

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 479

By: Smith of the Senate

and

Askins of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to courts; amending 12 O.S. 2001, Sections 556.1, 706.2, 842, 1172, 1174, 2503, as last amended by Section 10 of Enrolled Senate Bill No. 629 of the 1st Session of the 49th Oklahoma Legislature, and 2803, as amended by Section 59, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2002, Section 2803), which relate to civil juries, judgments, disclosure of assets, garnishment proceedings, doctor-patient privilege and hearsay exceptions; allowing certain officers to issue any judicial process under certain agreement; modifying procedures for selection of numbers of jurors; providing that certain money amount be determined by court order upon application; modifying certain statement; establishing certain duty of judgment debtor; adding recipient of certain mailed notice; extending number of days to object; providing certain restriction on extension; allowing a judge to authorize certain citation or warrant under specified circumstances; providing penalty; modifying certain prejudgment garnishment procedures; clarifying certain postjudgment amount; modifying calculation of certain postjudgment amount; modifying certain procedure for providing notice; adding exceptions to certain privilege; adding exception to hearsay rule; defining term; amending 20 O.S. 2001, Section 78.1, which relates to court records; deleting construing provision; amending 28 O.S. 2001, Section 32, as amended by Section 11, Chapter 22, O.S.L. 2002 (28 O.S. Supp. 2002, Section 32), which relates to fees; increasing certain fee; directing remittance of certain funds; stating purpose of certain funds; amending 31 O.S. 2001, Section 1.1, which relates to exemptions from process; clarifying certain term; allowing a certain exemption under certain circumstances; amending 85 O.S. 2001, Section 1.2, which relates to presiding judges; modifying certain positions; providing for codification; and providing effective dates; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 28.1 of Title 12, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any other provision of law, any judicial process which is allowed or required by law to be issued or processed by a district court clerk or deputy may be issued or processed by a duly appointed municipal court clerk or deputy when authorized by interlocal agreement entered into pursuant to Sections 1001 et seq. of Title 74 of the Oklahoma Statutes.

SECTION 2. AMENDATORY 12 O.S. 2001, Section 556.1, is amended to read as follows:

Section 556.1 (a) Where the amount in controversy, as stated in the prayer for relief or an affidavit of a party, or as found by the court where the amount in controversy is questioned by the adverse party, does not exceed One Thousand Five Hundred Dollars (\$1,500.00), the action shall be tried to the court without a jury.

(b) In actions for forcible entry and detainer, or detention only, of real property and collection of rents therefor a jury shall consist of six (6) persons.

(c) Except as provided in parts (a) and (b) of this section, in actions for the recovery of money or specific real or personal property or both ~~shall be tried to a jury of twelve (12) persons in~~ which (1) ~~if~~ a party requests the recovery of money in the sum of at least Ten Thousand Dollars (\$10,000.00) or (2) ~~if~~ a party files an affidavit that the action involves at least Ten Thousand Dollars (\$10,000.00) and the adverse party does not controvert the affidavit, or (3) ~~if~~ the adverse party controverts such an affidavit, if one is filed, and the court finds that the action involves at least Ten Thousand Dollars (\$10,000.00), both parties shall request a jury composed of either six (6) or twelve (12) persons and shall provide to the court an estimate of the number of days of trial. If the parties agree on the number of jurors

requested, court costs shall be equally assessed on both parties.
If the parties fail to agree on the number of jurors requested, the
party requesting a jury composed of twelve (12) persons shall be
assessed an equal share of court costs based on the first six (6)
jurors, and shall be assessed all court costs based on the
additional (6) jurors; all other actions for the recovery of money
or specific real or personal property or both shall be tried to a
jury composed of six (6) persons.

SECTION 3. AMENDATORY 12 O.S. 2001, Section 706.2, is
amended to read as follows:

Section 706.2 In the event of an appeal from a money judgment
granted by a court of this state, the lien of such judgment, and any
lien by virtue of an attachment issued and levied in the action in
which such judgment was granted, shall cease when the judgment
debtor or debtors deposit with the clerk of the court in which such
judgment was granted cash sufficient to cover the whole amount of
the judgment, including interest, costs, and any attorneys fees,
together with costs and interest on the appeal. ~~Such cash deposit~~
~~shall be accompanied by a written statement executed by the judgment~~
~~debtor or debtors~~ This amount shall be determined by court order
upon application of the judgment debtor indicating that such deposit
is made to discharge the lien of the judgment and any lien by virtue
of an attachment issued and levied in the action. The cash deposit
shall be accompanied by the statement of ownership required pursuant
to Section 151.1 of Title 28 of the Oklahoma Statutes.

