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ENGROSSED HOUSE
BILL NO. 1235

and

Sykes of the Senate

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

Section 2004.

A. SUMMONS: ISSUANCE. Upon filing of the petition, the clerk shall forthwith issue a summons. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

SENATE FLOOR VERSION - HB1235 SFLR
(Bold face denotes Committee Amendments)

1 1. The summons shall be signed by the clerk, be under the seal
2 of the court, contain the name of the court and the names of the
3 parties, be directed to the defendant, state the name and address of
4 the plaintiff's attorney, if any, otherwise, the plaintiff's
5 address, and the time within which these rules require the defendant
6 to appear and defend, and shall notify the defendant that in case of
7 failure to appear, judgment by default will be rendered against the
8 defendant for the relief demanded in the petition.

9 2. A judgment by default shall not be different in kind from or
10 exceed in amount that prayed for in either the demand for judgment
11 or in cases not sounding in contract in a notice which has been
12 given the party against whom default judgment is sought. Except as
13 to a party against whom a judgment is entered by default, every
14 final judgment shall grant the relief to which the party in whose
15 favor it is rendered is entitled, even if the party has not demanded
16 such relief in his or her pleadings.

17 C. BY WHOM SERVED: PERSON TO BE SERVED.

18 1. SERVICE BY PERSONAL DELIVERY.

19 a. At the election of the plaintiff, process, other than
20 a subpoena, shall be served by a sheriff or deputy
21 sheriff, a person licensed to make service of process
22 in civil cases, or a person specially appointed for
23 that purpose. The court shall freely make special
24

1 appointments to serve all process, other than a
2 subpoena, under this paragraph.

3 b. A summons to be served by the sheriff or deputy
4 sheriff shall be delivered to the sheriff by the court
5 clerk or an attorney of record for the plaintiff.
6 When a summons, subpoena, or other process is to be
7 served by the sheriff or deputy sheriff of another
8 county, the court clerk shall mail it, together with
9 the voucher of the court clerk for the fees collected
10 for the service, to the sheriff of that county. The
11 sheriff shall deposit the voucher in the Sheriff's
12 Service Fee Account created pursuant to Section 514.1
13 of Title 19 of the Oklahoma Statutes. The sheriff or
14 deputy sheriff shall serve the process in the manner
15 that other process issued out of the court of the
16 sheriff's own county is served. A summons to be
17 served by a person licensed to make service of process
18 in civil cases or by a person specially appointed for
19 that purpose shall be delivered by an attorney of
20 record for the plaintiff to such person.

21 c. Service shall be made as follows:

22 (1) upon an individual other than an infant who is
23 less than fifteen (15) years of age or an
24 incompetent person, by delivering a copy of the

1 summons and of the petition personally or by
2 leaving copies thereof at the person's dwelling
3 house or usual place of abode with some person
4 then residing therein who is fifteen (15) years
5 of age or older or by delivering a copy of the
6 summons and of the petition to an agent
7 authorized by appointment or by law to receive
8 service of process,

9 (2) upon an infant who is less than fifteen (15)
10 years of age, by serving the summons and petition
11 personally and upon either of the infant's
12 parents or guardian, or if they cannot be found,
13 then upon the person having the care or control
14 of the infant or with whom the infant lives; and
15 upon an incompetent person by serving the summons
16 and petition personally and upon the incompetent
17 person's guardian,

18 (3) upon a domestic or foreign corporation or upon a
19 partnership or other unincorporated association
20 which is subject to suit under a common name, by
21 delivering a copy of the summons and of the
22 petition to an officer, a managing or general
23 agent, or to any other agent authorized by
24 appointment or by law to receive service of

1 process and, if the agent is one authorized by
2 statute to receive service and the statute so
3 requires, by also mailing a copy to the
4 defendant,

5 (4) upon the United States or an officer or agency
6 thereof in the manner specified by Federal Rule
7 of Civil Procedure 4,

8 (5) upon a state, county, school district, public
9 trust or municipal corporation or other
10 governmental organization thereof subject to
11 suit, by delivering a copy of the summons and of
12 the petition to the officer or individual
13 designated by specific statute; however, if there
14 is no statute, then upon the chief executive
15 officer or a clerk, secretary, or other official
16 whose duty it is to maintain the official records
17 of the organization, and

18 (6) upon an inmate incarcerated in an institution
19 under the jurisdiction and control of the
20 Department of Corrections, by delivering a copy
21 of the summons and of the petition to the warden
22 or superintendent or the designee of the warden
23 or superintendent of the institution where the
24 inmate is housed. It shall be the duty of the

1 receiving warden or superintendent or a designee
2 to promptly deliver the summons and petition to
3 the inmate named therein. The warden or
4 superintendent or his or her designee shall
5 reject service of process for any inmate who is
6 not actually present in said institution.

