# OKLAHOMA STATUTES
# TITLE 12. CIVIL PROCEDURE

## §12-1. Title of chapter.

This chapter shall be known as the Code of Civil Procedure of the State of Oklahoma.

R.L. 1910, § 4641.

## §12-2. Force of common law.

The common law, as modified by constitutional and statutory law, judicial decisions and the condition and wants of the people, shall remain in force in aid of the general statutes of Oklahoma; but the rule of the common law, that statutes in derogation thereof, shall be strictly construed, shall not be applicable to any general statute of Oklahoma; but all such statutes shall be liberally construed to promote their object.

R.L. 1910, § 4642.

## §12-3. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-4. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-5. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-6. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-7. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-8. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-9. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-10. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-11. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-12. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-13. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-14. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-15. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-16. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-17. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-18. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-19. Repealed by Laws 2013, 1st Ex.Sess., c. 12, § 1.
NOTE: Laws 2009, c. 228, § 2, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). See, now, Title 12, § 19.1.

§12-19.1. Affidavit of consultation with qualified expert - Extension - Exemption.

A. 1. In any civil action for negligence wherein the plaintiff shall be required to present the testimony of an expert witness to establish breach of the relevant standard of care and that such breach of duty resulted in harm to the plaintiff, except as provided in subsection B of this section, the plaintiff shall attach to the petition an affidavit attesting that:

a. the plaintiff has consulted and reviewed the facts of the claim with a qualified expert,

b. the plaintiff has obtained a written opinion from a qualified expert that clearly identifies the plaintiff and includes the determination of the expert that, based upon a review of the available material including, but not limited to, applicable records, facts or other relevant material, a reasonable interpretation of the facts supports a finding that the acts or omissions of the defendant against whom the action is brought constituted negligence, and

c. on the basis of the review and consultation of the qualified expert, the plaintiff has concluded that the claim is meritorious and based on good cause.

2. If the civil action for negligence is filed:

a. without an affidavit being attached to the petition, as required in paragraph 1 of this subsection, and

b. no extension of time is subsequently granted by the court, pursuant to subsection B of this section,

the court shall, upon motion of the defendant, dismiss the action without prejudice to its refiling.

3. The written opinion from the qualified expert shall state the acts or omissions of the defendant or defendants that the expert then believes constituted negligence and shall include reasons explaining why the acts or omissions constituted negligence. The written opinion from the qualified expert shall not be admissible at trial for any purpose nor shall any inquiry be permitted with regard to the written opinion for any purpose either in discovery or at trial.

B. 1. The court may, upon application of the plaintiff for good cause shown, grant the plaintiff an extension of time, not exceeding ninety (90) days after the date the petition is filed, except for good cause shown, to file in the action an affidavit attesting that the plaintiff has obtained a written opinion from a qualified expert as described in paragraph 1 of subsection A of this section.

2. If on the expiration of an extension period described in paragraph 1 of this subsection, the plaintiff has failed to file in the action an affidavit as described above, the court shall, upon motion of the defendant, unless good cause is shown for such failure, dismiss the action without prejudice to its refiling. If good cause is shown, the resulting extension shall in no event exceed sixty (60) days.

C. 1. Upon written request of any defendant in a civil action for negligence, the plaintiff shall, within ten (10) business days after receipt of such request, provide the defendant with:

a. a copy of the written opinion of a qualified expert mentioned in an affidavit filed pursuant to subsection A or B of this section, and

b. an authorization from the plaintiff in a form that complies with applicable state and federal laws,

including the Health Insurance Portability and Accountability Act of 1996, for the release of any and all relevant records related to the plaintiff for a period commencing five (5) years prior to the incident that is at issue in the civil action for negligence.

2. If the plaintiff fails to comply with paragraph 1 of this subsection, the court shall, upon motion of the defendant, unless good cause is shown for such failure, dismiss the action without prejudice to its refiling.

D. A plaintiff in a civil action for negligence may claim an exemption to the provisions of this section based on indigency pursuant to the qualification rules established as set forth in Section 4 of this act.

Added by Laws 2013, 1st Ex.Sess., c. 12, § 2.

NOTE: Text formerly resided under repealed Title 12, § 19, which was derived from Laws 2009, c. 228, § 2, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§12-20. Definitions.

A. As used in this section:

1. "Foreign law" means any law, legal code, or system of a jurisdiction outside of any state or territory of the United States, including, but not limited to, international organizations and tribunals, and applied by that jurisdiction's courts, administrative bodies, or other formal or informal tribunals. For the purposes of this section, foreign law shall not mean, nor shall it include, any laws of the federally recognized American Indian tribes or nations in this state or territory of the United States;

2. "Court" means any court, board, administrative agency, or other adjudicative or enforcement authority of this state; and

3. "Religious organization" means any church, seminary, synagogue, temple, mosque, religious order, religious corporation, association, or society, whose identity is distinctive in terms of common religious creed, beliefs, doctrines, practices, or rituals, of any faith or denomination, including any organization qualifying as a church or religious organization under Section 501(c)(3) or 501(d) of the United States Internal Revenue Code.

B. Any court, arbitration, tribunal, or administrative agency ruling or decision shall violate the public policy of this state and be void and unenforceable if the court, arbitration, tribunal, or administrative agency bases its rulings or decisions in the matter at issue in whole or in part on foreign law that would not grant the parties affected by the ruling or decision the same fundamental liberties, rights, and privileges granted under the United States and Oklahoma Constitutions, including but not limited to due process,

freedom of religion, speech, or press, and any right of privacy or marriage as specifically defined by the Constitution of this state.

C. A contract or contractual provision, if capable of segregation, which provides for the choice of a foreign law to govern some or all of the disputes between the parties shall violate the public policy of this state and be void and unenforceable if the foreign law chosen includes or incorporates any substantive or procedural law, as applied to the dispute at issue, that would not grant the parties at least the same fundamental liberties, rights, and privileges granted under the United States and Oklahoma Constitutions, including but not limited to due process, freedom of religion, speech, or press, and any right of privacy or marriage as specifically defined by the Constitution of this state.

D. 1. A contract or contractual provision, if capable of segregation, which provides for a jurisdiction for purposes of granting the courts or arbitration panels in personam jurisdiction over the parties to adjudicate any disputes between parties arising from the contract shall violate the public policy of this state and be void and unenforceable if the jurisdiction chosen includes any foreign law as applied to the dispute at issue, that would not grant the parties at least the same fundamental liberties, rights, and privileges granted under the United States and Oklahoma Constitutions, including but not limited to due process, freedom of religion, speech, or press, and any right of privacy or marriage as specifically defined by the Constitution of this state.

2. If a resident of this state, subject to personal jurisdiction in this state, seeks to maintain litigation, arbitration, agency or similarly binding proceedings in this state and if the courts of this state find that granting a claim of forum non conveniens or a related claim violates or would likely lead to the application of foreign law that would not grant a nonclaimant at least the same fundamental liberties, rights, and privileges granted under the United States and Oklahoma Constitutions, then it is the public policy of this state that the claim shall be denied.

E. This section shall not apply to any contract or agreement to which a corporation, partnership, limited liability company, business association, or other legal entity binds itself.

F. No court or arbitrator shall interpret this section to limit the right of any person to the free exercise of religion as guaranteed by the First Amendment to the United States Constitution and by the Constitution of this state. No court shall interpret this section to require or authorize any court to adjudicate, or prohibit any religious organization from adjudicating, ecclesiastical matters, including, but not limited to, the election, appointment, calling, discipline, dismissal, removal or excommunication of a member, officer, official, priest, nun, monk, pastor, rabbi, imam or member of the clergy, of the religious organization, or determination or

interpretation of the doctrine of the religious organization, where adjudication by a court would violate the prohibition of the establishment clause of the First Amendment of the United States Constitution, or violate the Constitution of this state.

G. This section shall not be interpreted by any court to conflict with any federal treaty including, but not limited to, any treaty with any federally recognized American Indian tribe or nation, or other international agreement to which the United States is a party to the extent that such treaty or international agreement preempts or is superior to state law on the matter at issue.

Added by Laws 2013, c. 58 § 1, eff. Nov. 1, 2013.

§12-21. Repealed by Laws 1980, c. 180, § 6, emerg. eff. May 13, 1980.

§12-22. Books to be kept by district clerk.

The clerk of the district court shall keep an appearance docket, a trial docket, a journal and such other records as may be ordered by the court or required by law.

R.L. 1910, § 5322. Amended by Laws 1988, c. 102, § 2, eff. Nov. 1, 1988; Laws 1990, c. 251, § 18, eff. Jan. 1, 1991; Laws 1991, c. 251, § 1, eff. June 1, 1991; Laws 1993, c. 351, § 7, eff. Oct. 1, 1993.

§12-23. Appearance docket.

On the appearance docket he shall enter all actions in the order in which they are brought, the date of the summons, the time of the return thereof by the officer, and his return thereon, the time of filing the petition, and all subsequent pleadings and papers, and an abstract of all judgments and orders of the court. An abstract shall contain a very brief description of the order or judgment rendered. It must not be encumbered with a detailed recital of the terms. Proceedings other than those which culminated in an order or judgment shall not be abstracted into the appearance docket. Either the judge or the clerk may prepare an appearance docket entry in the form of a minute, or the content of the entry may be dictated either by the judge or the clerk into an electronic recording device. The clerk shall transcribe onto the appearance docket all minute entries made and all the electronically-recorded abstracts.

R.L. 1910, § 5323. Amended by Laws 1972, c. 119, § 1, emerg. eff. March 31, 1972.

§12-24. Journal record - Instruments to be entered - Microfilm.

Upon the journal record required to be kept by the clerk of the district court in civil cases exclusive of the small claims docket and juvenile proceedings docket shall be entered copies of the following instruments on file:

1. All items of process by which the court acquired jurisdiction of the person of each defendant in the case; and

2. All instruments filed in the case that bear the signature of the judge and specify clearly the relief granted or order made.

The journal may be kept entirely in microfilm, optical disks, or other appropriate medium. Existing journal records in the custody of the court clerk may be destroyed after being stored on at least two microfilm records, optical disks, or other appropriate medium, one of which shall be placed by the court clerk with the Archives and Records Division of the Oklahoma Department of Libraries, or in a bank or other appropriate local depository, and one shall be available for public use in the court clerk's office. In case of functional failure of the record in the court clerk's office the copy in storage shall be made available to anyone requesting access to it. The cost of the storage medium and equipment and for viewing and copying shall be paid out of the court fund upon approval by the Chief Justice of the Supreme Court. Copies of the journal record reproduced from microfilm, optical disk, and other media and copies of the original instruments that are part of the journal records, when certified by the court clerk having the custody of the original, may be received in evidence with the same effect as the original would have had and without further identification by the party desiring to offer them.

R.L.1910, § 5324. Amended by Laws 1971, c. 245, § 1, eff. Oct. 1, 1971; Laws 1972, c. 146, § 1, emerg. eff. April 7, 1972; Laws 2004, c. 447, § 2, emerg. eff. June 4, 2004.

§12-24.1. Disposal of records.

Any clerk, upon microfilming the record as above set forth, is directed to destroy the record, provided that such record shall first be offered to the county and State Historical Society.

Added by Laws 1971, c. 245, § 2, eff. Oct. 1, 1971.

§12-25. Repealed by Laws 1990, c. 251, § 20, eff. Jan. 1, 1991.

§12-25.1. Repealed by Laws 1993, c. 351, § 29, eff. Oct. 1, 1993.

§12-26. Repealed by Laws 1988, c. 102, § 3, eff. Nov. 1, 1988.

§12-27. Clerk may collect judgment and costs.

Where there is no execution outstanding, the clerk of the court in which the judgment was rendered may receive the amount of the judgment and costs, and receipt therefor, with the same effect as if the same had been paid to the sheriff on an execution; and the clerk shall be liable to be amerced in the same manner and amount as a sheriff for refusing to pay the same to the party entitled thereto, when requested, and shall also be liable on his official bond.

R.L. 1910, § 5327.

§12-28. Clerks to issue writs and orders - Preparation.

All writs and orders for provisional remedies, and process of every kind shall be prepared by the party or his attorney who is seeking the issuance of such writ, order, or process and shall be issued by the clerks of the several courts.

R.L. 1910, § 5328. Amended by Laws 1969, c. 210, § 1.

§12-29. Clerks to file and preserve papers - Refusal to file sham legal process.

A. It is the duty of the clerk of each of the courts to file together and carefully preserve in his office, all papers delivered to him for that purpose, except as provided in subsection B of this section, in every action or special proceeding.

B. The court clerk may refuse to file any document presented for filing if the clerk believes that the document constitutes sham legal process, as defined by Section 1533 of Title 21 of the Oklahoma Statutes.

C. 1. Any person aggrieved by the refusal of a court clerk to file any document provided for in subsection A of this section may petition the district court for a writ of mandamus to compel the clerk to file the tendered document.

2. At the time of refusal, the person aggrieved shall file a notice of refusal with the court clerk for the purpose of tolling any applicable statute of limitations in the event the person prevails in any action so commenced, if the person wishes for the statute of limitations to be tolled. The refusal notice shall be submitted on a form provided by the court clerk, but must be filled out by the aggrieved party. A copy of the instrument that the clerk refused to file must be attached to the notice of refusal. The court clerk shall stamp the date of refusal on the notice of refusal.

The refusal notice shall be in the following form:

STATE OF OKLAHOMA
_____ COUNTY

NOTICE OF REFUSAL

The Office of Court Clerk of _____ County, Oklahoma, has on _____ (date) refused to file a document designated _____ (title of document or brief description of document). A copy of the refused document must be attached to this notice of refusal or the clerk cannot accept it for filing.

Signed:_____
Court Clerk
_____County, Oklahoma

Signed: _____
Aggrieved party or attorney for aggrieved party

Address:_____
_____

3. The action for mandamus must be filed with the district court within twenty (20) days after the notice of refusal is filed with the county clerk. If the writ of mandamus is granted, the court clerk shall refund the fee for filing the action. Notice of the pendency of a mandamus action filed pursuant to this section shall be filed in accordance with Section 2004.2 of this title. If the court determines that the tendered document is not sham legal process, the court shall order the clerk to file the tendered paper or papers. For any instrument which the court orders to be filed pursuant to this subsection, the date of filing shall be retroactive to the date the notice of refusal was filed.

D. If a court clerk improperly files or refuses to file a document provided for in subsection B of this section, the clerk shall be immune from liability for such action in any civil suit.

E. A clerk shall post a sign, in letters at least one (1) inch in height, that is clearly visible to the general public in or near the clerk's office stating that it is a felony to intentionally or knowingly file or attempt to file sham legal process with the clerk. Failure of the clerk to post such a sign shall not create a defense to any criminal or civil action based on sham legal process.
R.L. 1910, § 5329. Amended by Laws 1997, c. 405, § 2, emerg. eff. June 13, 1997.

§12-30. Each case to be kept separate - Correction of case number or other identifying data.

The papers in each case shall be kept in a separate file marked with the title and number of the case. If the court clerk discovers a pleading or other paper which has been filed or submitted for filing that bears an incorrect case number or other incorrect identifying data, the court clerk shall correct the case number or other incorrect identifying data and enter a notation on the docket sheet of both cases recording the correction. The corrected pleading or other paper shall be placed in the court file bearing the corrected case number.
R.L. 1910, § 5330. Amended by Laws 1972, c. 119, § 2, emerg. eff. March 31, 1972; Laws 1997, c. 239, § 3, eff. July 1, 1997.

§12-31. Endorsements.

He shall endorse upon every paper filed with him, the day of filing it; and upon every order for a provisional remedy, and upon every undertaking given under the same, the day of its return to his office.
R.L. 1910, § 5331.

§12-31.1. Removal of records or files from office of court clerk.

Only officers of the court or persons, firms or corporations holding a certificate of authority pursuant to the Oklahoma

Abstractors Law, Section 227.10 et seq. of Title 74 of the Oklahoma Statutes and other authorized court personnel may remove records or case files from the office of the court clerk for a period not to exceed twenty-four (24) hours. Rules for the removal of records or case files shall be promulgated by the district court having jurisdiction over the county in which such records or case files are situated.
Added by Laws 1986, c. 214, § 1, eff. Nov. 1, 1986.

§12-32. Entry on return of summons.
He shall, upon the return of every summons, enter upon the appearance docket whether or not service has been made; and, if the summons has been served, the name of the defendant or defendants summoned and the day and manner of the service upon each one. The entry shall be evidence in case of the loss of the summons.
R.L. 1910, § 5332. Amended by Laws 1953, p. 47, § 1.

§12-32.1. Material for record.
The record shall be made up from the petition, the process, return, the pleadings subsequent thereto, reports, verdicts, orders, judgments, and all material acts and proceedings of the court; but if the items of an account, or the copies of papers attached to the pleadings, be voluminous, the court may order the record to be made by abbreviating the same, or inserting a pertinent description thereof, or by omitting them entirely. Evidence must not be recorded.
R.L. 1910, § 5146. Renumbered from § 704 of this title by Laws 1972, c. 119, § 5, emerg. eff. March 3l, 1972.

§12-32.1A. Supreme Court to make rules for display of court records online.
The Supreme Court of Oklahoma shall immediately make rules regulating the display of court records online. The rules shall ensure that all online data is displayed uniformly in all counties. The Supreme Court of Oklahoma may modify the rules as necessary. Court clerks shall obey and follow the rules.
Added by Laws 2014, c. 87, § 2, eff. Nov. 1, 2014.

§12-32.2. Repealed by Laws 1990, c. 251, § 20, eff. Jan. 1, 1991.

§12-32.3. Repealed by Laws 1993, c. 351, § 29, eff. Oct. 1, 1993.