It shall be the duty of the judgment debtor to deliver the court
order of deposit to the court clerk, department head or supervisor
personally. Upon receipt of such a cash deposit, statement of
ownership and ~~written statement~~ an order of the court directing
deposit, it shall be the duty of the court clerk to immediately
record receipt of the ~~statement~~ order and the amount of the cash
deposit upon the appearance docket in the cause. It also shall be

the duty of the court clerk to place the cash deposit in the court clerk's official depository account and to hold the deposit in an interest-bearing account, unless otherwise ordered by the court, pending final determination of the action. The court clerk shall mail notice of receipt of the cash deposit to counsel for the judgment creditor or, if the judgment creditor is not represented by counsel, to the judgment creditor at the last-known address of the judgment creditor, which provided by the judgment debtor's application. The notice shall contain a statement that, if the judgment creditor does not file with the court a response or objection to the cash deposit within ~~fifteen (15)~~ twenty (20) days after the mailing of the notice to the judgment creditor, the judgment lien may be released. This objection period shall not be extended because of mailing time or for intervening weekends or holidays.

If no objection is filed with the court by the judgment creditor within ~~fifteen (15)~~ twenty (20) days after the mailing of the notice, the court clerk, upon request of the judgment debtor, shall prepare a Release of Judgment Lien for the judgment debtor on the form provided by the Administrative Director of the Courts. Instructions shall be printed on the Release of Judgment Lien advising the judgment debtor to file the Release in the office of the county clerk of the county in which the real estate is situated. The lien of the judgment upon real estate of the judgment debtor in a county shall be released when the Release of Judgment Lien is filed in the office of the county clerk of that county. The judgment debtor making the deposit shall pay all costs and recording fees relating to the release procedure.

Upon final determination of the appeal, the court may order the deposit together with accrued interest to be applied to any final judgment granted against the depositor or depositors, and refund any balance in excess of the judgment to the depositor or depositors.

In the event judgment against the depositor or depositors is reversed in its entirety, the whole amount of the cash deposit together with accrued interest shall be refunded to the depositor or depositors.

A judgment debtor may also apply to the district court where the judgment was rendered for an order releasing a judgment lien to permit a particular transfer of property otherwise subject to the judgment lien on such terms as the court deems proper for the protection of the parties. Such a release of judgment lien may be granted only upon notice to the judgment creditor and hearing, and if granted the court shall endeavor to fully protect the rights of the judgment creditor to the security otherwise afforded by the judgment lien, for example, by determining the adequacy of consideration for the property and directing that such consideration be deposited into the court registry as security for the judgment.

SECTION 4. AMENDATORY 12 O.S. 2001, 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 the order, to answer concerning the judgment debtor's property. The judge may, by order, enjoin the judgment debtor from alienating, concealing, or encumbering any of 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, proceedings as provided by law may be had for the application of the property to the satisfaction of the judgment. If the judgment debtor is personally served with an order to appear pursuant to this section, the judge issuing the order may authorize the issuance of

either a contempt citation or a bench warrant for the judgment debtor's failure to comply with the order.

B. At any time after a final judgment, order, or decree is filed, an attorney for a judgment creditor may:

1. Subpoena the judgment debtor, pursuant to Section 2004.1 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, income, or liabilities, or to produce documents concerning the debtor's property, income, or liabilities. The judgment debtor shall not be entitled to an attendance fee or mileage;

2. Subpoena any person, pursuant to Section 2004.1 of this title, to appear at any place in the county where the person is located, or where service may otherwise be had on the person, to answer concerning the judgment debtor's property, income, or liabilities, or to produce documents concerning the judgment debtor's property, income, or liabilities; or

3. Serve interrogatories, requests for admissions, or request for production of documents, pursuant to Section 3224 et. seq. of this title, upon the judgment debtor, concerning the judgment debtor's property, income, or liabilities.

C. Failure by any person, without adequate excuse, to obey a subpoena issued and served pursuant to this section by personal service may be deemed a contempt of the court from which the subpoena issued.