7 2. SERVICE BY MAIL.

- 8 a. At the election of the plaintiff, a summons and
9 petition may be served by mail by the plaintiff's
10 attorney, any person authorized to serve process
11 pursuant to subparagraph a of paragraph 1 of this
12 subsection, or by the court clerk upon a defendant of
13 any class referred to in division (1), (3) or (5) of
14 subparagraph c of paragraph 1 of this subsection.
15 Service by mail shall be effective on the date of
16 receipt or if refused, on the date of refusal of the
17 summons and petition by the defendant.
- 18 b. Service by mail shall be accomplished by mailing a
19 copy of the summons and petition by certified mail,
20 return receipt requested and delivery restricted to
21 the addressee. When there is more than one defendant,
22 the summons and a copy of the petition or order shall
23 be mailed in a separate envelope to each defendant.
24 If the summons is to be served by mail by the court

1 clerk, the court clerk shall enclose the summons and a
2 copy of the petition or order of the court to be
3 served in an envelope, prepared by the plaintiff,
4 addressed to the defendant, or to the resident service
5 agent if one has been appointed. The court clerk
6 shall prepay the postage and mail the envelope to the
7 defendant, or service agent, by certified mail, return
8 receipt requested and delivery restricted to the
9 addressee. The return receipt shall be prepared by
10 the plaintiff. Service by mail to a garnishee shall
11 be accomplished by mailing a copy of the summons and
12 notice by certified mail, return receipt requested,
13 and at the election of the judgment creditor by
14 restricted delivery, to the addressee.

15 c. Service by mail shall not be the basis for the entry
16 of a default or a judgment by default unless the
17 record contains a return receipt showing acceptance by
18 the defendant or a returned envelope showing refusal
19 of the process by the defendant. Acceptance or
20 refusal of service by mail by a person who is fifteen
21 (15) years of age or older who resides at the
22 defendant's dwelling house or usual place of abode
23 shall constitute acceptance or refusal by the party
24 addressed. In the case of an entity described in

1 division (3) of subparagraph c of paragraph 1 of this
2 subsection, acceptance or refusal by any officer or by
3 any employee of the registered office or principal
4 place of business who is authorized to or who
5 regularly receives certified mail shall constitute
6 acceptance or refusal by the party addressed. A
7 return receipt signed at such registered office or
8 principal place of business shall be presumed to have
9 been signed by an employee authorized to receive
10 certified mail. In the case of a state municipal
11 corporation, or other governmental organization
12 thereof subject to suit, acceptance or refusal by an
13 employee of the office of the officials specified in
14 division (5) of subparagraph c of paragraph 1 of this
15 subsection who is authorized to or who regularly
16 receives certified mail shall constitute acceptance or
17 refusal by the party addressed. If delivery of the
18 process is refused, upon the receipt of notice of such
19 refusal and at least ten (10) days before applying for
20 entry of default, the person elected by plaintiff
21 pursuant to subparagraph a of this paragraph to serve
22 the process shall mail to the defendant by first-class
23 mail a copy of the summons and petition and a notice
24 prepared by the plaintiff that despite such refusal

1 the case will proceed and that judgment by default
2 will be rendered against him unless he appears to
3 defend the suit. Any default or judgment by default
4 shall be set aside upon motion of the defendant in the
5 manner prescribed in Section 1031.1 of this title, or
6 upon petition of the defendant in the manner
7 prescribed in Section 1033 of this title if the
8 defendant demonstrates to the court that the return
9 receipt was signed or delivery was refused by an
10 unauthorized person. A petition shall be filed within
11 one (1) year after the defendant has notice of the
12 default or judgment by default but in no event more
13 than two (2) years after the filing of the judgment.