§12-33. Clerk to keep court records, books and papers - Statistical and other information for Supreme Court, President Pro Tempore of Senate and Speaker of House.
He shall keep the records and books and papers appertaining to the court and record its proceedings. He is directed to furnish

without cost to the Supreme Court of Oklahoma and to the President Pro Tempore of the Senate and the Speaker of the House of Representatives such statistical and other information as the court or Legislature may require, including, but without being limited to, the number and classification of cases:

1. Filed with the court;

2. Disposed of by the court, and the manner of such disposition; and

3. The number of cases pending before the court, at each term of the court.

R.L. 1910, § 5333. Amended by Laws 1951, p. 23, § 1; Laws 1981, c. 272, § 2, eff. July 1, 1981.

§12-34. Applicable to what courts.

The provisions of this article shall, as far as they are applicable, apply to the clerk of all courts of record.

R.L. 1910, § 5334.

§12-35. Powers and duties of clerks - Statistical and other information for Supreme Court, President Pro Tempore of Senate and Speaker of House.

The clerks of each of the courts shall exercise the powers and perform the duties imposed upon them by the statutes of this state and by the common law. The clerks of each of the courts of record shall furnish without cost to the Supreme Court of Oklahoma and to the President Pro Tempore of the Senate and the Speaker of the House of Representatives such statistical and other information as the court or Legislature may require, including, but without being limited to, the number and classification of cases:

1. Filed with the court;

2. Disposed of by the court, and the manner of such disposition; and

3. The number of cases pending before the court, at each term of the court.

R.L. 1910, § 5335. Amended by Laws 1951, p. 23, § 2; Laws 1981, c. 272, § 3, eff. July 1, 1981.

§12-35.1. Court clerk may process passports - Election - Passport fees.

A. The duties of the court clerk may include processing of passports as permitted and prescribed by federal law and regulation if the court clerk files a written election with the Administrative Office of the Courts to process passports. Upon the filing of the election to process passports as an official duty and service, the court clerk shall execute all passport applications presented.

B. Amounts collected pursuant to subsection A of this section shall be retained by the court clerk and deposited in the Court

Clerk's Revolving Fund pursuant to the provisions of Section 220 of Title 19 of the Oklahoma Statutes.
Added by Laws 1983, c. 127, § 1, eff. Nov. 1, 1983. Amended by Laws 1997, c. 400, § 2, eff. July 1, 1997; Laws 1998, c. 310, § 1, eff. Nov. 1, 1998.

§12-36. Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975.

§12-37. Repealed by Laws 1979, c. 221, § 18, emerg. eff. May 1, 1979.

§12-38. Seal of clerk of district court.

A. Every clerk of a district court shall keep a seal, to be furnished by the court, which shall contain the name of the county and the words "Oklahoma" and "District Court". The seal may be either metallic or nonmetallic.

B. Every instrument, document, record, paper or other thing required to be certified by the court or by the court clerk shall contain the seal of the court clerk. Where electronic transmission of a document is allowed, the document shall be deemed certified if it contains a digital signature or equivalent signing technology, as approved and supplied by the Supreme Court of Oklahoma. The Supreme Court shall be the guardian of digital signatures or equivalent signing technology and shall govern all rules as to validity and authenticity.

C. Any person who uses the seal of the court clerk with the intent to deceive or mislead any person as to the authenticity of the seal, a certification required by subsection B of this section, or the thing to which the seal is applied shall be guilty of a misdemeanor.

D. Electronic transmittals of documents shall be allowed if safeguards are in place to protect against unauthorized users and if agents intended to receive the transmittals have agreed to electronic processing of the documents.
Added by Laws 1991, c. 114, § 1, eff. Sept. 1, 1991. Amended by Laws 2004, c. 94, § 1, eff. July 1, 2004.

§12-39. Court clerk – Prohibition of posting documents containing certain charges on court-controlled web site.

A. Beginning July 1, 2005, no court clerk shall post on a court-controlled web site any document that contains a charge in Sections 886 and 888 of Title 21 of the Oklahoma Statutes, if the offense involved the detestable and abominable crime against nature with mankind, or a charge in Section 843.5 of Title 21 of the Oklahoma Statutes, or Section 644, 741, 843.1, 885, 1021, 1021.2, 1021.3,

1040.13a, 1081, 1085, 1087, 1088, Sections 1111 through 1116 or Section 1123 of Title 21 of the Oklahoma Statutes.

B. Nothing in this section shall be construed to prohibit access to any original document as provided by law.

Added by Laws 2005, c. 387, § 1, eff. July 1, 2005. Amended by Laws 2009, c. 234, § 110, emerg. eff. May 21, 2009.

§12-51. Style of process.

The style of all process shall be "The State of Oklahoma." It shall be under the seal of the court from whence the same shall issue, shall be signed by the clerk, and dated the day it is issued.

R.L. 1910, § 5319.

§12-52. Appointment of substitute for sheriff.

The court or judge, or any clerk in the absence of the judge from the county, for good cause, may appoint a person to serve a particular process or order, who shall have the same power to execute it which the sheriff has. The person may be appointed on the application of the party obtaining the process or order, and the return must be verified by affidavit. He shall be entitled to the same fees allowed to the sheriff for similar services.

R.L. 1910, § 5320.

§12-53. Sheriff to endorse time of receipt on process.

The sheriff shall endorse upon every summons, order of arrest, or for the delivery of property or of attachment or injunction, the day and hour it was received by him.

R.L. 1910, § 5336.

§12-54. Must execute and return process - Execution by county clerk when sheriff disqualified.

He shall execute every summons, order or other process, and return the same as required by law; and if he fail to do so, unless he make it appear to the satisfaction of the court that he was prevented by inevitable accident from so doing, he shall be amerced by the court in a sum not exceeding One Thousand Dollars ($1,000.00), upon motion and ten (10) days' notice, and shall be liable to the action of any person aggrieved by such failure. Provided that whenever any party, his agent or attorney, shall make and file with the clerk of the proper court an affidavit, stating that he believes that the sheriff of said county will not, by reason of either partiality, prejudice, consanguinity or interest, faithfully perform his duties in any suit commenced in said court, the clerk shall direct the original, or other process, in such suit to the county clerk who shall execute the same in like manner as the sheriff might or ought to have done, and who shall be subject to the same penalties as the sheriff if he fail to do so, unless he make it appear that he

was prevented by inevitable accident from so doing, and the county clerk shall perform all of the other duties of the sheriff when the sheriff shall be a party to the case, or is disqualified.
R.L. 1910, § 5337. Amended by Laws 1953, p. 47, § 1.

§12-55. Sheriff may adjourn court, when.

If the judge of a court fail to attend at the time and place appointed for holding his court, the sheriff shall have power to adjourn the court, from day to day, until the regular or assigned judge attend or a judge pro tempore be selected; but if the judge be not present in his court, nor a judge be assigned or a judge pro tempore be selected, within two (2) days after the first day of the term, then the court shall stand adjourned for the term. The sheriff shall exercise the powers and duties conferred and imposed upon him by the statutes of this state and by the common law.
R.L. 1910, § 5338.

§12-61. Justification of surety.

A ministerial officer whose duty it is to take security in any undertaking provided for by this Code or by other statutes shall require the person offered as surety to make an affidavit of his qualifications, which affidavit may be made before such officer, and shall be endorsed upon or attached to the undertaking. The taking of such an affidavit shall not exempt the officer from any liability to which he might otherwise be subject for taking insufficient security.
R.L. 1910, § 5342.

§12-62. Qualifications of surety.

The surety in every undertaking provided for by this Code or other statutes unless a surety company, must be a resident of this state and worth double the sum to be secured, over and above all exemptions, debts and liabilities. Where there are two or more sureties in the same undertaking they must in the aggregate have the qualifications prescribed in this section.
R.L. 1910, § 5343.

§12-63. Real estate mortgage as bond.

In every instance in this state where bond, indemnity or guaranty is required, a first mortgage upon improved real estate within this state shall be accepted: Provided, that the amount of such bond, guaranty or indemnity shall not exceed fifty percent (50%) of the reasonable valuation of such improved real estate, exclusive of all buildings thereon; Provided, further, that where the amount of such bond, guaranty or indemnity shall exceed fifty percent (50%) of the reasonable valuation of such improved real estate, exclusive of all buildings, then such first mortgage shall be accepted to the extent of such fifty percent (50%) valuation.

R.L. 1910, § 5344.

§12-64. Valuation of real estate.

The officer, whose duty it is to accept and approve such bond, guaranty or indemnity shall require the affidavits of two freeholders versed in land values in the community where such real estate is located to the value of such real estate. Said officer shall have the authority to administer the oaths and take said affidavits.
R.L. 1910, § 5345.

§12-65. False valuation - Penalty.

Any person willfully making a false affidavit as to the value of any such real estate shall be guilty of perjury and punished accordingly. Any officer administering or accepting such affidavit knowing it to be false, shall be guilty of the felony of subornation of perjury and punished accordingly.
R.L. 1910, § 5346. Amended by Laws 1997, c. 133, § 130, eff. July 1, 1999.
NOTE: Laws 1998, 1st Ex.Sess., c. 2, § 23 amended the effective date of Laws 1997, c. 133, § 130 from July 1, 1998, to July 1, 1999.

§12-66. State as a party – Bond not required – Automatic stay - Payment of costs.

A. Whenever an action is filed in any of the courts of this state where the State of Oklahoma or any of its departments or agencies, as defined in Section 152 of Title 51 of the Oklahoma Statutes, is a party, no bonds or other obligation of security shall be required from the state or from any party acting under the direction of the state, either to prosecute, answer, or appeal the action. The execution of a judgment or final order of any judicial tribunal against the state or any of its departments or agencies is automatically stayed without the execution of a supersedeas bond until any appeal of such judgment or final order has finally been determined.

In case of an adverse decision, such costs as by law are taxable against the state, or against the party acting by its direction, shall be paid out of the funds of the department under whose direction the proceedings were instituted or defended.

B. Costs shall be paid to the court fund of the district court in which an action is filed from the first funds collected in satisfaction of any judgment obtained by this state or any party acting under the direction of this state, except when the funds are collected pursuant to a child support order, judgment, or pursuant to any civil forfeiture action. No action filed by this state or by any party acting under the direction of this state shall be dismissed with unpaid costs of the action without the prior notification of the district court clerk of the county in which the action was filed.

Added by Laws 1923, c. 203, p. 354, § 1, emerg. eff. March 31, 1923. Amended by Laws 1992, c. 357, § 1, eff. July 1, 1992; Laws 1999, c. 359, § 2, eff. Nov. 1, 1999; Laws 2002, c. 468, § 1, eff. Nov. 1, 2002; Laws 2007, c. 248, § 1, emerg. eff. June 4, 2007.

§12-67. Repealed by Laws 1961, p. 59, § 1.

§12-68. Appearance bond - Application of penalty - Right to enforce.

If a bench warrant or command to enforce a court order by body attachment is issued in a case for divorce, legal separation, annulment or alimony, or in any civil proceeding in which a judgment debtor is summoned to answer as to assets, and the person arrested, pursuant to the authority of such process, makes a bond for his appearance at the time of trial or other proceeding in the case, the bond made shall be disbursed by the court clerk upon order of the court to the party in the suit who has procured the bench warrant or command for body attachment rather than to the State of Oklahoma. The penalty on the bond, or any part thereof, shall, when recovered, first be applied to discharge the obligation adjudicated in the case in which the bond was posted. The party who is the obligee on such bond shall have the right to enforce its penalty to the same extent and in the same manner as the state may enforce the penalty on a forfeited bail bond.

Added by Laws 1976, c. 265, § 1, operative Oct. 1, 1976. Amended by Laws 1977, c. 26, § 1, eff. Oct. 1, 1977. Renumbered from § 1276.1 of this title by Laws 1977, c. 26, § 2, eff. Oct. 1, 1977.

§12-71. Deputy may perform official duties.

Any duty enjoined by this Code upon a ministerial officer, and any act permitted to be done by him, may be performed by his lawful deputy.

R.L. 1910, § 5339.

§12-72. Affirmation.

Whenever an oath is required by this Code, the affirmation of a person, conscientiously scrupulous of taking an oath shall have the same effect.

R.L. 1910, § 5340.

§12-73. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-74. Supreme Court rules.

The Justices of the Supreme Court shall meet every two (2) years during the month of June at the capitol of the state and revise their general rules, and make such amendments thereto as may be required to carry into effect the provisions of this Code, and shall make such further rules consistent therewith as they may deem proper. The

rules so made shall apply to the Supreme Court, the district courts, the superior courts, the county courts and all other courts of record.
R.L. 1910, § 5347.

§12-75. Publications in "patent insides".
All publications and notices required by law to be published in newspapers in this state if published in newspapers having one side of the paper printed away from the office of publication, known as patent outsides or insides, shall have the same force and effect as though the same were published in newspapers printed wholly and published in the county where such publication shall be made, if one side of the paper is printed in said county where said notices are required to be published.
R.L. 1910, § 5348.

§12-76. Action on official bond.
When an officer, executor or administrator within this state, by misconduct or neglect of duty, forfeits his bond or renders his sureties liable, any person injured thereby, or who is, by law, entitled to the benefit of the security, may bring an action thereon in his own name, against the officer, executor or administrator and his sureties, to recover the amount to which he may be entitled by reason of the delinquency. The action may be instituted and proceeded in on a certified copy of the bond, which copy shall be furnished by the person holding the original thereof.
R.L. 1910, § 5349.

§12-77. May be several actions on same security.
A judgment in favor of a party for one delinquency does not preclude the same or another party from an action on the same security for another delinquency.
R.L. 1910, § 5350.

§12-78. Immaterial errors to be disregarded.
The court, in every stage of action, must disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the adverse party; and no judgment shall be reversed or affected by reason of such error or defect.
R.L. 1910, § 4791.

§12-79. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-80. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-81. Payments into court for infant or incompetent person - Disposition.

Where any amount of money not exceeding Five Hundred Dollars ($500.00) shall be deposited and paid into any court of record of this state by virtue of any judgment, order, settlement, distribution or decree for the use and benefit of, and to the credit of, any minor or incompetent person having no legal guardian of his estate within this state, and no person shall within ninety (90) days thereafter become the legal and qualified guardian of the estate of such minor or incompetent person, if it appears to the court that such money is needed for the support of such minor or incompetent person or that it is otherwise for the best interest of such minor or incompetent person, the court may, in its discretion, order payment of such funds to be made to any proper and suitable person as trustee for such minor or incompetent person, with bond, as the court may direct, to be expended for the support, use, and benefit of such minor or incompetent person. Such order may be made by the court in the original cause in which the funds are credited upon the application of any interested person; and the court may direct the clerk of the court to make payment of the same to be made in installments or in one lump sum as may seem for the best interests of such minor or incompetent person.
Added by Laws 1931, p. 2, § 1. Amended by Laws 1951, p. 24, § 1.

§12-82. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-83. Conserving monies obtained for or on behalf of persons under eighteen years of age in court proceedings.

A. Monies recovered in any court proceeding by a next friend or guardian ad litem for or on behalf of a person who is less than eighteen (18) years of age in excess of One Thousand Dollars ($1,000.00) over sums sufficient for paying costs and expenses including medical bills and attorney's fees shall be deposited, by order of the court, in one or more federally insured banking, credit union or savings and loan institutions, or invested by a bank or trust company having trust powers under federal or state law, approved by the court; provided, that the court may approve a structured settlement, by the terms of which the proceeds of a settlement may be invested by the plaintiff or the defendant in an annuity to be paid to or for the benefit of the minor by an insurance company licensed in this state. If authorized by the court at the request of the next friend or guardian ad litem, all or a portion of the recovered monies may be deposited in an account pursuant to the Oklahoma College Savings Plan Act with the minor designated as beneficiary of the account.

B. Until the person becomes eighteen (18) years of age, withdrawals of monies from the account or accounts shall be solely pursuant to order of the court made in the case in which recovery was had.

C. When an application for the order is made by a person who is not represented by an attorney, the judge of the court shall prepare the order.

D. This section shall not apply if a legal guardian has been appointed for the minor prior to any award of monies pursuant to subsection A of this section. If a legal guardian is appointed after any award of monies pursuant to subsection A of this section, the legal guardian may petition the district court in the county where the federally insured funds are held for an order directing the bank, credit union or savings and loan to transfer the funds to the legal guardian. The district court may make the granting of the request to transfer funds subject to reasonable safeguards.

Added by Laws 1971, c. 98, § 1, eff. Oct. 1, 1971. Amended by Laws 1972, c. 197, § 1, emerg. eff. April 7, 1972; Laws 1984, c. 53, § 1, emerg. eff. March 28, 1984; Laws 1993, c. 98, § 1, eff. Sept. 1, 1993; Laws 1996, c. 293, § 1, eff. Nov. 1, 1996; Laws 2003, c. 140, § 1, eff. Nov. 1, 2003; Laws 2019, c. 58, § 1, eff. Nov. 1, 2019.

§12-84. Repealed by Laws 1993, c. 98, § 2, eff. Sept. 1, 1993.

§12-85. Repealed by Laws 1982, c. 290, § 11.

§12-91. Actions barred not revived.

Any right of action, which shall have been barred by any statute heretofore in force, shall not be deemed to be revived by the provisions of this article, nor shall the prior statutes of limitation be extended as to any cause of action which has accrued prior to the time this article shall take effect.

R.L. 1910, § 4653.

§12-92. Limitations applicable.

Civil actions can only be commenced within the periods prescribed in this article, after the cause of action shall have accrued; but where, in special cases, a different limitation is prescribed by statute, the action shall be governed by such limitation.

R.L. 1910, § 4654.

§12-93. Limitation of real actions.