D. In addition to sums otherwise due under a final judgment, order, or decree if an order, subpoena, or discovery request is served upon the judgment debtor or any person 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 calendar year.

SECTION 5. AMENDATORY 12 O.S. 2001, Section 1172, is amended to read as follows:

Section 1172. A. Garnishment proceedings, whether prejudgment or postjudgment, shall be commenced by the filing of an affidavit, on a form prescribed by the Administrative Director of the Courts, stating:

1. The name(s) of the plaintiff(s);

2. The name(s) of the defendant(s);

3. ~~The~~ In the case of prejudgment garnishments, the amount of the plaintiff's original claim against the defendant or defendants over and above all offsets;

4. In the case of postjudgment garnishments, the amount of ~~any interest, court costs and attorneys' fees awarded, stated separately~~ the interest bearing balance;

5. In the case of postjudgment garnishments, the ~~rate and the date the interest begins to accrue~~ current applicable interest rate, and the amounts of any interest, court costs and attorney fees, stated separately, which have accrued subsequent to the date of the interest bearing balance in paragraph 4 of this subsection; and

6. That the plaintiff verily believes that some person, naming him, whether within or without the county, is indebted to or has property in his possession or under his control belonging to the defendant, or either or any of the defendants, in the action or execution and that the indebtedness or property is, to the best of the knowledge and belief of the person making such affidavit, not by law exempt from seizure or sale upon execution.

B. The affidavit may be filed by the plaintiff or the plaintiff's attorney at or before the time of filing of a garnishment summons.

C. Only one garnishee may be embraced in any affidavit or garnishment summons.

SECTION 6. AMENDATORY 12 O.S. 2001, Section 1174, is amended to read as follows:

Section 1174. A. In all cases of garnishment before judgment, the defendant in the principal action shall be given notice of the issuance in said action of any garnishee summons, the date of issuance of said summons, and the name of the garnishee.

B. In all cases of garnishment for the collection of child support, the defendant shall be given notice as required by this section.

C. In all cases of postjudgment garnishment, the court clerk shall ~~issue~~ attach notice, in a form prescribed by the Administrative Director of the Courts, with the garnishment, in the manner provided by Section 1172.2 of this title that the defendant may be entitled to claim an exemption for any assistance received pursuant to the terms of the Federal or Oklahoma Social Security Act and other exemptions that may be available to the defendant, and that any such claim should be filed with the court clerk within five (5) days from receipt of notice in a form prescribed by the Administrative Director of the Courts, requesting a hearing as to the status of any assets which the defendant asserts are exempt. Any proceeding to claim an exemption initiated subsequent to five (5) days after receipt of notice shall be by motion unless otherwise agreed by the parties.

D. Said notification may be accomplished by:

1. Serving a copy of the garnishee summons on the defendant or on his attorney of record in the manner provided for the service of summons; or

2. Sending the notice or a copy of the garnishee summons to the defendant or his attorney of record by registered or certified mail

with return receipt requested, which receipt shall be filed in the action; or

3. ~~Endorsing~~ Attaching the notice ~~on~~ to the summons issued in the principal action prior to its service; or

4. Including the notice in the publication notice when service in the principal action is by publication; or

5. Publication one time in a newspaper of general circulation in the county in which the action is filed at least five (5) days prior to the date on which the garnishee's answer is due if the defendant is a nonresident or if the defendant's whereabouts are unknown to plaintiff.

SECTION 7. AMENDATORY 12 O.S. 2001, Section 2503, as last amended by Section 10 of Enrolled Senate Bill No. 629 of the 1st Session of the 49th Oklahoma Legislature, is amended to read as follows:

Section 2503. A. As used in this section:

1. A "patient" is a person who consults or is examined or interviewed by a physician or psychotherapist;

2. A "physician" is a person authorized to practice medicine in any state or nation, or reasonably believed by the patient to be so authorized;

3. A "psychotherapist" is:

a. a person authorized to practice medicine in any state or nation, or reasonably believed by the patient to be so authorized, while engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction, or

b. a person licensed or certified as a psychologist under the laws of any state or nation, or reasonably believed by the patient to be so licensed or certified, while similarly engaged; and

4. A communication is "confidential" if not intended to be disclosed to third persons, except persons present to further the interest of the patient in the consultation, examination or interview, persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist, including members of the patient's family.

B. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of the patient's physical, mental or emotional condition, including alcohol or drug addiction, among the patient, the patient's physician or psychotherapist, and persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist, including members of the patient's family.

C. The privilege may be claimed by the patient, the patient's guardian or conservator or the personal representative of a deceased patient. The person who was the physician or psychotherapist at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the patient.

D. The following shall be exceptions to a claim of privilege:

1. There is no privilege under this section for communications relevant to an issue in proceedings to hospitalize the patient for mental illness, if the psychotherapist in the course of diagnosis or treatment has determined that the patient is in need of hospitalization;

2. Communications made in the course of a court-ordered examination of the physical, mental or emotional condition of a patient, whether a party or a witness, are not privileged under this section when they relate to the particular purpose for which the examination is ordered unless the court orders otherwise;

3. The privilege under this Code as to a communication relevant to the physical, mental or emotional condition of the patient in any proceeding in which the patient relies upon that condition as an element of the patient's claim or defense or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense is qualified to the extent that an adverse party in the proceeding may obtain relevant information regarding the condition by statutory discovery;

4. If the services of the physician or psychotherapist were sought or obtained to enable or aid anyone to commit or plan to commit what the patient knew, or reasonably should have known, was a crime or fraud or physical injury to the patient or another individual;

5. In which the patient has expressed an intent to engage in conduct likely to result in imminent death or serious bodily injury to the patient or another individual;

6. Relevant to an issue in a proceeding challenging the competency of the physician or psychotherapist;

7. Relevant to a breach of duty by the physician or psychotherapist; or

8. That are subject to a duty to disclose under statutory law.

SECTION 8. AMENDATORY 12 O.S. 2001, Section 2803, as amended by Section 59, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2002, Section 2803), is amended to read as follows:

Section 2803. A. The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

1. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter;

2. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition;

3. A statement of the declarant's then existing state of mind, emotion, sensation or physical condition, such as intent, plan, motive, design, mental feeling, pain and bodily health, but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification or terms of declarant's will;

4. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain or sensations, if reasonably pertinent to diagnosis or treatment;

5. A record concerning a matter about which a witness once had knowledge but now has insufficient recollection to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness's memory and to reflect that knowledge correctly. The record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party;

6. A record of acts, events, conditions, opinions or diagnosis, made at or near the time by or from information transmitted by a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the record, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with paragraph 11 or 12 of Section 2902 of this title, or with a statute providing for certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation and calling of every kind, whether or not conducted for profit. A public record inadmissible under paragraph 8 of this section is inadmissible under this exception;

7. Evidence that a matter is not included in records kept in accordance with the provisions of paragraph 6 of this section, to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a record was regularly made and preserved, or by certification that complies with paragraph 11 or 12 of Section 2902 of this title, or with a statute providing for certification, unless the sources of information or other circumstances indicate lack of trustworthiness;

8. To the extent not otherwise provided in this paragraph, a record of a public office or agency setting forth its regularly conducted and regularly recorded activities or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual finding resulting from an investigation made pursuant to authority granted by law. The following are not within this exception to the hearsay rule:

- a. investigative reports by police and other law enforcement personnel,
- b. investigative reports prepared by or for a government, a public office or agency when offered by it in a case in which it is a party,
- c. factual findings offered by the government in criminal cases,
- d. factual findings resulting from special investigation of a particular complaint, case or incident, or
- e. any matter as to which the sources of information or other circumstances indicate lack of trustworthiness;

9. Records of births, fetal deaths, deaths or marriages, if the report thereof was made to a public office pursuant to statutory requirements;

10. To prove the absence of a record or the nonoccurrence or nonexistence of a matter of which a record was regularly made and preserved by a public office or agency, evidence in the form of a

certification in accordance with Section 2903 of this title, or testimony, that diligent search failed to disclose the record or entry;

11. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage or other similar facts of personal or family history contained in a regularly kept record of a religious organization;

12. Statements of fact contained in a certified record that the maker performed a marriage or other ceremony or administered a sacrament, made by a cleric, public official or other person authorized by the rules or practices of a religious organization or by law to perform the act certified and purporting to have been issued at the time of the act or within a reasonable time thereafter;

13. Statements of fact concerning personal or family history including those contained in family Bibles, genealogy, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts or tombstones, or the like;

