are required to be withheld for the payment of any debt which has statutory priority over this section, the amount withheld pursuant to a garnishment under this section shall be reduced by the actual sums withheld pursuant to such other involuntary process.

J. A continuing earnings garnishment may be suspended or modified for a specific period of time within the effective period of the garnishment by the judgment creditor upon agreement with the judgment debtor, which agreement shall be in writing and filed by the judgment creditor with the clerk of the court in which the judgment was entered, and a copy of which shall be mailed by first-class mail, postage prepaid by the judgment creditor to the garnishee.

K. Any garnishment issued against a debtor already subject to a continuing or noncontinuing earnings garnishment shall take effect immediately upon the conclusion of the prior garnishment, and shall be effective for its full period of time or as otherwise provided in this section.

SECTION 16. AMENDATORY 12 O.S. 1991, Section 1183, as amended by Section 15, Chapter 338, O.S.L. 1995 (12 O.S. Supp. 1998, Section 1183), is amended to read as follows:

Section 1183. The garnishee may be examined by the judgment creditor ~~either by deposition or by written interrogatories. The garnishee's deposition may be taken or interrogatories issued~~ in any manner prescribed by the Oklahoma Discovery Code. Discovery may commence at any time after the service of the garnishee summons. If the garnishee ~~be~~ is a corporation, any principal officer thereof may be so examined. Within ~~twenty (20)~~ forty-five (45) days after the filing of the answer affidavit by the garnishee, the judgment creditor may ~~file and serve interrogatories on the garnishee~~ commence discovery concerning any matter contained in the answer or

germane to any liability on the garnishee's part to the principal defendant. Attached to any ~~interrogatories~~ discovery request or notice of deposition shall be a statement that, upon failure to answer or appear, a judgment may be taken against the garnishee ~~as~~ by default for the amount of the judgment and costs which the judgment creditor shall recover or has recovered against the defendant in the principal action, together with costs of ~~such~~ the garnishment, and that the garnishee may also be proceeded against ~~as~~ for contempt. A copy of the ~~interrogatories~~ discovery request or notice of deposition and such statement shall be served upon the garnishee or the garnishee's attorney of record in the manner provided for service of summons ~~and shall be returned with proof of service within five (5) days from the date of filing or within ten (10) days when served in another county and the~~. The garnishee within ~~ten (10)~~ twenty (20) days of the date of ~~such~~ service of a discovery request shall ~~file with the clerk,~~ deliver by mail a copy to the judgment creditor or the judgment creditor's attorney of record, full and true answers to all ~~such~~ ~~interrogatories~~ discovery requests, verified by affidavit, in the manner prescribed by the Oklahoma Discovery Code.

SECTION 17. AMENDATORY 12 O.S. 1991, Section 1190, as last amended by Section 16, Chapter 338, O.S.L. 1995 (12 O.S. Supp. 1998, Section 1190), is amended to read as follows:

Section 1190. A. A garnishee may deduct a fee of Ten Dollars ($10.00) from the funds of the defendant in the garnishee's possession as reimbursement for costs incurred in answering. If the garnishee is not indebted to the defendant and the garnishee's answer evidencing that is filed and mailed or delivered to the judgment creditor or to the judgment creditor's attorney of record, the garnishee may assess the judgment creditor a fee of Ten Dollars ($10.00) as reimbursement for such costs.

B. 1. In case of the trial of any issue between the judgment creditor and any garnishee, costs shall be awarded to the plaintiff and against the garnishee, in addition to the garnishee's liability, if the judgment creditor recovered more than the garnishee admitted by the garnishee's answer; and if the garnishee does not, the garnishee shall recover costs of the judgment creditor. The costs shall include a reasonable attorney's fee to be taxed in favor of the prevailing party.

2. In the case of the trial to determine the amount to be recovered for due and owing child support, where any liability on the part of the garnishee is disclosed, costs shall be awarded to the judgment creditor and against the defendant, including a reasonable attorney's fee.

C. In all other cases under this article not expressly provided for, the court may, in its discretion, award costs in favor of or against any party.

D. In addition to sums otherwise due pursuant to a judgment, a judgment creditor, if represented by an attorney, shall be entitled to an attorney's fee of Fifty Dollars ($50.00) for prosecuting a garnishment pursuant to subparagraphs b, c, and d of paragraph 2 of subsection B of Section 1171 of this title, and an attorney's fee of One Hundred Dollars ($100.00) for prosecuting a garnishment pursuant to subparagraph e of paragraph 2 of subsection B of Section 1171 of this title, not to exceed a total of One Hundred Fifty Dollars ($150.00) in any twelve-month period.

SECTION 18. AMENDATORY 12 O.S. 1991, Section 2004, as amended by Section 4, Chapter 339, O.S.L. 1996 (12 O.S. Supp. 1998, Section 2004), is amended to read as follows:

Section 2004.

PROCESS

A. SUMMONS: ISSUANCE. Upon filing of the petition, the clerk shall forthwith issue a summons. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

B. SUMMONS: FORM. 1. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise, the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify the defendant that in case of failure to appear, judgment by default will be rendered against the defendant for the relief demanded in the petition.

2. A judgment by default shall not be different in kind from or exceed in amount that prayed for in either the demand for judgment or in cases not sounding in contract in a notice which has been given the party against whom default judgment is sought. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his <u>or her</u> pleadings.

C. BY WHOM SERVED: PERSON TO BE SERVED.

1. SERVICE BY PERSONAL DELIVERY. a. At the election of the plaintiff, process, other than a subpoena, shall be served by a sheriff or deputy sheriff, a person licensed to make service of process in civil cases, or a person specially appointed for that purpose. The court shall freely make special appointments to serve all process, other than a subpoena, under this paragraph.

b. A summons to be served by the sheriff or deputy sheriff shall be delivered to the sheriff by the court clerk or an attorney of record for the plaintiff. When a summons, subpoena, or other process is to be served by the sheriff or deputy sheriff of another

county, the court clerk shall mail it, together with his voucher for the fees collected for the service, to the sheriff of that county. The sheriff shall deposit the voucher in the Sheriff's Service Fee Account created pursuant to Section 514.1 of Title 19 of the Oklahoma Statutes. The sheriff or deputy sheriff shall serve the process in the manner that other process issued out of the court of the sheriff's own county is served. A summons to be served by a person licensed to make service of process in civil cases or by a person specially appointed for that purpose shall be delivered by an attorney of record for the plaintiff to such person.

c. Service shall be made as follows:

(1) Upon an individual other than an infant who is less than fifteen (15) years of age or an incompetent person, by delivering a copy of the summons and of the petition personally or by leaving copies thereof at the person's dwelling house or usual place of abode with some person then residing therein who is fifteen (15) years of age or older or by delivering a copy of the summons and of the petition to an agent authorized by appointment or by law to receive service of process;

(2) Upon an infant who is less than fifteen (15) years of age, by serving the summons and petition personally and upon either of the infant's parents or guardian, or if they cannot be found, then upon the person having the care or control of the infant or with whom the infant lives; and upon an incompetent person by serving the summons

and petition personally and upon the incompetent person's guardian;

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the petition to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant;

(4) Upon the United States or an officer or agency thereof in the manner specified by Federal Rule of Civil Procedure 4;

(5) Upon a state, county, school district, public trust or municipal corporation or other governmental organization thereof subject to suit, by delivering a copy of the summons and of the petition to the officer or individual designated by specific statute; however, if there is no statute, then upon the chief executive officer or a clerk, secretary, or other official whose duty it is to maintain the official records of the organization; and

(6) Upon an inmate incarcerated in an institution under the jurisdiction and control of the Department of Corrections, by delivering a copy of the summons and of the petition to the warden or superintendent or the designee of the warden or superintendent of the institution where the

inmate is housed. It shall be the duty of the receiving warden or superintendent or a designee to promptly deliver the summons and petition to the inmate named therein. The warden or superintendent or his or her designee shall reject service of process for any inmate who is not actually present in said institution.