Actions for the recovery of real property, or for the determination of any adverse right or interest therein, can only be brought within the periods hereinafter prescribed, after the cause of action shall have accrued, and at no other time thereafter:

(1) An action for the recovery of real property sold on execution, or for the recovery of real estate partitioned by judgment in kind, or sold, or conveyed pursuant to partition proceedings, or other judicial sale, or an action for the recovery of real estate distributed under decree of district court in administration or

probate proceedings, when brought by or on behalf of the execution debtor or former owner, or his or their heirs, or any person claiming under him or them by title acquired after the date of the judgment or by any person claiming to be an heir or devisee of the decedent in whose estate such decree was rendered, or claiming under, as successor in interest, any such heir or devisee, within five (5) years after the date of the recording of the deed made in pursuance of the sale or proceeding, or within five (5) years after the date of the entry of the final judgment of partition in kind where no sale is had in the partition proceedings; or within five (5) years after the recording of the decree of distribution rendered by the district court in an administration or probate proceeding; provided, however, that where any such action pertains to real estate distributed under decree of district court in administration or probate proceedings and would at the passage of this act be barred by the terms hereof, such action may be brought within one (1) year after the passage of this act; this proviso shall not be construed to revive any action barred by paragraph 4 of this section.

(2) An action for the recovery of real property sold by executors, administrators, or guardians, upon an order or judgment of a court directing such sale, brought by the heirs or devisees of the deceased person, or the ward of his guardian, or any person claiming under any or either of them, by the title acquired after the date of judgment or order, within five (5) years after the date of recording of the deed made in pursuance of the sale.

(3) An action for the recovery of real property sold for taxes, within five (5) years after the date of the recording of the tax deed, except where lands exempt from taxation by reason of any Act of the Congress of the United States of America have been sold for taxes, in which case there shall be no limitation; provided, nothing herein shall be construed as reviving any cause of action for recovery of real property heretofore barred nor as divesting any interest acquired by adverse possession prior to the effective date hereof.

(4) An action for the recovery of real property not hereinbefore provided for, within fifteen (15) years.

(5) An action for the forcible entry and detention or forcible detention only of real property, within two (2) years.

(6) Numbered paragraphs 1, 2, and 3 shall be fully operative regardless of whether the deed or judgment or the precedent action or proceeding upon which such deed or judgment is based is void or voidable in whole or in part, for any reason, jurisdictional or otherwise; provided that this paragraph shall not be applied so as to bar causes of action which have heretofore accrued, until the expiration of one (1) year from and after its effective date.
R.L. 1910, § 4655. Amended by Laws 1945, p. 37, § 1; Laws 1949, p. 95, § 1; Laws 1961, p. 59, § 1, emerg. eff. July 26, 1961.

§12-94. Persons under disability - Time to sue to recover realty.

Any person entitled to bring an action for the recovery of real property, who may be under any legal disability when the cause of action accrues, may bring his action within two (2) years after the disability is removed.

R.L. 1910, § 4656.

§12-95. Limitation of other actions.

A. Civil actions other than for the recovery of real property can only be brought within the following periods, after the cause of action shall have accrued, and not afterwards:

1. Within five (5) years: An action upon any contract, agreement, or promise in writing;

2. Within three (3) years: An action upon a contract express or implied not in writing; an action upon a liability created by statute other than a forfeiture or penalty; and an action on a foreign judgment;

3. Within two (2) years: An action for trespass upon real property; an action for taking, detaining, or injuring personal property, including actions for the specific recovery of personal property; an action for injury to the rights of another, not arising on contract, and not hereinafter enumerated; an action for relief on the ground of fraud - the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud;

4. Within one (1) year: An action for libel, slander, assault, battery, malicious prosecution, or false imprisonment; an action upon a statute for penalty or forfeiture, except where the statute imposing it prescribes a different limitation;

5. An action upon the official bond or undertaking of an executor, administrator, guardian, sheriff, or any other officer, or upon the bond or undertaking given in attachment, injunction, arrest, or in any case whatever required by the statute, can only be brought within five (5) years after the cause of action shall have accrued;

6. An action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of childhood sexual abuse incidents or exploitation as defined by Section 1-1-105 of Title 10A of the Oklahoma Statutes or incest against the actual perpetrator shall be commenced by the forty-fifth birthday of the alleged victim. If the person committing the act of sexual abuse against a child was employed by an institution, agency, firm, business, corporation or other public or private legal entity that owed a duty of care to the victim, or the accused and the child were engaged in some activity over which the legal entity had some degree of responsibility or control, the action must be brought against such employer or legal entity within two (2) years; provided, that the time limit for commencement of an action pursuant to this paragraph

is tolled for a child until the child reaches the age of eighteen (18) years. No action may be brought against the alleged perpetrator or the estate of the alleged perpetrator after the death of such alleged perpetrator, unless the perpetrator was convicted of a crime of sexual abuse involving the claimant. An action pursuant to this paragraph must be based upon objective verifiable evidence in order for the victim to recover damages for injuries suffered by reason of such sexual abuse, exploitation, or incest. The victim need not establish which act in a series of continuing sexual abuse incidents, exploitation incidents, or incest caused the injury complained of;

7. An action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of criminal actions, as defined by the Oklahoma Statutes, may be brought against any person incarcerated or under the supervision of a state, federal or local correctional facility on or after November 1, 2003:

a. at any time during the incarceration of the offender for the offense on which the action is based, or

b. within five (5) years after the perpetrator is released from the custody of a state, federal or local correctional facility, if the defendant was serving time for the offense on which the action is based;

8. An action to establish paternity and to enforce support obligations can be brought any time before the child reaches the age of eighteen (18);

9. An action to establish paternity can be brought by a child in accordance with Section 7700-606 of Title 10 of the Oklahoma Statutes;

10. Court-ordered child support is owed until it is paid in full and it is not subject to a statute of limitations;

11. All actions filed by an inmate or by a person based upon facts that occurred while the person was an inmate in the custody of one of the following:

a. the State of Oklahoma,

b. a contractor of the State of Oklahoma, or

c. a political subdivision of the State of Oklahoma,

to include, but not be limited to, the revocation of earned credits and claims for injury to the rights of another, shall be commenced within one (1) year after the cause of action shall have accrued; and

12. An action for relief, not hereinbefore provided for, can only be brought within five (5) years after the cause of action shall have accrued.

B. Collection of debts owed by inmates who have received damage awards pursuant to Section 566.1 of Title 57 of the Oklahoma Statutes shall be governed by the time limitations imposed by that section. R.L.1910, § 4657. Amended by Laws 1953, p. 48, § 1, emerg. eff. June 1, 1953; Laws 1961, p. 60, § 1; Laws 1971, c. 316, § 3, emerg. eff. June 24, 1971; Laws 1992, c. 344, § 1, eff. Sept. 1, 1992; Laws 1994,

c. 356, § 11, eff. Sept. 1, 1994; Laws 1996, c. 233, § 1, eff. Nov. 1, 1996; Laws 2002, c. 402, § 1, eff. July 1, 2002; Laws 2004, c. 168, § 1, emerg. eff. April 27, 2004; Laws 2005, c. 159, § 1, emerg. eff. May 10, 2005; Laws 2008, c. 99, § 4, eff. Nov. 1, 2008; Laws 2009, c. 234, § 111, emerg. eff. May 21, 2009; Laws 2017, c. 221, § 1, eff. Nov. 1, 2017; Laws 2017, c. 378, § 1, eff. Nov. 1, 2017.
NOTE: Laws 2004, c. 168, § 18, providing for an effective date of Nov. 1, 2004, was repealed by Laws 2004, c. 382, § 4, emerg. eff. June 3, 2004.

§12-96. Persons under disability in actions other than to recover realty - Exceptions - Personal injury to minor arising from medical malpractice.

If a person entitled to bring an action other than for the recovery of real property, except for a penalty or forfeiture, be, at the time the cause of action accrued, under any legal disability, every such person shall be entitled to bring such action within one (1) year after such disability shall be removed, except that, after the effective date of this section, an action for personal injury to a minor under the age of twelve (12) arising from medical malpractice must be brought by the minor's parent or guardian within seven (7) years of infliction of the injury, provided a minor twelve (12) years of age and older must bring such action within one (1) year after attaining majority, but in no event less than two (2) years from the date of infliction of the injury, and an action for personal injury arising from medical malpractice to a person adjudged incompetent must be brought by the incompetent person's guardian within seven (7) years of infliction of the injury, provided an incompetent who has been adjudged competent must bring such action within one (1) year after the adjudication of such competency, but in no event less than two (2) years from the date of infliction of the injury.
R.L. 1910, § 4658. Amended by Laws 1987, c. 78, § 1, eff. Nov. 1, 1987.

§12-97. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-98. Absence or flight of defendant - Effect of other laws.

When a cause of action accrues against a person and that person is out of the state or has concealed himself, the period limited for the commencement of the action shall not begin to run until he comes into the state, or while he is concealed. If, after a cause of action accrues against a person and that person leaves the state or conceals himself, the time of his absence or concealment shall not be computed as any part of the period within which the action must be brought. Provided, however, that if any statute which extends the exercise of personal jurisdiction of courts over a person or corporation based upon service outside this state, or based upon

substituted service upon an official of this or any other state or nation, or based upon service by publication permits the courts of this state to acquire personal jurisdiction over the person, the period of his absence or concealment shall be computed as part of the period within which the action must be brought.
R.L. 1910, § 4660. Amended by Laws 1970, c. 76, § 1, emerg. eff. March 20, 1970; Laws 1980, c. 31, eff. Oct. 1, 1980.

§12-99. Repealed by Laws 1965, c. 98, § 6, eff. July 1, 1966.

§12-100. Limitation of new action after reversal or failure otherwise than on merits.

If any action is commenced within due time, and a judgment thereon for the plaintiff is reversed, or if the plaintiff fail in such action otherwise than upon the merits, the plaintiff, or, if he should die, and the cause of action survive, his representatives may commence a new action within one (1) year after the reversal or failure although the time limit for commencing the action shall have expired before the new action is filed.
R.L. 1910, § 4662. Amended by Laws 1975, c. 44, § 1, emerg. eff. March 31, 1975.

§12-101. Extension of limitation - Part payment, acknowledgment or new promise.

In any case founded on contract, when any part of the principal or interest shall have been paid, or an acknowledgment of an existing liability, debt or claim, or any promise to pay the same shall have been made, an action may be brought in such case within the period prescribed for the same, after such payment, acknowledgment or promise; but such acknowledgment or promise must be in writing, signed by the party to be charged thereby.
R.L. 1910, § 4663.

§12-102. Statutory bar absolute - Exception.

When a right of action is barred by the provisions of any statute, it shall be unavailable either as a cause of action or ground of defense, except as otherwise provided with reference to a counterclaim or setoff.
R.L. 1910, § 4664.

§12-103. Repealed by Laws 1953, p. 64, § 2.

§12-104. Claims arising outside state - "Claim" defined.

As used in this act, "claim" means any right of action which may be asserted in a civil action or proceeding and includes, but is not limited to, a right of action created by statute.
Added by Laws 1965, c. 98, § 1, emerg. eff. May 12, 1965.

§12-105. Law governing.

The period of limitation applicable to a claim accruing outside of this state shall be that prescribed either by the law of the place where the claim accrued or by the law of this state, whichever last bars the claim.

Added by Laws 1965, c. 98, § 2, emerg. eff. May 12, 1965. Amended by Laws 1970, c. 31, § 1, emerg. eff. Feb. 24, 1970.

§12-106. Repealed by Laws 1980, c. 68, § 1, emerg. eff. April 10, 1980.

§12-107. Uniform law.

This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Added by Laws 1965, c. 98, § 4, emerg. eff. May 12, 1965.

§12-108. Citation.

This act may be cited as the Uniform Statute of Limitation on Foreign Claims Act.

Added by Laws 1965, c. 98, § 5, emerg. eff. May 12, 1965.

§12-109. Limitation of action to recover damages arising from design, planning or construction of improvement to real property.

No action in tort to recover damages

(i) for any deficiency in the design, planning, supervision or observation of construction or construction of an improvement to real property,

(ii) for injury to property, real or personal, arising out of any such deficiency, or

(iii) for injury to the person or for wrongful death arising out of any such deficiency,

shall be brought against any person owning, leasing, or in possession of such an improvement or performing or furnishing the design, planning, supervision or observation of construction or construction of such an improvement more than ten (10) years after substantial completion of such an improvement.

Added by Laws 1967, c. 360, § 1, emerg. eff. May 22, 1967. Amended by Laws 1978, c. 188, § 1, eff. Oct. 1, 1978.

§12-110. Injury occurring during fifth year after substantial completion.

Notwithstanding the provisions of Section 1 of this act, in the case of such an injury to property or the person or such an injury causing wrongful death, which injury occurred during the fifth year after such substantial completion, an action in tort to recover damages for such an injury or wrongful death may be brought within

two (2) years after the date on which such injury occurred (irrespective of the date of death) but in no event may such an action be brought more than seven (7) years after the substantial completion of construction of such an improvement.
Added by Laws 1967, c. 360, § 2, emerg. eff. May 22, 1967.

§12-111. Period for bringing actions not extended.
Nothing in this act shall be construed as extending the period prescribed by the laws of this state for the bringing of any action.
Added by Laws 1967, c. 360, § 3, emerg. eff. May 22, 1967.

§12-112. Repealed by Laws 1978, c. 188, § 2, eff. Oct. 1, 1978.

§12-113. "Person" defined.
As used in this act, the term "person" shall mean an individual, corporation, partnership, business trust, unincorporated organization, association or joint stock company.
Added by Laws 1967, c. 360, § 5, emerg. eff. May 22, 1967.

§12-121. Repealed by Laws 1947, c. 188, § 248.

§12-122. Repealed by Laws 1947, c. 188, § 248.

§12-123. Repealed by Laws 1947, c. 188, § 248.

§12-124. Repealed by Laws 1947, c. 188, § 248.

§12-125. Repealed by Laws 1947, c. 188, § 248.

§12-126. Repealed by Laws 1947, c. 188, § 248.

§12-130. Actions brought pursuant to Affordable Access to Health Care Act.
The venue of civil actions for damages brought pursuant to the Affordable Access to Health Care Act, Section 1-1708.1A et seq. of Title 63 of the Oklahoma Statutes, shall be in a county where the cause of action or any portion thereof arose, or in any county in which any of the defendants reside, or in the case of a corporation, in a county in which it is situated, or has its principal office or place of business, or in any county where a codefendant of such corporation may be sued. Upon a finding of lack of venue, the court shall transfer or dismiss the action; provided, however, that if the court finds lack of venue and that a dismissal would operate as a dismissal with prejudice, the court shall transfer the action.
Added by Laws 2004, c. 368, § 2, eff. Nov. 1, 2004.

§12-131. Actions brought where subject located.

Except as provided in Section 132 of this title or Section 163 of Title 51 of the Oklahoma Statutes:

1. Actions for the following causes shall be brought in the county in which the subject of the action is situated

   a. for the recovery of real property, or of any estate, or interest therein, or the determination in any form of any such right or interest,
   b. for the partition of real property,
   c. for the sale of real property under a mortgage, lien, or other encumbrance or charge, and
   d. to quiet title, to establish a trust in, remove a cloud on, set aside a conveyance of, or to enforce or set aside an agreement to convey real property; and

2. For all damages to land, crops, or improvements thereon, actions shall be brought in the county where the damage occurs.

R.L. 1910, § 4671. Amended by Laws 1957, p. 78, § 2; Laws 1999, c. 293, § 2 eff. Nov. 1, 1999.

§12-132. Realty located in two or more counties - Specific performance.

If real property, the subject of an action, be an entire tract, and situated in two or more counties, or if it consists of separate tracts, situated in two or more counties, the action may be brought in any county in which any tract, or part thereof, is situated, unless it be an action to recover possession thereof, and if the property be an entire tract situated in two or more counties, an action to recover possession thereof may be brought in either of such counties; but if it consists of separate tracts, in different counties, the possession of such tracts must be recovered by separate actions brought in the counties where such tracts are situated. An action to compel the specific performance of a contract to sell real estate may be brought in the county where the land lies or where the defendants, or any of them reside or may be summoned.

R.L. 1910, § 4672.

§12-133. Actions brought where cause arose.

Actions for the following causes must be brought in the county where the cause, or some part thereof arose:

First. An action for the recovery of a fine, forfeiture or penalty imposed by statute, except when imposed for an offense committed on a river or other stream of water, road or other place which is the boundary of two or more counties, the cause of action shall be deemed to have arisen in each of said counties, and may be brought in any county bordering on such river, watercourse, road or other place, and opposite to the place where the offense was committed.

Second. An action against a public officer for an act done by him in virtue, or under color, of his office, or for neglect of his official duties.

Third. An action on the official bond or undertaking of a public officer.

R.L. 1910, § 4673.

§12-134. Domestic corporations.

An action, other than one of those mentioned in first three sections of this article, against a corporation created by the laws of this state, may be brought in the county in which it is situated, or has its principal office or place of business, or in which any of the principal officers thereof may reside, or be summoned, or in the county where the cause of action or some part thereof arose, or in any county where a codefendant of such corporation created by the laws of this state may properly be sued.

R.L. 1910, § 4674. Amended by Laws 1913, c. 83, p. 133, § 1; Laws 1970, c. 190, § 2, eff. Jan. 1, 1971.

§12-135. Actions against transportation or transmission companies.

Actions may be commenced against any transportation or transmission company in the county where any person resides upon whom service of summons is authorized to be made, irrespective of the order in which such persons are named in this chapter, and irrespective of the residence of any superior officer or authorized person upon whom service of summons may be had; or in the county where the cause of action, or some part thereof may have accrued; or, in any county through which or into which the lines of road or any part of the structure of such company may be, or passes; and the plaintiff may elect in which county he will bring the action.

