STATE OF OKLAHOMA

1st Session of the 51st Legislature (2007)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL 634 By: Lerblance

COMMITTEE SUBSTITUTE

An Act relating to civil procedure; establishing procedures for transfer of certain cases; amending 12 O.S. 2001, Sections 696.2, 696.3, as amended by Section 1, Chapter 181, O.S.L. 2004, 1083, 2004.1, as last amended by Section 21, Chapter 468, O.S.L. 2002, 2005, Section 22, Chapter 468, O.S.L. 2002, 2006, and Section 1, Chapter 370, O.S.L. 2004 (12 O.S. Supp. 2006, Sections 696.3, 2004.1, 2005.2 and 2011.1), which relate to judgments, decrees and appealable orders, actions not at issue, subpoena, service, entry of appearance, time and frivolous claim; modifying certain service requirements; specifying actions eligible for dismissal; establishing requirements for subpoena for production in certain cases; allowing alternate forms of delivery of certain documents; directing calculation of certain deadlines; stating exception; adding acceptable methods of service; establishing procedures for certain type of service; defining term; stating when certain service is complete; allowing certain notice in entry of appearance; requiring provision of certain address; conforming language; modifying procedures for certain determination; providing for codification; and providing an effective date.

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 140.1 of Title 12, unless there is created a duplication in numbering, reads as follows:

When the court orders the transfer of a case upon a showing by a party that the venue is or should be in some other county, the clerk of the court shall prepare a transcript of all the papers filed, orders entered, and a bill of the costs accrued. The clerk shall collect a new filing fee and shall forthwith transmit by certified mail such files and transcript of the cause and the filing fee which shall be due to the clerk of the court to which transfer is ordered. Unless otherwise ordered by the court, the plaintiff shall be responsible for appropriate filing fees when a case is brought in the wrong venue and transferred to a court having proper venue. In all other instances, the moving party shall be responsible for fees. The fees for the transfer shall be paid within ten (10) days of the transfer order.

SECTION 2. AMENDATORY 12 O.S. 2001, Section 696.2, is amended to read as follows:

Section 696.2 A. After the granting of a judgment, decree or appealable order, it shall be reduced to writing in conformance with Section 696.3 of this title, signed by the court, and filed with the court clerk. The court may direct counsel for any party to the action to prepare a draft for the signature of the court, in which event, the court may prescribe procedures for the preparation and timely filing of the judgment, decree or appealable order, including, but not limited to, the time within which it is to be submitted to the court. If a written judgment, decree or appealable

order is not submitted to the court by the party directed to do so within the time prescribed by the court, then any other party may reduce it to writing and submit it to the court.

B. A file-stamped copy of every judgment, decree, or appealable order shall be ~~mailed to~~ served upon all parties, including those parties who are ~~not~~ in default for failure to appear in the action, by the counsel for a party or party who prepared it, or by a person designated by the trial court, promptly and no later than three (3) days after it is filed. The ~~mailing~~ service shall be done in the manner provided in Section 2005 of ~~Title 12 of the Oklahoma Statutes~~ this title for the service of papers, and a certificate of service must be filed with the court clerk. If the judgment, decree or appealable order was prepared by the court, the court may direct a bailiff, court clerk or party to perform the ~~mailing~~ service and certificate of service required by this subsection. In cases in which a party has failed to appear in the action, it shall be sufficient to mail a file-stamped copy of the judgment, decree or appealable order by first-class mail to the party's last-known address, or if the service of process was on a registered agent, to the address of the registered agent. No mailing is required to a party who has failed to appear in the action if that party was served by publication.

C. In any probate, guardianship, or conservatorship proceeding commenced on or after October 1, 1996, where a party, heir, devisee,

legatee, or other interested party or representative of a party has received notice of a hearing which resulted in the issuance of a judgment, decree, or appealable order and did not file an entry of appearance, no further ~~mailing~~ service of any judgment, decree, or appealable order shall be required to be sent to such party, heir, devisee, legatee, or other interested party or representative of a party, unless otherwise specifically required by law. No certificate of ~~mailing~~ service shall be required to be filed where no party, heir, devisee, legatee, or other interested party, or representative of a party has filed an entry of appearance.