2. SERVICE BY MAIL. a. At the election of the plaintiff, a summons and petition may be served by mail by the plaintiff's attorney, any person authorized to serve process pursuant to subparagraph a of paragraph 1 of this subsection, or by the court clerk upon a defendant of any class referred to in division (1), (3), or (5) of subparagraph c of paragraph 1 of this subsection. Service by mail shall be effective on the date of receipt or if refused, on the date of refusal of the summons and petition by the defendant.

b. Service by mail shall be accomplished by mailing a copy of the summons and petition by certified mail, return receipt requested and delivery restricted to the addressee. When there is more than one defendant, the summons and a copy of the petition or order shall be mailed in a separate envelope to each defendant. If the summons is to be served by mail by the court clerk, the court clerk shall enclose the summons and a copy of the petition or order of the court to be served in an envelope, prepared by the plaintiff, addressed to the defendant, or to the resident service agent if one has been appointed. The court clerk shall prepay the postage and mail the envelope to the defendant, or service agent, by certified mail, return receipt requested and delivery restricted to the addressee. The return receipt shall be prepared by

the plaintiff. Service by mail to a garnishee shall be accomplished by mailing a copy of the summons and notice by certified mail, return receipt requested, and at the election of the judgment creditor by restricted delivery, to the addressee.

c. Service by mail shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing acceptance by the defendant or a returned envelope showing refusal of the process by the defendant. Acceptance or refusal of service by mail by a person who is fifteen (15) years of age or older who resides at the defendant's dwelling house or usual place of abode shall constitute acceptance or refusal by the party addressed. In the case of an entity described in division (3) of subparagraph c of paragraph 1 of this subsection, acceptance or refusal by any officer or by any employee of the registered office or principal place of business who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. A return receipt signed at such registered office or principal place of business shall be presumed to have been signed by an employee authorized to receive certified mail. In the case of a state municipal corporation, or other governmental organization thereof subject to suit, acceptance or refusal by an employee of the office of the officials specified in division (5) of subparagraph c of paragraph 1 of this subsection who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. If delivery of the

process is refused, upon the receipt of notice of such refusal and at least ten (10) days before applying for entry of default, the person elected by plaintiff pursuant to subparagraph a of this paragraph to serve the process shall mail to the defendant by first-class mail a copy of the summons and petition and a notice prepared by the plaintiff that despite such refusal the case will proceed and that judgment by default will be rendered against him unless he appears to defend the suit. Any ~~such~~ default or judgment by default shall be set aside upon motion of the defendant in the manner prescribed in Section 1031.1 of this title, or upon petition of the defendant in the manner prescribed in Section 1033 of this title if the defendant demonstrates to the court that the return receipt was signed or delivery was refused by an unauthorized person. ~~Such motion~~ A petition shall be filed within one (1) year after the defendant has notice of the default or judgment by default but in no event more than two (2) years after the filing of the judgment.

3. SERVICE BY PUBLICATION. a. Service of summons upon a named defendant may be made by publication when it is stated in the petition, verified by the plaintiff or ~~his~~ the plaintiff's attorney, or in a separate affidavit by the plaintiff or ~~his~~ the plaintiff's attorney filed with the court, that with due diligence service cannot be made upon the defendant by any other method.

b. Service of summons upon the unknown successors of a named defendant, a named decedent, or a dissolved partnership, corporation, or other association may be made by publication when it is stated in a petition, verified by the plaintiff or the plaintiff's attorney,

or in a separate affidavit by the plaintiff or the plaintiff's attorney filed with the court, that the person who verified the petition or the affidavit does not know and with due diligence cannot ascertain the following:

(1) whether a person named as defendant is living or dead, and, if dead, the names or whereabouts of ~~his~~ the person's successors, if any,

(2) the names or whereabouts of the unknown successors, if any, of a named decedent,

(3) whether a partnership, corporation, or other association named as a defendant continues to have legal existence or not; or the names or whereabouts of its officers or successors,

(4) whether any person designated in a record as a trustee continues to be the trustee; or the names or whereabouts of the successors of the trustee, or

(5) the names or whereabouts of the owners or holders of special assessment or improvement bonds, or any other bonds, sewer warrants or tax bills.

c. Service pursuant to this paragraph shall be made by publication of a notice, signed by the court clerk, one (1) day a week for three (3) consecutive weeks in a newspaper authorized by law to publish legal notices which is published in the county where the petition is filed. If no newspaper authorized by law to publish legal notices is published in such county, the notice shall be published in some such newspaper of general circulation which is published in an adjoining county. All named parties and their unknown successors who may be served by publication may be included in one

notice. The notice shall state the court in which the petition is filed and the names of the plaintiff and the parties served by publication, and shall designate the parties whose unknown successors are being served. The notice shall also state that the named defendants and their unknown successors have been sued and must answer the petition on or before a time to be stated (which shall not be less than forty-one (41) days from the date of the first publication), or judgment, the nature of which shall be stated, will be rendered accordingly. If jurisdiction of the court is based on property, any real property subject to the jurisdiction of the court and any property or debts to be attached or garnished must be described in the notice.

(1) When the recovery of money is sought, it is not necessary for the publication notice to state the separate items involved, but the total amount that is claimed must be stated. When interest is claimed, it is not necessary to state the rate of interest, the date from which interest is claimed, or that interest is claimed until the obligation is paid.

(2) It is not necessary for the publication notice to state that the judgment will include recovery of costs in order for a judgment following the publication notice to include costs of suit.

(3) In an action to quiet title to real property, it is not necessary for the publication notice to state the nature of the claim or interest of either party, and in describing the nature of the judgment that will be rendered should the

defendant fail to answer, it is sufficient to state that a decree quieting plaintiff's title to the described property will be entered. It is not necessary to state that a decree forever barring the defendant from asserting any interest in or to the property is sought or will be entered if the defendant does not answer.

