

ESB 1073

THE HOUSE OF REPRESENTATIVES
Wednesday, April 8, 2009

ENGROSSED
Senate Bill No. 1073
As Amended

ENGROSSED SENATE BILL NO. 1073 - By: CRAIN of the Senate and SULLIVAN of the House.

(civil procedure - venue - flat fee schedule -
effective date)

1 SECTION 1. AMENDATORY 12 O.S. 2001, Section 139, is amended to read as
2 follows:
3 Section 139. Every other action must be brought in the county in which the
4 defendant or some one of the defendants resides or resided at the time the claim arose, or
5 may be summoned; except claims against makers of notes, claims, or other indebtedness
6 which have been assigned, sold or transferred by or from the original payee or obligee,
7 which claims against such original maker of such notes, claims or indebtedness can only
8 be brought in the county in which the said maker of such note, claim or indebtedness or
9 some one of the original makers of such note, claim or indebtedness resides or in the
10 county in which the claim arose. Provided, however, this section shall not in any way
11 change or limit Section ~~4671 of the Revised Laws of Oklahoma, 1910~~ 131 of this title.

1 SECTION 2. AMENDATORY 12 O.S. 2001, Section 706, is amended to read as
2 follows:

3 Section 706. A. Scope. This section applies to all judgments of courts of record of
4 this state, and judgments of courts of record of the United States not subject to the
5 registration procedures of the Uniform Federal Lien Registration Act, ~~Section 3401 et~~
6 ~~seq. of Title 68 of the Oklahoma Statutes~~, which award the payment of money, regardless
7 of whether such judgments also include other orders or relief.

8 B. Creation of Lien. A judgment to which this section applies shall be a lien on the
9 real estate of the judgment debtor within a county only from and after a Statement of
10 Judgment made by the judgment creditor or the judgment creditor's attorney,
11 substantially in the form prescribed by the Administrative Director of the Courts, has
12 been filed in the office of the county clerk in that county.

13 1. Presentation of a Statement of Judgment and tender of the filing fee, shall, upon
14 acceptance by the county clerk, constitute filing under this section.

15 2. A lien created pursuant to this section shall affect and attach to all real property,
16 including the homestead, of judgment debtors whose names appear in the Statement of
17 Judgment; however, judgment liens on a homestead are exempt from forced sale
18 pursuant to Section 1 of Title 31 of the Oklahoma Statutes and Section 2 of Article XII of
19 the Oklahoma Constitution.

20 C. Judgment Index. A judgment index shall be kept by each county clerk in which
21 the name of each person named as a judgment debtor in a Statement of Judgment filed
22 with the county clerk shall appear in alphabetical order.

1 1. It shall be the duty of the county clerk, immediately after the filing of the
2 Statement of Judgment, to make in the judgment index a separate entry in alphabetical
3 order of the name of each judgment debtor named therein, which entry shall also contain
4 the name(s) of the judgment creditor(s), the name of the court which granted the
5 judgment, the number and style of the case in which the judgment was filed, the amount
6 of the judgment, including interest, costs and attorney's fees if shown on the Statement
7 of Judgment, the date of the filing of the judgment with the court clerk of the court which
8 granted it, and the date of filing of the Statement of Judgment with the county clerk.

9 2. It shall also be the duty of the county clerk, immediately after the filing of a
10 Release of Judgment Lien, to make a notation in each entry in the judgment index made
11 when any Statement of Judgment was filed with respect to the judgment being released,
12 of the date of filing of the Release with the county clerk, the name of the judgment
13 creditor on whose behalf the Release is filed, and whether the Release states that it is
14 only a partial Release.

15 D. Execution of Judgment. Execution shall be issued only from the court which
16 granted the judgment being enforced.

17 E. Release of Lien of Judgment. The lien of a judgment upon the real estate of
18 judgment debtor in any county, which has not become unenforceable by operation of law,
19 is released only upon the filing in the office of the county clerk in that county of a Release
20 of Judgment Lien, or a copy thereof certified by the court clerk of the court which granted
21 the judgment.

