

THE HOUSE OF REPRESENTATIVES
Monday, April 2, 2007

ENGROSSED

Senate Bill No. 634

ENGROSSED SENATE BILL NO. 634 - By: LERBLANCE of the Senate and SULLIVAN AND KIESEL of the House.

An Act relating to civil procedure; allowing alternate forms of delivery of certain documents; directing calculation of certain deadlines; stating exception; amending 12 O.S. 2001, Section 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 2005.2 and 2011.1), which relate to service, entry of appearance, time and frivolous claim; 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:

1 SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma
2 Statutes as Section 2004.3 of Title 12, unless there is created a duplication in numbering,
3 reads as follows:

4 A. In lieu of mailing a copy of process or other papers by certified mail, return
5 receipt requested and delivery restricted to the addressee as required or allowed by Title
6 12 of the Oklahoma Statutes, a party or attorney may send the same by commercial
7 courier service, overnight delivery service, or other reliable personal delivery service to
8 the party addressed, in each instance evidenced by a written or electronic receipt signed

1 by the addressee showing to whom delivered, date of delivery, address where delivered,
2 and person or entity effecting delivery.

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

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

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

12 SECTION 2. AMENDATORY 12 O.S. 2001, Section 2005, is amended to read
13 as follows:

14 Section 2005.

15 SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

16 A. SERVICE: WHEN REQUIRED. Except as otherwise provided in this title,
17 every order required by its terms to be served, every pleading subsequent to the original
18 petition unless the court otherwise orders because of numerous defendants, every paper
19 relating to discovery required to be served upon a party or any other person unless the
20 court otherwise orders, every written motion other than one which may be heard ex
21 parte, and every written notice, appearance, demand, offer of judgment, and similar
22 paper shall be served upon each of the parties. No service need be made on parties in

1 default for failure to appear except that pleadings asserting new or additional claims for
2 relief against them shall be served upon them in the manner provided for service of
3 summons in Section 2004 of this title.

4 B. SERVICE: HOW MADE. Whenever pursuant to this act service is required or
5 permitted to be made upon a party represented by an attorney the service shall be made
6 upon the attorney unless service directly upon the party ~~himself~~ is ordered by the court
7 or final judgment has been rendered and the time for appeal has expired. Service upon
8 the attorney or upon a party shall be made by delivering a copy to ~~him~~ the attorney or
9 the party or by mailing it or sending it by third-party commercial carrier for delivery
10 within three (3) calendar days to him the attorney or the party at his the last-known
11 address of the attorney or the party or, if by electronic means if the attorney or party
12 consents in writing to receiving service in a particular case by electronic means and the
13 attorney or party provides instructions for making the electronic service consented to by
14 the attorney or party. The required written consent and electronic service instructions
15 may be made in the entry of appearance filed by the attorney or the party pursuant to
16 subsection A of Section 2005.2 of this title or may be made in another pleading filed by
17 the attorney or party in the case. For purposes of this subsection, "electronic means"
18 includes communications by facsimile or electronic mail through the internet, commonly
19 known as e-mail. If no mailing address, physical address or electronic means address for
20 the attorney or party is known, service is effected by leaving it with the clerk of the court.
21 Delivery of a copy within this section means:

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

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

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

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

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

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

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

8 E. FILING WITH THE COURT DEFINED.

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

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

20 3. Papers may be filed by facsimile or other electronic transmission directly to the
21 court or the court clerk as permitted by a rule of court. The Administrative Office of the
22 Courts shall promulgate rules for the district court for the filing of papers transmitted by

1 facsimile or other electronic transmission device. Rules for facsimile or other electronic
2 transmission filing must have the approval of the Supreme Court.

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

5 SECTION 3. AMENDATORY Section 22, Chapter 468, O.S.L. 2002 (12 O.S.
6 Supp. 2006, Section 2005.2), is amended to read as follows:

7 Section 2005.2

8 ENTRY OF APPEARANCE; OUT-OF-STATE COUNSEL;

9 WITHDRAWAL; ADDRESS OF RECORD

10 A. ENTRY OF APPEARANCE. Every party to any civil proceeding in the district
11 courts shall file an entry of appearance by counsel or personally as an unrepresented
12 party when no other pleading or other paper in the case by that counsel or party has
13 been filed, but no later than the first filing of any pleading or other paper in the case by
14 that counsel or party. In the event a party changes, adds, or substitutes counsel, new
15 counsel must immediately file an entry of appearance as set forth in this section. The
16 entry of appearance shall include the name and signature of counsel or the
17 unrepresented party, the name of the party represented by counsel, the mailing address,
18 telephone and fax numbers, Oklahoma Bar Association number, and name of the law
19 firm, if any. In the event that counsel or a party consents to receive service by electronic
20 means in a particular case or civil proceeding pursuant to subsection B of Section 2005 of
21 this title, counsel or a party may give notice of the required written consent within
22 counsel's or the party's entry of appearance. Counsel or the party giving the required

1 written consent shall provide the electronic means address or addresses to which service
2 by electronic means will be accepted by the consenting counsel or party. Copies shall be
3 served on all other parties of record. Filing an entry of appearance as required by this
4 section does not waive any defenses enumerated in subsection B of Section 2012 of Title
5 12 of the Oklahoma Statutes.