D. The filing with the court clerk of a written judgment, decree or appealable order, prepared in conformance with Section 696.3 of this title and signed by the court, shall be a jurisdictional prerequisite to the commencement of an appeal. The following shall not constitute a judgment, decree or appealable order: A minute entry; verdict; informal statement of the proceedings and relief awarded, including, but not limited to, a letter to a party or parties indicating the ruling or instructions for preparing the judgment, decree or appealable order.

E. A judgment, decree or appealable order, whether interlocutory or final, shall not be enforceable in whole or in part unless or until it is signed by the court and filed; except that the adjudication of any issue shall be enforceable when pronounced by the court in the following actions: divorce; separate maintenance;

annulment; post-decree matrimonial proceedings; paternity; custody; adoption; termination of parental rights; mental health; guardianship; juvenile matters; habeas corpus proceedings; or proceedings for temporary restraining orders, temporary injunctions, permanent injunctions, conservatorship, probate proceedings, special executions in foreclosure actions, quiet title actions, partition proceedings or contempt citations. The time for appeal shall not begin to run until a written judgment, decree or appealable order, prepared in conformance with Section 696.3 of this title, is filed with the court clerk, regardless of whether the judgment, decree, or appealable order is effective when pronounced or when it is filed.

F. The preparation of orders, decisions and awards and the taking of appeals in workers' compensation cases shall be governed by the provisions of Title 85 of the Oklahoma Statutes.

SECTION 3. AMENDATORY 12 O.S. 2001, Section 696.3, as amended by Section 1, Chapter 181, O.S.L. 2004 (12 O.S. Supp. 2006, Section 696.3), is amended to read as follows:

Section 696.3 A. Judgments, decrees and appealable orders that are filed with the clerk of the court shall contain:

1. A caption setting forth the name of the court, the names and designation of the parties, the file number of the case and the title of the instrument;

2. A statement of the disposition of the action, proceeding or motion, including a statement of the relief awarded to a party or

parties and the liabilities and obligations imposed on the other party or parties, including the amount of any prejudgment interest;

3. The signature and title of the court; and

4. Any other matter approved by the court.

B. Judgments, decrees and appealable orders that are filed with the clerk of the court may contain a statement of costs, attorney fees and interest other than prejudgment interest, or any of them, if they have been determined prior to the time the judgment, decree or appealable order is signed by the court in accordance with this section.

C. The clerk shall endorse on the judgment, decree or appealable order the date it was filed and the name and title of the clerk.

D. A file-stamped copy of the judgment, decree, or appealable order shall be ~~mailed to~~ served upon all parties, including those parties who are ~~not~~ in default for failure to appear in the action, as provided in Section 696.2 of this title.

SECTION 4. AMENDATORY 12 O.S. 2001, Section 1083, is amended to read as follows:

Section 1083. Any action ~~which is not at issue and~~ in which no pleading has been filed or other action taken for a year and in which no motion or demurrer has been pending during any part of said year shall be dismissed without prejudice by the court on its own motion after notice to the parties or their attorneys of record;

providing, the court may upon written application and for good cause shown, by order in writing allow the action to remain upon its docket.

SECTION 5. AMENDATORY 12 O.S. 2001, Section 2004.1, as last amended by Section 21, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2006, 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.

2. A subpoena shall issue from the court where the action is pending, and it may be served at any place within the state.

a. Deposition in Action Pending Outside of This State. If the action is pending outside of this state, the district court for the county in which the deposition is to be taken shall issue the subpoena and, upon

application, any other order or process that may be appropriate in aid of discovery in that action. Proof of service of a notice to take deposition constitutes a sufficient authorization for the issuance ~~by the clerk~~ of subpoenas for the persons named or described therein~~; provided, any person aggrieved by the issuance or enforcement of the subpoena may obtain judicial review upon the filing of a civil action and payment of the required fees.~~,

b. Subpoena for Production or Inspection in Action Pending Outside of This State.