1 1. A judgment lien may be released, in whole or in part, by filing a Release of
2 Judgment Lien with the county clerk by the judgment creditor or his or her attorney.

3 a. A Release of Judgment Lien shall either recite the name of the court
4 which granted the judgment, the number and style of the case, the
5 name of each judgment debtor with respect to whom the lien is being
6 released, the name of each judgment creditor in favor of whom the lien
7 was created, or otherwise adequately identify the judgment lien being
8 released and the judgment debtor against whom the lien is indexed.
9 The Administrative Director of the Courts shall prescribe a form of
10 Release of Judgment which may be used at the option of the judgment
11 creditor.

12 b. If the release is only partial, it shall also contain a description of the
13 lands then being released from the judgment lien or identify the
14 particular judgment debtors, if less than all, with respect to whom the
15 lien is then being released, or both, as the case may be.

16 c. A Release of Judgment Lien may also be filed with the court clerk of
17 the court which granted the judgment but filing with the court clerk
18 does not release any judgment lien created pursuant to this section.

19 2. The lien of any judgment which has been satisfied ~~by payment~~ in full, vacated or
20 become dormant or otherwise ~~discharged~~ unenforceable and which has not been released
21 by the judgment creditor shall be released by the court upon written motion.

- 1 a. The motion shall be accompanied by an affidavit stating the grounds
2 for the motion, and shall contain or be accompanied by a notice to the
3 judgment creditor that, if the judgment creditor does not file with the
4 court a response or objection to the motion within fifteen (15) days
5 after the mailing of a copy of the motion to the judgment creditor, the
6 court will order the judgment lien released.
- 7 b. A copy of the motion shall be mailed by certified mail by the party
8 seeking release of the lien to the judgment creditor at the last-known
9 address of the judgment creditor, and to the attorney of record of the
10 judgment creditor, if any. There shall be attached to the filed motion,
11 and to each copy of the motion to be mailed, a Certificate of Mailing
12 showing to whom copies of the motion were mailed, the addresses to
13 which they were mailed, and the date of mailing.
- 14 c. If the judgment creditor does not file a response or objection to the
15 motion within fifteen (15) days after the mailing of a copy of the
16 motion, the court shall order the judgment lien released.
- 17 d. When a judgment lien is ordered released by the court, the court shall
18 cause a Release of Judgment Lien, in the form provided by the
19 Administrative Director of the Courts, to be prepared. Instructions
20 shall be printed on such form advising the judgment debtor to file the
21 Release in the office of the county clerk of the county in which the real

1 estate is situated in order to obtain the release of the lien of the
2 judgment upon the real estate of the judgment debtor in such county.

3 e. The party filing the motion for release shall pay all costs of the
4 proceeding and any recording fees.

5 F. Effect of Filing or Recording a Judgment. The filing or recording of a judgment
6 itself in the office of a county clerk on or after October 1, 1993, shall not be effective to
7 create a general money judgment lien upon real estate, but a certified copy of a judgment
8 may be recorded in such office for the purpose of giving notice of its contents whether or
9 not recording is required by law.

10 G. Acceptance by County Clerk. The county clerk shall accept for filing and file any
11 Statement of Judgment or Release of Judgment Lien without requiring any formalities of
12 execution other than those provided in this section.

