

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 SENATE BILL 634

By: Lerblance

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5  
6 AS INTRODUCED

7 An Act relating to civil procedure; allowing  
8 alternate forms of delivery of certain documents;  
9 directing calculation of certain deadlines; stating  
10 exception; amending 12 O.S. 2001, Section 2005,  
11 Section 22, Chapter 468, O.S.L. 2002, 2006, and  
12 Section 1, Chapter 370, O.S.L. 2004 (12 O.S. Supp.  
13 2006, Sections 2005.2 and 2011.1), which relate to  
14 service, entry of appearance, time and frivolous  
15 claim; adding acceptable methods of service;  
16 establishing procedures for certain type of service;  
17 defining term; stating when certain service is  
18 complete; allowing certain notice in entry of  
19 appearance; requiring provision of certain address;  
20 conforming language; modifying procedures for certain  
21 determination; providing for codification and  
22 providing an effective date.

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

24 SECTION 1. 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

1 courier service, overnight delivery service, or other reliable  
2 personal delivery service to the party addressed, in each instance  
3 evidenced by a written or electronic receipt signed by the addressee  
4 showing to whom delivered, date of delivery, address where  
5 delivered, and person or entity effecting delivery.

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

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

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

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

19 Section 2005.

20 SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

21 A. SERVICE: WHEN REQUIRED. Except as otherwise provided in  
22 this title, every order required by its terms to be served, every  
23 pleading subsequent to the original petition unless the court  
24 otherwise orders because of numerous defendants, every paper

1 relating to discovery required to be served upon a party or any  
2 other person unless the court otherwise orders, every written motion  
3 other than one which may be heard ex parte, and every written  
4 notice, appearance, demand, offer of judgment, and similar paper  
5 shall be served upon each of the parties. No service need be made  
6 on parties in default for failure to appear except that pleadings  
7 asserting new or additional claims for relief against them shall be  
8 served upon them in the manner provided for service of summons in  
9 Section 2004 of this title.

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

1 appearance filed by the attorney or the party pursuant to subsection  
2 A of Section 2005.2 of this title or may be made in another pleading  
3 filed by the attorney or party in the case. For purposes of this  
4 subsection, "electronic means" includes communications by facsimile  
5 or electronic mail through the internet, commonly known as e-mail.  
6 If no mailing address, physical address or electronic means address  
7 for the attorney or party is known, service is effected by leaving  
8 it with the clerk of the court. Delivery of a copy within this  
9 section means:

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

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

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

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

20 Except for service of the summons and the original petition, service  
21 by mail is complete upon mailing, service by commercial carrier is  
22 complete upon delivery to the commercial carrier, and service by  
23 electronic means is complete upon transmission, unless the party  
24 making service is notified that the copy or paper served was not

1 received by the party served. If the court clerk or a party is  
2 required to serve a judgment or other paper by first-class mail,  
3 service in accordance with any method permitted by this section is  
4 sufficient to comply with such requirement.

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

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

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1 names of the persons served and the date, place, and method of  
2 service.

3 E. FILING WITH THE COURT DEFINED.

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

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

18 3. Papers may be filed by facsimile or other electronic  
19 transmission directly to the court or the court clerk as permitted  
20 by a rule of court. The Administrative Office of the Courts shall  
21 promulgate rules for the district court for the filing of papers  
22 transmitted by facsimile or other electronic transmission device.  
23 Rules for facsimile or other electronic transmission filing must  
24 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 3. 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  
24 Section 2005 of this title, counsel or a party may give notice of

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

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

20 C. WITHDRAWAL OF COUNSEL. A motion to withdraw may be filed at  
21 any time. All motions to withdraw shall be accompanied by a  
22 proposed order. No counsel may withdraw from a pending case without  
23 leave of the court. The counsel filing the motion shall serve a  
24 copy of the motion on the client and all attorneys of record. All

1 motions to withdraw shall be signed by the party on whose behalf  
2 counsel has previously appeared or contain a certificate by counsel  
3 that:

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

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

22 D. ADDRESS OF RECORD. The address of record for any attorney  
23 or party appearing in a case pending in any district court shall be  
24 the last address provided to the court. The attorney or

1 unrepresented party must, in all cases pending before the court  
2 involving the attorney or party, file with the court and serve upon  
3 all counsel and unrepresented parties a notice of a change of  
4 address. Any attorney or unrepresented party has the duty of  
5 maintaining a current address with the court. Service of notice to  
6 the address of record of counsel or an unrepresented party shall be  
7 considered valid service for all purposes, including dismissal of  
8 cases for failure to appear.

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

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

5 Section 2006.

6 TIME

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

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

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

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

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

23           C. FOR MOTIONS - AFFIDAVITS. A written motion, other than one  
24 which may be heard ex parte, and notice of the hearing thereof,

1 shall be served not later than five (5) days before the time  
2 specified for the hearing, unless a different period is fixed by the  
3 Oklahoma Statutes, court rules, or by an order of the court. Such  
4 an order may for cause shown be made on ex parte application. When  
5 a motion is supported by affidavit, the affidavit shall be served  
6 with the motion.

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

19 SECTION 5. AMENDATORY Section 1, Chapter 370, O.S.L.  
20 2004 (12 O.S. Supp. 2006, Section 2011.1), is amended to read as  
21 follows:

22 Section 2011.1 In any action not arising out of contract, if  
23 requested the court shall, upon granting ruling on a motion to  
24 dismiss an action or a motion for summary judgment or subsequent to

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

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

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