14 3. SERVICE BY PUBLICATION.

15 a. Service of summons upon a named defendant may be made
16 by publication when it is stated in the petition,
17 verified by the plaintiff or the plaintiff's attorney,
18 or in a separate affidavit by the plaintiff or the
19 plaintiff's attorney filed with the court, that with
20 due diligence service cannot be made upon the
21 defendant by any other method.

22 b. Service of summons upon the unknown successors of a
23 named defendant, a named decedent, or a dissolved
24 partnership, corporation, or other association may be

1 made by publication when it is stated in a petition,
2 verified by the plaintiff or the plaintiff's attorney,
3 or in a separate affidavit by the plaintiff or the
4 plaintiff's attorney filed with the court, that the
5 person who verified the petition or the affidavit does
6 not know and with due diligence cannot ascertain the
7 following:

8 (1) whether a person named as defendant is living or
9 dead, and, if dead, the names or whereabouts of
10 the person's successors, if any,

11 (2) the names or whereabouts of the unknown
12 successors, if any, of a named decedent,

13 (3) whether a partnership, corporation, or other
14 association named as a defendant continues to
15 have legal existence or not; or the names or
16 whereabouts of its officers or successors,

17 (4) whether any person designated in a record as a
18 trustee continues to be the trustee; or the names
19 or whereabouts of the successors of the trustee,
20 or

21 (5) the names or whereabouts of the owners or holders
22 of special assessment or improvement bonds, or
23 any other bonds, sewer warrants or tax bills.
24

1 c. Service pursuant to this paragraph shall be made by
2 publication of a notice, signed by the court clerk,
3 one (1) day a week for three (3) consecutive weeks in
4 a newspaper authorized by law to publish legal notices
5 which is published in the county where the petition is
6 filed. If no newspaper authorized by law to publish
7 legal notices is published in such county, the notice
8 shall be published in some such newspaper of general
9 circulation which is published in an adjoining county.
10 All named parties and their unknown successors who may
11 be served by publication may be included in one
12 notice. The notice shall state the court in which the
13 petition is filed and the names of the plaintiff and
14 the parties served by publication, and shall designate
15 the parties whose unknown successors are being served.
16 The notice shall also state that the named defendants
17 and their unknown successors have been sued and must
18 answer the petition on or before a time to be stated
19 (which shall not be less than forty-one (41) days from
20 the date of the first publication), or judgment, the
21 nature of which shall be stated, will be rendered
22 accordingly. If jurisdiction of the court is based on
23 property, any real property subject to the
24 jurisdiction of the court and any property or debts to

1 be attached or garnished must be described in the
2 notice.

3 (1) When the recovery of money is sought, it is not
4 necessary for the publication notice to state the
5 separate items involved, but the total amount
6 that is claimed must be stated. When interest is
7 claimed, it is not necessary to state the rate of
8 interest, the date from which interest is
9 claimed, or that interest is claimed until the
10 obligation is paid.

11 (2) It is not necessary for the publication notice to
12 state that the judgment will include recovery of
13 costs in order for a judgment following the
14 publication notice to include costs of suit.

15 (3) In an action to quiet title to real property, it
16 is not necessary for the publication notice to
17 state the nature of the claim or interest of
18 either party, and in describing the nature of the
19 judgment that will be rendered should the
20 defendant fail to answer, it is sufficient to
21 state that a decree quieting plaintiff's title to
22 the described property will be entered. It is
23 not necessary to state that a decree forever
24 barring the defendant from asserting any interest

1 in or to the property is sought or will be
2 entered if the defendant does not answer.

3 (4) In an action to foreclose a mortgage, it is
4 sufficient that the publication notice state that
5 if the defendant does not answer, the defendant's
6 interest in the property will be foreclosed. It
7 is not necessary to state that a judgment forever
8 barring the defendant from all right, title,
9 interest, estate, property and equity of
10 redemption in or to said property or any part
11 thereof is requested or will be entered if the
12 defendant does not answer.

13 d. Service by publication is complete when made in the
14 manner and for the time prescribed in subparagraph c
15 of this paragraph. Service by publication shall be
16 proved by the affidavit of any person having knowledge
17 of the publication. No default judgment may be
18 entered on such service until proof of service by
19 publication is filed with and approved by the court.