13 SECTION 3. AMENDATORY 12 O.S. 2001, Section 842, as last amended by
14 Section 2, Chapter 450, O.S.L. 2004 (12 O.S. Supp. 2008, Section 842), is amended to
15 read as follows:

16 Section 842. A. At any time after a final judgment, order, or decree is filed, on
17 application of the judgment creditor, a judge of the court in which the final judgment,
18 order, or decree was rendered shall ~~order~~:

19 1. Order the judgment debtor to appear before the judge, or a referee appointed by
20 the judge, at a time and place specified in the order, to answer concerning the judgment
21 debtor's property. The judge may, by order, enjoin the judgment debtor from alienating,
22 concealing, or encumbering any of the judgment debtor's nonexempt property pending

1 the hearing and further order of the court. Upon the judgment debtor's disclosure of any
2 nonexempt property, proceedings as provided by law may be had for the application of
3 the property to the satisfaction of the judgment. If the judgment debtor is personally
4 served with an order to appear pursuant to this section, the judge issuing the order may
5 authorize the issuance of either a contempt citation or a bench warrant for the judgment
6 debtor's failure to comply with the order. If the judgment debtor is served by other than
7 personal service, the judge may authorize the issuance of a contempt citation for the
8 judgment debtor's failure to comply with the order; and

9 2. Issue an order authorizing the Oklahoma Employment Security Commission to
10 release to the judgment creditor any employment information maintained by the
11 Commission concerning the judgment debtor if such authority was not granted in the
12 judgment. Service of the application on the judgment debtor by the judgment creditor
13 shall be in accordance with Section 2005 of this title. The judgment creditor shall be
14 entitled to any costs paid to the Commission pursuant to Section 4-508 of Title 40 of the
15 Oklahoma Statutes.

16 B. At any time after a final judgment, order, or decree is filed, an attorney for a
17 judgment creditor may:

18 1. Subpoena the judgment debtor, pursuant to Section 2004.1 of this title, to appear
19 at any place in the county in which the judgment, order, or decree was rendered, ~~or~~ the
20 judgment debtor's county of residence, to answer concerning the judgment debtor's
21 property, income, or liabilities, or to produce documents concerning the debtor's property,

1 income, or liabilities. The judgment debtor shall not be entitled to an attendance fee or
2 mileage;

3 2. Subpoena any person, pursuant to Section 2004.1 of this title, to appear at any
4 place in the county where the person is located, or where service may otherwise be had
5 on the person, to answer concerning the judgment debtor's property, income, or
6 liabilities, or to produce documents concerning the judgment debtor's property, income,
7 or liabilities; or

8 3. Serve interrogatories, requests for admissions, or request for production of
9 documents, pursuant to Section 3224 et. seq. of this title, upon the judgment debtor,
10 concerning the judgment debtor's property, income, or liabilities.

11 C. Failure by any person, without good cause, to obey a subpoena issued and served
12 pursuant to this section by personal service may be deemed a contempt of the court from
13 which the subpoena issued.

14 D. In addition to sums otherwise due under a final judgment, order, or decree if an
15 order, subpoena, citation for failure to obey an order to appear or discovery request is
16 served upon the judgment debtor or any person under this section, the judgment creditor
17 shall be entitled to costs of service and, if represented by an attorney, to an attorney fee
18 of ~~Seventy-five Dollars (\$75.00)~~ One Hundred Dollars (\$100.00) for each order or
19 subpoena to appear, citation for failure to obey an order or subpoena to appear, and
20 discovery request; provided, attorney fees awarded pursuant to this subsection relating
21 to a judgment, order, or decree shall not exceed ~~One Hundred Fifty Dollars (\$150.00)~~
22 Three Hundred Dollars (\$300.00) in any calendar year.

1 SECTION 4. AMENDATORY 12 O.S. 2001, Section 936, as amended by
2 Section 5, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2008, Section 936), is amended to
3 read as follows:

4 Section 936. A. In any civil action to recover for labor or services rendered, or on an
5 open account, a statement of account, account stated, note, bill, negotiable instrument, or
6 contract relating to the purchase or sale of goods, wares, or merchandise, unless
7 otherwise provided by law or the contract which is the subject of the action, the
8 prevailing party shall be allowed a reasonable attorney fee to be set by the court, to be
9 taxed and collected as costs.

