STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

2ND CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 81

By: Morgan and Robinson of the Senate

and

Mitchell and Bonny of the House

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to fees; amending 12 O.S. 2001, Section 158.1, which relates to private process servers; modifying private process server license filing fee; amending 12 O.S. 2001, Section 1764, which relates to filing fees for small claims court; modifying fee for small claims court; amending 28 O.S. 2001, Section 31, which relates to fees of court clerks; modifying fees for marriage licenses; deleting fee for storage and indexing of wills; modifying mailing fees; amending 28 O.S. 2001, Section 152, which relates to flat fees in civil cases; modifying fee for actions for divorce, alimony without divorce, separate maintenance, custody or support; modifying fee for probate and guardianship actions; modifying fee for civil actions; providing a distinction in civil actions; amending 28 O.S. 2001, Section 152.1, which relates to charges in addition to flat fees in civil actions; modifying certain postage charges; modifying fee when a jury is requested; providing a new fee for motion for summary judgment or summary disposition of issue; amending 28 O.S. 2001, Section 153, which relates to costs in criminal cases; modifying certain costs in criminal cases; amending 28 O.S. 2001, Section 155.1, which relates to fees for preparing and transmitting record for appellate review; modifying fees for preparing and transmitting record for appellate review; providing a distinction between nonjury trials and jury trials; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 12 O.S. 2001, Section 158.1, is amended to read as follows:

Section 158.1 A. Service and return of process in civil cases may be by an authorized licensed private process server. The

presiding judge of the judicial administrative district in which the county is located, or an associate district judge or district judge of the county as may be designated by the presiding judge, shall be authorized to issue a license to make service of process in civil cases to persons deemed qualified to do so.

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

C. The applicant filing for a license shall:

1. Pay a license fee of Thirty-five Dollars ($35.00), and the regular docketing, posting, mailing, and filing fees prescribed by law. The license shall contain the name, address, a brief description of the licensee, and, at the discretion of the district court clerk, a recent photograph of the licensee. The license shall state that the licensee is an officer of the court only for the purpose of service of process and only within the county in which the license is issued. The license shall be carried by the licensee while on duty as a private process server. At the end of one (1) calendar year from the date of issuance of the initial license, the license shall be renewed for a period of one (1) year. The license shall be renewed each succeeding year. A fee of Five Dollars ($5.00) shall be charged for each license renewal. Upon an annual filing of a certified copy of a license issued pursuant to the provisions of this paragraph and payment of a filing fee of ~~Ten Dollars ($10.00)~~ Twenty-five Dollars ($25.00) to the court clerk of any county within this state, a licensed process server may serve process in that county for the district court having jurisdiction for that county; or

2. Pay a license fee of One Hundred Fifty Dollars ($150.00), and the regular docketing, posting, mailing, and filing fees

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

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

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

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

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

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

H. The district attorney of the county wherein a license authorized under this act has been issued may file a petition in the district court to revoke the license issued to any licensee, as authorized pursuant to the provisions of this section, alleging the violation by the licensee of any of the provisions of the law. After at least ten (10) days' notice by certified mail to the licensee, the chief or presiding judge, sitting without jury, shall hear the petition and enter an order thereon. If the license is revoked, the licensee shall not be permitted to reapply for a license for a period of five (5) years from the date of revocation. Notwithstanding any other provisions of this section, any licensee whose license has been revoked one time shall pay the sum of One Thousand Dollars ($1,000.00) as a renewal fee. If a second revocation occurs, the chief or presiding judge shall not allow an applicant to renew the license.

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

SECTION 2. AMENDATORY 12 O.S. 2001, Section 1764, is amended to read as follows:

Section 12-1764. A fee of ~~Thirty-five Dollars ($35.00)~~ Forty-five Dollars ($45.00) shall be charged and collected for the filing of the affidavit for the commencement of any action for an amount of One Thousand Five Hundred Dollars ($1,500.00) or less. Any action in excess of One Thousand Five Hundred Dollars ($1,500.00) shall be subject to the filing fees provided in Title 28 of the Oklahoma Statutes for the same kind of action as filed in district court. For the filing of any counterclaim or setoff, fees shall be charged and collected pursuant to Section 152.1 of Title 28 of the Oklahoma Statutes for the mailing of the copy of the affidavit and for each notice mailed. Except as otherwise provided in Section 1772 of this title, no other fee or charge shall be collected by any officer for any service rendered pursuant to the provisions of the Small Claims Procedure Act, or for the taking of affidavits for use in connection with any action tried pursuant to the provisions of the Small Claims Procedure Act. If the affidavit and order are served by the sheriff or a licensed private process server, the court clerk shall collect the usual fee for the sheriff, which shall be taxed as costs in the case. The fee paid to a licensed private process server, as approved by the court, shall be taxed as additional costs in the case. After judgment, the court clerk shall issue such process and shall be entitled to collect only such fees and charges as are allowed by law for like services in other actions. All fees collected as authorized by this section and Section 1772 of this title shall be deposited with other fees that are collected by the district court. Any statute providing for an award of attorneys fees shall be applicable to the small claims division if the attorney makes an appearance in the case, whether before or after judgment or on hearing for disclosure of assets.