14. A public record purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed and delivered;

15. A statement contained in a record purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the record unless dealings with the property since the record was made have been inconsistent with the truth of the statement or the purport of the record;

16. Statements in a record in existence twenty (20) years or more, the authenticity of which is established;

17. Market quotations, tabulations, lists, directories or other published or publicly recorded compilations generally used and relied upon by the public or by persons in particular occupations;

18. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the witness in direct examination, statements contained in published treatises, periodicals or pamphlets on a subject of history, medicine or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits;

19. Reputation among members of an individual's family by blood, adoption or marriage, or among the individual's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption or marriage, ancestry or other similar fact of the individual's personal or family history;

20. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community and reputation as to events of general history important to the community or state or nation in which located;

21. Reputation of a person's character among the person's associates or in the community;

22. Evidence of a final judgment, but not upon a plea of nolo contendere, adjudging a person guilty of a crime punishable by death or imprisonment in excess of one (1) year, to prove any fact essential to sustain the judgment, but not including, when offered by the state in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility; ~~or~~

23. Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the matter would be provable by evidence of reputation; or

24. Report of treating physician in an action for bodily injury where the amount in controversy does not exceed Twenty-five Thousand Dollars (\$25,000.00).

B. For purposes of this section, a treating physician shall mean a physician who has rendered care and treatment to or on behalf of the plaintiff. If the plaintiff submits a report pursuant to this section, a defendant may offer a rebuttal report from any licensed medical provider who has provided care, treatment, or examined the plaintiff.

SECTION 9. AMENDATORY 20 O.S. 2001, Section 78.1, is amended to read as follows:

Section 78.1 The Supreme Court, Court of Criminal Appeals, Court of Tax Review, and the Court on the Judiciary shall provide by rule, which shall have the force of law, for the retention, copying, preservation, archiving and destruction of the records, files and papers committed to the care of the Clerk of the Supreme Court by the respective courts. ~~The provisions of this section shall not be construed to authorize said courts to promulgate or adopt rules contrary to the provisions of the Records Management Act or Oklahoma Open Records Act.~~

SECTION 10. AMENDATORY 28 O.S. 2001, Section 32, as amended by Section 11, Chapter 22, O.S.L. 2002 (28 O.S. Supp. 2002, Section 32), is amended to read as follows:

Section 32. A. Notwithstanding any other provision of law county clerks shall charge and collect the following flat fees to be uniform throughout the state regardless of the recording method used, and the county clerks shall not be required to itemize or charge these fees pursuant to any other schedule, except as specifically provided by law:

1. For recording the first page of deeds,
mortgages and any other instruments
not subject to the fee imposed by

Section 1-9-525 of Title 12A of the
 Oklahoma Statutes.....~~\$8.00~~
\$9.00

- 2. For recording each additional page of
 same instrument.....\$2.00
- 3. For furnishing hard copies of microfilmed
 records to bonded abstractors only,
 per page.....\$1.00
- 4. For furnishing photographic copies of
 photographic records, or of
 typewritten script or printed records,
 per page.....\$1.00
- 5. For recording plat of one block or less..... \$10.00
- 6. For recording plat of more than one block..... \$25.00
- 7. For certifying to any copy per page..... \$1.00
- 8. For recording an assignment of Tax Sale
 Certificate to be paid by the party
 purchasing.....\$5.00
- 9. For recording of any mark or brand and
 giving certificate for same.....\$5.00
- 10. For recording each certificate for
 estrays and forwarding description of
 same, as required by law.....\$1.00
- 11. a. For recording and filing of
 mechanics' or materialmen's liens
 which includes the release thereof.....\$10.00
- b. For preparing and mailing notice of
 mechanics' or materialmen's lien.....\$8.00
- c. For each additional page or exhibit..... \$2.00
- 12. For recording and filing of fictitious
 name partnership certificates\$5.00

To this fee shall be added the fees
required by Sections 81 through 86 of
Title 54 of the Oklahoma Statutes.

