

1 STATE OF OKLAHOMA

2 1st Extraordinary Session of the 54th Legislature (2013)

3 HOUSE BILL 1006

By: Shannon of the House

4 and

5 Bingman and Sykes of the
6 Senate

7
8
9 AS INTRODUCED

10 An Act relating to civil procedure; repealing
11 Sections 14 and 15, Chapter 228, O.S.L. 2009, which
12 relate to frivolous filings; amending 12 O.S. 2011,
13 Sections 2011 and 2011.1, which relate to frivolous
14 filings; modifying definition of frivolous; amending
15 12 O.S. 2011, Sections 2011 and 2011.1, as amended by
16 Sections 2 and 4 of this act, which relate to
17 frivolous filings; modifying definition of frivolous;
18 providing for construction of act; providing for
19 noncodification; and declaring an emergency.

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

23 SECTION 1. REPEALER Sections 14 and 15, Chapter 228,
24 O.S.L. 2009, are hereby repealed.

SECTION 2. AMENDATORY 12 O.S. 2011, Section 2011, is
amended to read as follows:

Section 2011.

SIGNING OF PLEADINGS

1 A. SIGNATURE. Every pleading, written motion, and other paper
2 shall be signed by at least one attorney of record in the individual
3 name ~~of the attorney~~, whose Oklahoma Bar Association identification
4 number shall be stated, or, if the party is not represented by an
5 attorney, shall be signed by the party. Each paper shall state the
6 address of the signer and telephone number, if any. Except when
7 otherwise specifically provided by rule or statute, pleadings need
8 not be verified or accompanied by affidavit. An unsigned paper
9 shall be stricken unless the omission of the signature is corrected
10 promptly after being called to the attention of the attorney or
11 party.

12 B. REPRESENTATIONS TO COURT. By presenting to the court,
13 whether by signing, filing, submitting, or later advocating, a
14 pleading, written motion, or other paper, an attorney or
15 unrepresented party is certifying that to the best of the person's
16 knowledge, information, and belief, formed after an inquiry
17 reasonable under the circumstances:

18 1. It is not being presented for any improper or frivolous
19 purpose, such as to harass or to cause unnecessary delay or needless
20 increase in the cost of litigation;

21 2. The claims, defenses and other legal contentions therein are
22 warranted by existing law or by a nonfrivolous argument for the
23 extension, modification, or reversal of existing law or the
24 establishment of new law;

1 3. The allegations and other factual contentions have
2 evidentiary support or, if specifically so identified, are likely to
3 have evidentiary support after a reasonable opportunity for further
4 investigation or discovery; and

5 4. The denials of factual contentions are warranted on the
6 evidence or, if specifically so identified, are reasonably based on
7 a lack of information or belief.

8 C. SANCTIONS. If, after notice and a reasonable opportunity to
9 respond, the court determines that subsection B of this section has
10 been violated, the court shall, subject to the conditions stated
11 below, impose an appropriate sanction upon the attorneys, law firms,
12 or parties that have violated subsection B of this section or are
13 responsible for the violation.

14 1. HOW INITIATED.

15 a. By Motion. A motion for sanctions under this rule
16 shall be made separately from other motions or
17 requests and shall describe the specific conduct
18 alleged to violate subsection B of this section. It
19 shall be served as provided in Section 2005 of this
20 title, but shall not be filed with or presented to the
21 court unless, within twenty-one (21) days after
22 service of the motion or such other period as the
23 court may prescribe, the challenged paper, claim,
24 defense, contention, allegation, or denial is not

1 withdrawn or appropriately corrected. If warranted,
2 the court may award to the party prevailing on the
3 motion the reasonable expenses and attorneys fees
4 incurred in presenting or opposing the motion. Absent
5 exceptional circumstances, a law firm shall be held
6 jointly responsible for violations committed by its
7 partners, associates, and employees.

8 b. On Court's Initiative. On its own initiative, the
9 court may enter an order describing the specific
10 conduct that appears to violate subsection B of this
11 section and directing an attorney, law firm, or party
12 to show cause why it has not violated subsection B of
13 this section with respect thereto.

14 2. NATURE OF SANCTIONS; LIMITATIONS. A sanction imposed for
15 violation of this section shall be limited to what is sufficient to
16 deter repetition of such conduct or comparable conduct by others
17 similarly situated. Subject to the limitations in subparagraphs a,
18 b and c of this paragraph, the sanction may consist of, or include,
19 directives of a nonmonetary nature, an order to pay a penalty into
20 court, or, if imposed on motion and warranted for effective
21 deterrence, an order directing payment to the movant of some or all
22 of the reasonable attorneys fees and other expenses incurred as a
23 direct result of the violation.