(4) In an action to foreclose a mortgage, it is sufficient that the publication notice state that if the defendant does not answer, the defendant's interest in the property will be foreclosed. It is not necessary to state that a judgment forever barring the defendant from all right, title, interest, estate, property and equity of redemption in or to said property or any part thereof is requested or will be entered if the defendant does not answer.

d. Service by publication is complete when made in the manner and for the time prescribed in subparagraph c of this paragraph. Service by publication shall be proved by the affidavit of any person having knowledge of the publication. No default judgment may be entered on such service until proof of service by publication is filed with and approved by the court.

e. Before entry of a default judgment or order against a party who has been served solely by publication under this paragraph, the court shall conduct an inquiry to determine whether the plaintiff, or someone acting in his behalf, made a distinct and meaningful search of all reasonably available sources to ascertain the whereabouts of any named parties who have been served solely by publication under this paragraph. Before

entry of a default judgment or order against the unknown successors of a named defendant, a named decedent, or a dissolved partnership, corporation or association, the court shall conduct an inquiry to ascertain whether the requirements described in subparagraph b of this paragraph have been satisfied.

f. A party against whom a default judgment or order has been rendered, without other service than by publication in a newspaper, may, at any time within three (3) years after the ~~date~~ filing of the judgment or order, have the judgment or order ~~opened and be let in to defend~~ set aside in the manner prescribed in Sections 1031.1 and 1033 of this title. Before the judgment or order is ~~opened~~ set aside, the applicant shall notify the adverse party of the intention to make an application and shall file a full answer to the petition, pay all costs if the court requires them to be paid, and satisfy the court by affidavit or other evidence that during the pendency of the action the applicant had no actual notice thereof in time to appear in court and make a defense. The title to any property which is the subject of and which passes to a purchaser in good faith by or in consequence of the judgment or order to be opened shall not be affected by any proceedings under this subparagraph. Nor shall proceedings under this subparagraph affect the title of any property sold before judgment under an attachment. The adverse party, on the hearing of an application to open a judgment or order as provided by this subparagraph, shall be allowed to present evidence to show that during the pendency of the

action the applicant had notice thereof in time to appear in court and make ~~his~~ a defense.

g. The term "successors" includes all heirs, executors, administrators, devisees, trustees, and assigns, immediate and remote, of a named individual, partnership, corporation, or association.

h. Service outside of the state does not give the court in personal jurisdiction over a defendant who is not subject to the jurisdiction of the courts of this state or who has not, either in person or through an agent, submitted ~~himself~~ to the jurisdiction of the courts of this state.

4. SERVICE ON THE SECRETARY OF STATE. a. Service of process on a domestic or foreign corporation may be made by serving the Secretary of State as the corporation's agent, if:

(1) there is no registered agent for the corporation listed in the records of the Secretary of State; or

(2) neither the registered agent nor an officer of the corporation could be found at the registered office of the corporation, when service of process was attempted.

b. Before resorting to service on the Secretary of State the plaintiff must have attempted service either in person or by mail on the corporation at:

(1) the corporation's last-known address shown on the records of the Franchise Tax Division of the Oklahoma Tax Commission, if any is listed there; and

(2) the corporation's last-known address shown on the records of the Secretary of State, if any is listed there; and

(3) the corporation's last address known to the plaintiff.

If any of these addresses are the same, the plaintiff is not required to attempt service more than once at any address. The plaintiff shall furnish the Secretary of State with a certified copy of the return or returns showing the attempted service.

c. Service on the Secretary of State shall be made by filing two (2) copies of the summons and petition with the Secretary of State, notifying the Secretary of State that service is being made pursuant to the provisions of this paragraph, and paying the Secretary of State the fee prescribed in paragraph 7 of Section 1142 of Title 18 of the Oklahoma Statutes, which fee shall be taxed as part of the costs of the action, suit or proceeding if the plaintiff shall prevail therein. If a registered agent for the corporation is listed in the records of the Secretary of State, the plaintiff must also furnish a certified copy of the return showing that service on the registered agent has been attempted either in person or by mail, and that neither the registered agent nor an officer of the corporation could be found at the registered office of the corporation.

d. Within three (3) working days after receiving the summons and petition, the Secretary of State shall send notice by letter, certified mail, return receipt requested, directed to the corporation at its registered office or the last-known address found in the office of the Secretary of State, or if no address is found there, to the corporation's last-known address provided by the plaintiff. The notice shall

enclose a copy of the summons and petition and any other papers served upon the Secretary of State. The corporation shall not be required to serve its answer until forty (40) days after service of the summons and petition on the Secretary of State.

e. Before entry of a default judgment or order against a corporation that has been served by serving the Secretary of State as its agent under this paragraph, the court shall determine whether the requirements of this paragraph have been satisfied. A default judgment or order against a corporation that has been served only by service on the Secretary of State may be set aside upon motion of the corporation in the manner prescribed in Section 1031.1 of this title, or upon petition of the corporation in the manner prescribed in Section 1033 of this title, if the corporation demonstrates to the court that it had no actual notice of the action in time to appear and make its defense. ~~The motion~~ A petition shall be filed within one (1) year after the corporation has notice of the default judgment or order but in no event more than two (2) years after the filing of the default judgment or order.

f. The Secretary of State shall maintain an alphabetical record of ~~such~~ service setting forth the name of the plaintiff and defendant, the title, docket number, and nature of the proceeding in which the process has been served upon ~~him~~ the defendant, the fact that service has been effected pursuant to the provisions of this paragraph, the return date thereof, and the date when the service was made. The Secretary of State shall not be required to retain ~~such~~ this information for a

period longer than five (5) years from ~~his~~ receipt of the service of process.

g. The provisions of this paragraph shall not apply to a foreign insurance company doing business in this state.

5. SERVICE BY ACKNOWLEDGMENT. An acknowledgment on the back of the summons or the voluntary appearance of a defendant is equivalent to service.

6. SERVICE BY OTHER METHODS. If service cannot be made by personal delivery or by mail, a defendant of any class referred to in division (1) or (3) of subparagraph c of paragraph 1 of this subsection may be served as provided by court order in any manner which is reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard.

D. SUMMONS AND PETITION. The summons and petition shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. The failure to serve a copy of the petition with the summons is not a ground for dismissal for insufficiency of service of process, but on motion of the party served, the court may extend the time to answer or otherwise plead. If a summons and petition are served by personal delivery, the person serving the summons shall state on the copy that is left with the person served the date that service is made. This provision is not jurisdictional, but if the failure to comply with it prejudices the party served, the court, on motion of the party served, may extend the time to answer or otherwise plead.

E. SUMMONS: TERRITORIAL LIMITS OF EFFECTIVE SERVICE.

1. Service of the summons and petition may be made anywhere within this state in the manner provided by subsection C of this section.

2. When the exercise of jurisdiction is authorized by subsection F of this section, service of the summons and petition may be made outside this state:

a. by personal delivery in the manner prescribed for service within this state,

b. in the manner prescribed by the law of the place in which the service is made for service in that place in an action in any of its courts of general jurisdiction,

c. in the manner prescribed by paragraph 2 of subsection C of this section,

d. as directed by the foreign authority in response to a letter rogatory,

e. in the manner prescribed by paragraph 3 of subsection C of this section only when permitted by subparagraphs a and b of paragraph 3 of subsection C of this section, or

f. as directed by the court.

3. Proof of service outside this state may be made in the manner prescribed by subsection G of this section, the order pursuant to which the service is made, or the law of the place in which the service is made for proof of service in an action in any of its courts of general jurisdiction.

4. Service outside this state may be made by an individual permitted to make service of process under the law of this state or under the law of the place in which the service is made or who is designated to make service by a court of this state.

5. When subsection C of this section requires that in order to effect service one or more designated individuals be served, service outside this state under this section must be made upon the designated individual or individuals.

6. a. A court of this state may order service upon any person who is domiciled or can be found within this state of any document issued in connection with a proceeding in a tribunal outside this state. The order may be made upon application of any interested person or in response to a letter rogatory issued by a tribunal outside this state and shall direct the manner of service.

b. Service in connection with a proceeding in a tribunal outside this state may be made within this state without an order of court.

c. Service under this paragraph does not, of itself, require the recognition or enforcement of an order, judgment, or decree rendered outside this state.