If the action is pending outside of this state, the district court for the county in which the production or inspection is to be made shall issue a subpoena for production or inspection as provided in subparagraph b of paragraph 1 of subsection A of this section, if separate from a subpoena commanding the attendance of a person, and upon application, any other order or process that may be appropriate in aid of discovery in that action. Proof of service of a notice of request for production of documents without a deposition constitutes a sufficient authorization for the issuance of a subpoena for production or inspection, and

c. Judicial Assistance or Review Available.

Any person seeking an order or process in aid of discovery or any person aggrieved by the issuance or enforcement of a subpoena issued in aid of discovery for an action pending outside of this state may obtain judicial assistance or review upon the filing of a civil action and payment of required fees.

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

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

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

6. Notwithstanding any other provision of law, a court clerk of this state shall not be subject to a subpoena in matters relating to court records unless the court makes a specific finding that the appearance and testimony of the court clerk are both material and necessary because of a written objection to the introduction of the court records made by a party prior to trial.

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

produce them until the date specified in this subpoena, and if an objection is filed, until the court rules on the objection."

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

C. PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

1. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney, or both, in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney 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. An objection that all or a portion of the requested material will or should be withheld on a claim that it is privileged or subject to protection as trial

preparation materials shall be made within this time period and in accordance with subsection D of this section. 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. For failure to object in a timely fashion, the court may assess reasonable costs and attorney fees or take any other action it deems proper; however, a privilege or the protection for trial preparation materials shall not be waived solely for a failure to timely object under this section. 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 3 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 or her may be deemed a contempt of the court from which the subpoena issued.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2004.3 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. In lieu of mailing a copy of process or other papers by certified mail, return receipt requested and delivery restricted to the addressee as required or allowed by Title 12 of the Oklahoma Statutes, a party or attorney may send the same by commercial courier service, overnight delivery service, or other reliable personal delivery service to the party addressed, in each instance evidenced by a written or electronic receipt signed by the addressee showing to whom delivered, date of delivery, address where delivered, and person or entity effecting delivery.

B. In lieu of mailing a copy of papers by ordinary mail as required or allowed by Title 12 of the Oklahoma Statutes, a party or attorney may send same by commercial courier service, overnight delivery service, or other reliable personal delivery service to the party addressed.

C. When one of the methods described in this section is utilized, all deadlines based upon service shall be calculated in the same manner as if the service had been by mail.

D. This section shall not apply to the filing of any document with a court clerk. The filing of documents with a court clerk remains governed by the Oklahoma statutes and court rules.

SECTION 7. AMENDATORY 12 O.S. 2001, Section 2005, is amended to read as follows:

Section 2005.

SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

A. SERVICE: WHEN REQUIRED. Except as otherwise provided in this title, every order required by its terms to be served, every pleading subsequent to the original petition unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party or any other person unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Section 2004 of this title.

B. SERVICE: HOW MADE. Whenever pursuant to this act service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service directly upon the party ~~himself~~ is ordered by the court or final judgment has been rendered and the time for appeal has expired. Service upon the attorney or upon a party shall be made by delivering a copy to ~~him~~ the attorney or the party or by mailing it

or sending it by third-party commercial carrier for delivery within three (3) calendar days to ~~him~~ the attorney or the party at ~~his~~ the last-known address of the attorney or the party or~~, if~~ by electronic means if the attorney or party consents in writing to receiving service in a particular case by electronic means and the attorney or party provides instructions for making the electronic service consented to by the attorney or party. The required written consent and electronic service instructions may be made in the entry of appearance filed by the attorney or the party pursuant to subsection A of Section 2005.2 of this title or may be made in another pleading filed by the attorney or party in the case. For purposes of this subsection, "electronic means" includes communications by facsimile or electronic mail through the internet, commonly known as e-mail. If no mailing address, physical address or electronic means address for the attorney or party is known, service is effected by leaving it with the clerk of the court. Delivery of a copy within this section means:

1. Handing it to the attorney or to the party; or

2. Leaving it at ~~his~~ the office of the attorney or the party with ~~his~~ the attorney's or party's clerk or other person in charge thereof; or

3. If there is no one in charge, leaving it in a conspicuous place therein; or

4. If the office is closed or the person to be served has no office, leaving it at his or her dwelling house or usual place of abode with some person residing therein who is fifteen (15) years of age or older.