10 B. In any civil action to recover unpaid fees, fines, costs, expenses or any other debt
11 owed to this state or its agencies, as defined pursuant to Section 152 of Title 51 of the
12 Oklahoma Statutes, unless otherwise provided by law, the prevailing party shall be
13 allowed a reasonable attorney fee to be set by the court, to be taxed and collected as
14 costs.

15 SECTION 5. AMENDATORY 12 O.S. 2001, Section 1173, is amended to read
16 as follows:

17 Section 1173. A. Any judgment creditor may obtain a noncontinuing lien on
18 earnings. For the purposes of this section, "earnings" means any form of payment to an
19 individual including, but not limited to, salary, commission, or other compensation, but
20 does not include reimbursements for travel expenses for state employees.

21 B. A noncontinuing earnings garnishment shall be commenced by filing the
22 affidavit provided for by Section 1172 of this title.

1 C. The form for the summons required by this section shall be prescribed by the
2 Administrative Office of the Courts.

3 D. The summons shall be served upon the garnishee, together with a copy of the
4 judgment creditor's affidavit, a garnishee's answer form, notice of garnishment and
5 request for hearing, and claim for exemptions, in the manner provided for in Section
6 2004 of this title and shall be returned with proof of service within ten (10) days of its
7 date.

8 E. The garnishee's answer shall be on a form prescribed by the Administrative
9 Office of the Courts.

10 F. Within seven (7) days after the end of the defendant's then-current pay period or
11 thirty (30) days from the date of service of the garnishment summons, whichever is
12 earlier, the garnishee shall file the answer with the court clerk and the garnishee shall
13 pay the amount withheld from the pay period to the judgment creditor's attorney or to
14 the judgment creditor, if there is no attorney, with a copy of the answer which shall
15 state:

16 1. Whether the garnishee was the employer of or indebted or under any liability to
17 the defendant named in the notice in any manner or upon any account for earnings or
18 wages, specifying, as applicable, the beginning and ending dates of the pay period
19 existing at the time of the service of the affidavit and summons, the total amounts
20 earned in the pay period, and all of the facts and circumstances necessary to a complete
21 understanding of the indebtedness or liability. When the garnishee shall be in doubt

1 respecting the liability or indebtedness, the garnishee may set forth all of the facts and
2 circumstances concerning the same, and submit the question to the court;

3 2. If the garnishee shall claim any setoff, defense, other indebtedness, liability, lien,
4 or claim to the property, the facts and circumstances in the affidavit;

5 3. At the garnishee's option, any claim of exemption from execution on the part of
6 the defendant or other objection known to the garnishee against the right of the
7 judgment creditor to apply the indebtedness or property disclosed;

8 4. If the garnishee shall disclose any indebtedness or the possession of any property
9 to which the defendant or any other person makes claim, at the garnishee's option, the
10 names and addresses of other claimants and, so far as known, the nature of the claims;
11 and

12 5. That the garnishee has mailed or hand-delivered a copy of the notice of
13 garnishment and exemptions, application for hearing, and the manner and date of
14 compliance.

15 G. The garnishment summons served on the garnishee under this section is a lien
16 on the defendant's property due at the time of service or the effective date of the
17 summons to the extent the property is not exempt from garnishment.

18 H. 1. A garnishment lien under this section has priority over any subsequent
19 garnishment lien or garnishment summons served on the garnishee.

20 2. When a garnishment summons is served under this section on a garnishee while
21 a previous garnishment lien is still in effect, the garnishee shall answer the subsequent
22 garnishment lien or garnishment summons by stating that the garnishee is presently

1 holding defendant's property under a previous garnishment lien or garnishment
2 summons and by giving the date when all previous garnishment liens or garnishment
3 summonses are expected to end.

4 I. 1. When a postjudgment noncontinuing earnings garnishment under Section
5 1173 of this title or a continuing earnings garnishment under Section 1173.4 of this title
6 is issued against a defendant already subject to an income assignment for child support,
7 the garnishee shall determine the maximum percentage of the defendant's disposable
8 earnings according to the provisions of Section 1171.2 of this title and then deduct from
9 that percentage the actual percentage of the defendant's disposable earnings actually
10 withheld under the income assignment. The resulting percentage shall be the amount to
11 be withheld by the garnishee, not to exceed twenty-five percent (25%).