F. ASSERTION OF JURISDICTION. A court of this state may exercise jurisdiction on any basis consistent with the Constitution of this state and the Constitution of the United States.

G. RETURN. 1. The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the process, but the failure to make proof of service does not affect the validity of the service.

2. When process has been served by a sheriff or deputy sheriff and return thereof is filed in the office of the court clerk, a copy of the return shall be sent by the court clerk to the plaintiff's attorney within three (3) days after the return is filed. If service is made by a person other than a sheriff, deputy sheriff, or licensed process server, ~~such~~ that person shall make affidavit thereof. The return shall set forth the name of the person served and the date, place, and method of service.

3. If service was by mail, the person mailing the summons and petition shall endorse on the copy of the summons or order of the

court that is filed in the action the date and place of mailing and the date when service was receipted or service was rejected, and ~~he~~ shall attach to the copy of the summons or order a copy of the return receipt or returned envelope, if and when received ~~by him~~, showing whether the mailing was accepted, refused, or otherwise returned. If the mailing was refused, the return shall also show the date and place of any subsequent mailing pursuant to paragraph 2 of subsection C of this section. When the summons and petition are mailed by the court clerk, the court clerk shall notify the plaintiff's attorney within three (3) days after receipt of the returned card or envelope showing that the card or envelope has been received.

H. AMENDMENT. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

I. SUMMONS: TIME LIMIT FOR SERVICE. If service of process is not made upon a defendant within one hundred eighty (180) days after the filing of the petition and the plaintiff cannot show good cause why such service was not made within that period, the action may be dismissed as to that defendant without prejudice upon the court's own initiative with notice to the plaintiff or upon motion. The action shall not be dismissed where a summons was served on the defendant within one hundred eighty (180) days after the filing of the petition and a court later holds that the summons or its service was invalid. After a court quashes a summons or its service, a new summons may be served on the defendant within a time specified by the judge. If the new summons is not served within the specified time, the action shall be deemed to have been dismissed without prejudice as to that defendant. This subsection shall not apply

with respect to a defendant who has been outside of this state for one hundred eighty (180) days following the filing of the petition.

SECTION 19. AMENDATORY 12 O.S. 1991, Section 2004.1, as last amended by Section 2, Chapter 374, O.S.L. 1998 (12 O.S. Supp. 1998, Section 2004.1), 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. 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 Oklahoma, the district court for the county in which the deposition is to be taken shall issue the subpoena. 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.

2. 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. 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 ~~Oklahoma~~ this state may also issue and sign a subpoena on behalf of ~~an Oklahoma state~~ a court of this state.

4. 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 him 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 his 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, his 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 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 20. AMENDATORY 12 O.S. 1991, Section 2006, as amended by Section 4, Chapter 253, O.S.L. 1995 (12 O.S. Supp. 1998, Section 2006), is amended to read as follows:

Section 2006.

TIME

A. COMPUTATION. In computing any period of time prescribed or allowed by this title, by the rules of any court, by order of the court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday as defined by the Oklahoma Statutes or any other day when the office of the court clerk does not remain open for public business until 4:00 p.m., in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday as defined by the Oklahoma Statutes or any other day when the office of the court clerk does not remain open for public business until 4:00 p.m. When the period of time prescribed or allowed is less than ~~seven (7)~~ eleven (11) days, intermediate Saturdays, Sundays, and legal holidays as defined by the Oklahoma Statutes or any other day when the office of the court clerk does not remain open for public business until 4:00 p.m., shall be excluded in the computation.

B. ENLARGEMENT. When by this title or by a notice given thereunder by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion:

1. With or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or

2. Upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time set forth in this title for taking an appeal from a judgment, decree or appealable order, or for seeking a new trial, a judgment notwithstanding the verdict, or to correct, open, modify, vacate or reconsider a judgment, decree, or appealable order, except as provided in the sections governing such proceedings.

C. FOR MOTIONS - AFFIDAVITS. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof, shall be served not later than five (5) days before the time specified for the hearing, unless a different period is fixed by the Oklahoma Statutes, court rules, or by an order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion.

D. ADDITIONAL TIME AFTER SERVICE BY MAIL. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three (3) days shall be added to the prescribed period. Provided, however, when a summons and petition are served by mail, a defendant shall serve his answer within twenty (20) days after the date of receipt or if refused, the date of refusal of the summons and petition by the defendant.

SECTION 21. AMENDATORY 12 O.S. 1991, Section 3226, as last amended by Section 3, Chapter 61, O.S.L. 1996 (12 O.S. Supp. 1998, Section 3226), is amended to read as follows:

Section 3226. A. DISCOVERY METHODS. Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the court orders otherwise under this section, the frequency of use of these methods is not limited.

B. DISCOVERY SCOPE AND LIMITS. Unless otherwise limited by order of the court in accordance with the Oklahoma Discovery Code, the scope of discovery is as follows:

1. IN GENERAL. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

2. TRIAL PREPARATION: MATERIALS. Subject to the provisions of paragraph 3 of this subsection, discovery may be obtained of documents and tangible things otherwise discoverable under paragraph 1 of this subsection and prepared in anticipation of litigation or for trial by or for another party or by or for the representative of that other party, including his attorney, consultant, surety, indemnitor, only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable, without undue hardship, to obtain the substantial equivalent of the materials by other means. In ordering discovery

of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain, without the required showing provided for in this paragraph, a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of paragraph 4 of subsection A of Section 3237 of this title apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is:

a. A written statement signed or otherwise adopted or approved by the person making it, or

b. A stenographic, mechanical, electrical, or other recording, or a transcription thereof, which substantially recites an oral statement by the person making it and contemporaneously recorded.

3. TRIAL PREPARATION: EXPERTS.

a. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of paragraph 1 of this subsection and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(1) A party may, through interrogatories, require any other party to identify each person whom that other party expects to call as an expert witness at trial and give the address at which that expert witness may be located.

(2) After disclosure of the names and addresses of the expert witnesses, the other party expects to call as witnesses, the party, who has requested disclosure, may depose any such expert witnesses subject to scope of this section. Prior to taking the deposition the party must give notice as required in subsections A and C of Section 3230 of this title.

(3) In addition to taking the deposition of an expert witness the party may, through interrogatories, require the party who expects to call the expert witness to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

b. A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only upon motion, when the court may order discovery as provided in Section 3235 of this title or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by any other means.

c. Unless manifest injustice would result:

(1) The court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under division (2) of subparagraph a of this paragraph and subparagraph b of this paragraph.