R.L. 1910, § 4675.

§12-136. Actions against turnpike companies.

An action, other than one of those mentioned in the first three sections of this article, against a turnpike road company, may be brought in any county in which any part of such turnpike road or roads lie.

R.L. 1910, § 4676.

§12-137. Actions against foreign corporations and nonresidents.

In addition to the other counties in which an action may be brought against a nonresident of this state, or a foreign corporation, such action may be brought in any county in which there may be property of or debts owing to such defendant, or where such defendant may be found, or in any county where a codefendant may properly be sued; if such defendant be a foreign insurance company the action may be brought in any county where such cause of action,

or any part thereof, arose, or where the plaintiff resides or where such company has an agent.
R.L. 1910, § 4677. Amended by Laws 1975, c. 125, § 1, emerg. eff. May 13, 1975.

§12-138. Repealed by Laws 1971, c. 23, § 3, eff. March 22, 1971.

§12-139. Other actions - Venue when creditor has assigned right.
Every other action must be brought in the county in which the defendant or some one of the defendants resides or resided at the time the claim arose, or may be summoned; except claims against makers of notes, claims, or other indebtedness which have been assigned, sold or transferred by or from the original payee or obligee, which claims against such original maker of such notes, claims or indebtedness can only be brought in the county in which the said maker of such note, claim or indebtedness or some one of the original makers of such note, claim or indebtedness resides or in the county in which the claim arose. Provided, however, this section shall not in any way change or limit Section 131 of this title.
R.L.1910, § 4679. Amended by Laws 1915, c. 62, § 1, emerg. eff. March 3, 1915; Laws 1991, c. 30, § 1, eff. Sept. 1, 1991; Laws 2011, c. 187, § 1, eff. Nov. 1, 2011.

§12-140. Change of venue.
In all cases in which it is made to appear to the court that a fair and impartial trial cannot be had in the county where the suit is pending, the court may, on application of either party, change the place of trial to some county where such objections do not exist.
R.L. 1910, § 4680.

§12-140.1. Transfer of case to other county.
When the court orders the transfer of a case upon a showing by a party that the venue is or should be in some other county, the clerk of the court shall prepare a transcript of all the papers filed, orders entered, and a bill of the costs accrued. The clerk shall collect a new filing fee and shall forthwith transmit by certified mail such files and transcript of the cause and the filing fee which shall be due to the clerk of the court to which transfer is ordered. Unless otherwise ordered by the court, the plaintiff shall be responsible for appropriate filing fees when a case is brought in the wrong venue and transferred to a court having proper venue. In all other instances, the moving party shall be responsible for fees. The fees for the transfer shall be paid within ten (10) days of the transfer order.
Added by Laws 2007, c. 12, § 1, eff. Nov. 1, 2007.

§12-140.2. Repealed by Laws 2013, 1st Ex. Sess., c. 1, § 1, emerg. eff. Sept. 10, 2013.
NOTE: Laws 2009, c. 228, § 3, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). See now Title 12, § 140.3.

§12-140.3. Forum non conveniens – Considerations in motions to stay, transfer or dismiss.

A. If the court, upon motion by a party or on the court's own motion, finds that, in the interest of justice and for the convenience of the parties, an action would be more properly heard in another forum either in this state or outside this state, the court shall decline to exercise jurisdiction under the doctrine of forum non conveniens and shall stay, transfer or dismiss the action.

B. In determining whether to grant a motion to stay, transfer or dismiss an action pursuant to this section, the court shall consider:

1. Whether an alternate forum exists in which the action may be tried;

2. Whether the alternate forum provides an adequate remedy;

3. Whether maintenance of the action in the court in which the case is filed would work a substantial injustice to the moving party;

4. Whether the alternate forum can exercise jurisdiction over all the defendants properly joined in the action of the plaintiff;

5. Whether the balance of the private interests of the parties and the public interest of the state predominate in favor of the action being brought in an alternate forum; and

6. Whether the stay, transfer or dismissal would prevent unreasonable duplication or proliferation of litigation.

Added by Laws 2013, 1st Ex. Sess., c. 1, § 2, emerg. eff. Sept. 10, 2013.
NOTE: Text formerly resided under repealed Title 12, § 140.2, which was derived from Laws 2009, c. 228, § 3, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§12-141. Actions for damages by motor vehicles or watercraft.

The venue of civil actions for damages resulting from the use or operation of motor vehicles, or resulting from the operation of boats or other watercraft in the waters of this state, wherein the defendant or defendants resided in the State of Oklahoma at the time of injury, shall be, at the option of the plaintiff or plaintiffs, in either of the following:

1. In any county of Oklahoma where service of summons can be obtained upon one or more of the defendants as now provided by law.

2. In any county where the damages or a part thereof were sustained.

The plaintiff or plaintiffs may cause summons to issue to any county in Oklahoma for service upon one or more of the defendants. When service of summons upon one or more of the defendants cannot be obtained in Oklahoma with the exercise of due diligence, service may then be secured upon such defendant or defendants, as now or hereafter provided in Chapter 59, 47 O.S. 1961, for service upon nonresident motorists.

Added by Laws 1953, p. 49, § 1. Amended by Laws 1965, c. 51, § 1, emerg. eff. March 26, 1965; Laws 1965, c. 246, § 1, emerg. eff. June 16, 1965.

§12-142. Action for collection on open account, statement of account, account stated, note or other instrument of indebtedness - Contracts for goods, wares, merchandise, labor or services.

The venue of civil actions for the collection of an open account, a statement of account, account stated, written or oral contract relating to the purchase of goods, wares or merchandise, labor or services, or for the collection of any note or other instrument of indebtedness shall be, at the option of the plaintiff or plaintiffs, in either of the following:

(a) in any county in which venue may be properly laid as now provided by law; or

(b) in the county in which the debt was contracted or in which the note or other instrument of indebtedness was given.

Added by Laws 1965, c. 94, § 1. Amended by Laws 1971, c. 45, § 1, eff. Oct. 1, 1971; Laws 1978, c. 305, § 1, eff. July 1, 1978; Laws 1988, c. 4, § 1, eff. Nov. 1, 1987.

§12-143. Venue statutes as cumulative - Application.

All venue statutes are cumulative wherever they appear and any action brought under any such statute may be maintained where brought. No court shall apply one venue statute in preference to another whether considered general or special.

Added by Laws 1975, c. 105, § 1, emerg. eff. May 6, 1975.

NOTE: A former § 143 of this title, derived from Laws 1965, c. 94, § 2, was repealed by Laws 1971, c. 45, § 2.

§12-150. Medical liability actions - Summons.

In any medical liability action, a summons shall be served on the defendant, or defendants, within one hundred eighty (180) days of the filing of the lawsuit or the case shall be deemed dismissed without prejudice.

Added by Laws 2003, c.390, § 9, eff. July 1, 2003.

§12-151. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-152. Repealed by Laws 1972, c. 214, § 5, eff. Oct. 1, 1972.

§12-153. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-153.1. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-154. Summons may issue to other county.

Where the action is rightly brought in any county, a summons shall be issued to any other county against any one or more of the defendants, at the plaintiff's request.

R.L. 1910, § 4706.

§12-154.1. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-154.2. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-154.3. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-154.4. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-154.5. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-154.6. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-154.7. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-155. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-156. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-157. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-158. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-158.1. Private process servers - Licensing - Qualifications - Fees - Hearing - Notice - Protests - Proof of service - Revocation of license - List of licensees - Statewide registry.

A. Service and return of process in civil cases may be by an authorized licensed private process server. The presiding judge of the judicial administrative district in which the county is located, or an associate district judge or district judge of the county as may be designated by the presiding judge, shall be authorized to issue a license to make service of process in civil cases to persons deemed qualified to do so.

B. Any person who is:

1. Eighteen (18) years of age or older;

2. Of good moral character;

3. Found ethically and mentally fit;

4. A resident of the State of Oklahoma for a period of not less than six (6) months; and

5. A resident of the county or judicial administrative district in which the application is submitted for a period of not less than thirty (30) days,

may obtain a license by filing an application with the court clerk on a verified form to be prescribed by the Administrative Office of the Courts. The form shall require the applicant to identify whether the applicant has had a process server license issued by the State of Oklahoma, any other state, or any county in Oklahoma at any time prior to the current application.

C. The applicant filing for a license to serve process anywhere in this state shall pay a license fee of One Hundred Fifty Dollars ($150.00), and the regular docketing, posting, mailing, and filing fees prescribed by law. The license shall contain the full legal name, address, county in which the license was issued, a brief description of the licensee and a recent photograph of the licensee. The license shall state that the licensee is an officer of the court only for the purpose of service of process. The authority of the licensee shall be statewide. The license shall be carried by the licensee while on duty as a private process server. At the end of one (1) calendar year from the date of issuance of the initial license, the license shall be renewed for a period of three (3) years. The license shall be renewed each succeeding three (3) years. A fee of Fifteen Dollars ($15.00) per renewal shall be charged for each statewide license renewal. A license issued pursuant to this subsection entitles the holder of the license to serve process in any county in this state.

All fees collected pursuant to this section shall be deposited in the court fund.

D. Upon the filing of an application for a license, the court clerk shall give thirty (30) days' notice of hearing by causing the notice to be continually posted for thirty (30) days on the website of the county, or be posted in the courthouse. The applicant shall cause notice of the hearing to be made no less than twenty (20) days prior to the hearing one time by publication in a legal newspaper of the county, as defined in Section 106 of Title 25 of the Oklahoma Statutes, in which the application is filed. The applicant shall be responsible for payment of the publication fee, and shall file in the case the proof of publication affidavit from the newspaper prior to the hearing. The court clerk shall mail or deliver a copy of the notice at least twenty (20) days prior to the hearing to the district attorney, the sheriff in the county in which the application was filed, and the Oklahoma State Bureau of Investigation and shall contain the name of the applicant and the time and place the

presiding judge or the associate district judge or district judge designated by the presiding judge, will act upon the application.

E. If, at the time of consideration of the application or renewal, there are no protests and the applicant appears qualified, the application for the license shall be granted by the presiding judge or such associate district judge or district judge as is designated by the presiding judge and, upon executing bond running to the State of Oklahoma in the amount of Five Thousand Dollars ($5,000.00) for faithful performance of his or her duties and filing the bond with the court clerk, the applicant shall be authorized and licensed to serve civil process in any county in this state. If, at the time of consideration of the application for the license, the presiding judge, associate district judge or district judge as is designated by the presiding judge determines that the applicant does not meet all of the qualifications necessary for a license, the applicant shall be prohibited from reapplying for a license to serve process for a period of not less than one (1) year from the date of denial.

F. If any citizen of this state files a written protest setting forth objections to the licensing of the applicant, the district court clerk shall so advise the presiding judge or such associate district judge or district judge as is designated by the presiding judge, who shall set a later date for hearing of application and protest. The hearing shall be held within sixty (60) days and after notice to all persons known to be interested.

G. Proof of service of process shall be shown by affidavit as provided for by subsection G of Section 2004 of this title.

H. The district attorney of the county wherein a license authorized under this act has been issued or the Attorney General may file a petition in the district court to revoke the license issued to any licensee, as authorized pursuant to the provisions of this section, alleging the violation by the licensee of any of the provisions of the law. After at least thirty (30) days' notice by certified mail to the licensee, the chief or presiding judge, sitting without jury, shall hear the petition and enter an order thereon. If the license is revoked, the licensee shall not be permitted to reapply for a license for a period of five (5) years from the date of revocation. Notwithstanding any other provision of this section, any licensee whose license has been revoked one time shall pay the sum of One Thousand Dollars ($1,000.00) as a renewal fee. If a second revocation occurs, the chief or presiding judge shall not allow an applicant to renew the license.

I. The court clerk shall make available at all times in the office of the court clerk the list of licensed private process servers. Any person in need of the services of a process server may designate one from the names on the list, before presenting summons

to the court clerk for issuance, without necessity for individual judicial appointment.

J. No later than January 1, 2013, the Administrative Office of the Courts shall establish and maintain a statewide registry which shall contain a list of licensed private process servers. The Administrative Office of the Courts shall promulgate rules for the creation and maintenance of the statewide registry. Rules for the statewide registry for private process servers must have approval of the Supreme Court.

Added by Laws 1976, c. 74, § 1, emerg. eff. April 29, 1976. Amended by Laws 1978, c. 156, § 1, emerg. eff. Oct. 1, 1978; Laws 1979, c. 177, § 1, eff. Oct. 1, 1979; Laws 1984, c. 157, § 1, eff. Nov. 1, 1984; Laws 1985, c. 277, § 1, eff. Nov. 1, 1985; Laws 1987, c. 83, § 1, eff. Nov. 1, 1987; Laws 1998, c. 310, § 2, eff. Nov. 1, 1998; Laws 2003, c. 440, § 1, eff. July 1, 2003; Laws 2010, c. 50, § 1, eff. Nov. 1, 2010; Laws 2012, c. 101, § 1, eff. Jan. 1, 2013; Laws 2013, c. 76, § 1, emerg. eff. April 22, 2013.

§12-158.2. Request of server - Fees.

The process served by a licensee, authorized herein, shall be upon a request by the party or person desiring to obtain the services of said licensee. The fees to be paid for the services shall be agreed upon by them, and such fees shall not be collected by, nor handled through, the court clerk's office.

Added by Laws 1976, c. 74, § 2, emerg. eff. April 29, 1976.

§12-159. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-160. Repealed by Laws 1968, c. 293, § 3, eff. May 3, 1968.

§12-161. Repealed by Laws 1972, c. 214, § 5, eff. Oct. 1, 1972.

§12-162. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-163. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-164. Repealed by Laws 1963, c. 24, § 1, eff. March 26, 1963.

§12-165. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-166. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-167. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-168. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-169. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-170. Repealed by Laws 1972, c. 208, § 12, eff. Oct. 1, 1972.

§12-170.1. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-170.2. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-170.3. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-170.4. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-170.5. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-170.6. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-170.7. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-170.8. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-170.9. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-171. Repealed by Laws 1972, c. 208, § 12, eff. Oct. 1, 1972.

§12-171.1. Effect of affidavit of service.

No judgment rendered more than ten (10) years prior hereto against unknown heirs, executors, administrators, devisees, trustees or assigns of any deceased person or, in the alternative, against a person or his unknown heirs, executors, administrators, devisees and assigns, shall ever be construed or held to be either void or voidable on the ground of the alleged insufficiency of said affidavit, provided the requirements of 12 O.S. 1961, § 171, are met in such affidavit, either directly or by inference. All such judgments, if not otherwise defective, are hereby declared valid and legally effective and conclusive as of the date thereof. Provided, that nothing in this act shall be construed to affect any litigation now pending in any courts of the State of Oklahoma on the effective date of this act.

Added by Laws 1967, c. 143, § 1, emerg. eff. April 27, 1967.

§12-172. Repealed by Laws 1972, c. 208, § 12, eff. Oct. 1, 1972.

§12-173. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-174. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-176. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-177. Repealed by Laws 1947, p. 79, § 2.

§12-177.1. Judgment against unknown heirs or devisees - Judgment against party served by publication.

No judgment heretofore or hereafter rendered in any action against unknown heirs or devisees of a deceased person shall ever be construed, or held to be, either void or voidable upon the ground that an affidavit of the plaintiff to the effect that the name of such heirs or devisees, or any of them, and their residences, are unknown to the plaintiff, was not annexed to his petition; and all such judgments, if not otherwise void, are hereby declared to be valid and binding from the date of rendition.

No judgment heretofore or hereafter rendered in any action against any person or party served by publication shall be construed or held to be void or voidable because the affidavit for such service by publication was made by the attorney for the plaintiff or because the petition or other pleading was verified by the attorney for the plaintiff or party seeking such service by publication. In all such cases it shall be conclusively presumed, if otherwise sufficient, that the allegations and statements made by such attorney were and are in legal effect and for all purposes made by plaintiff and shall have the same force and effect as if actually made by the plaintiff. All such judgments, if not otherwise defective or void, are hereby declared valid and legally effective and conclusive as of the date thereof as if such affidavit was made or the petition or pleading was verified by the plaintiff or other party obtaining such service by publication. Provided further, that nothing in this act shall be construed to affect any litigation now pending in any courts of the State of Oklahoma on the effective date of this act.
Added by Laws 1947, p. 79, § 3. Amended by Laws 1957, p. 80, § 1.

§12-177.2. Limitation of actions.

Provided, any proceeding or suit or action to challenge or vacate or reopen a judgment ratified or confirmed by this act or law shall be commenced within six (6) months from the effective date hereof. Unless such suit or proceeding is begun within such time, the right to attack or challenge or question the validity of such judgment shall be forever barred.
Added by Laws 1957, p. 81, § 2.

§12-178. Service on some of several defendants.

Where the action is against two or more defendants, and one or more shall have been served, but not all of them, the plaintiff may proceed as follows:

First. If the action be against defendants jointly indebted upon contract, tort, or any other cause of action, he may proceed against the defendants served, unless the court otherwise direct; and if he

recover judgment, it may be entered against all the defendants thus jointly indebted, so far only as that it may be enforced against the joint property of all, and the separate property of the defendants served; and if they are subject to arrest, against the persons of the defendants served.

Second. If the action be against defendants severally liable, he may, without prejudice to his rights against those not served, proceed against the defendants served in the same manner as if they were the only defendants.

R.L. 1910, § 4730. Amended by Laws 1925, c. 186, p. 291, § 1.

§12-179. Judgment no bar as to defendants not served.

Nothing in this code shall be so construed as to make a judgment, against one or more defendants jointly or severally liable, a bar to another action against those not served.

R.L. 1910, § 4731.

§12-180. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-180.1. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-181. Record of judgment in realty case.