12 2. For any involuntary legal or equitable procedures through which the earnings of
13 any individual are required to be withheld for the payment of any debt which has
14 statutory priority over this section, the amount withheld pursuant to a garnishment
15 under this section shall be reduced by the actual sums withheld pursuant to such other
16 involuntary process.

17 J. A noncontinuing earnings garnishment may be suspended or modified by the
18 judgment creditor upon agreement with the judgment debtor, which agreement shall be
19 in writing and filed by the judgment creditor with the clerk of the court in which the
20 judgment was entered. A copy of such agreement shall be mailed by first class mail to
21 the garnishee, postage prepaid by judgment creditor.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 SECTION 6. AMENDATORY 12 O.S. 2001, Section 1173.4, as amended by
2 Section 5, Chapter 450, O.S.L. 2004 (12 O.S. Supp. 2008, Section 1173.4), is amended to
3 read as follows:

4 Section 1173.4 A. Any judgment creditor may obtain a continuing lien on earnings.
5 For the purposes of this section, “earnings” means any form of payment to an individual
6 including, but not limited to, salary, wages, commission, or other compensation, but does
7 not include reimbursements for travel expenses for state employees.

8 B. A continuing earnings garnishment shall be commenced by filing the affidavit
9 provided for by Section 1172 of this title.

10 C. The summons required by this section shall be on a form prescribed by the
11 Administrative Office of the Courts.

12 D. The summons required by this section shall be served upon each of the
13 garnishees, together with a copy of the judgment creditor’s affidavit, a garnishee’s
14 answer form, notice of garnishment and request for hearing, and claim for exemptions, in
15 the manner provided for in Section 2004 of this title and shall be returned with proof of
16 service within ten (10) days of its date.

17 E. The garnishee’s answer shall be on a form prescribed by the Administrative
18 Office of the Courts.

19 F. Within seven (7) days after the end of each pay period, or, if the judgment debtor
20 does not have regular pay periods or is not paid by the garnishee within thirty (30) days
21 from the date of the garnishment summons, and after any payment by the garnishee to
22 the judgment debtor, the garnishee shall file an answer with the court clerk, and pay the

1 amount withheld to the judgment creditor's attorney or to the judgment creditor, if there
2 is no attorney, together with a copy of the answer which shall state:

3 1. Whether the garnishee was the employer of the defendant named in the notice,
4 was indebted to the defendant, or was under any liability to the defendant in any manner
5 or upon any account for earnings, specifying the beginning and ending dates of the pay
6 period, if applicable, existing at the time of the service of the affidavit and summons, the
7 total amounts earned in the entire pay period, and all of the facts and circumstances
8 necessary to a complete understanding of any indebtedness or liability. When the
9 garnishee shall be in doubt respecting the liability or indebtedness, the garnishee may
10 set forth all of the facts and circumstances concerning the same, and submit the question
11 to the court;

12 2. If the garnishee shall claim any setoff, defense, other indebtedness, liability, lien,
13 or claim to the property, the facts and circumstances in the affidavit;

14 3. At the garnishee's option, any claim of exemption from execution on the part of
15 the defendant or other objection known to the garnishee against the right of the
16 judgment creditor to apply the indebtedness or property disclosed;

17 4. If the garnishee shall disclose any indebtedness or the possession of any property
18 to which the defendant or any other person makes claim, at the garnishee's option, the
19 names and addresses of other claimants and, so far as known, the nature of their claims;
20 and

1 garnishee shall answer the subsequent garnishment lien or
2 garnishment summons by stating that the garnishee is presently
3 holding defendant's property under a previous garnishment lien or
4 garnishment summons, and by giving the date when all previous
5 garnishment liens or garnishment summons are expected to end.