20 e. Before entry of a default judgment or order against a
21 party who has been served solely by publication under
22 this paragraph, the court shall conduct an inquiry to
23 determine whether the plaintiff, or someone acting in
24 behalf of the plaintiff, made a distinct and

1 meaningful search of all reasonably available sources
2 to ascertain the whereabouts of any named parties who
3 have been served solely by publication under this
4 paragraph. Before entry of a default judgment or
5 order against the unknown successors of a named
6 defendant, a named decedent, or a dissolved
7 partnership, corporation or association, the court
8 shall conduct an inquiry to ascertain whether the
9 requirements described in subparagraph b of this
10 paragraph have been satisfied.

11 f. A party against whom a default judgment or order has
12 been rendered, without other service than by
13 publication in a newspaper, may, at any time within
14 three (3) years after the filing of the judgment or
15 order, have the judgment or order set aside in the
16 manner prescribed in Sections 1031.1 and 1033 of this
17 title. Before the judgment or order is set aside, the
18 applicant shall notify the adverse party of the
19 intention to make an application and shall file a full
20 answer to the petition, pay all costs if the court
21 requires them to be paid, and satisfy the court by
22 affidavit or other evidence that during the pendency
23 of the action the applicant had no actual notice
24 thereof in time to appear in court and make a defense.

1 The title to any property which is the subject of and
2 which passes to a purchaser in good faith by or in
3 consequence of the judgment or order to be opened
4 shall not be affected by any proceedings under this
5 subparagraph. Nor shall proceedings under this
6 subparagraph affect the title of any property sold
7 before judgment under an attachment. The adverse
8 party, on the hearing of an application to open a
9 judgment or order as provided by this subparagraph,
10 shall be allowed to present evidence to show that
11 during the pendency of the action the applicant had
12 notice thereof in time to appear in court and make a
13 defense.

14 g. The term "successors" includes all heirs, executors,
15 administrators, devisees, trustees, and assigns,
16 immediate and remote, of a named individual,
17 partnership, corporation, or association.

18 h. Service outside of the state does not give the court
19 in personal jurisdiction over a defendant who is not
20 subject to the jurisdiction of the courts of this
21 state or who has not, either in person or through an
22 agent, submitted to the jurisdiction of the courts of
23 this state.

24 4. SERVICE ON THE SECRETARY OF STATE.

- 1 a. Service of process on a domestic or foreign
2 corporation may be made by serving the Secretary of
3 State as the corporation's agent, if:
- 4 (1) there is no registered agent for the corporation
5 listed in the records of the Secretary of State;
6 or
7 (2) neither the registered agent nor an officer of
8 the corporation could be found at the registered
9 office of the corporation, when service of
10 process was attempted.
- 11 b. Before resorting to service on the Secretary of State
12 the plaintiff must have attempted service either in
13 person or by mail on the corporation at:
- 14 (1) the corporation's last-known address shown on the
15 records of the Franchise Tax Division of the
16 Oklahoma Tax Commission, if any is listed there;
17 and
18 (2) the corporation's last-known address shown on the
19 records of the Secretary of State, if any is
20 listed there; and
21 (3) the corporation's last address known to the
22 plaintiff.
- 23 If any of these addresses are the same, the plaintiff
24 is not required to attempt service more than once at

1 any address. The plaintiff shall furnish the
2 Secretary of State with a certified copy of the return
3 or returns showing the attempted service.

4 c. Service on the Secretary of State shall be made by
5 filing two (2) copies of the summons and petition with
6 the Secretary of State, notifying the Secretary of
7 State that service is being made pursuant to the
8 provisions of this paragraph, and paying the Secretary
9 of State the fee prescribed in paragraph 7 of
10 subsection A of Section 1142 of Title 18 of the
11 Oklahoma Statutes, which fee shall be taxed as part of
12 the costs of the action, suit or proceeding if the
13 plaintiff shall prevail therein. If a registered
14 agent for the corporation is listed in the records of
15 the Secretary of State, the plaintiff must also
16 furnish a certified copy of the return showing that
17 service on the registered agent has been attempted
18 either in person or by mail, and that neither the
19 registered agent nor an officer of the corporation
20 could be found at the registered office of the
21 corporation.