When any part of real property, the subject matter of an action, is situated in any other county or counties than the one in which the action is brought, a certified copy of the judgment in such action must be recorded in the office of the county clerk of such other county or counties, before it shall operate therein as notice. It shall operate as such notice, when recorded in the office of the county clerk, in the county where it is rendered.

R.L. 1910, § 4733. Amended by Laws 1977, c. 207, § 2, eff. Oct. 1, 1977.

§12-182. Unincorporated associations and trusts - Suits against - Service of process.

When any two or more persons associate themselves together and transact business for gain or speculation under a particular appellation, not being incorporated, they may be sued by such appellation without naming the individuals composing such association and service of process may be had upon such association by personal service as provided by law for services of summons in civil actions, upon any member of such unincorporated association, or, if the case be one in which service by publication may be had under the laws of this state, and service of summons either within or outside of the state cannot be had, with due diligence, upon any of the members of such unincorporated association, service by publication may be had upon such association by its particular appellation. Provided further, that service may be had upon any common law trust or any

other unincorporated association or trust of individuals designating themselves as a trust or represented by an individual as trustee, by service upon any one of such individuals as may be designated as trustee for said trust, the same as in any other civil action. Venue in such cases, in addition to that now provided, shall be the same as that provided for actions involving domestic corporations.
Added by Laws 1931, p. 4, art. 3, § 1. Amended by Laws 1973, c. 262, § 4, operative July 1, 1973; Laws 1976, c. 17, § 1, eff. Oct. 1, 1976.

§12-183. Repealed by Laws 1973, c. 262, § 8, operative July 1, 1973.

§12-184. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-185. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-185.1. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-186. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-187. Action against nonresident defendant(s) - Venue.
In addition to the other counties in which an action may be brought against a nonresident of this state, an action where all defendants are nonresidents of the state may be brought in the county where the cause of action arose or in the county where the plaintiff or one of the plaintiffs resides. If one or more of the defendants is a resident of this state, the action shall be brought in any county where venue would be proper as to the resident defendant or one of the resident defendants if there are several.
Added by Laws 1963, c. 32, § 1. Amended by Laws 1965, c. 54, § 1, emerg. eff. March 29, 1965; Laws 1967, c. 228, § 1, emerg. eff. May 2, 1967; Laws 1972, c. 208, § 8, eff. Oct. 1, 1972; Laws 1984, c. 164, § 31, eff. Nov. 1, 1984.

§12-188. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-189. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-190. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-192. Repealed by Laws 2013, 1st Ex.Sess., c. 12, § 3.
NOTE: Laws 2009, c. 228, § 4, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). See, now, Title 12, § 192.1.

§12-192.1. Indigency exemption - Promulgation of rules.

A. When a plaintiff requests an indigency exemption from providing an affidavit of merit in a civil action for negligence pursuant to Section 2 of this act, such person shall submit an appropriate application to the court clerk, on a form created by the Administrative Director of the Courts, which shall state that the application is signed under oath and under the penalty of perjury and that a false statement may be prosecuted as such.

B. 1. The Supreme Court shall promulgate rules governing the determination of indigency for a plaintiff claiming an exemption from providing an affidavit of merit in a civil action for negligence pursuant to Section 2 of this act. The initial determination of indigency shall be made by the Chief Judge of the Judicial District or a designee thereof, based on the plaintiff's application and the rules provided herein.

2. Upon promulgation of the rules required by law, the determination of indigency shall be subject to review by the Presiding Judge of the Judicial Administrative District.

Added by Laws 2013, 1st Ex.Sess., c. 12, § 4.

NOTE: Text formerly resided under repealed Title 12, § 192, which was derived from Laws 2009, c. 228, § 4, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§12-221. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-222. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-223. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-224. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-225. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-226. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-227. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-228. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-228a. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-229. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-230. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-231. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-232. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-233. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-234. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-235. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-236. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-236a. Party defendants in real property actions.

In an action involving real property any person appearing in any manner in the title thereto, or claiming or appearing to claim some interest in the real property involved, may be included as a party defendant by naming such person as a party defendant in the caption of such petition; and when such person is made a defendant in the body of the petition under the appellation of substantially the following words "said defendant named herein claims some right, title, lien, estate, encumbrance, claim, assessment or interest in and to the real property involved herein, adverse to plaintiff which constitutes a cloud upon the title of plaintiff and defendant has no right, title, lien, estate, encumbrance, claim, assessment or interest, either in law or in equity, in and to the real property involved herein", that same is sufficient to include any and all claims, known or unknown, that such defendant may have in and to the real property involved in such case, it not being necessary to set out the reason in the petition, or other pleading, for such person being made a party defendant.

Added by Laws 1961, p. 61, § 1.

§12-237. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-238. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-239. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-240. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-241. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-242. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-243. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-244. Transferred to § 17.1 of Title 10.

§12-245. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-261. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-262. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-263. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-264. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-264.1. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-265. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-266. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-267. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-268. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-268A. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-269. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-270. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-271. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-272. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-273. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-273.1. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-274. Repealed by Laws 1965, c. 120, § 2.

§12-275. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-276. Repealed by Laws 1963, c. 125, § 2.

§12-277. Repealed by Laws 1963, c. 125, § 2.

§12-278. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-279. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-280. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-281. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-282. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-283. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-284. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-285. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-286. Repealed by Laws 1977, c. 86, § 1, eff. Oct. 1, 1977.

§12-287. Repealed by Laws 1977, c. 86, § 1, eff. Oct. 1, 1977.

§12-288. Repealed by Laws 1977, c. 86, § 1, eff. Oct. 1, 1977.

§12-289. Repealed by Laws 1977, c. 86, § 1, eff. Oct. 1, 1977.

§12-290. Repealed by Laws 1977, c. 86, § 1, eff. Oct. 1, 1977.

§12-291. Repealed by Laws 1977, c. 86, § 1, eff. Oct. 1, 1977.

§12-292. Repealed by Laws 1977, c. 86, § 1, eff. Oct. 1, 1977.

§12-293. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-294. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-295. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-296. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-297. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-298. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-299. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-300. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-301. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-302. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-303. Libel or slander - Alleging publication concerning plaintiff.

In an action for libel or slander, it shall be sufficient to state, generally, that the defamatory matter was published or spoken of the plaintiff; and if the allegation be denied, the plaintiff must prove, on the trial, the facts, showing that the defamatory matter was published or spoken of him.
R.L. 1910, § 4776.

§12-304. Truth as defense in libel or slander - Mitigation.
In the actions mentioned in the last section, the defendant may allege the truth of the matter charged as defamatory, and may prove the same, and any mitigating circumstances, to reduce the amount of damages, or he may prove either.
R.L. 1910, § 4777.

§12-305. Description of real property.
In any action for the recovery of real property, it shall be described with such convenient certainty as will enable an officer holding an execution to identify it.
R.L. 1910, § 4778.

§12-305.1. Pleading recorded instruments affecting real estate.
From and after the passage of this act in all civil cases whereby it is necessary to incorporate, in the pleadings, facts concerning instruments of record affecting real estate, that such incorporation may be made by reference to the date of such instrument, and the book and page number where recorded in lieu of affixing a copy of the same to such pleadings.
Added by Laws 1953, p. 52, § 1.

§12-306. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-307. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-308. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-309. Tenders - How made - Deposit in court.
When a tender of money is alleged in any pleading, it shall not be necessary to deposit the money in court when the pleading is filed, but it shall be sufficient if the money is deposited in court at trial, or when ordered by the court.
R.L. 1910, § 4782.

§12-310. Lost pleadings.
If an original pleading be lost or withheld by any person the court may allow a copy thereof to be substituted.
R.L. 1910, § 4783.

§12-311. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-312. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-313. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-314. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-315. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-316. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-317. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-318. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-319. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-320. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-321. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-322. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-323. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-324. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-381. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-382. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-383. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-384. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-385. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-385.1. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-385.2. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-385.3. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-386. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-387. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-388. Repealed by Laws 1982, c. 198, § 16.

§12-389. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-390. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-390.1. Repealed by Laws 1982, c. 198, § 16.

§12-391. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-392. Disobedience of subpoena or refusal to be sworn or answer as a witness punishable as contempt.

Disobedience of a subpoena, or refusal to be sworn or to answer as a witness, when lawfully ordered, may be punished as a contempt of the court or officer by whom his attendance or testimony is required. R.L. 1910, § 5057. Amended by Laws 1980, c. 47, § 1, eff. Oct. 1, 1980.

§12-393. Attachment of witness for nonattendance.

When a witness fails to attend in obedience to a subpoena (except in case of a demand and failure to pay his fees), the court or officer before whom his attendance is required may issue an attachment to the sheriff, coroner or constable of the county, commanding him to arrest and bring the person therein named before the court or officer, at a time and place to be fixed in the attachment, to give his testimony and answer for the contempt. If the attachment be not for immediately bringing the witness before the court or officer, a sum may be fixed in which the witness may give an undertaking, with surety, for his appearance; such sum shall be endorsed on the back of the attachment; and if no sum is so fixed and endorsed, it shall be One Hundred Dollars ($100.00). If the witness be not personally served, the court may, by a rule, order him to show cause why an attachment should not issue against him.
R.L. 1910, § 5058.

§12-394. Punishment for contempt - Liability to party injured.

A. The punishment for the contempt provided in Section 393 of this title shall be as follows: When the witness fails to attend, in obedience to the subpoena, except in case of a demand and failure to pay his fees, the court or officer may fine the witness in a sum not exceeding Fifty Dollars ($50.00). In other cases, the court or officer may fine the witness in a sum not exceeding Fifty Dollars ($50.00), or may imprison him in the county jail, there to remain until he shall submit to be sworn, testify or give his deposition. The fine imposed by the court shall be paid into the county treasury, and that imposed by the officer shall be for the use of the party for

whom the witness was subpoenaed. The witness shall, also, be liable to the party injured for any damages occasioned by his failure to attend, or his refusal to be sworn, testify or give his deposition.

B. The punishment provided in this section shall not apply where the witness refuses to subscribe a deposition.

R.L. 1910, § 5059. Amended by Laws 1980, c. 47, § 2, eff. Oct. 1, 1980.

§12-395. Discharge when imprisonment illegal.

A witness so imprisoned by an officer before whom his deposition is being taken, may apply to a judge of a court of record, who shall have power to discharge him, if it appears that his imprisonment is illegal.

R.L. 1910, § 5060.

§12-396. Requisites of attachment - Order of commitment.

Every attachment for the arrest, or order of commitment to prison of a witness by a court or officer, pursuant to this article, must be under the seal of the court or officer, if he have an official seal, and must specify, particularly, the cause of arrest or commitment; and if the commitment be for refusing to answer a question, such question must be stated in the order. Such order of commitment may be directed to the sheriff, coroner or any constable of the county where such witness resides, or may be at the time, and shall be executed by committing him to the jail of such county, and delivering a copy of the order to the jailor.

R.L. 1910, § 5061.

§12-397. Prisoner as witness or complaining or defending party - Release for examination - Notice - Attorney fee award prohibited - Writ of habeas corpus.

A. A person confined in any prison in this state may by order of any court of record, be required to be produced for oral examination as a witness by the court in the county where he is imprisoned, but in all other cases his examination must be by deposition.

B. Any person or a prisoner confined in any prison or jail in this state who is the complaining party or defending party in any form of a civil action may apply for a Writ of Habeas Corpus for the purpose of having the prisoner appear before the court for an evidentiary hearing in which the court shall take testimony from the prisoner. The custodian of the prisoner shall be given prior notice of the application and fifteen (15) days to respond prior to the decision of the court. If the court issues such writ, it shall be issued and delivered to the custodian of the prisoner at least fifteen (15) days prior to the date the prisoner is to appear, shall order the custodian to be paid for all costs of transportation and shall order the prisoner to be delivered to the court named in the

writ. The court shall not consider a writ of habeas corpus ad testificandum except for a hearing on the merits of the civil action. The court shall not award attorney fees and costs to the prevailing party in this matter. All pretrial hearings for the civil action that involve a prisoner shall be conducted by telephone, deposition or video conference.

C. If upon application, the court issues a Writ of Habeas Corpus as provided in subsection B of this section, it shall order the person applying for such writ or other appropriate party to pay to the custodian executing the writ all costs of transporting the prisoner to and from the court. No court shall waive the requirement to pay the costs of transportation to the custodian. The writ shall also serve as a judgment against the prisoner, if the prisoner is the party ordered to pay transportation costs or was the party seeking the writ, and may be enforced by the detaining governmental unit without further order of any court for a period of five (5) years after the date of the writ. The custodian executing the release shall notify the prisoner and the court, at the time of delivery, of the costs of transportation.

D. Any writ that fails to comply with all of the requirements of this section shall be void and unenforceable and no officer or employee of the custodian shall be liable for failing to execute said writ.

R.L. 1910, § 5062. Amended by Laws 1993, c. 174, § 1, emerg. eff. May 10, 1993; Laws 2002, c. 402, § 2, eff. July 1, 2002; Laws 2004, c. 168, § 2, emerg. eff. April 27, 2004; Laws 2005, c. 159, § 2, emerg. eff. May 10, 2005.

NOTE: Laws 2004, c. 168, § 18, providing for an effective date of Nov. 1, 2004, was repealed by Laws 2004, c. 382, § 4, emerg. eff. June 3, 2004.

§12-398. Examination by deposition - Custody.

If a prisoner's testimony is taken by deposition, he shall remain in the custody of the official charged with the prisoner's custody. The official custodian shall afford reasonable facilities for the taking of the deposition.

R.L. 1910, § 5063. Amended by Laws 1993, c. 174, § 2, emerg. eff. May 10, 1993.

§12-399. Witness privileged.

A witness shall not be liable to be sued in a county in which he does not reside, by being served with a summons in such county, while going, returning or attending, in obedience to a subpoena.

R.L. 1910, § 5064.

§12-400. Witness may demand fees each day - Exception.

At the commencement of each day after the first day, a witness may demand his fees for that day's attendance in obedience to a subpoena; and if the same be not paid, he shall not be required to remain, except witnesses subpoenaed by any state department, board, commission or legislative committee authorized by law to issue subpoenas shall be paid for their attendance and necessary travel as provided by law in other cases at the time their testimony is completed.
R.L. 1910, § 5065. Amended by Laws 1961, p. 63, § 3.

§12-401. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-411. Privilege.

No testimony given by a witness before the House of Representatives or the Senate, or before any committee established by a Resolution of the House, or Senate, or Concurrent Resolution of the two Houses of the Legislature, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committed in giving such testimony. But an official paper or record produced by him is not within the privilege.
Added by Laws 1957, p. 167, § 1.

§12-412. Procedure.

In the case of proceedings before a committee that two-thirds (2/3) of the members of the full committee shall by affirmative vote have authorized such witness, to be granted immunity under this act with respect to the transactions, matters or things concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence by direction of the presiding officer and that an order of the district or superior court for the county wherein the inquiry is being carried on has been entered into the record requiring said person to testify or produce evidence. Such an order may be issued by a district or superior court judge upon application by a duly authorized representative of the House of Representatives or Senate or of the committee concerned. Neither house nor any committee thereof nor any joint committee of the two houses of the Legislature shall grant immunity to any witness without first having notified the Attorney General of the State of Oklahoma of such action and thereafter having secured the approval of the district or superior court for the county wherein the inquiry is being held. The Attorney General of the State of Oklahoma shall be notified of the time of each proposed application to the district or superior court and shall be given an opportunity to be heard with respect thereto prior to the entrance into the record of the order of the district or superior court. No witness shall be exempt from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section.

Added by Laws 1957, p. 168, § 2.

§12-413. Oaths.

The President of the Senate, the Speaker of the House of Representatives, or a chairman of committee of the whole, or of any committee or either House of the Legislature, is empowered to administer oaths to witnesses in any case under their examination.
Added by Laws 1957, p. 168, § 3.

§12-414. Penalties.

Every person who having been summoned as a witness by the authority of either house of the Legislature, to give testimony or produce papers upon any matter under inquiry before either house, or any committee of either house of the Legislature, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than Five Thousand Dollars ($5,000.00) nor less than One Hundred Dollars ($100.00), and imprisonment in a county jail for not less than one (1) month nor more than twelve (12) months.
Added by Laws 1957, p. 168, § 4.

§12-415. Disgrace as ground for refusal to testify.

No witness is privileged to refuse to testify to any fact, or produce any paper, respecting which he shall be examined by either house of the Legislature, or by any committee of either house, upon the ground that his testimony to such fact or his production of such paper may tend to disgrace or otherwise render him infamous.
Added by Laws 1957, p. 168, § 5.

§12-416. Prosecution.

Whenever a witness summoned as mentioned in Section 4 of this act fails to testify, and the facts are reported to either house, the President of the Senate or Speaker of the House, as the case may be, shall certify the fact under the seal of the Senate or House to the Attorney General and district attorney of the county where the witness failed to appear, whose duty it shall be to bring the matter in the proper court by information or indictment for prosecution.
Added by Laws 1957, p. 168, § 6.

§12-417. Fees and mileage.

Witnesses shall be paid the same fees and mileage as are paid in civil cases in district and superior courts.
Added by Laws 1957, p. 168, § 7.

§12-418.1. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-418.2. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-418.3. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-418.4. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-418.5. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-418.6. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-418.7. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-418.8. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-418.9. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-418.10. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-418.11. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-418.12. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-421. Modes of taking testimony.

The testimony of witnesses is taken in three modes:

First. By affidavits.

Second. By deposition.

Third. By oral examination.

R.L. 1910, § 5067.

§12-422. Affidavit defined.

An affidavit is a written declaration, under oath, made without notice to the adverse party.

R.L. 1910, § 5068.

§12-423. Repealed by Laws 1982, c. 198, § 16.