Except for service of the summons and the original petition, service by mail is complete upon mailing, service by commercial carrier is complete upon delivery to the commercial carrier, and service by electronic means is complete upon transmission, unless the party making service is notified that the copy or paper served was not received by the party served. If the court clerk or a party is required to serve a judgment or other paper by first-class mail, service in accordance with any method permitted by this section is sufficient to comply with such requirement.

C. SERVICE: NUMEROUS DEFENDANTS. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

D. FILING. All papers after the petition required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter, but the court may on motion of a party or on its own initiative order that depositions upon oral examination and interrogatories, requests for documents, requests for admission, and answers and responses thereto not be filed unless on order of the court or for use in the proceeding. All papers filed with the court shall include a statement setting forth the names of the persons served and the date, place, and method of service.

E. FILING WITH THE COURT DEFINED.

1. The filing of papers with the court as required by this act shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

2. A duplicate of any paper shall be acceptable for filing with the court and shall have the same force and effect as an original. For purposes of this section a duplicate is a copy produced on unglazed white or eggshell paper by mechanical, chemical or electronic means, or by other equivalent technique, which accurately reproduces the original. A duplicate that is acceptable for filing shall not be refused because any signatures thereon are duplicates.

A carbon copy shall not be considered a duplicate for purposes of this section.

3. Papers may be filed by facsimile or other electronic transmission directly to the court or the court clerk as permitted by a rule of court. The Administrative Office of the Courts shall promulgate rules for the district court for the filing of papers transmitted by facsimile or other electronic transmission device. Rules for facsimile or other electronic transmission filing must have the approval of the Supreme Court.

4. The clerk shall not refuse to accept for filing any paper solely because it is not presented in proper form as required by these rules or any local rules or practices.

SECTION 8. AMENDATORY Section 22, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2006, Section 2005.2), is amended to read as follows:

Section 2005.2

ENTRY OF APPEARANCE; OUT-OF-STATE COUNSEL; WITHDRAWAL; ADDRESS OF RECORD

A. ENTRY OF APPEARANCE. Every party to any civil proceeding in the district courts shall file an entry of appearance by counsel or personally as an unrepresented party when no other pleading or other paper in the case by that counsel or party has been filed, but no later than the first filing of any pleading or other paper in the case by that counsel or party. In the event a party changes, adds,

or substitutes counsel, new counsel must immediately file an entry of appearance as set forth in this section. The entry of appearance shall include the name and signature of counsel or the unrepresented party, the name of the party represented by counsel, the mailing address, telephone and fax numbers, Oklahoma Bar Association number, and name of the law firm, if any. In the event that counsel or a party consents to receive service by electronic means in a particular case or civil proceeding pursuant to subsection B of Section 2005 of this title, counsel or a party may give notice of the required written consent within counsel's or the party's entry of appearance. Counsel or the party giving the required written consent shall provide the electronic means address or addresses to which service by electronic means will be accepted by the consenting counsel or party. Copies shall be served on all other parties of record. Filing an entry of appearance as required by this section does not waive any defenses enumerated in subsection B of Section 2012 of Title 12 of the Oklahoma Statutes.

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

motion. The motion shall show that the requirements of Section 5 of Article 2 of the Rules Creating and Controlling the Oklahoma Bar Association are fulfilled. The required entry of appearance of the associate attorney shall be filed with the motion and affidavit.

