

1                                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2   STATE OF OKLAHOMA

3   2nd Session of the 53rd Legislature (2012)

4 COMMITTEE SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 2466

By: Stiles

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8   COMMITTEE SUBSTITUTE

9                   An Act relating to settlements; providing for offer  
10 of settlement in civil actions; stating parameters  
11 for offer of settlement; providing for recovery of  
12 certain costs if offer of settlement is rejected and  
13 certain judgment is rendered; excepting certain civil  
14 actions; proscribing minimum contents of an offer of  
15 settlement; setting forth procedure for extending an  
16 offer of settlement; setting forth procedure for  
17 accepting an offer of settlement; providing for  
18 rejection of an offer of settlement; stating  
19 acceptance of an offer of settlement is a binding  
20 agreement; requiring application for award of  
21 litigation costs; mandating court consider  
22 application at two separate hearings; outlining  
23 considerations for each hearing; requiring mediation  
24 prior to certain deadline; directing mediation be  
conducted by certain persons; 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 1121 of Title 12, unless there  
is created a duplication in numbering, reads as follows:

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

1       A. In all civil actions filed on or after November 1, 2012,  
2 except those listed in Section 2 of this act, any party may make an  
3 offer of settlement as to any claim, counterclaim or crossclaim at  
4 any time after an answer to the petition has been filed and until  
5 ten (10) days prior to trial.

6       B. The offer of settlement may include any relief entitled  
7 under law, including but not limited to: monetary damages, equitable  
8 relief, injunctive relief, dismissal, custody and visitation  
9 arrangement.

10       C. Any party that submits an offer of settlement shall be  
11 entitled to recover reasonable litigation costs and attorney fees  
12 when the offeree rejects the offer of settlement and the judgment  
13 rendered by the court is either equal to or is a greater benefit to  
14 the offeror.

15       SECTION 2.       NEW LAW       A new section of law to be codified  
16 in the Oklahoma Statutes as Section 1122 of Title 12, unless there  
17 is created a duplication in numbering, reads as follows:

18       The following civil actions shall not subject to this act:

- 19       1. Guardianships;
- 20       2. Name changes; and
- 21       3. Adoptions.

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1 SECTION 3. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1123 of Title 12, unless there  
3 is created a duplication in numbering, reads as follows:

4 The offer of settlement shall be specific enough so that the  
5 offer constitutes the entire agreement between the parties. At a  
6 minimum, all offers of settlement shall include:

- 7 1. The date the offer is made;
- 8 2. The amount or a clear description of the relief being  
9 offered;
- 10 3. Any terms the offer shall be subject to;
- 11 4. Whether acceptance of the offer shall act as either a  
12 dismissal of all claims asserted against the offeror with prejudice  
13 as to refilling or that the terms of the offer of settlement shall  
14 be reduced to judgment;
- 15 5. The following statutory disclosure statement: "This offer of  
16 settlement is made under Sections 1121 through 1127 of Title 12 of  
17 the Oklahoma Statutes. You may consult with an attorney in deciding  
18 whether to accept or reject this offer. If you choose to accept  
19 this offer, you shall sign the offer and return it within ten (10)  
20 days of receipt. Failure to respond within ten (10) days shall  
21 result in a rejection of this offer. If you reject this offer and  
22 the judgment rendered by the court is either equal to or is a  
23 greater benefit to the offeror, then you could be held liable to pay  
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1 the reasonable litigation expenses and attorney fees of the offering  
2 party”;

3 6. A place for the signature of the offeror with the  
4 declaration that the offeree accepts the offer on his or her own  
5 free will and not under duress; and

6 7. A place for the signature of the offeree and the attorney of  
7 the offeree, if any, affirming acceptance of the offer.

8 SECTION 4. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 1124 of Title 12, unless there  
10 is created a duplication in numbering, reads as follows:

11 A. Making an offer of settlement.

12 1. The offeror shall serve the offer of settlement by certified  
13 mail to the attorney for the offeree or by the same methods of  
14 service as serving a petition in Section 2004 of Title 12 of the  
15 Oklahoma Statutes;

16 2. After service of the offer of settlement, the offeror shall  
17 file with the court a notice of service of an offer of settlement.  
18 This notice shall not contain the particulars of the offer but shall  
19 state that an offer was delivered to the offeree or attorney of the  
20 offeree and the date upon which the offer was delivered;

21 3. After service, the offeree shall have ten (10) days to  
22 respond to the offer of settlement;

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1 4. If the offeree is represented by counsel, then the counsel  
2 of the offeree shall file with the court a statement of submission.  
3 Failure to file this statement shall constitute indirect civil  
4 contempt of court. This statement shall declare the following:

- 5 a. that the attorney has received the offer of  
6 settlement,
- 7 b. the date upon which the attorney submitted the offer  
8 to the client, and
- 9 c. that the attorney has advised the client as to the  
10 potential liability for litigation costs and attorney  
11 fees for not accepting the offer; and

12 5. No party shall be restricted as to the number of offers of  
13 settlements.