§12-424. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-425. Repealed by Laws 1982, c. 198, § 16.

§12-426. Statement under penalty of perjury.

Whenever, under any law of Oklahoma or under any rule, order, or requirement made pursuant to the law of Oklahoma, any matter is required or permitted to be supported, evidenced, established, or

proved by the sworn statement, declaration, verification, certificate, oath, or affidavit, in writing of the person making the same (other than a deposition, or any oath of office, or an oath required to be taken before a specified official other than a notary public), the matter may with like force and effect be supported, evidenced, established, or proved by the unsworn statement in writing of the person made and signed under penalty of perjury setting forth the date and place of execution and that it is made under the laws of Oklahoma. The statement under penalty of perjury may be substantially in the following form:

"I state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct.

_____ _____

(Date and Place) (Signature)"

The signed statement under penalty of perjury shall constitute a legally binding assertion that the contents of the statement to which it refers are true. This section shall not affect any requirement for acknowledgment of an instrument affecting real property.
Added by Laws 2002, c. 468, § 2, eff. Nov. 1, 2002.

§12-431. Use of affidavit.

An affidavit may be used to verify a pleading, to prove the service of a summons, notice or other process in an action, to obtain a provisional remedy, an examination of a witness, a stay of proceedings, or upon a motion or in any other case permitted by law.
R.L. 1910, § 5071.

§12-432. Where and before whom taken.

An affidavit may be made in and out of this state, before any person authorized to administer oaths.
R.L. 1910, § 5072. Amended by Laws 1989, c. 230, § 1, eff. Nov. 1, 1989.

§12-433. Repealed by Laws 1982, c. 198, § 16.

§12-434. Repealed by Laws 1982, c. 198, § 16.

§12-435. Repealed by Laws 1982, c. 198, § 16.

§12-436. Repealed by Laws 1982, c. 198, § 16.

§12-437. Repealed by Laws 1982, c. 198, § 16.

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§12-440. Repealed by Laws 1982, c. 198, § 16.

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§12-442. Repealed by Laws 1982, c. 198, § 16.

§12-443. Repealed by Laws 1982, c. 198, § 16.

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§12-450. Repealed by Laws 1982, c. 198, § 16.

§12-451. Repealed by Laws 1982, c. 198, § 16.

§12-452. Repealed by Laws 1982, c. 198, § 16.

§12-453. Repealed by Laws 1961, p. 63, § 1, eff. Oct. 27, 1961.

§12-461. Repealed by Laws 1982, c. 198, § 16.

§12-462. Repealed by Laws 2002, c. 468, § 79, eff. Nov. 1, 2002.

§12-463. Repealed by Laws 1982, c. 198, § 16.

§12-481. Repealed by Laws 1982, c. 198, § 16.

§12-482. Repealed by Laws 1982, c. 198, § 16.

§12-483. Repealed by Laws 1982, c. 198, § 16.

§12-484. Repealed by Laws 1982, c. 198, § 16.

§12-485. Repealed by Laws 1982, c. 198, § 16.

§12-486. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-487. Repealed by Laws 1982, c. 198, § 16.

§12-488. Repealed by Laws 1982, c. 198, § 16.

§12-489. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-490. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-491. Repealed by Laws 1968, c. 295, § 6, eff. Jan. 13, 1969.

§12-492. Repealed by Laws 1968, c. 295, § 6, eff. Jan. 13, 1969.

§12-493. Repealed by Laws 1982, c. 198, § 16.

§12-494. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-495. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-496. Repealed by Laws 1982, c. 198, § 16.

§12-497. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-498. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-499. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-500. Repealed by Laws 1982, c. 198, § 16.

§12-501. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-502. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-503. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-504. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-505. Repealed by Laws 1982, c. 198, § 16.

§12-521. Repealed by Laws 1982, c. 198, § 16.

§12-522. Repealed by Laws 1982, c. 198, § 16.

§12-523. Repealed by Laws 1982, c. 198, § 16.

§12-531. Repealed by Laws 1965, c. 110, § 14, eff. May 19, 1965.

§12-532. Repealed by Laws 1965, c. 110, § 14, eff. May 19, 1965.

§12-533. Repealed by Laws 1965, c. 110, § 14, eff. May 19, 1965.

§12-534. Repealed by Laws 1965, c. 110, § 14, eff. May 19, 1965.

§12-535. Repealed by Laws 1965, c. 110, § 14, eff. May 19, 1965.

§12-536. Repealed by Laws 1965, c. 110, § 14, eff. May 19, 1965.

§12-537. Repealed by Laws 1982, c. 198, § 16.

§12-538.1. Repealed by Laws 1982, c. 198, § 16.

§12-538.2. Repealed by Laws 1982, c. 198, § 16.

§12-538.3. Repealed by Laws 1982, c. 198, § 16.

§12-538.4. Repealed by Laws 1982, c. 198, § 16.

§12-538.5. Repealed by Laws 1982, c. 198, § 16.

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§12-538.9. Repealed by Laws 1982, c. 198, § 16.

§12-538.10. Repealed by Laws 1982, c. 198, § 16.

§12-538.11. Repealed by Laws 1982, c. 198, § 16.

§12-538.12. Repealed by Laws 1982, c. 198, § 16.

§12-538.13. Repealed by Laws 1982, c. 198, § 16.

§12-541. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-542. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-543. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-544. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-546. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-547. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-548. Repealed by Laws 1982, c. 198, § 16.

§12-549. Repealed by Laws 1982, c. 198, § 16.

§12-551. Trial defined.
A trial is a judicial examination of the issues, whether of law or fact, in an action.
R.L. 1910, § 4988.

§12-552. How issues arise - Kinds of issues.
Issues arise on the pleadings, where a fact or conclusion of law is maintained by one party, and controverted by the other. There are two kinds: First, of law. Second, of fact.
R.L. 1910, § 4989.

§12-553. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-554. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-555. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-556. Trial of issues.
Issues of law must be tried by the court, unless referred. Issues of fact arising in actions for the recovery of money, or of specific real or personal property, shall be tried by a jury, unless a jury trial is waived, or a reference be ordered, as hereinafter provided.
R.L. 1910, § 4993.

§12-556.1. Constituency of juries in civil actions - Trial without jury in certain cases.
(a) Where the amount in controversy, as stated in the prayer for relief or an affidavit of a party, or as found by the court where the amount in controversy is questioned by the adverse party, does not exceed One Thousand Five Hundred Dollars ($1,500.00), the action shall be tried to the court without a jury.
(b) In actions for forcible entry and detainer, or detention only, of real property and collection of rents therefor a jury shall consist of six (6) persons.
(c) Except as provided in parts (a) and (b) of this section, actions for the recovery of money or specific real or personal property or both shall be tried to a jury of twelve (12) persons (1) if a party requests the recovery of money in the sum of at least Ten Thousand Dollars ($10,000.00) or (2) if a party files an affidavit that the action involves at least Ten Thousand Dollars ($10,000.00) and the adverse party does not controvert the affidavit, or (3) if

the adverse party controverts such an affidavit, if one is filed, and the court finds that the action involves at least Ten Thousand Dollars ($10,000.00); all other actions for the recovery of money or specific real or personal property or both shall be tried to a jury composed of six (6) persons.
Added by Laws 1968, c. 371, § 2. Amended by Laws 1969, c. 331, § 1, emerg. eff. May 7, 1969; Laws 1991, c. 15, § 1.

§12-557. Certain issues of fact tried by court.
All other issues of fact shall be tried by the court, subject to its power to order any issue or issues to be tried by jury, or referred as provided in this Code.
R.L. 1910, § 4994.

§12-558. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-559. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-571. Summoning jury.
The general mode of summoning the jury is such as is or may be provided by law.
R.L. 1910, § 4996.

§12-572. Causes for challenging jurors.
If there shall be impaneled, for the trial of any cause, any petit juror, who shall have been convicted of any crime which by law renders him disqualified to serve on a jury; or who has been arbitrator on either side, relating to the same controversy; or who has an interest in the cause; or who has an action pending between him and either party; or who has formerly been a juror in the same cause; or who is the employer, employee, counselor, agent, steward or attorney of either party; or who is subpoenaed as a witness; or who is of kin to either party; or any person who shall have served once already on a jury, as a talesman on the trial of any cause, in the same court during the term, he may be challenged for such causes; in either of which cases the same shall be considered as a principal challenge, and the validity thereof be tried by the court; and any petit juror who shall be returned upon the trial of any of the causes hereinbefore specified, against whom no principal cause of challenge can be alleged, may, nevertheless, be challenged on suspicion of prejudice against, or partiality for either party, or for want of competent knowledge of the English language, or any other cause that may render him, at the time, an unsuitable juror; but a resident and taxpayer of the state or any municipality therein shall not be thereby disqualified in actions in which such municipality is a party. The validity of all challenges shall be determined by the court.

R.L. 1910, § 4997.

§12-573. Order of challenges.

The plaintiff first, and afterward the defendant, shall complete his challenges for cause. They may then, in turn, in the same order, have the right to challenge one juror each, until each shall have peremptorily challenged three jurors, but no more.
R.L. 1910, § 4998.

§12-574. Vacancies filled at once - Challenges to jurors.

After each challenge, the vacancy shall be filled before further challenges are made; and any new juror thus introduced may be challenged for cause as well as peremptorily.
R.L. 1910, § 4999.

§12-575. Repealed by Laws 1961, p. 64, § 1, eff. Oct. 27, 1961.

§12-575.1. Selection of jury in discretion of court - Manner.

Notwithstanding other methods authorized by law, the trial judge may direct in his discretion that a jury in a civil case be selected in the following manner:

(a) if the case be triable to a twelve-man jury, eighteen prospective jurors shall be called and seated in the box and then examined on voir dire; when eighteen such prospective jurors have been passed for cause, each side of the lawsuit shall exercise its peremptory challenges out of the hearing of the jury by alternately striking three names from the list of those so passed for cause, and the remaining twelve persons shall be sworn to try the case;

(b) if the case be triable to a six-man jury, twelve prospective jurors shall be called and seated in the box and then examined on voir dire; when twelve such prospective jurors have been passed for cause, each side of the lawsuit shall exercise its peremptory challenges out of the hearing of the jury by alternately striking three names from the list of those so passed for cause, and the remaining six persons shall be sworn to try the case.

If there be more than one defendant in the case, and the trial judge determines on motion that there is a serious conflict of interest between them, he may, in his discretion, allow each defendant to strike three names from the list of jurors seated and passed for cause. In such case he shall appropriately increase the number of jurors initially called and seated in the box for voir dire examination.
Added by Laws 1969, c. 252, § 1, emerg. eff. April 24, 1969.

§12-576. Oath of jury.

The jury shall be sworn to well and truly try the matters submitted to them in the case in hearing, and a true verdict give, according to the law and the evidence.
R.L. 1910, § 5001.

§12-577. Order of trial.

When the jury has been sworn, the trial shall proceed in the following order, unless the court for special reasons otherwise directs:

First. The party on whom rests the burden of the issues may briefly state his case, and the evidence by which he expects to sustain it.

Second. The adverse party may then briefly state his defense, and the evidence he expects to offer in support of it.

Third. The party on whom rests the burden of the issues must first produce his evidence; after he has closed his evidence the adverse party may interpose and file a demurrer thereto, upon the ground that no cause of action or defense is proved. If the court shall sustain the demurrer, such judgment shall be rendered for the party demurring as the state of the pleadings or the proof shall demand. If the demurrer be overruled, the adverse party will then produce his evidence.

Fourth. The parties will then be confined to rebutting evidence unless the court, for good reasons in furtherance of justice, permits them to offer evidence in the original case.

Fifth. When the evidence is concluded and either party desires special instructions to be given to the jury, such instructions shall be reduced to writing, numbered, and signed by the party or his attorney asking the same, and delivered to the court. The court shall give general instructions to the jury, which shall be in writing, and be numbered, and signed by the judge, if required by either party.

Sixth. When either party asks special instructions to be given to the jury, the court shall either give such instructions as requested, or positively refuse to do so; or give the instructions with modification in such manner that it shall distinctly appear what instructions were given in whole or part, and in like manner those refused, so that either party may except to the instructions as asked for, or as modified, or to the modification, or to the refusal. All instructions given by the court must be signed by the judge; and filed together with those asked for by the parties as a part of the record.

Seventh. After the instructions have been given to the jury the cause may be argued.
R.L. 1910, § 5002.

§12-577.1. Oklahoma Uniform Jury Instructions - Institution of.

Inasmuch as many judgments in actions tried by juries are set aside and vacated on account of errors in instructions; and, whereas, justice is withheld, delayed, and, in some cases, denied on account of such erroneous instructions; and, the compilation and adoption of a body of uniform instructions in civil and criminal cases tried by juries in the courts of this state is necessary to the equal and uniform administration of justice; and, whereas, the justices and judges of the appellate courts of this state are in the best position to properly prescribe such instructions on this subject to the Legislature; the Supreme Court of the State of Oklahoma and the Court of Criminal Appeals of Oklahoma are respectively requested and authorized to proceed to prescribe and institute uniform instructions to be given in jury trials of civil or criminal cases, such instructions to be called: "Oklahoma Uniform Jury Instructions." (OUJI).
Added by Laws 1968, c. 201, § 1, emerg. eff. April 19, 1968.

§12-577.2. Use of instructions - Requests - Copies.

Whenever Oklahoma Uniform Jury Instructions (OUJI) contains an instruction applicable in a civil case or a criminal case, giving due consideration to the facts and the prevailing law, and the court determines that the jury should be instructed on the subject, the OUJI instructions shall be used unless the court determines that it does not accurately state the law. Whenever OUJI does not contain an instruction on a subject on which the court determines that the jury should be instructed, the instruction given on that subject should be simple, brief, impartial and free from argument. Counsel for either party or parties shall have a right to request instructions by so requesting in writing.

Each instruction shall be accompanied by a copy, and a copy shall be delivered to opposing counsel. In addition to numbering the copies and indicating who tendered them, the copy shall contain a notation substantially as follows:

"OUJI No. _____" or "OUJI No. _____ Modified" or "Not in OUJI" as the case may be.
Added by Laws 1968, c. 201, § 2, emerg. eff. April 19, 1968.

§12-577.3. Appropriations.

The Supreme Court of Oklahoma and the Court of Criminal Appeals are authorized and requested to include in their respective budget requests, a reasonable appropriation for personal services and expenses to effectively carry out this project.
Added by Laws 1968, c. 201, § 3, emerg. eff. April 19, 1968.

§12-577.4. Damage awards - Applicability of federal and state income tax.

The Oklahoma Uniform Jury Instructions (OUJI) applicable in a civil case shall include an instruction notifying the jury that no part of an award for damages for personal injury or wrongful death is subject to federal or state income tax. Any amount that the jury determines to be proper compensation for personal injury or wrongful death should not be increased or decreased by any consideration for income taxes. In order to be admitted at trial, any exhibit relating to damage awards shall reflect accurate tax ramifications.
Added by Laws 2011, c. 16, § 1, eff. Nov. 1, 2011.

§12-578. Exceptions to instructions - Copies to parties.

A party excepting to the giving of instructions, or the refusal thereof, shall not be required to file a formal bill of exceptions; but it shall be sufficient to make objection thereto by dictating into the record in open court, out of the hearing of the jury, after the reading of all instructions, the number of the particular instruction that was requested, refused and is excepted to, or the number of the particular instruction given by the court that is excepted to. Provided, further, that the court shall furnish copies of the instructions to the plaintiff and defendant prior to the time said instructions are given by the court.
R.L. 1910, § 5003. Amended by Laws 1969, c. 140, § 1, emerg. eff. April 9, 1969.

§12-579. View by jury.

Whenever, in the opinion of the court, it is proper for the jury to have a view of the property which is the subject of litigation, or of the place in which any material fact occurred, it may order, them to be conducted, in a body, under the charge of an officer, to the place, which shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent, no person, other than the person so appointed, shall speak to them on any subject connected with the trial.
R.L. 1910, § 5004.

§12-580. Jury may decide in court or retire - Keeping together - Communications to jury or concerning deliberations.

When the case is finally submitted to the jury, they may decide in court or retire for deliberation. If they retire, they must be kept together, in some convenient place, under charge of an officer, until they agree upon a verdict or be discharged by the court, subject to the discretion of the court, to permit them to separate temporarily at night, and at their meals. The officer having them under his charge shall not suffer any communication to be made to them, or make any himself, except to ask them if they are agreed upon their verdict, unless by order of the court; and he shall not, before

their verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon.
R.L. 1910, § 5005.

§12-581. Admonition of jury on separation.

If the jury are permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with, or suffer themselves to be addressed by, any other person, on any subject of the trial, and that it is their duty not to form or express an opinion thereon, until the case is finally submitted to them.
R.L. 1910, § 5006.

§12-582. Information after retirement.

After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed as to any part of the law arising in the case, they may request the officer to conduct them to the court, where the information on the point of law shall be given in writing, and the court may give its recollections as to the testimony on the point in dispute, or cause the same to be read by the stenographer in the presence of, or after notice to, the parties or their counsel.
R.L. 1910, § 5007.

§12-583. Discharged, when.

The jury may be discharged by the court on account of the sickness of a juror, or other accident or calamity requiring their discharge, or by consent of both parties, or after they have been kept together until it satisfactorily appears to the court that there is no probability of their agreeing.
R.L. 1910, § 5008.

§12-584. Retrial.

In all cases where the jury are discharged during the trial, or after the cause is submitted to them, it may be tried again immediately, or at a future time, as the court may direct.
R.L. 1910, § 5009.

§12-585. Delivery of verdict.

