

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 HOUSE BILL 3482

By: Jordan

6 AS INTRODUCED

7 An Act relating to civil procedure; amending 12 O.S.
8 2011, Section 696.4, as amended by Section 1, Chapter
9 278, O.S.L. 2012 (12 O.S. Supp. 2017, Section 696.4),
10 which relates to costs and attorney fees; providing
11 for recovery of costs and attorney fees by the state
12 if the state is the prevailing party; and providing
13 an effective date.

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

14 SECTION 1. AMENDATORY 12 O.S. 2011, Section 696.4, as
15 amended by Section 1, Chapter 278, O.S.L. 2012 (12 O.S. Supp. 2017,
16 Section 696.4), is amended to read as follows:

17 Section 696.4 A. A judgment, decree or appealable order may
18 provide for costs, attorney fees, or both of these items, but it
19 need not include them; provided however, if the state is the
20 prevailing party the state shall be awarded attorney fees and costs.

21 The preparation and filing of the judgment, decree, or appealable
22 order shall not be delayed pending the determination of these items.
23 Such items may be determined by the court if a timely request is
24 made, regardless of whether a petition in error has been filed.

1 B. If attorney fees or costs, including the amount of such
2 attorney fees or costs have not been included in the judgment,
3 decree or appealable order, a party seeking any of these items must
4 file an application with the court clerk along with the proof of
5 service of the application on all affected parties in accordance
6 with Section 2005 of this title. The application must set forth the
7 amount requested and include information which supports that amount.
8 The application must be filed within thirty (30) days after the
9 filing of the judgment, decree or appealable order unless a
10 posttrial motion pursuant to subsection A of Section 990.2 of this
11 title has been filed within ten (10) days after the filing of the
12 judgment, decree, or appealable order. If such a motion is filed
13 within that time, the application for attorney fees, costs, or
14 interest shall be filed within thirty (30) days after the date an
15 order disposing of the posttrial motion is filed. If the party
16 filing the application did not prepare the judgment, decree, or
17 appealable order, and Section 696.2 of this title required a copy of
18 the judgment, decree, or appealable order to be mailed to the party
19 filing application, and the court records do not reflect the mailing
20 of a copy of the judgment, decree, or appealable order to the party
21 filing the application within three (3) days, exclusive of weekends
22 and holidays, after the filing of the judgment, decree, or
23 appealable order, the application may be filed no later than thirty
24 (30) days after the earliest date on which the court records show

1 that a copy of the judgment, decree, appealable order, or order
2 disposing of the posttrial motion was mailed to the party filing the
3 application. For good cause shown, the court may extend the time
4 for filing the application upon motion filed within the time that
5 the application could be filed. Within fifteen (15) days after the
6 application is filed with the court, any party may file written
7 objections to it, with a copy to the moving party.

8 C. Except as provided in ~~Subsection~~ subsection D of this
9 section, an application for attorney fees for services performed on
10 appeal shall be made to the appellate court by separate motion filed
11 any time before issuance of mandate. The application shall cite
12 authority for awarding attorney fees but shall not include
13 evidentiary material concerning their amount. The appellate court
14 shall decide whether to award attorney fees for services on appeal,
15 and if fees are awarded, it shall remand the case to the trial court
16 for a determination of their amount. The trial court's order
17 determining the amount of fees is an appealable order.

18 D. If the right of a party to recover attorney fees depends
19 upon a determination that the party has prevailed in an action, and
20 if the prevailing party in the action cannot be determined from the
21 decision of the appellate court, an application for attorney fees
22 for services performed on appeal shall be made to the trial court in
23 the manner and within the time provided in subsection B of this
24 section.

SECTION 2. This act shall become effective November 1, 2018.

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