6 b. The subsequent summons is not effective if a summons or lien on the
7 same cause of action is pending at the time of service unless the
8 subsequent summons in the same cause of action is served after the
9 one-hundred-fiftieth day of the previous garnishment lien.

10 I. 1. When a postjudgment wage garnishment under Section 1173 of this title or a
11 continuing earnings garnishment under this section is issued against a defendant
12 already subject to an income assignment for child support, the garnishee shall determine
13 the maximum percentage of the defendant's disposable earnings according to the
14 provisions of Section 1171.2 of this title and then deduct from that percentage the actual
15 percentage of the defendant's disposable earnings actually withheld under the income
16 assignment. The resulting percentage shall be the amount to be withheld by the
17 garnishee, not to exceed twenty-five percent (25%).

18 2. For any involuntary legal or equitable procedures through which the earnings of
19 any individual are required to be withheld for the payment of any debt which has
20 statutory priority over this section, the amount withheld pursuant to a garnishment
21 under this section shall be reduced by the actual sums withheld pursuant to such other
22 involuntary process.

1 J. A continuing earnings garnishment may be suspended or modified for a specific
2 period of time within the effective period of the garnishment by the judgment creditor
3 upon agreement with the judgment debtor, which agreement shall be in writing and filed
4 by the judgment creditor with the clerk of the court in which the judgment was entered,
5 and a copy of which shall be mailed by first-class mail, postage prepaid by the judgment
6 creditor to the garnishee.

7 K. Any garnishment issued against a debtor already subject to a continuing or
8 noncontinuing earnings garnishment shall take effect immediately upon the conclusion
9 of the prior garnishment, and shall be effective for its full one-hundred-eighty-day period
10 of time or as otherwise provided in this section as specified in subsection G of this
11 section.

12 SECTION 7. AMENDATORY 12 O.S. 2001, Section 1183, is amended to read
13 as follows:

14 Section 1183. The garnishee may be examined by the judgment creditor in any
15 manner prescribed by the Oklahoma Discovery Code. Discovery may commence at any
16 time after the service of the garnishee summons. If the garnishee is a corporation, any
17 principal officer thereof may be so examined. Within forty-five (45) days after the filing
18 of the answer affidavit by the garnishee, the judgment creditor may commence discovery
19 concerning any matter contained in the answer or germane to any liability on the
20 garnishee's part to the principal defendant. ~~Attached to any discovery request or notice~~
21 ~~of deposition shall be a statement that, upon failure to answer or appear, a judgment~~
22 ~~may be taken against the garnishee by default for the amount of the judgment and costs~~

1 ~~which the judgment creditor shall recover or has recovered against the defendant in the~~
2 ~~principal action, together with costs of the garnishment, and that the garnishee may also~~
3 ~~be proceeded against for contempt.~~ A copy of the discovery request or notice of deposition
4 and such statement shall be served upon the garnishee or the garnishee's attorney of
5 record in the manner provided for service of summons. The garnishee within twenty (20)
6 days of the date of service of a discovery request shall deliver by mail a copy to the
7 judgment creditor or the judgment creditor's attorney of record, full and true answers to
8 all discovery requests, verified by affidavit, in the manner prescribed by the Oklahoma
9 Discovery Code.

10 SECTION 8. AMENDATORY 12 O.S. 2001, Section 1190, as amended by
11 Section 1, Chapter 26, O.S.L. 2002 (12 O.S. Supp. 2008, Section 1190), is amended to
12 read as follows:

13 Section 1190. A. A garnishee may deduct a fee of Ten Dollars (\$10.00) from the
14 funds of the defendant in the garnishee's possession as reimbursement for costs incurred
15 in answering. If the garnishee is not indebted to the defendant and the garnishee's
16 answer evidencing that is filed and mailed or delivered to the judgment creditor or to the
17 judgment creditor's attorney of record, the garnishee may assess the judgment creditor a
18 fee of Ten Dollars (\$10.00) as reimbursement for such costs.