SECTION 3. AMENDATORY 28 O.S. 2001, Section 31, is amended to read as follows:

Section 31. Notwithstanding any other provision of law, the clerk of the district court, or the clerk of any other court of record, shall charge and collect the following fees for services by them respectively rendered and none others, except as otherwise provided by law:

Approving bond or undertaking,
including certificate and seal
.....$3.00

Making copy of an instrument of
record or on file, first page.....$1.00
subsequent pages (each)..... $0.50

Certifying to any instrument (each)..... $0.50

Authentication of court records.....$5.00

Receiving and paying out money in
pursuance of law or order of court 1%
provided, however, that such
charge shall not exceed $300.00.

In any case which has been on file and
pending without activity for a period
of five (5) years and in which there
is on hand, unexpended, a balance of
deposits for costs, there shall be a
charge annually thereafter for
accounting, to be deducted from any
such balance, and to the extent
available therefor, an annual fee of $3.00

Application, issuing, entering return
and recording marriage license if the
applicants submit a certificate that
states the applicants have completed
the premarital counseling program

pursuant to Section ~~2 of this act~~ 5.1 of Title 43 of the Oklahoma Statutes $5.00

Application, issuing, entering return and recording marriage license if the applicants do not submit a certificate that states the applicants have completed the premarital counseling program pursuant to Section ~~2 of this act~~ 5.1 of Title 43 of the Oklahoma Statutes.....~~$25.00~~ $50.00

Conveyance of full-blood Indian heirs to interest in inherited lands, same to be accounted for as other fees $5.00

~~Storage and indexing of wills.....$5.00~~

Posting notice outside the courthouse.....$10.00

Mailing, by any type of mail, writs, warrants, orders, process, command or notice for each person .....~~$7.00~~ ..... $10.00, or actual expense, whichever is greater, except ordinary mailing of first-class mail in probate cases, for each case .....~~$7.00~~ .....$10.00, or actual expense, whichever is greater.

For the actual cost of all postage in each case in excess of .....~~$7.00~~ ..... $10.00, or actual expense, whichever is greater.

For filing and indexing of disclaimers other than in pending probate or civil cases pursuant to the provisions of

Section 751 et seq. of Title 60 of the

Oklahoma Statutes $5.00

SECTION 4. AMENDATORY 28 O.S. 2001, Section 152, is amended to read as follows:

Section 152. A. In any civil case filed in a district court, the court clerk shall collect, at the time of filing, the following flat fees, none of which shall ever be refundable, and which shall be the only charge for court costs, except as is otherwise specifically provided for by law:

1. Actions for divorce, alimony without divorce, separate maintenance, custody or support.....~~$82.00~~ $140.00
2. Any ancillary proceeding to modify or vacate a divorce decree providing for custody or support.....$40.00
3. Probate and guardianship.....~~$82.00~~ $132.00
4. Annual guardianship report.....$30.00
5. Any proceeding for sale or lease of real or personal property or mineral interest in probate or guardianship.....$40.00
6. Any proceeding to revoke the probate of a will.....$40.00
7. Judicial determination of death.....$55.00
8. Adoption.....$102.00
9. Civil actions for an amount of Ten Thousand Dollars ($10,000.00) or less and condemnation.....~~$82.00~~ $147.00

10. Civil actions for an amount of Ten Thousand One Dollars ($10,001.00) or more $160.00

11. Garnishment.....$20.00

~~11.~~ 12. Continuing wage garnishment.....$60.00

~~12.~~ 13. Any other proceeding after judgment.....$30.00

~~13.~~ 14. All others, including but not limited to actions for forcible entry and detainer, judgments from all other courts, including the Workers' Compensation Court.....$82.00

~~14.~~ 15. Notice of renewal of judgment.....$20.00

B. In addition to the amounts collected pursuant to subsection A of this section, the sum of Six Dollars ($6.00) shall be assessed and credited to the Law Library Fund.