13. For recording the first page of deeds,
mortgages, and any other instruments
which are nonconforming pursuant to
subsection C of Section 298 of Title
19 of the Oklahoma Statutes..... \$25.00

14. For recording each additional page of an
instrument which is nonconforming
pursuant to subsection C of Section
298 of Title 19 of the Oklahoma
Statutes..... \$10.00

B. Of the fees prescribed in paragraph 1 of subsection A of
this section, One Dollar (\$1.00) shall be remitted to the Center for
Local Government Technology and the Cooperative Extension Service at
Oklahoma State University for the benefit of the Commission on
County Government Personnel Education and Training created pursuant
to Section 130.1 of Title 19 of the Oklahoma Statutes, for the
maintenance or replacement of equipment and for payment of any
contractual expense related to the education and training programs
administered by the Center for Local Government Technology.

C. The fees prescribed in paragraph 4 of subsection A of this
section shall be deposited into the County Clerk's Lien Fee Account,
created pursuant to Section 265 of Title 19 of the Oklahoma Statutes
in an amount not to exceed Twenty Thousand Dollars (\$20,000.00) each
fiscal year.

~~C.~~ D. For the purpose of preserving, maintaining, and archiving
recorded instruments including, but not limited to, records
management, records preservation, automation, modernization, and
related lawful expenditures, in addition to all other fees required

by law, the county clerk shall collect Five Dollars (\$5.00) for each instrument recorded with the Registrar of Deeds.

~~D.~~ E. There is hereby created a fund to be known as the "County Clerk's Records Management and Preservation Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of the fees and monies accruing to the fund, as prescribed in subsection C of this section with all monies accruing to the fund to be expended by the clerk and not transferred to any other fund. The intent of this section is to increase the net funding level available to the county clerk to maintain and preserve public records.

~~E.~~ F. The fees and costs prescribed in this section shall not apply to child support enforcement offices operated by or on behalf of the Department of Human Services' Child Support Enforcement Division. County clerks shall not charge any fees or costs to such offices, the Division, or the Department.

SECTION 11. AMENDATORY 31 O.S. 2001, Section 1.1, is amended to read as follows:

Section 1.1 A. Following the issuance of an execution, attachment, or garnishment, except process to collect a judgment or order for child support or maintenance of children or in cases in which the court has limited or reduced the application of this section pursuant to Section 142.18 of Title 21 of the Oklahoma Statutes, the debtor may file with the court an application requesting a hearing to exempt from such process by reason of undue hardship that portion of any earnings from personal services necessary for the maintenance of a family or other dependents supported wholly or partially by the labor of the debtor. A debtor with no family or other dependents may not claim an exemption under this section. A hearing on the application shall be set and conducted in the manner provided by Section 1172.2 of Title 12 of

the Oklahoma Statutes and subsection D of Section 1174 of Title 12 of the Oklahoma Statutes.

B. In determining the existence of an undue hardship, the court should consider the income and expenses of the family and other dependents, and the standard of living created by the income and expenses. The court should also consider the standard of living in relationship to the minimal subsistence needs of the debtor's family and other dependents, with comparison to the minimal subsistence standards in the community, in regard to basic shelter, food, clothing, personal necessities and transportation. The court should then determine if the lack of the funds sought to be exempt would be an undue hardship by creating less than a minimal level of subsistence. If deprivation of these earnings would create an undue hardship on the debtor and the family or other dependents the debtor supports, the court may:

1. Order all or a portion of the personal ~~wages~~ earnings exempt; or

2. In the case of a continuing ~~wage~~ earnings garnishment pursuant to Section 1173.4 of Title 12 of the Oklahoma Statutes, order all or a portion of the personal earnings withheld within thirty (30) days preceding the filing of the claim for exemption, exempt, modify or stay the garnishment for a period of time not to exceed the remainder of its term.

SECTION 12. AMENDATORY 85 O.S. 2001, Section 1.2, is amended to read as follows:

A. There is hereby created the Workers' Compensation Court which shall consist of ~~ten (10)~~ eight (8) judges. Each judge of the Court shall be appointed to a designated numbered position on the Court. ~~The positions shall be numbered one through ten.~~ The initial terms of the judges by position number shall expire on the following dates:

Position 1 shall expire 7-1-84, provided this position shall terminate permanently effective 7-1-2003.

Position 2 shall expire 7-1-84.

Position 3 shall expire 7-1-84, provided this position shall terminate permanently effective 7-1-2003.

Position 4 shall expire 7-1-82.

Position 5 shall expire 7-1-82.

Position 6 shall expire 7-1-80.