When the jury have agreed upon their verdict they must be conducted into court, their names called by the clerk, and their verdict rendered by their foreman. When the verdict is announced, either party may require the jury to be polled, which is done by the clerk or the court asking each juror if it is his verdict. If any one answers in the negative, the jury must again be sent out, for further deliberation.
R.L. 1910, § 5010.

§12-586. Requisites of verdicts - Reading and inquiry by clerk - Correction of defects in form.

The verdict shall be written, signed by the foreman and read by the clerk to the jury, and the inquiry made whether it is their verdict. If any juror disagrees, the jury must be sent out again; but if no disagreement be expressed, and neither party requires the jury to be polled, the verdict is complete and the jury discharged from the case. If, however, the verdict be defective in form only, the same may, with the assent of the jury, before they are discharged, be corrected by the court.
R.L. 1910, § 5011.

§12-587. General and special verdict.

The verdict of a jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury finds facts only. It must present the facts as established by the evidence, and not the evidence to prove them; and they must be so presented as that nothing remains to the court but to draw from them conclusions of law.
R.L. 1910, § 5012.

§12-588. General and special findings.

In all cases the jury shall render a general verdict, and the court may in any case at the request of the parties thereto, or either of them, in addition to the general verdict, direct the jury to find upon particular questions of fact, to be stated in writing by the party or parties requesting the same.
R.L. 1910, § 5013.

§12-589. When special finding inconsistent with general verdict.

When the special finding of facts is inconsistent with the general verdict, the former controls the latter and the court may give judgment accordingly.
R.L. 1910, § 5014.

§12-590. Jury must assess amount of recovery.

When, by the verdict either party is entitled to recover money of the adverse party the jury, in their verdict, must assess the amount of recovery.
R.L. 1910, § 5015.

§12-591. Waiver of jury.

The trial by jury may be waived by the parties, in actions arising on contract, and with the assent of the court in other actions, in the following manner: By the consent of the party

appearing, when the other party fails to appear at the trial by himself or attorney. By written consent, in person or by attorney, filed with the clerk. By oral consent, in open court, entered on the journal.
R.L. 1910, § 5016.

§12-611. Findings of fact and conclusions of law.
Upon the trial of questions of fact by the court, it shall not be necessary for the court to state its findings, except generally, for the plaintiff or defendant, unless one of the parties request it, with the view of excepting to the decision of the court upon the questions of law involved in the trial; in which case the court shall state, in writing, the findings of fact found, separately from the conclusions of law.
R.L. 1910, § 5017. Amended by Laws 1990, c. 251, § 9, eff. Jan. 1, 1991; Laws 1991, c. 251, § 4, eff. June 1, 1991.

§12-612. Reference of issues by consent of parties.
All or any of the issues in the action, whether of fact or of law, or both, may be referred, upon the written consent of the parties, or upon their oral consent in court, entered upon the journal.
R.L. 1910, § 5018.

§12-613. Reference by court, when.
When the parties do not consent, the court may, upon the application of either, or of its own motion, direct a reference in either of the following cases: Where the trial of an issue of fact shall require the examination of mutual accounts, or when the account is on one side only, and it shall be made to appear to the court that it is necessary that the party on the other side should be examined as a witness to prove the account; in which case the referees may be directed to hear and report upon the whole issue, or upon any specific question of fact involved therein; or where the taking of an account shall be necessary for the information of the court before judgment, in cases which may be determined by the court, or for carrying a judgment into effect, or where a question of fact other than upon the pleadings, shall arise, upon motion or otherwise, in any stage of an action.
R.L. 1910, § 5019.

§12-614. Trial before referee - Report.
A trial before referees is conducted in the same manner as a trial by the court. They have the same power as the court to summon and enforce the attendance of witnesses, to administer all necessary oaths in the trial of the case, and to grant adjournments, upon such trial. They must state the facts found and the conclusions of law

separately, and their decisions must be given, and may be excepted to and reviewed in like manner. The report of the referees upon the whole issue stands as the decision of the court, and judgment may be entered thereon in the same manner as if the action had been tried by the court. When the referee is to report the facts, the report has the effect of a special verdict.
R.L. 1910, § 5020.

§12-615. Appointment of referee.
In all cases of reference, the parties, except when an infant may be a party, may agree upon a suitable person or persons, not exceeding three, and the reference shall be ordered accordingly; and if the parties do not agree, the court shall appoint one or more referees, not exceeding three, who shall be free from exception.
R.L. 1910, § 5021.

§12-616. Exceptions - Signature and return with report.
It shall be the duty of the referees to sign any true exceptions taken to any order or decision by them made in the case, and return the same, with their report, to the court making the reference.
R.L. 1910, § 5022.

§12-617. Reference in vacation.
A judge, in vacation, upon the written consent of the parties, may make an order of reference which the court of which he is a member could make in term time. In such case, the order of reference shall be made on the written agreement of the parties to refer, and shall be filed with the clerk of the court, with the other papers in the case.
R.L. 1910, § 5023.

§12-618. Oath of referee.
The referees must be sworn or affirmed well and faithfully to hear and examine the cause, and to make a just and true report therein, according to the best of their understanding. The oath may be administered by any person authorized to take depositions.
R.L. 1910, § 5024.

§12-619. Compensation.
The referees shall be allowed such compensation for their services as the court may deem just and proper, which shall be taxed as part of the costs in the case.
R.L. 1910, § 5025.

§12-620. Reference by district or superior court - Report and transcript - Filing.

In all actions referred to a referee by the district or superior court, with directions to make findings of fact and conclusions of law and to report the evidence to the court, the referee must file a written report of his findings of fact and conclusions of law and the transcript of the testimony with the clerk of the court.
Added by Laws 1941, p. 35, § 1.

§12-621. Notice before filing report.
The referee must give at least four (4) days written notice to each attorney of record in the action that he will file his report with the clerk of the court on a day certain.
Added by Laws 1941, p. 35, § 2.

§12-622. Objections to report.
Any party to the action desiring to except to the reports of the referee or any portion thereof, shall file his written objections thereto with the clerk of the court within ten (10) days after the referee shall have filed his report.
Added by Laws 1941, p. 35, § 3. Amended by Laws 1963, c. 292, § 1.

§12-623. Repealed by Laws 1968, c. 395, § 2.

§12-624. Appeal as provided in code of civil procedure.
An appeal shall be had and perfected in the same manner and time as provided in the code of civil procedure from any final judgment of the district or superior court.
Added by Laws 1941, p. 35, § 5.

§12-630. Formal exceptions unnecessary - What acts sufficient.
Formal exceptions to rulings or orders of the court shall not be necessary; but for all purposes for which an exception has heretofore been necessary at the trial of a cause it shall be sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor.
Added by Laws 1951, p. 25, § 1.

§12-631. Exception defined.
An exception is an objection taken to a decision of the court or judge upon a matter of law.
R.L. 1910, § 5026.

§12-632. Repealed by Laws 1961, p. 64, § 1.

§12-633. Repealed by Laws 1961, p. 64, § 1.

§12-634. Repealed by Laws 1961, p. 64, § 1.

§12-635. Repealed by Laws 1961, p. 64, § 1.

§12-636. Immaterial exception.

No exception shall be regarded, unless it is material and prejudicial to the substantial rights of the party excepting.
R.L. 1910, § 5031.

§12-637. Exceptions may be withdrawn.

Exceptions taken to the decision of any court of record may, by leave of such court, be withdrawn from the files by the party taking the same, at any time before the proceedings in error are commenced.
R.L. 1910, § 5032.

§12-651. New trial - Definition - Causes for.

A new trial is a reexamination in the same court, of an issue of fact or of law or both, after a verdict by a jury, the approval of the report of a referee, or a decision by the court. The former verdict, report, or decision shall be vacated, and a new trial granted, on the application of the party aggrieved, for any of the following causes, affecting materially the substantial rights of the party:

1. Irregularity in the proceedings of the court, jury, referee, or prevailing party, or any order of the court or referee, or abuse of discretion, by which the party was prevented from having a fair trial;

2. Misconduct of the jury or a prevailing party;

3. Accident or surprise, which ordinary prudence could not have guarded against;

4. Excessive or inadequate damages, appearing to have been given under the influence of passion or prejudice;

5. Error in the assessment of the amount of recovery, whether too large or too small, where the action is upon a contract, or for the injury or detention of property;

6. That the verdict, report, or decision is not sustained by sufficient evidence, or is contrary to law;

7. Newly discovered evidence, material for the party applying, which could not, with reasonable diligence, have been discovered and produced at the trial;

8. Error of law occurring at the trial, and objected to by the party making the application; or

9. When, without fault of the complaining party, it becomes impossible to prepare a record for an appeal.

R.L. 1910, § 5033. Amended by Laws 1953, p. 53, § 1; Laws 1963, c. 239, § 1, emerg. eff. June 13, 1963; Laws 1999, c. 293, § 3, eff. Nov. 1, 1999.

§12-652. Repealed by Laws 1953, p. 54, § 2.

§12-653. Time of application.

A. Unless unavoidably prevented, an application for a new trial by motion, if made, must be filed not later than ten (10) days after the judgment, decree or appealable order prepared in conformance with Section 696.3 of this title has been filed. More than ten (10) days after the judgment, decree, or appealable order which conforms with Section 696.3 of this title has been filed, an application for a new trial by petition may be filed in conformance with the provisions of Section 655 of this title.

B. If the moving party did not prepare the judgment, decree, or appealable order, and Section 696.2 of this title required a copy of the judgment, decree, or appealable order to be mailed to the moving party, and the court records do not reflect the mailing of a copy of the judgment, decree, or appealable order to the moving party within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or appealable order, the motion for new trial may be filed no later than ten (10) days after the earliest date on which the court records show that a copy of the judgment, decree, or appealable order was mailed to the moving party.

C. A motion for new trial filed after the announcement of the decision on all issues in the case but before the filing of the judgment or decree shall be deemed filed immediately after the filing of the judgment or decree.

R.L. 1910, § 5035. Amended by Laws 1953, p. 54, § 1; Laws 1990, c. 251, § 10, eff. Jan. 1, 1991; Laws 1991, c. 251, § 5, eff. June 1, 1991; Laws 1993, c. 351, § 8, eff. Oct. 1, 1993; Laws 1994, c. 343, § 1, eff. Sept. 1, 1994; Laws 1997, c. 102, § 1, eff. May 1, 1997; Laws 1999, c. 293, § 4, eff. Nov. 1, 1999.

§12-654. Application, how made - Affidavits.

A. The application for a new trial by motion must be upon written grounds filed at the time of making the motion.

B. The application for a new trial by petition must be filed in conformance with Section 655 of this title. The causes enumerated in paragraphs 2, 3, 7, and 9 of Section 651 of this title must be sustained by affidavits, showing their truth, and may be controverted by affidavits.

R.L. 1910, § 5036. Amended by Laws 1999, c. 293, § 5, eff. Nov. 1, 1999.

§12-655. Petition for new trial on grounds discovered more than 10 days after judgment, decree, or appealable order was filed.

Where the grounds for a new trial could not with reasonable diligence have been discovered before but are discovered more than

ten (10) days after the judgment, decree, or appealable order was filed, or where the impossibility of preparing a record for an appeal, without fault of the complaining party, arose more than ten (10) days after the judgment, decree, or appealable order was filed, the application may be made by petition filed in the original case, as in other cases, within thirty (30) days after such discovery or occurrence; on which a summons shall issue, be returnable and served, or publication made, as in the beginning of civil actions, or service may be made on the attorney of record in the original case. The facts stated in the petition shall be considered as denied without answer, and the case shall be heard and summarily decided after the expiration of twenty (20) days from the date of service and not more than sixty (60) days after service, and the witnesses shall be examined in open court, or their depositions taken as in other cases; but no petition shall be filed more than one (1) year after the filing of the final judgment.
R.L. 1910, § 5037. Amended by Laws 1969, c. 304, § 2, emerg. eff. April 28, 1969; Laws 1990, c. 251, § 11, eff. Jan. 1, 1991; Laws 1999, c. 293, § 6, eff. Nov. 1, 1999.

§12-661. Amount of damages recoverable.
Whenever damages are recoverable, the plaintiff may claim and recover any rate of damages to which he may be entitled for the cause of action established.
R.L. 1910, § 5038.

§12-662. Provisions applicable to trials by court.
The provisions of this article respecting trials by jury apply, so far as they are in their nature applicable, to trials by the court.
R.L. 1910, § 5039.

§12-663. Trial docket.
A trial docket shall be made out by the clerk of court, at least twelve (12) days before the first day of each term of the court, and the actions shall be set for particular days in the order prescribed by the judge of the court, and so arranged that the cases set for each day shall be considered as nearly as may be on that day.
R.L. 1910, § 5040.

§12-664. Trial docket for bar.
The clerk shall make out a copy of the trial docket for the use of the bar, before the first day of the term of court and cause the same to be printed.
R.L. 1910, § 5041.

§12-665. Order of trial of cases docketed.

The trial of an issue of fact, and the assessment of damages in any case, shall be in the order in which they are placed on the trial docket, unless by the consent of the parties or the order of the court they are continued or placed at the heel of the docket, unless the court, in its discretion, shall otherwise direct. The court may, in its discretion, hear at any time a motion, and may by rule prescribe the time for hearing motions.
R.L. 1910, § 5042.

§12-666. Time of trial.

Actions shall be triable at the first term of court, after or during which the issues therein, by the time fixed for pleading are, or shall have been made up. When the issues are made up, or when the defendant has failed to plead within the time fixed, the cause shall be placed on the trial docket, and if it be a trial case shall stand for trial at such term ten (10) days after the issues are made up, and shall, in case of default stand for trial forthwith. When any demurrer shall be adjudged to be frivolous the cause shall stand for hearing or trial in like manner as if an issue of fact had been joined in the first instance.
R.L. 1910, § 5043.

§12-667. Continuances - Power to grant - Costs - Continuances and appeals when member of Legislature is party or attorney.

The court may, for good cause shown, continue an action at any stage of the proceedings upon terms as may be just; provided, that if a party or his attorney of record is serving as a member of the Legislature or the Senate, sitting as a court of impeachment, or within thirty (30) days after an adjournment of a session of the Legislature, such fact shall constitute cause for continuance of the case, and it is mandatory that the court shall grant such continuance upon motion whether such attorney may have been employed before or during the session of the Legislature, and the court shall have no power to exercise its discretion as to the granting of such continuance, and all motions, demurrers and preliminary matters to be heard by the court, the refusal to grant which shall constitute error, and entitle such party to a new trial as a matter of right. When a continuance is granted on account of the absence of evidence, it shall be at the cost of the party making the application unless the court otherwise order. And when any litigant has given notice of appeal from any judgment of any court of record in this state to the Supreme Court or Criminal Court of Appeals and the time for doing any act to perfect such appeal has, or does hereafter lapse during the session of the Legislature, whether regular or special, and the said litigant is a member of the Senate or House of Representatives, of the State of Oklahoma, in such session, or his attorney of record is such member, such litigant or attorney shall have such time after the

adjournment of the session of the Legislature to perform such act and complete his appeal as he had at the commencement of the session of the Legislature, of which he or his attorney of record was a member, and all acts done in the perfection of such appeals shall be as valid as if done within the time provided.
R.L. 1910, § 5044. Amended by Laws 1915, c. 236, p. 556, § 1; Laws 1919, c. 263, p. 374, § 1; Laws 1935, p. 2, § 1; Laws 1937, p. 1, § 1; Laws 1955, p. 134, § 1.

§12-668. Affidavit for continuance.

A motion for a continuance, on account of the absence of evidence, can be made only upon affidavit, showing the materiality of the evidence expected to be obtained, and that due diligence has been used to obtain it, and where the evidence may be; and if it is for an absent witness, the affidavit must show where the witness resides, if his residence is known to the party, and the probability of procuring his testimony within a reasonable time, and what facts he believes the witness will prove, and that he believes them to be true. If thereupon, the adverse party will consent that on the trial the facts, alleged in the affidavit shall be read and treated as the deposition of the absent witness, or that the facts in relation to other evidence shall be taken as proved to the extent alleged in the affidavit, no continuance shall be granted on the ground of the absence of such evidence.
R.L. 1910, § 5045.

§12-681. Judgment defined.

A judgment is the final determination of the rights of the parties in an action.
R.L. 1910, § 5123.

§12-682. Given for or against whom - Dismissal of petition - Suits against officers, directors and shareholders - Statute of limitations.

A. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; it may determine the ultimate rights of the parties on either side, as between themselves, and it may grant to the defendant any affirmative relief to which he or she may be entitled. In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others whenever a several judgment may be proper. The court may also dismiss the petition with costs, in favor of one or more defendants, in case of unreasonable neglect on the part of the plaintiff to serve the summons on other defendants, or proceed in the cause against the defendant or defendants served.

B. No suit or claim of any nature shall be brought against any officer, director or shareholder for the debt or liability of a corporation of which he or she is an officer, director or shareholder, until judgment is obtained therefor against the corporation and execution thereon returned unsatisfied. This provision includes, but is not limited to, claims based on vicarious liability and alter ego. Provided, nothing herein prohibits a suit or claim against an officer, director or shareholder for their own conduct, act or contractual obligation, not within the scope of their role as an officer, director or shareholder, arising out of or in connection with their direct involvement in the same or related transaction or occurrence.

C. Members and managers of limited liability companies shall be afforded the same substantive and procedural protection from suits and claims as the protections provided to officers, directors and shareholders of a corporation as set forth in subsection B of this section.

D. The statute of limitations on any claim precluded by this section, either against an officer, director or shareholder of a corporation or a member or manager of a limited liability company, shall not accrue until judgment is obtained against the corporation and execution thereon returned unsatisfied.

R.L. 1910, § 5124. Amended by Laws 2013, c. 265, § 1, eff. Nov. 1, 2013; Laws 2016, c. 116, § 1, eff. Nov. 1, 2016.