C. Of the amounts collected pursuant to paragraph 8 of subsection A of this section, the sum of Twenty Dollars ($20.00) shall be deposited to the credit of the Voluntary Registry and Confidential Intermediary program and the Mutual Consent Voluntary Registry established pursuant to the Oklahoma Adoption Code.

D. Of the amounts collected pursuant to subsection A of this section, the sum of Ten Dollars ($10.00) shall be deposited to the credit of the Child Abuse Multidisciplinary Account.

E. In any case in which a litigant claims to have a just cause of action and that, by reason of poverty, the litigant is unable to pay the fees and costs provided for in this section and is financially unable to employ counsel, upon the filing of an affidavit in forma pauperis executed before any officer authorized by law to administer oaths to that effect and upon satisfactory showing to the court that the litigant has no means and is, therefore, unable to pay the applicable fees and costs and to employ counsel, no fees or costs shall be required. The opposing party or

parties may file with the court clerk of the court having jurisdiction of the cause an affidavit similarly executed contradicting the allegation of poverty. In all such cases, the court shall promptly set for hearing the determination of eligibility to litigate without payment of fees or costs. Until a final order is entered determining that the affiant is ineligible, the clerk shall permit the affiant to litigate without payment of fees or costs. Any litigant executing a false affidavit or counter affidavit pursuant to the provisions of this section shall be guilty of perjury.

SECTION 5. AMENDATORY 28 O.S. 2001, Section 152.1, is amended to read as follows:

Section 152.1 A. In civil cases, the court clerk shall collect and deposit in the court fund the following charges in addition to the flat fee:

1. For posting notices and filing certificates required by statute.....$30.00

2. For the filing of any counterclaim or setoff pursuant to Section 1758 of Title 12 of the Oklahoma Statutes.....$20.00

3. For mailing by any type of mail writs, warrants, orders, process, command, or notice for each person.....~~$7.00~~ $10.00

4. For the actual cost of all postage in each case in excess of .....~~$7.00~~ $10.00

5. For serving or endeavoring to serve each writ, warrant, order, process, command, or notice for each person in one or more counties.....$35.00

provided that if more than one person is served at the same address, one flat fee of Thirty-five Dollars ($35.00) may be charged

6. For sheriff's fees on court-ordered sales of real or personal property.....$75.00

7. When a jury is requested.....~~$60.00~~ $349.00

8. For issuing each summons for each person.....$ 5.00

9. For services of a court reporter at each trial held in the case.....$20.00

10. For filing a motion for summary judgment or summary disposition of issue(s) $50.00

The fees prescribed in paragraphs 5 and 6 of subsection A of this section shall be paid by the court clerk into the Sheriff's Service Fee Account, created pursuant to the provisions of Section 514.1 of Title 19 of the Oklahoma Statutes, of the sheriff in the county where service is made or attempted or where the sheriff's sale occurs. All other fees shall be deposited into the local court fund in the county where collected.

B. Of the amounts collected pursuant to the provisions of paragraphs 1, 2 and 7 of subsection A of this section, the sum of Ten Dollars ($10.00) shall be deposited to the credit of the Child Abuse Multidisciplinary Account.

SECTION 6. AMENDATORY 28 O.S. 2001, Section 153, is amended to read as follows:

Section 153. A. The clerks of the courts shall collect as costs in every criminal case for each offense of which the defendant is convicted, irrespective of whether or not the sentence is deferred, the following flat charges and no more, except for standing and parking violations and for charges otherwise provided

for by law, which fee shall cover docketing of the case, filing of all papers, issuance of process, warrants, orders, and other services to the date of judgment:

1. For each defendant convicted of exceeding the speed limit by at least one (1) mile per hour but not more than ten (10) miles per hour, whether charged individually or conjointly with others..... ~~$57.00~~ $77.00

2. For each defendant convicted of a misdemeanor traffic violation other than an offense provided for in paragraph 1 or 5 of this subsection, whether charged individually or conjointly with others..... ~~$73.00~~ $88.00

3. For each defendant convicted of a misdemeanor, other than for driving under the influence of alcohol or other intoxicating substance or an offense provided for in paragraph 1 or 2 of this subsection, whether charged individually or conjointly with others..... $83.00

4. For each defendant convicted of a felony, other than for driving under the influence of alcohol or other intoxicating substance, whether charged individually or conjointly with others..... $103.00