19 B. 1. In case of the trial of any issue between the judgment creditor and any
20 garnishee, costs shall be awarded to the judgment creditor and against the garnishee, in
21 addition to the garnishee's liability, if the judgment creditor recovered more than the
22 garnishee admitted by the garnishee's answer; and if the judgment creditor does not, the

1 garnishee shall recover costs from the judgment creditor. The costs shall include a
2 reasonable attorney's fee to be taxed in favor of the prevailing party.

3 2. In the case of the trial to determine the amount to be recovered for due and
4 owing child support, where any liability on the part of the garnishee is disclosed, costs
5 shall be awarded to the judgment creditor and against the defendant, including a
6 reasonable attorney's fee.

7 C. In all other cases under this article not expressly provided for, the court may, in
8 its discretion, award costs in favor of or against any party.

9 D. In addition to sums otherwise due pursuant to a judgment, a judgment creditor,
10 if represented by an attorney, shall be entitled to an attorney's fee of Fifty Dollars
11 (\$50.00) for prosecuting a garnishment pursuant to subparagraphs b, c, and d of
12 paragraph 2 of subsection B of Section 1171 of this title, and an attorney's fee of One
13 Hundred Dollars (\$100.00) for prosecuting a garnishment pursuant to subparagraph e of
14 paragraph 2 of subsection B of Section 1171 of this title, not to exceed a total of ~~One~~
15 ~~Hundred Fifty Dollars (\$150.00)~~ Two Hundred Dollars (\$200.00) in any ~~twelve-month~~
16 ~~period~~ calendar year.

17 SECTION 9. AMENDATORY 12 O.S. 2001, Section 1764, as last amended by
18 Section 3, Chapter 447, O.S.L. 2004 (12 O.S. Supp. 2008, Section 1764), is amended to
19 read as follows:

20 Section 1764. A fee of Forty-five Dollars (\$45.00) shall be charged and collected for
21 the filing of the affidavit for the commencement of any action or counterclaim for an
22 amount of One Thousand Five Hundred Dollars (\$1,500.00) or less. Any action in excess

1 of One Thousand Five Hundred Dollars (\$1,500.00) shall be subject to the filing fees
2 provided in Title 28 of the Oklahoma Statutes for the same kind of action as filed in
3 district court. For the filing of any counterclaim or setoff, fees shall be charged and
4 collected pursuant to Section 152.1 of Title 28 of the Oklahoma Statutes. Except as
5 otherwise provided in Section 1772 of this title, no other fee or charge shall be collected
6 by any officer for any service rendered pursuant to the provisions of the Small Claims
7 Procedure Act, or for the taking of affidavits for use in connection with any action tried
8 pursuant to the provisions of the Small Claims Procedure Act. If the affidavit and order
9 are served by the sheriff or a licensed private process server, the court clerk shall collect
10 the usual fee for the sheriff, which shall be taxed as costs in the case. The fee paid to a
11 licensed private process server, as approved by the court, shall be taxed as additional
12 costs in the case. After judgment, the court clerk shall issue such process and shall be
13 entitled to collect only such fees and charges as are allowed by law for like services in
14 other actions. All fees collected as authorized by this section and Section 1772 of this
15 title shall be deposited with other fees that are collected by the district court. Any
16 statute providing for an award of attorneys fees shall be applicable to the small claims
17 division if the attorney makes an appearance in the case, whether before or after
18 judgment or on hearing for disclosure of assets.