14 B. Accepting an offer of settlement.

15 1. The offer of settlement is considered accepted when it is  
16 signed by the offeree and delivered to the offeror;

17 2. Upon acceptance, the offeror shall file a notice of  
18 acceptance of the offer of settlement. This notice shall not  
19 contain the particulars of the offer but shall serve as notice to  
20 the court that there exists a valid offer of settlement; and

21 3. If an accepted offer of settlement requires the offer to be  
22 reduced to judgment, then the offeror shall prepare a journal entry  
23 of judgment in accordance with the terms of the offer of settlement

1 which shall be signed by the judge and entered as a judgment on the  
2 record.

3 C. Rejection of an offer of settlement.

4 1. The offeree may reject any offer of settlement either by not  
5 signing the offer of settlement or by formal rejection;

6 2. Any counteroffer to an offer of settlement shall constitute  
7 a rejection of the offer of settlement; and

8 3. Offers of settlement shall not be used as evidence in the  
9 trial, but may be used as evidence in a motion for attorney fees or  
10 motion for sanctions.

11 SECTION 5. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 1125 of Title 12, unless there  
13 is created a duplication in numbering, reads as follows:

14 A. Acceptance of an offer of settlement constitutes a binding  
15 settlement agreement between the parties and no other documents or  
16 settlement agreements are necessary. Nothing in this section shall  
17 restrict the parties from executing a more particular settlement  
18 agreement if the parties concur.

19 B. An offer of settlement shall be deemed to include any costs  
20 or attorney fees otherwise recoverable unless it expressly provides  
21 otherwise.

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1 SECTION 6. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1126 of Title 12, unless there  
3 is created a duplication in numbering, reads as follows:

4 A. To be awarded litigation costs under this act, the party  
5 shall make application to the court within thirty (30) days after  
6 filing the journal entry of judgment. This motion shall only  
7 address liability under this act and shall not address the amount of  
8 attorney fees. The court shall hold a hearing to determine  
9 liability for litigation costs and attorney fees under this act.  
10 The offeror shall prove the following by the preponderance of the  
11 evidence:

12 1. That an offer of judgment in compliance with this act was  
13 delivered to the offeree or counsel of the offeree;

14 2. That the offeror received judgment either equal to or  
15 greater than the offer of judgment. The court shall consider the  
16 offer and judgment as a whole and not whether or not each and every  
17 provision in the offer was received in the judgment; and

18 3. That a reasonable person should have known that he or she  
19 would have received the judgment against him or her.

20 B. If the court determines that the offeree is liable for costs  
21 and attorney fees under this act, then the offeree shall file a  
22 motion with the court addressing the reasonableness of the amount of  
23 costs and attorney fees. A second hearing shall be held to

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1 determine the amount for which the offeree shall pay in reasonable  
2 litigation costs and attorney fees. An award for reasonable  
3 litigation costs and attorney fees shall be from the date of the  
4 service of the offer to the date of judgment. The court shall  
5 consider the following:

6 1. The amount in controversy compared to the amount of attorney  
7 fees and litigation expenses;

8 2. The net worth of the party that rejected the offer;

9 3. The point in the lawsuit that the offer was rejected; and

10 4. The actions of the offeree during the litigation, including  
11 but not limited to, the amount of motions, the length of trial,  
12 noncompliance with discovery, bad faith, misconduct, and overall  
13 attempts by the offeree to fight, stall and drag the litigation.

14 C. The amount of the litigation costs and attorney fees award  
15 shall be offset against any judgment in the lawsuit and any  
16 remaining award shall be reduced to judgment.

17 D. Nothing in this act shall preclude a party from applying to  
18 the court for an award of attorney fees or litigation costs under  
19 any other statute. If the party applying for litigation costs under  
20 this act is also the same party applying for litigation costs under  
21 any other statute, then the court shall hear each application  
22 separately, with an application under this act being heard first.

23 If the party applying for litigation costs under this act is  
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1 different than the party applying for litigation costs under any  
2 other statute, then the court shall enter separate judgments and  
3 offset the amounts against each other.

4 SECTION 7. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 1127 of Title 12, unless there  
6 is created a duplication in numbering, reads as follows:

7 A. All parties to a civil lawsuit shall submit to mediation at  
8 some time prior to the end of the discovery deadline. Any party who  
9 does not submit to mediation shall be subject to sanctions by the  
10 court including but not limited to judgment against the party not  
11 submitting.

12 B. Mediation under this act shall be conducted by:

13 1. Any judge of the district court, other than the presiding  
14 judge, chosen at random by the court clerk; or

15 2. A member of the Oklahoma Bar Association appointed by the  
16 court who is either willing to perform such services pro bono or is  
17 paid out of the court fund; or

18 3. A person licensed by the Oklahoma Bar Association to perform  
19 mediation appointed by the court who is either willing to perform  
20 such services pro bono or is paid out of the court fund; or

21 4. A member of the Oklahoma Bar Association or a person who is  
22 licensed by the Oklahoma Bar Association to perform mediation as  
23 agreed to and paid for by the parties.

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1 SECTION 8. This act shall become effective November 1, 2012.

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3 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/28/2012 - DO  
4 PASS, As Amended.  
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