

THE STATE SENATE
Tuesday, February 20, 2007

Committee Substitute for
Senate Bill No. 634

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 634 - By: LERBLANCE of the Senate and SULLIVAN of the House.

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,

1 orders entered, and a bill of the costs accrued. The clerk shall
2 collect a new filing fee and shall forthwith transmit by certified
3 mail such files and transcript of the cause and the filing fee which
4 shall be due to the clerk of the court to which transfer is ordered.
5 Unless otherwise ordered by the court, the plaintiff shall be
6 responsible for appropriate filing fees when a case is brought in
7 the wrong venue and transferred to a court having proper venue. In
8 all other instances, the moving party shall be responsible for fees.
9 The fees for the transfer shall be paid within ten (10) days of the
10 transfer order.

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

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

1 within the time prescribed by the court, then any other party may
2 reduce it to writing and submit it to the court.

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

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

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

11 D. The filing with the court clerk of a written judgment,
12 decree or appealable order, prepared in conformance with Section
13 696.3 of this title and signed by the court, shall be a
14 jurisdictional prerequisite to the commencement of an appeal. The
15 following shall not constitute a judgment, decree or appealable
16 order: A minute entry; verdict; informal statement of the
17 proceedings and relief awarded, including, but not limited to, a
18 letter to a party or parties indicating the ruling or instructions
19 for preparing the judgment, decree or appealable order.

20 E. A judgment, decree or appealable order, whether
21 interlocutory or final, shall not be enforceable in whole or in part
22 unless or until it is signed by the court and filed; except that the
23 adjudication of any issue shall be enforceable when pronounced by

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

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

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

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

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

1 2. A statement of the disposition of the action, proceeding or
2 motion, including a statement of the relief awarded to a party or
3 parties and the liabilities and obligations imposed on the other
4 party or parties, including the amount of any prejudgment interest;

5 3. The signature and title of the court; and

6 4. Any other matter approved by the court.

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

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

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

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

22 Section 1083. Any action ~~which is not at issue and~~ in which no
23 pleading has been filed or other action taken for a year and in

1 which no motion or demurrer has been pending during any part of said
2 year shall be dismissed without prejudice by the court on its own
3 motion after notice to the parties or their attorneys of record;
4 providing, the court may upon written application and for good cause
5 shown, by order in writing allow the action to remain upon its
6 docket.

7 SECTION 5. AMENDATORY 12 O.S. 2001, Section 2004.1, as
8 last amended by Section 21, Chapter 468, O.S.L. 2002 (12 O.S. Supp.
9 2006, Section 2004.1), is amended to read as follows:

10 Section 2004.1

11 SUBPOENA

12 A. SUBPOENA; FORM; ISSUANCE.

13 1. Every subpoena shall:

14 a. state the name of the court from which it is issued
15 and the title of the action~~r~~, and

16 b. command each person to whom it is directed to attend
17 and give testimony or to produce and permit inspection
18 and copying of designated books, documents or tangible
19 things in the possession, custody or control of that
20 person, or to permit inspection of premises, at a time
21 and place therein specified.

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

1 a. Deposition in Action Pending Outside of This State.

2 If the action is pending outside of this state, the
3 district court for the county in which the deposition
4 is to be taken shall issue the subpoena and, upon
5 application, any other order or process that may be
6 appropriate in aid of discovery in that action. Proof
7 of service of a notice to take deposition constitutes
8 a sufficient authorization for the issuance ~~by the~~
9 ~~clerk~~ of subpoenas for the persons named or described
10 ~~therein; provided, any person aggrieved by the~~
11 ~~issuance or enforcement of the subpoena may obtain~~
12 ~~judicial review upon the filing of a civil action and~~
13 ~~payment of the required fees.,~~

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

16 If the action is pending outside of this state, the
17 district court for the county in which the production
18 or inspection is to be made shall issue a subpoena for
19 production or inspection as provided in subparagraph b
20 of paragraph 1 of subsection A of this section, if
21 separate from a subpoena commanding the attendance of
22 a person, and upon application, any other order or
23 process that may be appropriate in aid of discovery in

1 that action. Proof of service of a notice of request
2 for production of documents without a deposition
3 constitutes a sufficient authorization for the
4 issuance of a subpoena for production or inspection,
5 and

6 c. Judicial Assistance or Review Available.