(2) The court shall require that the party seeking discovery with respect to discovery obtained under subparagraph b of this paragraph, pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

4. CLAIMS OF PRIVILEGE OR PROTECTION OF TRIAL PREPARATION MATERIALS. When a party withholds information otherwise discoverable under the Oklahoma Discovery Code by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

C. PROTECTIVE ORDERS. 1. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer, either in person or by telephone, with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or on matters relating to a deposition, the district court in the county where the deposition is to be taken may enter any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense, including one or more of the following:

a. that the discovery not be had,

b. that the discovery may be had only on specified terms and conditions, including a designation of the time or place,

c. that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery,

d. that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters,

e. that discovery be conducted with no one present except persons designated by the court,

~~e.~~ f. that a deposition after being sealed be opened only by order of the court,

~~f.~~ g. that a trade secret or other confidential research, development or commercial information not be disclosed or be disclosed only in a designated way, and

~~g.~~ h. that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court;

2. If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of paragraph 4 of subsection A of Section 3237 of this title apply to the award of expenses incurred in relation to the motion. Any protective order of the court which has the effect of removing any material obtained by discovery from the public record shall contain the following:

a. a statement that the court has determined it is necessary in the interests of justice to remove the material from the public record,

b. specific identification of the material which is to be removed or withdrawn from the public record, or which is to be filed but not placed in the public record, and

c. a requirement that any party obtaining a protective order place the protected material in a sealed manila envelope clearly marked with the caption and case number and is clearly marked with the word "CONFIDENTIAL", and stating the date the order was entered and the name of the judge entering the order;

3. No protective order entered after the filing and microfilming of documents of any kind shall be construed to require the microfilm record of such filing to be amended in any fashion;

4. The party or counsel which has received the protective order shall be responsible for promptly presenting the order to appropriate court clerk personnel for appropriate action;

5. All documents produced or testimony given under a protective order shall be retained in the office of counsel until required by the court to be filed in the case;

6. Counsel for the respective parties shall be responsible for informing witnesses, as necessary, of the contents of the protective order; and

7. When a case is filed in which a party intends to seek a protective order removing material from the public record, the plaintiff(s) and defendant(s) shall be initially designated on the petition under pseudonym such as "John or Jane Doe", or "Roe", and the petition shall clearly indicate that the party designations are fictitious. The party seeking confidentiality or other order removing the case, in whole or in part, from the public record, shall immediately present application to the court, seeking instructions for the conduct of the case, including confidentiality of the records.

D. SEQUENCE AND TIMING OF DISCOVERY. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence. The fact that a party is conducting

discovery, whether by deposition or otherwise, shall not operate to delay discovery by any other party.

E. SUPPLEMENTATION OF RESPONSES. A party who has responded to a request for discovery with a response that was complete when it was made is under no duty to supplement the response to include information thereafter acquired, except as follows:

1. A party is under a duty seasonably to supplement the response with respect to any question directly addressed to:

a. the identity and location of persons having knowledge of discoverable matters, and

b. the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

2. A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party obtains information upon the basis of which:

a. (i) the party knows that the response was incorrect in some material respect when made, or

(ii) the party knows that the response, which was correct when made, is no longer true in some material respect; and

b. the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

3. A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

F. DISCOVERY CONFERENCE. At any time after commencement of an action, the court may direct the attorneys for the parties to appear for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

1. A statement of the issues as they then appear;

2. A proposed plan and schedule of discovery;

3. Any limitations proposed to be placed on discovery;

4. Any other proposed orders with respect to discovery; and

5. A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion.

Each party and his attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than ten (10) days after service of the motion.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. In preparing the plan for discovery the court shall protect the parties from excessive or abusive use of discovery. An order shall be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference.

G. SIGNING OF DISCOVERY REQUESTS, RESPONSES AND OBJECTIONS. Every request for discovery, response or objection thereto made by a party represented by an attorney shall be signed by at least one of his attorneys of record in his individual name whose address shall be stated. A party who is not represented by an attorney shall sign the request, response or objection and state his address. The

signature of the attorney or party constitutes a certification that he has read the request, response or objection, and that it is:

1. To the best of his knowledge, information and belief formed after a reasonable inquiry consistent with the Oklahoma Discovery Code and warranted by existing law or a good faith argument for the extension, modification or reversal of existing law;

2. Interposed in good faith and not primarily to cause delay or for any other improper purpose; and

3. Not unreasonable or unduly burdensome or expensive, given the nature and complexity of the case, the discovery already had in the case, the amount in controversy, and other values at stake in the litigation. If a request, response or objection is not signed, it shall be deemed ineffective.

If a certification is made in violation of the provisions of this subsection, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response or objection is made, or both, an appropriate sanction, which may include an order to pay to the amount of the reasonable expenses occasioned thereby, including a reasonable attorney's fee.

SECTION 22. AMENDATORY 12 O.S. 1991, Section 3230, as last amended by Section 5, Chapter 61, O.S.L. 1996 (12 O.S. Supp. 1998, Section 3230), is amended to read as follows:

Section 3230. A. WHEN DEPOSITIONS MAY BE TAKEN; WHEN LEAVE REQUIRED.

1. ~~After commencement of the action, any~~ A party may take the testimony of any person, including a party, by deposition upon oral examination without leave of court except as provided in paragraph 2 of this subsection. ~~Leave of court, granted with or without notice, shall be obtained only if the plaintiff seeks to take a deposition prior to the expiration of thirty (30) days after service of the~~

~~summons and petition upon any defendant provided that leave is not required:~~

~~a. If a defendant has served a notice of taking deposition or otherwise sought discovery; or~~

~~b. If special notice is given as provided in paragraph 2 of subsection B of this section.~~

The attendance of witnesses may be compelled by subpoena as provided in Section 2004.1 of this title. ~~The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.~~

2. a. A party shall obtain leave of court, if the person to be examined is confined in prison, or if, without the written stipulation of the parties:

(1) the person to be examined already has been deposed in the case, or

(2) a party seeks to take a deposition prior to the expiration of thirty (30) days after service of the summons and petition upon any defendant unless the notice contains a certification, with supporting facts, that the person to be examined is expected to leave this state and will be unavailable for examination in this state unless deposed before that time.

b. A request for leave of court shall include a statement that the requesting party has in good faith conferred or attempted to confer either in person or by telephone with the opposing parties to obtain a written stipulation.

3. Unless otherwise agreed by the parties or ordered by the court, a deposition upon oral examination ~~may~~ shall not last more than six (6) hours and shall be taken only between the hours of 8:00 a.m. and 5:00 p.m. on a day other than a Saturday or Sunday and on a

date other than a holiday designated in Section 82.1 of Title 25 of the Oklahoma Statutes. The court may grant an extension of these time limits if the court finds that the witness or counsel has been obstructive or uncooperative or if the court finds it to be in the interest of justice.

B. PLACE WHERE WITNESS OR PARTY IS REQUIRED TO ATTEND TAKING OF DEPOSITIONS.

1. A witness shall be obligated to attend to give ~~his~~ a deposition only in the county of his or her residence, a county adjoining the county of his or her residence or the county where he or she is located when the subpoena is served ~~upon him~~.

2. A party, in addition to the places where a witness may be deposed, may be deposed in the county where the action is pending or the county where he or she is located when the notice is served ~~upon him~~.

C. NOTICE OF EXAMINATION; GENERAL REQUIREMENTS; SPECIAL NOTICE; NONSTENOGRAPHIC RECORDING; PRODUCTION OF DOCUMENTS AND THINGS; DEPOSITION OF ORGANIZATION; DEPOSITION BY TELEPHONE.

1. A party desiring to take the deposition of any person upon oral examination shall give notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and shall state the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify ~~him~~ the person or the particular class or group to which ~~he~~ the person belongs. The notice shall be served in order to allow the adverse party sufficient time, by the usual route of travel, to attend, and three (3) days for preparation, exclusive of the day of service of the notice.

If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced, as set forth in the subpoena, shall be attached to or included in the notice.