22 d. Within three (3) working days after receiving the
23 summons and petition, the Secretary of State shall
24 send notice by letter, certified mail, return receipt

1 requested, directed to the corporation at its
2 registered office or the last-known address found in
3 the office of the Secretary of State, or if no address
4 is found there, to the corporation's last-known
5 address provided by the plaintiff. The notice shall
6 enclose a copy of the summons and petition and any
7 other papers served upon the Secretary of State. The
8 corporation shall not be required to serve its answer
9 until forty (40) days after service of the summons and
10 petition on the Secretary of State.

11 e. Before entry of a default judgment or order against a
12 corporation that has been served by serving the
13 Secretary of State as its agent under this paragraph,
14 the court shall determine whether the requirements of
15 this paragraph have been satisfied. A default
16 judgment or order against a corporation that has been
17 served only by service on the Secretary of State may
18 be set aside upon motion of the corporation in the
19 manner prescribed in Section 1031.1 of this title, or
20 upon petition of the corporation in the manner
21 prescribed in Section 1033 of this title, if the
22 corporation demonstrates to the court that it had no
23 actual notice of the action in time to appear and make
24 its defense. A petition shall be filed within one (1)

1 year after the corporation has notice of the default
2 judgment or order but in no event more than two (2)
3 years after the filing of the default judgment or
4 order.

5 f. The Secretary of State shall maintain an alphabetical
6 record of service setting forth the name of the
7 plaintiff and defendant, the title, docket number, and
8 nature of the proceeding in which the process has been
9 served upon the defendant, the fact that service has
10 been effected pursuant to the provisions of this
11 paragraph, the return date thereof, and the date when
12 the service was made. The Secretary of State shall
13 not be required to retain this information for a
14 period longer than five (5) years from receipt of the
15 service of process.

16 g. The provisions of this paragraph shall not apply to a
17 foreign insurance company doing business in this
18 state.

19 5. SERVICE BY ACKNOWLEDGMENT. An acknowledgment on the back of
20 the summons or the voluntary appearance of a defendant is equivalent
21 to service.

22 6. SERVICE BY OTHER METHODS. If service cannot be made by
23 personal delivery or by mail, a defendant of any class referred to
24 in division (1) or (3) of subparagraph c of paragraph 1 of this

1 subsection may be served as provided by court order in ~~any~~ a manner
2 which is reasonably calculated to give the defendant actual notice
3 of the proceedings and an opportunity to be heard and upon filing an
4 affidavit by the plaintiff or plaintiff's attorney that with due
5 diligence service cannot otherwise be made upon the defendant.

6 7. NO SERVICE BY PRISONER. No prisoner in any jail, Department
7 of Corrections facility, private prison, or parolee or probationer
8 under supervision of the Department of Corrections shall be
9 appointed by any court to serve process on any defendant, party or
10 witness.

11 D. SUMMONS AND PETITION. The summons and petition shall be
12 served together. The plaintiff shall furnish the person making
13 service with such copies as are necessary. The failure to serve a
14 copy of the petition with the summons is not a ground for dismissal
15 for insufficiency of service of process, but on motion of the party
16 served, the court may extend the time to answer or otherwise plead.
17 If a summons and petition are served by personal delivery, the
18 person serving the summons shall state on the copy that is left with
19 the person served the date that service is made. This provision is
20 not jurisdictional, but if the failure to comply with it prejudices
21 the party served, the court, on motion of the party served, may
22 extend the time to answer or otherwise plead.

23 E. SUMMONS: TERRITORIAL LIMITS OF EFFECTIVE SERVICE.
24

1 1. Service of the summons and petition may be made anywhere
2 within this state in the manner provided by subsection C of this
3 section.

4 2. When the exercise of jurisdiction is authorized by
5 subsection F of this section, service of the summons and petition
6 may be made outside this state:

7 a. by personal delivery in the manner prescribed for
8 service within this state,

9 b. in the manner prescribed by the law of the place in
10 which the service is made for service in that place in
11 an action in any of its courts of general
12 jurisdiction,

13 c. in the manner prescribed by paragraph 2 of subsection
14 C of this section,

15 d. as directed by the foreign authority in response to a
16 letter rogatory,

17 e. in the manner prescribed by paragraph 3 of subsection
18 C of this section only when permitted by subparagraphs
19 a and b of paragraph 3 of subsection C of this
20 section, or

21 f. as directed by the court.