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

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

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

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

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

12 B. 1. SERVICE. Service of a subpoena upon a person named
13 therein shall be made by delivering or mailing a copy thereof to
14 such person and, if the person's attendance is demanded, by
15 tendering to that person the fees for one (1) day's attendance and
16 the mileage allowed by law. Service of a subpoena may be
17 accomplished by any person who is eighteen (18) years of age or
18 older. A copy of any subpoena that commands production of documents
19 and things or inspection of premises before trial shall be served on
20 each party in the manner prescribed by subsection B of Section 2005
21 of this title. If the subpoena commands production of documents and
22 things or inspection of premises from a nonparty before trial but
23 does not require attendance of a witness, the subpoena shall specify

1 a date for the production or inspection that is at least seven (7)
2 days after the date that the subpoena and copies of the subpoena are
3 served on the witness and all parties, and the subpoena shall
4 include the following language: "In order to allow objections to
5 the production of documents and things to be filed, you should not
6 produce them until the date specified in this subpoena, and if an
7 objection is filed, until the court rules on the objection."

8 2. Service of a subpoena by mail may be accomplished by mailing
9 a copy thereof by certified mail with return receipt requested and
10 delivery restricted to the person named in the subpoena. The person
11 serving the subpoena shall make proof of service thereof to the
12 court promptly and, in any event, before the witness is required to
13 testify at the hearing or trial. If service is made by a person
14 other than a sheriff or deputy sheriff, such person shall make
15 affidavit thereof. If service is by mail, the person serving the
16 subpoena shall show in the proof of service the date and place of
17 mailing and attach a copy of the return receipt showing that the
18 mailing was accepted. Failure to make proof of service does not
19 affect the validity of the service, but service of a subpoena by
20 mail shall not be effective if the mailing was not accepted by the
21 person named in the subpoena. Costs of service shall be allowed
22 whether service is made by the sheriff, the sheriff's deputy, or any
23 other person. When the subpoena is issued on behalf of a state

1 department, board, commission, or legislative committee, fees and
2 mileage shall be paid to the witness at the conclusion of the
3 testimony out of funds appropriated to the state department, board,
4 commission, or legislative committee.

5 C. PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

6 1. A party or an attorney responsible for the issuance and
7 service of a subpoena shall take reasonable steps to avoid imposing
8 undue burden or expense on a person subject to that subpoena. The
9 court on behalf of which the subpoena was issued shall enforce this
10 duty and impose upon the party or attorney, or both, in breach of
11 this duty an appropriate sanction, which may include, but is not
12 limited to, lost earnings and a reasonable attorney fee.

13 2. a. A person commanded to produce and permit inspection
14 and copying of designated books, papers, documents or
15 tangible things, or inspection of premises need not
16 appear in person at the place of production or
17 inspection unless commanded to appear for deposition,
18 hearing or trial.

19 b. Subject to paragraph 2 of subsection D of this
20 section, a person commanded to produce and permit
21 inspection and copying or any party may, within
22 fourteen (14) days after service of the subpoena or
23 before the time specified for compliance if such time

1 is less than fourteen (14) days after service, serve
2 written objection to inspection or copying of any or
3 all of the designated materials or of the premises.
4 An objection that all or a portion of the requested
5 material will or should be withheld on a claim that it
6 is privileged or subject to protection as trial
7 preparation materials shall be made within this time
8 period and in accordance with subsection D of this
9 section. If the objection is made by the witness, the
10 witness shall serve the objection on all parties; if
11 objection is made by a party, the party shall serve
12 the objection on the witness and all other parties.
13 If objection is made, the party serving the subpoena
14 shall not be entitled to inspect and copy the
15 materials or inspect the premises except pursuant to
16 an order of the court by which the subpoena was
17 issued. For failure to object in a timely fashion,
18 the court may assess reasonable costs and attorney
19 fees or take any other action it deems proper;
20 however, a privilege or the protection for trial
21 preparation materials shall not be waived solely for a
22 failure to timely object under this section. If
23 objection has been made, the party serving the

1 subpoena may, upon notice to the person commanded to
2 produce, move at any time for an order to compel the
3 production. Such an order to compel production shall
4 protect any person who is not a party or an officer of
5 a party from significant expense resulting from the
6 inspection and copying commanded.

7 3. a. On timely motion, the court by which a subpoena was
8 issued shall quash or modify the subpoena if it:

9 (1) fails to allow reasonable time for compliance~~+~~

10 ~~or,~~

11 (2) requires a person to travel to a place beyond the
12 limits allowed under paragraph 3 of subsection A
13 of this section~~+~~~~or,~~

14 (3) requires disclosure of privileged or other
15 protected matter and no exception or waiver
16 applies~~+~~~~or,~~

17 (4) subjects a person to undue burden~~+~~, or

18 (5) requires production of books, papers, documents
19 or tangible things that fall outside the scope of
20 discovery permitted by Section 3226 of this
21 title.