2. ~~Leave of court is not required for the taking of a deposition by plaintiff if the notice states that the person to be examined is about to leave the state and will be unavailable for examination, unless his deposition is taken before expiration of the thirty-day period, and sets forth facts to support the statement. The attorney for the plaintiff shall sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information and belief the statement and supporting facts are true. For a willful violation of this section, an attorney may be subject to appropriate disciplinary action and sanctions under Section 3237 of this title.~~

~~If a party shows that when he was served with notice under this paragraph he was unable, through the exercise of diligence, to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.~~

~~3.~~ The court may for cause shown enlarge or shorten the time for taking the deposition and for notice of taking the deposition.

~~4.~~ 3. The parties may stipulate in writing or the court may upon motion order that the testimony at a deposition be recorded by other than stenographic means. Unless good cause is shown to the contrary, such motions shall be freely granted. The stipulation or order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the deposition is recorded by other than stenographic means, the party taking the deposition shall upon request by any party or the witness furnish a copy of the deposition to the witness. The party taking the deposition may furnish either a stenographic copy of the deposition or a copy of the deposition as recorded by other than stenographic means.

Any objections under subsection D of this section, any changes made by the witness, the signature of the witness identifying the deposition as his or her own or the statement of the officer that is required if the witness does not sign, as provided in subsection F of this section, and the certification of the officer required by subsection G of this section shall be set forth in a writing to accompany a deposition recorded by nonstenographic means.

~~5.~~ 4. The notice to a party deponent may be accompanied by a request made in compliance with Section 3234 of this title for the production of documents and tangible things at the taking of the deposition. The procedure of Section 3234 of this title shall apply to the request.

~~6.~~ 5. A party may in ~~his~~ the notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which ~~he~~ that person will testify. Such designation of persons to testify and the subject of the testimony shall be delivered to the other party or parties prior to or at the commencement of the taking of the deposition of the organization. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization.

This paragraph does not preclude taking a deposition by any other procedure authorized in the Oklahoma Discovery Code.

~~7.~~ 6. The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone or other remote electronic means. For the purposes of this section, subsection A of Section 3228, and paragraphs 1 of subsections A and

B of Section 3237 of this title, a deposition taken by such means is taken in the county and state and at the place where the deponent is to answer questions.

D. EXAMINATION AND CROSS-EXAMINATION; RECORD OF EXAMINATION; OATH; OBJECTIONS. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of Section 2101 et seq. of this title except Section 2104. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other method authorized by paragraph 4 of subsection C of this section.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any party, or to any other aspect of the proceedings shall be noted by the officer upon the record of the deposition; however, the examination shall proceed, with the testimony being taken subject to the objections.

In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the depositions and ~~he~~ that party shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

E. MOTION TO TERMINATE OR LIMIT EXAMINATION.

1. Any objection to evidence during a deposition shall be stated concisely and in a nonargumentative and nonsuggestive manner. A party may instruct a deponent not to answer only where the information sought is not discoverable by law, when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, to present a motion under paragraph 2 of this

subsection, or to move for a protective order under subsection C of Section 3226 of this title. If the court finds a person has engaged in conduct which has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney's fees incurred by any parties as a result thereof.

2. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass or oppress the deponent or party, the court in which the action is pending or the court in the county where the deposition is being taken may order the officer conducting the examination to cease taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in subsection C of Section 3226 of this title. If the order entered terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for the order provided for in this section. The provisions of paragraph 4 of subsection A of Section 3237 of this title apply to the award of expenses incurred in relation to the motion.

F. REVIEW BY WITNESS; CHANGES; SIGNING. The deponent shall have the opportunity to review the transcript of the deposition unless such examination and reading are waived by the deponent and by the parties. After being notified by the officer that the transcript is available, the deponent shall have thirty (30) days in which to review it and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by paragraph 1 of subsection G of this

section whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

G. CERTIFICATION AND FILING BY OFFICER; EXHIBITS; COPIES; NOTICE OF FILING.

1. The officer shall certify on any stenographic deposition:

a. the qualification of the officer to administer oaths, including ~~his~~ the officer's certificate number,

b. that the witness was duly sworn by ~~him~~ the officer,

c. that the deposition is a true record of the testimony given by the witness, and

d. that the officer is not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of ~~such~~ the attorney or counsel, and is not financially interested in the action.

Except on order of the court or unless a deposition is attached to a motion response thereto, is needed for use in a trial or hearing, or the parties stipulate otherwise, depositions shall not be filed with the court clerk. The officer shall securely seal any stenographic deposition in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and send it to the attorney who arranged for the deposition, who shall store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to the deposition and may be inspected and copied by any party. If the person producing the materials desires to retain them he may:

a. Offer copies to be marked for identification and annexed to the deposition and to serve as originals if he affords to all parties fair opportunity to verify the copies by comparison with the originals, or

b. Offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

2. Each party who takes the deposition of a witness or of another party shall bear all expenses thereof, including the cost of transcription, and shall furnish upon request to the adverse party or parties, free of charge, one copy of the transcribed deposition. If the party taking the deposition recorded it on videotape or by other nonstenographic means, that party shall also furnish upon request to the adverse party or parties, free of charge, one copy of the videotape or other recording of the deposition.

H. FAILURE TO ATTEND OR TO SERVE SUBPOENA; EXPENSES.

1. If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to ~~such~~ the other party the reasonable expenses incurred by ~~him~~ the attending party and his or her attorney in attending, including reasonable attorney's fees.

2. If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon ~~him~~ the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because he or she expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by ~~him~~ that party and his or her attorney in attending, including reasonable attorney's fees.

I. WITNESS FEES.

1. The attendance and travel fees for a witness shall be paid as provided in Section 400 of this title.

2. A party deponent must attend the taking of a deposition without the payment or tender of attendance or travel fees.

J. TAXING OF COSTS OF DEPOSITIONS. The cost of transcription of a deposition, as verified by the statement of the certified court reporter, the fees of the sheriff for serving the notice to take depositions and fees of witnesses shall each constitute an item of costs to be taxed in the case in the manner provided by law. The court may upon motion of a party retax the costs if the court finds the deposition was unauthorized by statute or unnecessary for protection of the interest of the party taking the deposition.

SECTION 23. AMENDATORY Section 5, Chapter 194, O.S.L. 1995 (42 O.S. Supp. 1998, Section 49), is amended to read as follows:

Section 49. A. Every person, company, governmental entity, or trust authority operating an ambulance service within this state who or which performs ambulance services for any person injured as a result of the ~~negligence~~ negligent or intentional act of another shall, if the injured person asserts or maintains a claim against another person for damages on account of the injuries, have a lien for the amount due for the ambulance services upon any recovery or sum had or collected or to be collected by the injured person or the estate of the injured person in the event of the injured person's death, whether by judgment, settlement, or compromise. The lien shall be inferior to any lien or claim of any attorney ~~handling the claim for or on behalf of~~ representing the injured person. The lien shall not be applied or considered valid against any claim for amounts due pursuant to the provisions of Title 85 of the Oklahoma Statutes.

B. In addition to the lien provided for in subsection A of this section, every person, company, governmental entity, or trust

authority operating an ambulance service within this state who or which performs ambulance services for any person injured as a result of the ~~negligence~~ negligent or intentional act of another shall have, if the injured person asserts or maintains a claim against an insurer, a lien for the amount due for the ambulance services upon any monies payable by the insurer to the injured person.