Position 7 shall expire 7-1-80.

Position 8 shall expire 7-1-88.

Position 9 shall expire 7-1-88.

Position 10 shall expire 7-1-96 after being appointed under the provisions hereinafter set forth effective September 1, 1993.

Thereafter, each position shall be filled by a judge appointed to serve a six-year term.

Provided the judges serving unexpired terms on the State Industrial Court shall serve on the Workers' Compensation Court until their terms expire only as provided herein. The judges of the State Industrial Court whose terms expire March 14, 1979, shall serve in Positions 6 and 7 until that date, and the judge whose term expires March 14, 1981, shall serve in Position 5 until that date. Upon expiration of these terms, the Governor shall appoint judges to serve the remainder of the initial terms designated in this section. When a vacancy on the Court occurs or is certain to occur or for initial appointments to the Court, the Judicial Nominating Commission shall choose and submit to the Governor and the Chief Justice of the Supreme Court the names of three persons, in addition to the name of the incumbent judge, if any, for each appointment, each of whom has previously notified the Commission in writing that he or she will serve as a judge if appointed. The Governor shall appoint one of the nominees to fill the vacancy, but if the Governor fails to do so within sixty (60) days, the Chief Justice of the

Supreme Court shall appoint one of the nominees, the appointment to be certified to the Secretary of State.

B. A judge of the Court shall have been licensed to practice law in this state for a period of not less than five (5) years prior to appointment. Each judge, before entering upon the duties of office, shall take and subscribe to an oath of office and file the same with the Secretary of State. Each judge shall continue to serve until his or her successor has been appointed and qualified. A judge shall be eligible for reappointment, provided that the judge may be removed for cause by the Court on the Judiciary prior to the expiration of his or her term.

C. Each judge shall receive a salary equal to that paid to a district judge of this state, and shall devote full time to his or her duties and shall not engage in the private practice of law during the term in office.

D. The Governor shall appoint from among the judges of the Workers' Compensation Court a presiding judge of that Court who shall serve for a two-year term commencing with the initial appointment beginning January 1, 1987. Any judge so appointed shall not serve more than two times in succession. The presiding judge shall preside at all hearings held by the Court, preside at such meetings of the judges of the Court as may be necessary and perform such other supervisory duties as the needs of the Court may require. The presiding judge may designate one of the other judges to act as presiding judge in his or her place whenever necessary during the disqualification, disability, or absence of the presiding judge. During the disqualification, disability, or absence of the presiding judge, the acting presiding judge shall exercise all of the powers of the presiding judge.

E. The Court shall have the authority to adopt reasonable rules within its respective areas of responsibility including the rules of procedure for the Court en banc, after notice and public hearing,

for effecting the purposes of the Workers' Compensation Act. All of the judges of the Court shall be present at all meetings wherein rules are adopted or amended. All rules, upon adoption, shall be submitted to the Supreme Court, which shall either approve or disapprove them within thirty (30) days. All rules, upon approval by the Supreme Court, shall be published and be made available to the public and, if not inconsistent with the law, shall be binding in the administration of the Workers' Compensation Act.

F. The Court is hereby designated and confirmed as a court of record, with respect to any matter within the limits of its jurisdiction, and within such limits the judges thereof shall possess the powers and prerogatives of the judges of the other courts of record of this state, including the power to punish for contempt those persons who disobey a subpoena, or refuse to be sworn or to answer as a witness, when lawfully ordered to do so.

G. The principal office of the Court shall be situated in the City of Oklahoma City in quarters assigned by the Department of Central Services. The Court may hold hearings in any city of this state.

H. All county commissioners and presiding district judges of this state shall make quarters available for the conducting of hearings by a judge of the Court upon request by the Court.

I. The judges of the Court shall determine the qualifications necessary for the job of Administrator. Said qualifications shall be submitted to the Chief Justice of the Supreme Court for approval, disapproval or modification.

J. Judges of the Workers' Compensation Court may punish for direct contempt pursuant to Sections 565, 565.1 and 566 of Title 21 of the Oklahoma Statutes.

SECTION 13. Section 2 of this act shall become effective July 1, 2004.

SECTION 14. Sections 1 and 3 through 11 of this act shall become effective November 1, 2003.

SECTION 15. Section 12 of this act shall become effective July 1, 2003.

SECTION 16. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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