22 b. If a subpoena:

1 (1) requires disclosure of a trade secret or other
2 confidential research, development, or commercial
3 information, or

4 (2) requires disclosure of an unretained expert's
5 opinion or information not describing specific
6 events or occurrences in dispute and resulting
7 from the expert's study made not at the request
8 of any party,

9 the court may, to protect a person subject to or
10 affected by the subpoena, quash or modify the
11 subpoena. However, if the party in whose behalf the
12 subpoena is issued shows a substantial need for the
13 testimony or material that cannot be otherwise met
14 without undue hardship and assures that the person to
15 whom the subpoena is addressed will be reasonably
16 compensated, the court may order appearance or
17 production only upon specified conditions.

18 D. DUTIES IN RESPONDING TO SUBPOENA.

19 1. A person responding to a subpoena to produce documents shall
20 produce them as they are kept in the usual course of business or
21 shall organize and label them to correspond with the categories in
22 the demand.

1 2. When information subject to a subpoena is withheld on a
2 claim that it is privileged or subject to protection as trial
3 preparation materials, the claim shall be made expressly and shall
4 be supported by a description of the nature of the documents,
5 communications, or things not produced that is sufficient to enable
6 the demanding party to contest the claim.

7 E. CONTEMPT.

8 Failure by any person without adequate excuse to obey a subpoena
9 served upon him or her may be deemed a contempt of the court from
10 which the subpoena issued.

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

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

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

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

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

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

14 Section 2005.

15 SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

16 A. SERVICE: WHEN REQUIRED. Except as otherwise provided in
17 this title, every order required by its terms to be served, every
18 pleading subsequent to the original petition unless the court
19 otherwise orders because of numerous defendants, every paper
20 relating to discovery required to be served upon a party or any
21 other person unless the court otherwise orders, every written motion
22 other than one which may be heard ex parte, and every written
23 notice, appearance, demand, offer of judgment, and similar paper

1 shall be served upon each of the parties. No service need be made
2 on parties in default for failure to appear except that pleadings
3 asserting new or additional claims for relief against them shall be
4 served upon them in the manner provided for service of summons in
5 Section 2004 of this title.

6 B. SERVICE: HOW MADE. Whenever pursuant to this act service
7 is required or permitted to be made upon a party represented by an
8 attorney the service shall be made upon the attorney unless service
9 directly upon the party ~~himself~~ is ordered by the court or final
10 judgment has been rendered and the time for appeal has expired.
11 Service upon the attorney or upon a party shall be made by
12 delivering a copy to ~~him~~ the attorney or the party or by mailing it
13 or sending it by third-party commercial carrier for delivery within
14 three (3) calendar days to ~~him~~ the attorney or the party at his the
15 last-known address of the attorney or the party or, if by electronic
16 means if the attorney or party consents in writing to receiving
17 service in a particular case by electronic means and the attorney or
18 party provides instructions for making the electronic service
19 consented to by the attorney or party. The required written consent
20 and electronic service instructions may be made in the entry of
21 appearance filed by the attorney or the party pursuant to subsection
22 A of Section 2005.2 of this title or may be made in another pleading
23 filed by the attorney or party in the case. For purposes of this

1 subsection, "electronic means" includes communications by facsimile
2 or electronic mail through the internet, commonly known as e-mail.
3 If no mailing address, physical address or electronic means address
4 for the attorney or party is known, service is effected by leaving
5 it with the clerk of the court. Delivery of a copy within this
6 section means:

- 7 1. Handing it to the attorney or to the party; or
- 8 2. Leaving it at ~~his~~ the office of the attorney or the party
9 with ~~his~~ the attorney's or party's clerk or other person in charge
10 thereof; or
- 11 3. If there is no one in charge, leaving it in a conspicuous
12 place therein; or
- 13 4. If the office is closed or the person to be served has no
14 office, leaving it at his or her dwelling house or usual place of
15 abode with some person residing therein who is fifteen (15) years of
16 age or older.

17 Except for service of the summons and the original petition, service
18 by mail is complete upon mailing, service by commercial carrier is
19 complete upon delivery to the commercial carrier, and service by
20 electronic means is complete upon transmission, unless the party
21 making service is notified that the copy or paper served was not
22 received by the party served. If the court clerk or a party is
23 required to serve a judgment or other paper by first-class mail,

1 service in accordance with any method permitted by this section is
2 sufficient to comply with such requirement.