C. No lien which is provided for in this section shall be effective unless, before the payment of any monies to the injured person or the injured person's attorney or legal representative, as compensation for the injuries or death:

1. A written notice is sent setting forth an itemized statement of the amount claimed, identifying the insurance policy or policies against which the lien is asserted, if any, and containing the name and address of the person, company, governmental entity, or trust authority claiming the lien, the injured person, and the person, firm, or corporation against whom the claim is made, is filed on the mechanic's and materialman's lien docket in the office of the county clerk of the county where the principal office of the claimant is located; and

2. The claimant sends, by registered or certified mail, postage prepaid, a copy of the notice with a statement of the date of filing thereof to the person, firm, or corporation against whom the claim is made and to the injured person. The claimant shall also send a copy of the notice to the attorney for the injured person, if the name and address of the attorney is known to the claimant.

D. ~~The liens provided for in~~ A lien created pursuant to this section may be enforced ~~by~~ in a civil action in the district court of the county where the lien was filed. An action shall be brought within one (1) year ~~from the time of the filing of the lien with the county clerk~~ of a final judgment, settlement, or compromise of the claim asserted or maintained by or on behalf of the injured person. The practice, pleading, and proceedings in the action shall conform

to the rules prescribed by the Oklahoma Pleading Code~~, Section 2001 et seq. of Title 12 of the Oklahoma Statutes,~~ to the extent applicable.

SECTION 24. AMENDATORY 51 O.S. 1991, Section 163, is amended to read as follows:

Section 163. A. Venue for actions against the state within the scope of this act shall be either the county in which the cause of action arose or Oklahoma County, except that a constitutional state agency, board or commission may, upon resolution filed with the Secretary of State, designate another situs for venue in lieu of Oklahoma County.

B. Actions against all political subdivisions within the scope of this act shall be brought in the county in which the situs of the political subdivision is located or in the county in which the cause of action arose; provided, any action brought against a municipality which is an owner of a dam, based upon the construction, maintenance, or operation of the dam, shall be brought in the county where the dam or a major portion of the dam is located.

C. Suits instituted pursuant to the provisions of this act shall name as defendant the state or the political subdivision against which liability is sought to be established. In no instance shall an employee of the state or political subdivision acting within the scope of his employment be named as defendant with the exception that suits based on the conduct of resident physicians and interns shall be made against the individual consistent with the provisions of Title 12 of the Oklahoma Statutes.

D. All actions against the state or political subdivision shall be filed in the name of the real party or parties in interest, and in no event shall any claim be presented nor recovery be made under the right of subrogation.

E. In all actions against the state, service shall be perfected by mailing, by certified mail, return receipt requested, a summons

and a copy of the petition to the Attorney General. Claimant shall also mail, by certified mail, return receipt requested, a copy of the summons and a copy of the petition to the administrative head of the state agency or agencies involved and a copy of the summons and a copy of the petition to the Risk Management Administrator of the Purchasing Division of the Office of Public Affairs.

F. In suits against political subdivisions the petition and summons shall be served in the manner prescribed by law for civil cases generally. If no method is prescribed by law, then service may be had on the administrative head of the political subdivision being sued, if available, and if not, the court in which the suit is pending may authorize service in such manner as may be calculated to afford the political subdivision a fair opportunity to answer and defend the suit.

G. No attempt shall be made in the trial of any action brought against the state or any political subdivision or employee within the scope of this act to suggest the existence of any insurance which covers in whole or in part any judgment or award which may be rendered in favor of the plaintiff.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 221.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For any return, claim, statement, or other document required to be filed or any payment required to be made within a prescribed period or on or before a prescribed date under authority of any provision of a tax law of this state, the date of the postmark stamped on the cover in which the return, claim, statement, or other document or payment is mailed shall be deemed to be the date of delivery or the date of payment, as the case may be.

B. The provisions of this section shall apply only if:

1. The postmark date falls within the prescribed period or on or before the prescribed date for filing, including any extension,

of the return, claim, statement, or other document or for making payment, including any extension granted for making such payment; and

2. The return, claim, statement, or other document or payment was, within the prescribed period or on or before the prescribed date for filing, deposited in the mail in the United States in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the Oklahoma Tax Commission, agency, officer, or office with which the return, claim, statement, or other document is required to be filed, or to which the payment is required to be made.

C. The provisions of this section shall apply in the case of postmarks not made by the United States Postal Service only and to the extent provided by rules or regulations prescribed by the Tax Commission.

D. For purposes of this section, if any return, claim, statement, or other document or payment, is sent by United States registered mail, the registration shall be prima facie evidence that the return, claim, statement, or other document was delivered to the Tax Commission, agency, officer, or office to which addressed, and the date of registration shall be deemed the postmark date. The Tax Commission is authorized to provide by rules or regulations the extent to which the foregoing provisions of this subsection with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail.

E. The provisions of this section shall not apply with respect to the filing of a document in, or the making of payment to, any court, or to currency or other medium of payment unless actually received and accounted for, or returns, claims, statements or other documents or payments which are required under any provision of a tax law or rules of this state to be delivered by any method other than by mailing.

F. Any reference in this section to the United States mail shall be treated as including a reference to any designated delivery service, and any reference in this section to a postmark by the United States Postal Service shall be treated as including a reference to any date recorded or marked as described in this subsection by a designated delivery service. For purposes of this section, the term "designated delivery service" means a delivery service provided by a trade or business if the service is designated by a rule of the Tax Commission for purposes of this section. The Tax Commission may designate a delivery service under the preceding sentence only if the Tax Commission determines that the service is available to the general public, is at least as timely and reliable on a regular basis as the United States mail, records electronically to its data base kept in the regular course of its business or marks on the cover in which any item referred to in this section is to be delivered, the date on which the item was given to the service for delivery, and meets all other criteria prescribed by the Tax Commission. The Tax Commission may provide a rule similar to the rule stated in the first sentence of this subsection with respect to any service provided by a designated delivery service which is substantially equivalent to United States registered or certified mail.

SECTION 26. AMENDATORY 68 O.S. 1991, Section 225, as last amended by Section 3, Chapter 385, O.S.L. 1998 (68 O.S. Supp. 1998, Section 225), is amended to read as follows:

Section 225. A. Any taxpayer aggrieved by any order, ruling, or finding of the Oklahoma Tax Commission directly affecting ~~such~~ the taxpayer or aggrieved by a final order of the Tax Commission issued pursuant to subsection (g) of Section 221 of this title may appeal therefrom directly to the Supreme Court of Oklahoma.

B. Within thirty (30) days ~~from~~ after the date of mailing to the taxpayer of the order, ruling, or finding complained of, the taxpayer desiring to appeal shall ~~file~~:

1. File a petition in error in the office of the Clerk of the Supreme Court ~~a petition in error specifying the grounds upon which such appeal is based. At the same time the taxpayer shall request~~;

2. Make cash payment of any tax, additional tax, penalty, and interest involved to the Tax Commission, or in lieu of this payment, file a bond for payment with the Tax Commission or a performance bond, if applicable, as and to the extent required in the case and as specified in subsections C, F, and G of this section;

3. Request that the Tax Commission prepare for filing with the Supreme Court, within thirty (30) days, the record of the appeal, certified ~~to~~ by the Secretary of the Tax Commission, and consisting of any citations, findings, judgments, motions, orders, pleadings and rulings, together with a transcript of all evidence introduced at any hearing relative thereto, or such portion of such citations, findings, judgments, motions, orders, pleadings, rulings, and evidence as the appealing parties and the Tax Commission may agree to be sufficient to present fully to the Court the questions involved.