C. WITHDRAWAL OF COUNSEL. A motion to withdraw may be filed at any time. All motions to withdraw shall be accompanied by a proposed order. No counsel may withdraw from a pending case without leave of the court. The counsel filing the motion shall serve a copy of the motion on the client and all attorneys of record. All motions to withdraw shall be signed by the party on whose behalf counsel has previously appeared or contain a certificate by counsel that:

1. The client has knowledge of counsel's intent to withdraw; or

2. Counsel has made a good faith effort to notify the client and the client cannot be located.

In civil actions, the court may grant a motion to withdraw where there is no successor counsel only if the withdrawing attorney clearly states in the body of the motion the name and address of the party. The order allowing withdrawal shall notify the unrepresented party that an entry of appearance must be filed either by the party pro se or by substitute counsel within thirty (30) days from the date of the order permitting the withdrawal and that a failure of the party to prosecute or defend the case may result in dismissal of the case without prejudice or a default judgment against the party.

If no entry of appearance is filed within thirty (30) days from the date of the order permitting withdrawal, then the unrepresented party, other than a corporation, is deemed to be representing himself or herself and acting pro se. In all cases, counsel seeking to withdraw shall advise the court if the case is currently set for motion docket, pretrial conference, or trial.

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

E. NOTICE OF CHANGE OF ADDRESS. All attorneys and unrepresented parties shall give immediate notice to the court of a change of address by filing notice with the court clerk. <u>If the attorney or unrepresented party has provided written consent to receive service by electronic means pursuant to subsection A of this section, or in another pleading, the attorney or party shall include a change of electronic mailing address as part of the notice</u>

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

SECTION 9. AMENDATORY 12 O.S. 2001, Section 2006, is amended to read as follows:

Section 2006.

TIME

A. COMPUTATION. 1. In computing any period of time prescribed or allowed by this title, by the rules of any court of this state, or by order of a court of this state, 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 legal holiday as defined by Section 82.1 of Title 25 of the Oklahoma Statutes or any other day when the office of the court clerk does not remain open for public business until the regularly scheduled closing time, in which event the period runs until the end of the next day which is not a legal holiday or a day

when the office of the court clerk does not remain open for public business until the regularly scheduled closing time. Except for the times provided in Sections 765, 990.3, 1148.4, 1148.5, 1148.5A, and 1756 of this title, when the period of time prescribed or allowed is less than eleven (11) days, intermediate legal holidays and any other day when the office of the court clerk does not remain open for public business until the regularly scheduled closing time, shall be excluded from the computation.

2. For actions filed on or after November 1, 1999, and on or before June 30, 2000, any period of time prescribed or allowed by this title, by the rules of any court, by an order of a court, or by any applicable statute, shall be computed pursuant to the shortest time prescribed by the law in effect before November 1, 1999, the law in effect prior to the effective date of this act, or this act, unless the court finds that to do so would result in injustice.

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<u>, THIRD-PARTY COMMERCIAL CARRIER OR ELECTRONIC MEANS</u>. 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 the party and the notice or paper is served upon the party by mail<u>, third-party commercial carrier or electronic means</u>, 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 an answer within twenty (20) days or thirty-five (35) days if pursuant to subsection A of Section 2012 of this title, after the

date of receipt or if refused, the date of refusal of the summons and petition by the defendant.

SECTION 10. AMENDATORY Section 1, Chapter 370, O.S.L. 2004 (12 O.S. Supp. 2006, Section 2011.1), is amended to read as follows:

Section 2011.1 In any action not arising out of contract, if requested the court shall, upon ~~granting~~ ruling on a motion to dismiss an action or a motion for summary judgment or subsequent to adjudication on the merits, determine whether a claim or defense asserted in the action by a nonprevailing party was frivolous. As used in this section, "frivolous" means the ~~action~~ claim or defense was knowingly asserted in bad faith, was unsupported by any credible evidence, was not grounded in fact, or was unwarranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law. Upon so finding, the court shall enter ~~a judgment ordering~~ an order requiring such nonprevailing party to reimburse the prevailing party for reasonable costs, including attorney fees, incurred with respect to such claim or defense. In addition, the court may impose any sanction authorized by Section 2011 of Title 12 of the Oklahoma Statutes.

SECTION 11. This act shall become effective November 1, 2007.

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