22 3. Proof of service outside this state may be made in the
23 manner prescribed by subsection G of this section, the order
24 pursuant to which the service is made, or the law of the place in

1 which the service is made for proof of service in an action in any
2 of its courts of general jurisdiction.

3 4. Service outside this state may be made by an individual
4 permitted to make service of process under the law of this state or
5 under the law of the place in which the service is made or who is
6 designated to make service by a court of this state.

7 5. When subsection C of this section requires that in order to
8 effect service one or more designated individuals be served, service
9 outside this state under this section must be made upon the
10 designated individual or individuals.

11 6. a. A court of this state may order service upon any
12 person who is domiciled or can be found within this
13 state of any document issued in connection with a
14 proceeding in a tribunal outside this state. The
15 order may be made upon application of any interested
16 person or in response to a letter rogatory issued by a
17 tribunal outside this state and shall direct the
18 manner of service.

19 b. Service in connection with a proceeding in a tribunal
20 outside this state may be made within this state
21 without an order of court.

22 ~~d.~~ c. Service under this paragraph does not, of itself,
23 require the recognition or enforcement of an order,
24 judgment, or decree rendered outside this state.

1 F. ASSERTION OF JURISDICTION. A court of this state may
2 exercise jurisdiction on any basis consistent with the Constitution
3 of this state and the Constitution of the United States.

4 G. RETURN.

5 1. The person serving the process shall make proof of service
6 thereof to the court promptly and in any event within the time
7 during which the person served must respond to the process, but the
8 failure to make proof of service does not affect the validity of the
9 service.

10 2. When process has been served by a sheriff or deputy sheriff
11 and return thereof is filed in the office of the court clerk, a copy
12 of the return shall be sent by the court clerk to the plaintiff's
13 attorney within three (3) days after the return is filed. If
14 service is made by a person other than a sheriff or deputy sheriff,
15 the licensed process server shall make affidavit thereof. The
16 return shall set forth the county of issuance, the name of the
17 person served and the date, place, and method of service.

18 3. If service was by mail, the person mailing the summons and
19 petition shall endorse on the copy of the summons or order of the
20 court that is filed in the action the date and place of mailing and
21 the date when service was receipted or service was rejected, and
22 shall attach to the copy of the summons or order a copy of the
23 return receipt or returned envelope, if and when received, showing
24 whether the mailing was accepted, refused, or otherwise returned.

1 If the mailing was refused, the return shall also show the date and
2 place of any subsequent mailing pursuant to paragraph 2 of
3 subsection C of this section. When the summons and petition are
4 mailed by the court clerk, the court clerk shall notify the
5 plaintiff's attorney within three (3) days after receipt of the
6 returned card or envelope showing that the card or envelope has been
7 received.

8 H. AMENDMENT. At any time in its discretion and upon such
9 terms as it deems just, the court may allow any process or proof of
10 service thereof to be amended, unless it clearly appears that
11 material prejudice would result to the substantial rights of the
12 party against whom the process issued.

13 I. SUMMONS: TIME LIMIT FOR SERVICE. If service of process is
14 not made upon a defendant within one hundred eighty (180) days after
15 the filing of the petition and the plaintiff ~~cannot show~~ has not
16 shown good cause why such service was not made within that period,
17 the action shall be deemed dismissed as to that defendant without
18 prejudice. The action shall not be dismissed if a summons was
19 served on the defendant within one hundred eighty (180) days after
20 the filing of the petition and a court later holds that the summons
21 or its service was invalid. After a court quashes a summons or its
22 service, a new summons may be served on the defendant within a time
23 specified by the judge. If the new summons is not served within the
24 specified time, the action shall be deemed to have been dismissed

1 without prejudice as to that defendant. This subsection shall not
2 apply with respect to a defendant who has been outside of this state
3 for one hundred eighty (180) days following the filing of the
4 petition.

5 SECTION 2. This act shall become effective November 1, 2017.

6 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
7 April 4, 2017 - DO PASS
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