C. Upon request of the taxpayer, the Tax Commission shall furnish ~~such~~ the taxpayer a copy of the proceedings had in connection with the matter complained of.

~~C. As~~ D. If the appeal is from an order of the Tax Commission assessing a tax or an additional tax, a penalty, or interest, then within thirty (30) days from the date of mailing to the taxpayer of the order, ruling, or finding complained of, the taxpayer filing the appeal shall pay to the Tax Commission the amounts of tax, additional tax, any penalty assessed, and interest accrued through the date of the payment, and the payment by the taxpayer to the Tax Commission within that thirty-day period is a condition precedent to

the right of the taxpayer to make and prosecute ~~such~~ an appeal, and ~~as~~ a jurisdictional prerequisite ~~of~~ to the Supreme Court having jurisdiction to ~~entertain such~~ hear and determine the appeal~~, it is specifically provided that, if the appeal be from an order of the Tax Commission assessing a tax or an additional tax, penalties, and interest, the taxpayer shall pay to the Tax Commission the amounts assessed and interest accrued through the date of payment~~. If, upon a final determination of the appeal the order assessing ~~such~~ a tax, ~~penalties~~ penalty, ~~and~~ or interest is reversed or modified and it is determined that the tax or part thereof was erroneously or illegally assessed, the amounts ~~so~~ paid by the taxpayer, together with the interest thereon at the rate of three percent (3%) per annum, shall be refunded to the taxpayer by the Tax Commission.

~~D.~~ E. If the appeal is from an order of the Tax Commission or a district court denying a refund of taxes previously paid and if upon final determination of the appeal, the order denying the refund is reversed or modified, the taxes previously paid, together with interest thereon from the date of the filing of the petition in error at the rate of three percent (3%) per annum, shall be refunded to the taxpayer by the Tax Commission.

~~E.~~ F. Such refunds and interest thereon shall be paid by the Tax Commission out of monies in the Tax Commission clearing account from subsequent collections from the same source as the original tax assessment, provided that in the event there are insufficient funds for refunds from subsequent collections from the same source, the refund shall be paid by the Tax Commission from monies appropriated by the Legislature to the special refund reserve account for such purposes as hereinafter provided. There is hereby created within the official depository of the State Treasury an agency special account for the Tax Commission for the purpose of making such refunds as may be required under this section, not otherwise

provided. This account shall consist of monies appropriated by the Legislature for the purpose of making refunds under this section.

~~F.~~ G. In lieu of the cash payment provided for in subsection C of this section, the taxpayer may file with the Tax Commission, pursuant to Section 210 of this title, a bond in double the amount of the tax, additional tax, penalties and interest so assessed, conditioned that the taxpayer will faithfully and diligently prosecute such appeal to a final determination, and in the event the order of the Tax Commission be affirmed on appeal, will pay such tax, additional tax, penalties and interest, and costs so assessed against the taxpayer. Any bond submitted pursuant to this subsection must be approved by the Tax Commission as to form and amount and accepted within the time prescribed for filing an appeal.

~~G.~~ H. If the appeal be from an order, judgment, finding, or ruling of the Tax Commission other than one assessing a tax and from which a right of appeal is not otherwise specifically provided for in this article, any aggrieved taxpayer may appeal from ~~any such~~ that order, judgment, finding, or ruling as provided in this section and may supersede the effect of such order, judgment, ruling, or finding by filing with the Tax Commission a bond in an amount fixed by the Tax Commission payable to the State of Oklahoma conditioned that ~~such~~ the appeal will faithfully and diligently be prosecuted to a final determination, and in the event the order, judgment, ruling, or finding of the Tax Commission be affirmed on appeal, that such person will immediately conform thereto.

~~H.~~ I. This section shall be construed to provide to the taxpayer a legal remedy by action at law in any case where a tax, or the method of collection or enforcement thereof, or any order, ruling, finding, or judgment of the Tax Commission is complained of, or is sought to be enjoined in any action in any court of this state or the United States of America.

SECTION 27. AMENDATORY 76 O.S. 1991, Section 19, as last amended by Section 14, Chapter 251, O.S.L. 1995 (76 O.S. Supp. 1998, Section 19), is amended to read as follows:

Section 19. A. 1. Any person who is or has been a patient of a doctor, hospital, or other medical institution shall be entitled to obtain access to the information contained in ~~all~~ the patient's medical records ~~of the person~~, including any x-ray or other photograph or image, upon request~~, and~~.

2. Any person who is or has been a patient of a doctor, hospital, or other medical institution shall be furnished copies of all records, including any x-ray or other photograph or image, pertaining to that person's case upon request and upon the tender of the expense of ~~such~~ the copy or copies. ~~Cost~~ The cost of each copy, not including any x-ray or other photograph or image, shall not exceed twenty-five cents ($0.25) per page. The cost of each x-ray or other photograph or image shall not exceed Five Dollars ($5.00) or the actual cost of reproduction, whichever is less. The physician, hospital, or other medical professionals and institutions may charge a patient for the actual cost of mailing the patient's requested medical records, but may not charge a fee for searching, retrieving, reviewing, and preparing medical records of the person ~~in order to determine which medical records are to be copied. Provided that this entitlement to medical records~~.

3. The provisions of paragraphs 1 and 2 of this subsection shall not apply to psychological or psychiatric records. In the case of psychological or psychiatric records, the patient shall not be entitled to copies unless access to ~~said~~ the records is consented to by the treating physician or practitioner or is ordered by a court of competent jurisdiction upon a finding that it is in the best ~~interest~~ interests of the patient, but the patient may be provided access to information contained in ~~said~~ the records, as provided in subsection B of Section 1-109 of Title 43A of the

Oklahoma Statutes. The patient or, if the patient is a minor child or a guardian has been appointed for the patient, the guardian of the patient may authorize the release of the psychiatric or psychological records of the patient to the patient's attorney, a third party payor, or a governmental entity. The execution of ~~such~~ an authorization shall not be construed to authorize the patient personal access to ~~said~~ the records or information.

B. 1. In cases involving a claim for personal injury or death against any practitioner of the healing arts or a licensed hospital, arising out of patient care, where any person has placed the physical or mental condition of that person in issue by the commencement of any action, proceeding, or suit for damages, or where any person has placed in issue the physical or mental condition of any other person or deceased person by or through whom ~~such~~ the person rightfully claims, that person shall be deemed to waive any privilege granted by law concerning any communication made to a physician or health care provider with reference to any physical or mental condition or any knowledge obtained by ~~such~~ the physician or health care provider by personal examination of ~~any such~~ the patient; provided that, before any ~~such~~ communication, medical or hospital record, or testimony is admitted in evidence in any proceeding, it must be material and relevant to an issue therein, according to existing rules of evidence.

2. Any person who obtains any document pursuant to the provisions of this section shall provide copies of ~~said~~ the document to any opposing party in ~~said~~ the proceeding upon payment of the expense of copying ~~said~~ the document~~, not to exceed twenty-five cents ($0.25) for each page copied~~ pursuant to the provisions of this section.

SECTION 28. REPEALER 12 O.S. 1991, Sections 690, 691, 692, 693, 694 and 695, are hereby repealed.

SECTION 29. This act shall become effective November 1, 1999.

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