- 1 a. Monetary sanctions shall not be awarded against a
2 represented party for a violation of paragraph 2 of
3 subsection B of this section.
- 4 b. Monetary sanctions shall not be awarded on the court's
5 initiative unless the court issues its order to show
6 cause before a voluntary dismissal or settlement of
7 the claims made by or against the party which is, or
8 whose attorneys are, to be sanctioned.
- 9 c. Monetary sanctions shall be awarded for any violations
10 of paragraph 1 of subsection B of this section. The
11 sanctions shall consist of an order directing payment
12 of reasonable costs, including attorney fees, incurred
13 by the movant with respect to the conduct for which
14 the sanctions are imposed. In addition, the court may
15 impose any other sanctions authorized by this
16 paragraph.

17 3. ORDER. When imposing sanctions, the court shall describe
18 the conduct determined to constitute a violation of this section and
19 explain the basis for the sanction imposed.

20 D. INAPPLICABILITY TO DISCOVERY. This section does not apply
21 to disclosures and discovery requests, responses, objections, and
22 motions that are subject to the provisions of Sections 3226 through
23 3237 of this title.

1 E. DEFINITION. As used in this section, "frivolous" means the
2 action or pleading was knowingly asserted in bad faith ~~or without~~
3 ~~any rational argument based in law or facts to support the position~~
4 ~~of the litigant or to change existing law,~~ was unsupported by any
5 credible evidence, was not grounded in fact, or was unwarranted by
6 existing law or a good faith argument for the extension,
7 modification, or reversal of existing law or the establishment of
8 new law.

9 SECTION 3. AMENDATORY 12 O.S. 2011, Section 2011, as
10 amended by Section 2 of this act, is amended to read as follows:

11 Section 2011.

12 SIGNING OF PLEADINGS

13 A. SIGNATURE. Every pleading, written motion, and other paper
14 shall be signed by at least one attorney of record in the individual
15 name of the attorney, whose Oklahoma Bar Association identification
16 number shall be stated, or, if the party is not represented by an
17 attorney, shall be signed by the party. Each paper shall state the
18 address of the signer and telephone number, if any. Except when
19 otherwise specifically provided by rule or statute, pleadings need
20 not be verified or accompanied by affidavit. An unsigned paper
21 shall be stricken unless the omission of the signature is corrected
22 promptly after being called to the attention of the attorney or
23 party.

1 B. REPRESENTATIONS TO COURT. By presenting to the court,
2 whether by signing, filing, submitting, or later advocating, a
3 pleading, written motion, or other paper, an attorney or
4 unrepresented party is certifying that to the best of the person's
5 knowledge, information, and belief, formed after an inquiry
6 reasonable under the circumstances:

7 1. It is not being presented for any improper or frivolous
8 purpose, such as to harass or to cause unnecessary delay or needless
9 increase in the cost of litigation;

10 2. The claims, defenses and other legal contentions therein are
11 warranted by existing law or by a nonfrivolous argument for the
12 extension, modification, or reversal of existing law or the
13 establishment of new law;

14 3. The allegations and other factual contentions have
15 evidentiary support or, if specifically so identified, are likely to
16 have evidentiary support after a reasonable opportunity for further
17 investigation or discovery; and

18 4. The denials of factual contentions are warranted on the
19 evidence or, if specifically so identified, are reasonably based on
20 a lack of information or belief.

21 C. SANCTIONS. If, after notice and a reasonable opportunity to
22 respond, the court determines that subsection B of this section has
23 been violated, the court shall, subject to the conditions stated
24 below, impose an appropriate sanction upon the attorneys, law firms,

1 or parties that have violated subsection B of this section or are
2 responsible for the violation.

3 1. HOW INITIATED.

4 a. By Motion. A motion for sanctions under this rule
5 shall be made separately from other motions or
6 requests and shall describe the specific conduct
7 alleged to violate subsection B of this section. It
8 shall be served as provided in Section 2005 of this
9 title, but shall not be filed with or presented to the
10 court unless, within twenty-one (21) days after
11 service of the motion or such other period as the
12 court may prescribe, the challenged paper, claim,
13 defense, contention, allegation, or denial is not
14 withdrawn or appropriately corrected. If warranted,
15 the court may award to the party prevailing on the
16 motion the reasonable expenses and attorneys fees
17 incurred in presenting or opposing the motion. Absent
18 exceptional circumstances, a law firm shall be held
19 jointly responsible for violations committed by its
20 partners, associates, and employees.

21 b. On Court's Initiative. On its own initiative, the
22 court may enter an order describing the specific
23 conduct that appears to violate subsection B of this
24 section and directing an attorney, law firm, or party

1 to show cause why it has not violated subsection B of
2 this section with respect thereto.