19 SECTION 10. AMENDATORY 28 O.S. 2001, Section 152, as last amended by
20 Section 2, Chapter 247, O.S.L. 2007 (28 O.S. Supp. 2008, Section 152), is amended to
21 read as follows:

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

- 5 1. Actions for divorce, alimony without divorce, separate
 6 maintenance, custody or support..... \$140.00
- 7 2. Any ancillary proceeding to modify or vacate a divorce
 8 decree providing for custody or support \$40.00
- 9 3. Probate and guardianship \$132.00
- 10 4. Annual guardianship report..... \$30.00
- 11 5. Any proceeding for sale or lease of real or personal
 12 property or mineral interest in probate or guardianship \$40.00
- 13 6. Any proceeding to revoke the probate of a will..... \$40.00
- 14 7. Judicial determination of death \$55.00
- 15 8. Adoption \$102.00
- 16 9. Civil actions and counterclaims for an amount of Ten
 17 Thousand Dollars (\$10,000.00) or less and
 18 condemnation \$147.00
- 19 10. Civil actions and counterclaims for an amount of Ten
 20 Thousand One Dollars (\$10,001.00) or more \$160.00
- 21 11. Garnishment \$20.00
- 22 12. Continuing wage garnishment \$60.00

- 1 13. Any other proceeding after judgment\$30.00
- 2 14. All others, including but not limited to actions for
- 3 forcible entry and detainer, judgments from all other
- 4 courts, including the Workers' Compensation Court.....\$82.00
- 5 15. Notice of renewal of judgment.....\$20.00

6 B. In addition to the amounts collected pursuant to paragraphs 1, 3, 7, 8, 9, 10 and
7 14 of subsection A of this section, the sum of Six Dollars (\$6.00) shall be assessed and
8 credited to the Law Library Fund.

9 C. In addition to the amounts collected pursuant to subsections A and B of this
10 section, the sum of Twenty-five Dollars (\$25.00) shall be assessed and credited to the
11 Oklahoma Court Information System Revolving Fund created pursuant to Section 1315
12 of Title 20 of the Oklahoma Statutes.

13 D. Of the amounts collected pursuant to paragraph 8 of shall be deposited to the
14 credit of the Voluntary Registry and Confidential Intermediary program and the Mutual
15 Consent Voluntary Registry established pursuant to the Oklahoma Adoption Code.

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

19 F. In addition to the amounts collected pursuant to subsections A and B of this
20 section, the sum of Three Dollars (\$3.00) shall be assessed and credited to the Office of
21 the Attorney General Victim Services Unit.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 G. In any case in which a litigant claims to have a just cause of action and that, by
2 reason of poverty, the litigant is unable to pay the fees and costs provided for in this
3 section and is financially unable to employ counsel, upon the filing of an affidavit in
4 forma pauperis executed before any officer authorized by law to administer oaths to that
5 effect and upon satisfactory showing to the court that the litigant has no means and is,
6 therefore, unable to pay the applicable fees and costs and to employ counsel, no fees or
7 costs shall be required. The opposing party or parties may file with the court clerk of the
8 court having jurisdiction of the cause an affidavit similarly executed contradicting the
9 allegation of poverty. In all such cases, the court shall promptly set for hearing the
10 determination of eligibility to litigate without payment of fees or costs. Until a final
11 order is entered determining that the affiant is ineligible, the clerk shall permit the
12 affiant to litigate without payment of fees or costs. Any litigant executing a false
13 affidavit or counter affidavit pursuant to the provisions of this section shall be guilty of
14 perjury.

15 H. Payments to the court clerk for fees and costs assessed pursuant to this section
16 may be made by a nationally recognized credit or debit card or other electronic payment
17 method as provided in paragraph 1 of subsection B of Section 151 of this title.

18 I. As used in this section, a “counterclaim” means a request of any form of
19 affirmative relief or injunction claimed against any party to the litigation. This shall not
20 apply to domestic or family law cases, or to a prayer for costs or attorney fees. A
21 counterclaim must be clearly designated as a counterclaim on the title of the first page of
22 the pleading or such claim will be treated as merely an affirmative defense. Any party

1 may move to dismiss a counterclaim filed without payment of the filing fee as required by
2 subsection A of this section.

3 SECTION 11. This act shall become effective November 1, 2009.

4 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 04-07-09 - DO PASS,
5 As Amended.