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

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

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

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

3 In civil actions, the court may grant a motion to withdraw where there is no
4 successor counsel only if the withdrawing attorney clearly states in the body of the
5 motion the name and address of the party. The order allowing withdrawal shall notify
6 the unrepresented party that an entry of appearance must be filed either by the party
7 pro se or by substitute counsel within thirty (30) days from the date of the order
8 permitting the withdrawal and that a failure of the party to prosecute or defend the case
9 may result in dismissal of the case without prejudice or a default judgment against the
10 party. If no entry of appearance is filed within thirty (30) days from the date of the order
11 permitting withdrawal, then the unrepresented party, other than a corporation, is
12 deemed to be representing himself or herself and acting pro se. In all cases, counsel
13 seeking to withdraw shall advise the court if the case is currently set for motion docket,
14 pretrial conference, or trial.

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

1 E. NOTICE OF CHANGE OF ADDRESS. All attorneys and unrepresented parties
2 shall give immediate notice to the court of a change of address by filing notice with the
3 court clerk. If the attorney or unrepresented party has provided written consent to
4 receive service by electronic means pursuant to subsection A of this section, or in another
5 pleading, the attorney or party shall include a change of electronic mailing address as
6 part of the notice required in this subsection. The notice of the change of address shall
7 contain the same information required in the entry of appearance, shall be served on all
8 parties, and a copy shall be provided to the assigned judge. If an attorney or an
9 unrepresented party files an entry of appearance, the court will assume the correctness
10 of the last address of record until a notice of change of address is received. Attorneys of
11 record who change law firms shall notify the court clerk and the assigned judge of the
12 status of representation of their clients, and shall immediately withdraw, when
13 appropriate.

14 SECTION 4. AMENDATORY 12 O.S. 2001, Section 2006, is amended to read
15 as follows:

16 Section 2006.

17 TIME

18 A. COMPUTATION. 1. In computing any period of time prescribed or allowed by
19 this title, by the rules of any court of this state, or by order of a court of this state, the
20 day of the act, event, or default from which the designated period of time begins to run
21 shall not be included. The last day of the period so computed shall be included, unless it
22 is a legal holiday as defined by Section 82.1 of Title 25 of the Oklahoma Statutes or any

1 other day when the office of the court clerk does not remain open for public business until
2 the regularly scheduled closing time, in which event the period runs until the end of the
3 next day which is not a legal holiday or a day when the office of the court clerk does not
4 remain open for public business until the regularly scheduled closing time. Except for
5 the times provided in Sections 765, 990.3, 1148.4, 1148.5, 1148.5A, and 1756 of this title,
6 when the period of time prescribed or allowed is less than eleven (11) days, intermediate
7 legal holidays and any other day when the office of the court clerk does not remain open
8 for public business until the regularly scheduled closing time, shall be excluded from the
9 computation.

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

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

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

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

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

13 D. ADDITIONAL TIME AFTER SERVICE BY MAIL, THIRD-PARTY
14 COMMERCIAL CARRIER OR ELECTRONIC MEANS. Whenever a party has the right
15 or is required to do some act or take some proceedings within a prescribed period after
16 the service of a notice or other paper upon the party and the notice or paper is served
17 upon the party by mail, third-party commercial carrier or electronic means, three (3)
18 days shall be added to the prescribed period; provided, however, when a summons and
19 petition are served by mail, a defendant shall serve an answer within twenty (20) days or
20 thirty-five (35) days if pursuant to subsection A of Section 2012 of this title, after the
21 date of receipt or if refused, the date of refusal of the summons and petition by the
22 defendant.

1 SECTION 5. AMENDATORY Section 1, Chapter 370, O.S.L. 2004 (12 O.S.
2 Supp. 2006, Section 2011.1), is amended to read as follows:

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

15 SECTION 6. This act shall become effective November 1, 2007.

16 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY AND PUBLIC SAFETY,
17 dated 3-29-07 - DO PASS, As Coauthored.