3 2. NATURE OF SANCTIONS; LIMITATIONS. A sanction imposed for
4 violation of this section shall be limited to what is sufficient to
5 deter repetition of such conduct or comparable conduct by others
6 similarly situated. Subject to the limitations in subparagraphs a,
7 b and c of this paragraph, the sanction may consist of, or include,
8 directives of a nonmonetary nature, an order to pay a penalty into
9 court, or, if imposed on motion and warranted for effective
10 deterrence, an order directing payment to the movant of some or all
11 of the reasonable attorneys fees and other expenses incurred as a
12 direct result of the violation.

13 a. Monetary sanctions shall not be awarded against a
14 represented party for a violation of paragraph 2 of
15 subsection B of this section.

16 b. Monetary sanctions shall not be awarded on the court's
17 initiative unless the court issues its order to show
18 cause before a voluntary dismissal or settlement of
19 the claims made by or against the party which is, or
20 whose attorneys are, to be sanctioned.

21 c. Monetary sanctions shall be awarded for any violations
22 of paragraph 1 of subsection B of this section. The
23 sanctions shall consist of an order directing payment
24 of reasonable costs, including attorney fees, incurred

1 by the movant with respect to the conduct for which
2 the sanctions are imposed. In addition, the court may
3 impose any other sanctions authorized by this
4 paragraph.

5 3. ORDER. When imposing sanctions, the court shall describe
6 the conduct determined to constitute a violation of this section and
7 explain the basis for the sanction imposed.

8 D. INAPPLICABILITY TO DISCOVERY. This section does not apply
9 to disclosures and discovery requests, responses, objections, and
10 motions that are subject to the provisions of Sections 3226 through
11 3237 of this title.

12 E. DEFINITION. As used in this section, "frivolous" means the
13 action or pleading was knowingly asserted in bad faith, ~~was~~
14 ~~unsupported by any credible evidence, was not grounded in fact, or~~
15 ~~was unwarranted by existing law or a good faith argument for the~~
16 ~~extension, modification, or reversal of existing law or the~~
17 ~~establishment of new law~~ or without any rational argument based in
18 law or facts to support the position of the litigant or to change
19 existing law.

20 SECTION 4. AMENDATORY 12 O.S. 2011, Section 2011.1, is
21 amended to read as follows:

22 Section 2011.1 In any action not arising out of contract, if
23 requested the court shall, upon ruling on a motion to dismiss an
24 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 claim or defense was
4 knowingly asserted in bad faith ~~or without any rational argument~~
5 ~~based in law or facts to support the position of the litigant or to~~
6 ~~change existing law, was unsupported by any credible evidence, was~~
7 ~~not grounded in fact, or was unwarranted by existing law or a good~~
8 ~~faith argument for the extension, modification, or reversal of~~
9 ~~existing law or the establishment of new law.~~ Upon so finding, the
10 court shall enter an order requiring such nonprevailing party to
11 reimburse the prevailing party for reasonable costs, including
12 attorney fees, incurred with respect to such claim or defense. In
13 addition, the court may impose any sanction authorized by Section
14 2011 of this title.

15 SECTION 5. AMENDATORY 12 O.S. 2011, Section 2011.1, as
16 amended by Section 4 of this act, is amended to read as follows:

17 Section 2011.1 In any action not arising out of contract, if
18 requested the court shall, upon ruling on a motion to dismiss an
19 action or a motion for summary judgment or subsequent to
20 adjudication on the merits, determine whether a claim or defense
21 asserted in the action by a nonprevailing party was frivolous. As
22 used in this section, "frivolous" means the claim or defense was
23 knowingly asserted in bad faith, ~~was unsupported by any credible~~
24 ~~evidence, was not grounded in fact, or was unwarranted by existing~~

1 ~~law or a good faith argument for the extension, modification, or~~
2 ~~reversal of existing law or the establishment of new law~~ or without
3 any rational argument based in law or facts to support the position
4 of the litigant or to change existing law. Upon so finding, the
5 court shall enter an order requiring such nonprevailing party to
6 reimburse the prevailing party for reasonable costs, including
7 attorney fees, incurred with respect to such claim or defense. In
8 addition, the court may impose any sanction authorized by Section
9 2011 of this title.

10 SECTION 6. NEW LAW A new section of law not to be
11 codified in the Oklahoma Statutes reads as follows:

12 The amendatory provisions contained in Sections 2 and 4 of this
13 act conform the statute to the holding in *Douglas v. Cox Retirement*
14 *Properties, Inc.*, 2013 OK 37, 302 P.2d 789 (Okla. 2013). The
15 amendatory provisions contained in Sections 3 and 5 of this act
16 conform the statute to the amendatory provisions of Enrolled House
17 Bill No. 1603 of the 1st Session of the 52nd Oklahoma Legislature,
18 c. 228, O.S.L. 2009.

19 SECTION 7. It being immediately necessary for the preservation
20 of the public peace, health and safety, an emergency is hereby
21 declared to exist, by reason whereof this act shall take effect and
22 be in full force from and after its passage and approval.

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24 54-1EX-50011 SD 08/29/13