5. For each defendant convicted of the misdemeanor of driving under the influence of alcohol or other intoxicating substance, whether charged individually or conjointly with others..... ~~$183.00~~

..... $283.00

6. For each defendant convicted of the felony of driving under the influence of alcohol or other intoxicating substance, whether charged individually or conjointly with others..... ~~$183.00~~

..... $283.00

7. For the services of a court reporter at each preliminary hearing and trial held in the case..... $20.00

8. For each time a jury is requested..... $30.00

9. A sheriff's fee for serving or endeavoring to serve each writ, warrant, order, process, command, or notice or pursuing any fugitive from justice

a. within the county..... $30.00, or mileage as established by the Oklahoma Statutes, whichever is greater, or

b. outside of the county..... $30.00, or actual, necessary expenses, whichever is greater

10. For the services of a language interpreter, other than an interpreter appointed pursuant to the provisions of the Oklahoma Interpreter for the Deaf Act, at each hearing held in the case, the actual cost of the interpreter.

B. In addition to the amount collected pursuant to paragraphs 2 through 5 of subsection A of this section, the sum of Six Dollars ($6.00) shall be assessed and credited to the Law Library Fund

pursuant to Section 1201 et seq. of Title 20 of the Oklahoma Statutes.

C. Prior to conviction, parties in criminal cases shall not be required to pay, advance, or post security for the services of a language interpreter or for the issuance or service of process to obtain compulsory attendance of witnesses.

D. The fees collected pursuant to this section shall be deposited into the court fund, except the following:

1. The sheriff's fee provided for in paragraph 9 of subsection A of this section which, when collected, shall be deposited in the Sheriff's Service Fee Account, created pursuant to the provisions of Section 514.1 of Title 19 of the Oklahoma Statutes, of the sheriff in the county in which service is made or attempted;

2. The sheriff’s fee provided for in Section 153.2 of this title; and

3. The witness fees paid by the district attorney pursuant to the provisions of Section 82 of this title which, if collected by the court clerk, shall be transferred to the district attorney’s office in the county where witness attendance was required. Fees transferred pursuant to this paragraph shall be deposited in the district attorney’s maintenance and operating expense account.

E. Costs required to be collected pursuant to this section shall not be dismissed or waived; provided, if the court determines that a person needing the services of a language interpreter is indigent, the court may waive all or part of the costs or require the payment of costs in installments.

F. As used in this section, "convicted" means any final adjudication of guilt, whether pursuant to a plea of guilty or nolo contendere or otherwise, and any deferred judgment or suspended sentence.

G. A court clerk may accept in payment for any fee, fine, or cost for violation of any traffic law a nationally recognized credit

card issued to the applicant. The court clerk may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of the payment as a service charge for the acceptance of the credit card. For purposes of this paragraph, "nationally recognized credit card" means any instrument or device, whether known as a credit card, credit plate, charge plate, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining goods, services, or anything else of value and which is accepted by over one thousand (1,000) merchants in this state. The court clerk shall determine which nationally recognized credit cards will be accepted as payment for fees; provided, the court clerk must ensure that no loss of state revenue will occur by the use of such cards.

H. Upon receipt of payment of fines and costs for offenses charged prior to July 1, 1992, the court clerk shall apportion and pay Thirteen Dollars ($13.00) per conviction to the court fund.

SECTION 7. AMENDATORY 28 O.S. 2001, Section 155.1, is amended to read as follows:

Section 155.1 ~~The~~ A. In nonjury trials, the clerk of the district court shall charge the sum of ~~One Hundred Dollars ($100.00)~~ Two Hundred Dollars ($200.00) for preparing, assembling, indexing, and transmitting the record for appellate review. This fee shall be paid by the party taking the appeal and shall be entered as costs in the action. If more than one party to the action shall prosecute an appeal from the same judgment or order, the fee shall be paid by the party whose petition in error is determined by the district court or by the appellate court to commence the principal appeal. The fees collected hereunder shall be paid into the court fund.

B. In jury trials, the clerk of the district court shall charge the sum of Three Hundred Dollars ($300.00) for preparing, assembling, indexing, and transmitting the record for appellate review. This fee shall be paid by the party taking the appeal and

shall be entered as costs in the action. If more than one party to the action shall prosecute an appeal from the same judgment or order, the fee shall be paid by the party whose petition in error is determined by the district court or by the appellate court to commence the principal appeal. The fees collected hereunder shall be paid into the court fund.

SECTION 8. This act shall become effective July 1, 2003.

SECTION 9. 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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