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

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

1 E. FILING WITH THE COURT DEFINED.

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

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

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

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

4 SECTION 8. AMENDATORY Section 22, Chapter 468, O.S.L.
5 2002 (12 O.S. Supp. 2006, Section 2005.2), is amended to read as
6 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
11 the district courts shall file an entry of appearance by counsel or
12 personally as an unrepresented party when no other pleading or other
13 paper in the case by that counsel or party has been filed, but no
14 later than the first filing of any pleading or other paper in the
15 case by that counsel or party. In the event a party changes, adds,
16 or substitutes counsel, new counsel must immediately file an entry
17 of appearance as set forth in this section. The entry of appearance
18 shall include the name and signature of counsel or the unrepresented
19 party, the name of the party represented by counsel, the mailing
20 address, telephone and fax numbers, Oklahoma Bar Association number,
21 and name of the law firm, if any. In the event that counsel or a
22 party consents to receive service by electronic means in a
23 particular case or civil proceeding pursuant to subsection B of

1 Section 2005 of this title, counsel or a party may give notice of
2 the required written consent within counsel's or the party's entry
3 of appearance. Counsel or the party giving the required written
4 consent shall provide the electronic means address or addresses to
5 which service by electronic means will be accepted by the consenting
6 counsel or party. Copies shall be served on all other parties of
7 record. Filing an entry of appearance as required by this section
8 does not waive any defenses enumerated in subsection B of Section
9 2012 of Title 12 of the Oklahoma Statutes.

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

21 C. WITHDRAWAL OF COUNSEL. A motion to withdraw may be filed at
22 any time. All motions to withdraw shall be accompanied by a
23 proposed order. No counsel may withdraw from a pending case without

1 leave of the court. The counsel filing the motion shall serve a
2 copy of the motion on the client and all attorneys of record. All
3 motions to withdraw shall be signed by the party on whose behalf
4 counsel has previously appeared or contain a certificate by counsel
5 that:

- 6 1. The client has knowledge of counsel's intent to withdraw; or
- 7 2. Counsel has made a good faith effort to notify the client
8 and the client cannot be located.

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

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

12 E. NOTICE OF CHANGE OF ADDRESS. All attorneys and
13 unrepresented parties shall give immediate notice to the court of a
14 change of address by filing notice with the court clerk. If the
15 attorney or unrepresented party has provided written consent to
16 receive service by electronic means pursuant to subsection A of this
17 section, or in another pleading, the attorney or party shall include
18 a change of electronic mailing address as part of the notice
19 required in this subsection. The notice of the change of address
20 shall contain the same information required in the entry of
21 appearance, shall be served on all parties, and a copy shall be
22 provided to the assigned judge. If an attorney or an unrepresented
23 party files an entry of appearance, the court will assume the

1 correctness of the last address of record until a notice of change
2 of address is received. Attorneys of record who change law firms
3 shall notify the court clerk and the assigned judge of the status of
4 representation of their clients, and shall immediately withdraw,
5 when appropriate.

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

8 Section 2006.

9 TIME

10 A. COMPUTATION. 1. In computing any period of time prescribed
11 or allowed by this title, by the rules of any court of this state,
12 or by order of a court of this state, the day of the act, event, or
13 default from which the designated period of time begins to run shall
14 not be included. The last day of the period so computed shall be
15 included, unless it is a legal holiday as defined by Section 82.1 of
16 Title 25 of the Oklahoma Statutes or any other day when the office
17 of the court clerk does not remain open for public business until
18 the regularly scheduled closing time, in which event the period runs
19 until the end of the next day which is not a legal holiday or a day
20 when the office of the court clerk does not remain open for public
21 business until the regularly scheduled closing time. Except for the
22 times provided in Sections 765, 990.3, 1148.4, 1148.5, 1148.5A, and
23 1756 of this title, when the period of time prescribed or allowed is

1 less than eleven (11) days, intermediate legal holidays and any
2 other day when the office of the court clerk does not remain open
3 for public business until the regularly scheduled closing time,
4 shall be excluded from the computation.

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

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

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

19 2. Upon motion made after the expiration of the specified
20 period permit the act to be done where the failure to act was the
21 result of excusable neglect; but it may not extend the time set
22 forth in this title for taking an appeal from a judgment, decree or
23 appealable order, or for seeking a new trial, a judgment

1 notwithstanding the verdict, or to correct, open, modify, vacate or
2 reconsider a judgment, decree, or appealable order, except as
3 provided in the sections governing such proceedings.

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

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

1 SECTION 10. AMENDATORY Section 1, Chapter 370, O.S.L.
2 2004 (12 O.S. Supp. 2006, Section 2011.1), is amended to read as
3 follows:

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

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

21 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-13-07 - DO
22 PASS, As Amended and Coauthored.