§12-683. Dismissal of action - Grounds and time.

Except as provided in Section 684.1 of this title, an action may be dismissed, without prejudice to a future action:

1. By the plaintiff, before the final submission of the case to the jury, or to the court, where the trial is by the court;

2. By the court, where the plaintiff fails to appear on the trial;

3. By the court, for the want of necessary parties;

4. By the court, on the application of some of the defendants, where there are others whom the plaintiff fails to prosecute with diligence;

5. By the court, for disobedience by the plaintiff of an order concerning the proceedings in the action; and

6. In all other cases, upon the trial of the action, the decision must be upon the merits.

R.L.1910, § 5125. Amended by Laws 2004, c. 368, § 3, eff. Nov. 1, 2004; Laws 2013, 1st Ex.Sess., c. 13, § 2; Laws 2013, 1st Ex.Sess., c. 13, § 3.

NOTE: Laws 2009, c. 228, § 5 was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013) and repealed by Laws 2013, 1st Ex.Sess., c. 13, § 1.

§12-684. Dismissal of case – With and without order of court.

A. An action may be dismissed by the plaintiff without an order of court by filing a notice of dismissal at any time before pretrial. After the pretrial hearing, an action may only be dismissed by agreement of the parties or by the court. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice.

B. Except as provided in subsection A of this section, an action shall not be dismissed at the plaintiff's request except upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaims can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this subsection is without prejudice.

C. For failure of the plaintiff to prosecute or to comply with the provisions of this section or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant.

D. The provisions of this section apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to subsection A of this section shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

R.L.1910, § 5126. Amended by Laws 2004, c. 368, § 4, eff. Nov. 1, 2004; Laws 2013, 1st Ex.Sess., c. 13, § 5; Laws 2013, 1st Ex.Sess., c. 13, § 6.

NOTE: Laws 2009, c. 228, § 6 was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013) and repealed by Laws 2013, 1st Ex.Sess., c. 13, § 4.

§12-684.1. Action brought pursuant to Affordable Access to Health Care Act – Dismissal without order of court.

A. A medical liability action brought pursuant to the Affordable Access to Health Care Act shall only be dismissed, on the payment of costs and without an order of court:

1. By the plaintiff, before the later of the completion of discovery or the court's ruling on a motion for summary judgment;

2. By the plaintiff at any time before a petition for intervention or answer praying for affirmative relief against the plaintiff is filed in the action. The plaintiff may, at any time before the trial is commenced, on payment of the costs and without any order of the court, dismiss the action after the filing of a petition for intervention or answer praying for affirmative relief, but such dismissal shall not prejudice the right of the intervenor or defendant to proceed with the action. Any defendant or intervenor may, in like manner, dismiss an action against the plaintiff, without an order of the court, at any time before the trial has begun, on payment of costs made on the claim filed by the defendant or intervenor; or

3. By agreement of all parties to a civil action at any time before trial.

B. Such dismissal shall be in writing and signed by the party or the attorney for the party, and shall be filed with the clerk of the district court where the action is pending, who shall note the fact on the proper record. Provided, such dismissal shall be held to be without prejudice, unless the words "with prejudice" be expressed therein.

C. If the court finds that a party has acted in bad faith, vexatiously, wantonly or in an oppressive manner in dismissing an action under this section, the court, pursuant to subsection A of this section, may award reasonable costs against the party and condition the refiling of the case upon payment of the costs. Added by Laws 2004, c. 368, § 5, eff. Nov. 1, 2004.

§12-685. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-686. Judgment in foreclosure suit - Sale of real estate - Lands in different counties - Application of proceeds - Attorney's fees and expenses, taxation of - Putting purchaser in possession - Post judgment deficiency order.

In actions to enforce a mortgage, deed of trust, or other lien or charge, a personal judgment or judgment or judgments shall be rendered for the amount or amounts due as well to the plaintiff as other parties to the action having liens upon the mortgaged premises by mortgage or otherwise, with interest thereon, and for sale of the property charged and the application of the proceeds; or such application may be reserved for the future order of the court, and the court shall tax the costs, attorney's fees and expenses which may accrue in the action, and apportion the same among the parties according to their respective interests, to be collected on the order of sale or sales issued thereon; when the same mortgage embraces separate tracts of land situated in two or more counties, the sheriff

of each county shall make sale of the lands situated in the county of which he or she is sheriff. No real estate shall be sold for the payment of any money or the performance of any contract or agreement in writing, in security for which it may have been pledged or assigned, except in pursuance of a judgment of a court of competent jurisdiction ordering such sale. The court may, in the order confirming a sale of land under order of sale on foreclosure or upon execution, award or order the issuance of a writ of assistance by the clerk of the court to the sheriff of the county where the land is situated, to place the purchaser in full possession of such land, and any resistance of the service of such writ of assistance shall constitute an indirect contempt of the process of such court, and if any person who has been removed from any lands by process of law or writ of assistance or who has removed from any lands pursuant to law or adjudication or direction of any court, tribunal or officer, afterwards, without authority of law, returns to settle or reside upon such land, the person shall be guilty of an indirect contempt of court, and may be proceeded against and punished for such contempt. Notwithstanding the above provisions, no judgment shall be enforced for any residue of the debt remaining unsatisfied as prescribed by this act after the mortgaged property shall have been sold, except as herein provided. Simultaneously with the making of a motion for an order confirming the sale or in any event within ninety (90) days after the date of the sale, the party to whom such residue shall be owing may make a motion in the action for leave to enter a post-judgment deficiency order upon notice to the party against whom such judgment is sought or the attorney who shall have appeared for such party in such action. Such notice shall be served personally or in such other manner as the court may direct. Upon such motion the court, whether or not the respondent appears, shall determine, upon affidavit or otherwise as it shall direct, the fair and reasonable market value of the mortgaged premises as of the date of sale or such nearest earlier date as there shall have been any market value thereof and shall enter a post-judgment deficiency order. Such post-judgment deficiency order shall be for an amount equal to the sum of the amount owing by the party liable as determined by the order with interest, plus costs and disbursements of the action plus the amount owing on all prior liens and encumbrances with interest, less the market value as determined by the court or the sale price of the property whichever shall be the higher. If no motion for a post-judgment deficiency order shall be made as herein prescribed the proceeds of the sale regardless of amount shall be deemed to be in full satisfaction of the mortgage debt and no right to recover any deficiency in any action or proceeding shall exist.

In any action pending at the time this act becomes effective or thereafter commenced, other than an action to foreclose a mortgage, to recover a judgment for any indebtedness secured by a mortgage on

real property and which originated simultaneously with such mortgage and which is secured solely by such mortgage, against any person or corporation directly or indirectly or contingently liable therefor, any party against whom a money judgment is demanded, shall be entitled to set off the fair and reasonable market value of the mortgaged property less the amounts owing on prior liens and encumbrances. Provided that nothing in this section shall limit or reduce any post-judgment deficiency order in favor of or in behalf of the state for any debts, obligations or taxes due the state, now or hereafter.
R.L.1910, § 5128. Amended by Laws 1915, c. 175, § 1; Laws 1941, p. 35, § 1; Laws 2010, c. 202, § 1, eff. Nov. 1, 2010.

§12-687. Judgment for conveyance, release or acquittance - Sheriff may execute when party fails to do so.

When a judgment shall be rendered for a conveyance, release or acquittance, in any court of this state, and the party against whom the judgment shall be rendered does not comply therewith by the time appointed, such judgment shall have the same operation and effect, and be as available, as if the conveyance, release or acquittance had been executed conformably to such judgment; or the court may order such conveyance, release or acquittance to be executed in the first instance by the sheriff; and such conveyance, release or acquittance, so executed, shall have the same effect as if executed by the party against whom the judgment was rendered.
R.L. 1910, § 5129.

§12-688. Taking account or proof or assessment of damages on default or decision of issue of law.

If the taking of an account, or the proof of a fact, or the assessment of damages, be necessary to enable the court to pronounce judgment upon a failure to answer, or after a decision of an issue of law the court may, with the assent of the party not in default, take the account, hear the proof, or assess the damages; or may, with the like assent, refer the same to a referee or master commissioner, or may direct the same to be ascertained or assessed by a jury. If a jury be ordered, it shall be on or after the day on which the action is set for trial.
R.L. 1910, § 5130.

§12-689. Judgment by confession.

Any person indebted, or against whom a cause of action exists, may personally appear in a court of competent jurisdiction, and, with the assent of the creditor or person having such cause of action, confess judgment therefor; whereupon judgment shall be entered accordingly.
R.L. 1910, § 5131.

§12-690. Repealed by Laws 1999, c. 293, § 28, eff. Nov. 1, 1999.

§12-691. Repealed by Laws 1999, c. 293, § 28, eff. Nov. 1, 1999.

§12-692. Repealed by Laws 1999, c. 293, § 28, eff. Nov. 1, 1999.

§12-693. Repealed by Laws 1999, c. 293, § 28, eff. Nov. 1, 1999.

§12-694. Repealed by Laws 1999, c. 293, § 28, eff. Nov. 1, 1999.

§12-695. Repealed by Laws 1999, c. 293, § 28, eff. Nov. 1, 1999.

§12-696. Repealed by Laws 1990, c. 251, § 20, eff. Jan. 1, 1991.

§12-696.1. Repealed by Laws 1993, c. 351, § 29, eff. Oct. 1, 1993.

§12-696.2. Preparation, service, and filing of judgments, decrees and appealable orders.

A. After the granting of a judgment, decree or appealable order, it shall be reduced to writing in conformance with Section 696.3 of this title, signed by the court, and filed with the court clerk. The court may direct counsel for any party to the action to prepare a draft for the signature of the court, in which event, the court may prescribe procedures for the preparation and timely filing of the judgment, decree or appealable order, including, but not limited to, the time within which it is to be submitted to the court. If a written judgment, decree or appealable order is not submitted to the court by the party directed to do so within the time prescribed by the court, then any other party may reduce it to writing and submit it to the court.

B. A file-stamped copy of every judgment, decree, or appealable order shall be served upon all parties, including those parties who are in default for failure to appear in the action, by the counsel for a party or party who prepared it, or by a person designated by the trial court, promptly and no later than three (3) days after it is filed. The service shall be done in the manner provided in Section 2005 of this title for the service of papers, and a certificate of service must be filed with the court clerk. If the judgment, decree or appealable order was prepared by the court, the court may direct a bailiff, court clerk or party to perform the service and certificate of service required by this subsection. In cases in which a party has failed to appear in the action, it shall be sufficient to mail a file-stamped copy of the judgment, decree or appealable order by first-class mail to the party’s last-known address, or if the service of process was on a registered agent, to the address of the registered agent. No mailing is required to a

party who has failed to appear in the action if that party was served by publication.

C. In any probate, guardianship, or conservatorship proceeding commenced on or after October 1, 1996, where a party, heir, devisee, legatee, or other interested party or representative of a party has received notice of a hearing which resulted in the issuance of a judgment, decree, or appealable order and did not file an entry of appearance, no further service of any judgment, decree, or appealable order shall be required to be sent to such party, heir, devisee, legatee, or other interested party or representative of a party, unless otherwise specifically required by law. No certificate of service shall be required to be filed where no party, heir, devisee, legatee, or other interested party, or representative of a party has filed an entry of appearance.

D. The filing with the court clerk of a written judgment, decree or appealable order, prepared in conformance with Section 696.3 of this title and signed by the court, shall be a jurisdictional prerequisite to the commencement of an appeal. The following shall not constitute a judgment, decree or appealable order: A minute entry; verdict; informal statement of the proceedings and relief awarded, including, but not limited to, a letter to a party or parties indicating the ruling or instructions for preparing the judgment, decree or appealable order.

E. A judgment, decree or appealable order, whether interlocutory or final, shall not be enforceable in whole or in part unless or until it is signed by the court and filed; except that the adjudication of any issue shall be enforceable when pronounced by the court in the following actions: divorce; separate maintenance; annulment; post-decree matrimonial proceedings; paternity; custody; adoption; termination of parental rights; mental health; guardianship; juvenile matters; habeas corpus proceedings; or proceedings for temporary restraining orders, temporary injunctions, permanent injunctions, conservatorship, probate proceedings, special executions in foreclosure actions, quiet title actions, partition proceedings or contempt citations. The time for appeal shall not begin to run until a written judgment, decree or appealable order, prepared in conformance with Section 696.3 of this title, is filed with the court clerk, regardless of whether the judgment, decree, or appealable order is effective when pronounced or when it is filed.

F. The preparation of orders, decisions and the taking of appeals from the Office of Administrative Hearings: Child Support shall be governed by the provisions of Title 56 of the Oklahoma Statutes.

G. The preparation of orders, decisions and awards and the taking of appeals in workers' compensation cases shall be governed by the provisions of Title 85 of the Oklahoma Statutes.

Added by Laws 1993, c. 351, § 9, eff. Oct. 1, 1993. Amended by Laws 1997, c. 102, § 2, eff. May 1, 1997; Laws 1997, c. 239, § 4, emerg. eff. May 23, 1997; Laws 2007, c. 12, § 2, eff. Nov. 1, 2007; Laws 2007, c. 41, § 1, eff. Nov. 1, 2007.

§12-696.3. Contents of filed judgments - Decrees and appealable orders - Clerk's endorsement - Service.

A. Judgments, decrees and appealable orders that are filed with the clerk of the court shall contain:

1. A caption setting forth the name of the court, the names and designation of the parties, the file number of the case and the title of the instrument;

2. A statement of the disposition of the action, proceeding or motion, including a statement of the relief awarded to a party or parties and the liabilities and obligations imposed on the other party or parties, including the amount of any prejudgment interest;

3. The signature and title of the court; and

4. Any other matter approved by the court.

B. Judgments, decrees and appealable orders that are filed with the clerk of the court may contain a statement of costs, attorney fees and interest other than prejudgment interest, or any of them, if they have been determined prior to the time the judgment, decree or appealable order is signed by the court in accordance with this section.

C. The clerk shall endorse on the judgment, decree or appealable order the date it was filed and the name and title of the clerk.

D. A file-stamped copy of the judgment, decree, or appealable order shall be served upon all parties, including those parties who are in default for failure to appear in the action, as provided in Section 696.2 of this title.

Added by Laws 1993, c. 351, § 10, eff. Oct. 1, 1993. Amended by Laws 1997, c. 102, § 3, eff. May 1, 1997; Laws 2004, c. 181, § 1, eff. Nov. 1, 2004; Laws 2007, c. 12, § 3, eff. Nov. 1, 2007.

§12-696.4. Costs and attorney fees.

A. A judgment, decree or appealable order may provide for costs, attorney fees, or both of these items, but it need not include them. The preparation and filing of the judgment, decree, or appealable order shall not be delayed pending the determination of these items. Such items may be determined by the court if a timely request is made, regardless of whether a petition in error has been filed.

B. If attorney fees or costs, including the amount of such attorney fees or costs have not been included in the judgment, decree or appealable order, a party seeking any of these items must file an application with the court clerk along with the proof of service of the application on all affected parties in accordance with Section 2005 of this title. The application must set forth the amount

requested and include information which supports that amount. The application must be filed within thirty (30) days after the filing of the judgment, decree or appealable order unless a posttrial motion pursuant to subsection A of Section 990.2 of this title has been filed within ten (10) days after the filing of the judgment, decree, or appealable order. If such a motion is filed within that time, the application for attorney fees, costs, or interest shall be filed within thirty (30) days after the date an order disposing of the posttrial motion is filed. If the party filing the application did not prepare the judgment, decree, or appealable order, and Section 696.2 of this title required a copy of the judgment, decree, or appealable order to be mailed to the party filing application, and the court records do not reflect the mailing of a copy of the judgment, decree, or appealable order to the party filing the application within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or appealable order, the application may be filed no later than thirty (30) days after the earliest date on which the court records show that a copy of the judgment, decree, appealable order, or order disposing of the posttrial motion was mailed to the party filing the application. For good cause shown, the court may extend the time for filing the application upon motion filed within the time that the application could be filed. Within fifteen (15) days after the application is filed with the court, any party may file written objections to it, with a copy to the moving party.

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

D. If the right of a party to recover attorney fees depends upon a determination that the party has prevailed in an action, and if the prevailing party in the action cannot be determined from the decision of the appellate court, an application for attorney fees for services performed on appeal shall be made to the trial court in the manner and within the time provided in subsection B of this section.
Added by Laws 1993, c. 351, § 11, eff. Oct. 1, 1993. Amended by Laws 1995, c. 253, § 1, eff. Nov. 1, 1995; Laws 1997, c. 102, § 4, eff. May 1, 1997; Laws 2002, c. 468, § 3, eff. Nov. 1, 2002; Laws 2004, c. 181, § 2, eff. Nov. 1, 2004; Laws 2012, c. 278, § 1, eff. Nov. 1, 2012.

§12-697. Repealed by Laws 1990, c. 251, § 20, eff. Jan. 1, 1991.

§12-697.1. Repealed by Laws 1993, c. 351, § 29, eff. Oct. 1, 1993.

§12-698. Judgment notwithstanding verdict.

When a motion for a directed verdict made at the close of all of the evidence should have been granted, the court shall, at the request of the moving party, grant judgment in the moving party's favor, although a verdict has been found against the moving party, but the court may order a new trial where it appears that the other party was prevented from proving a claim or defense by mistake, accident or surprise. The motion for judgment notwithstanding the verdict, if made, must be filed not later than ten (10) days after the judgment, prepared in conformance with Section 696.3 of this title, is filed with the court clerk. A motion for judgment notwithstanding the verdict may be joined with a motion for a new trial. If the moving party did not prepare the judgment, and Section 696.2 of this title required a copy of the judgment to be mailed to the moving party, and the court records do not reflect the mailing of a copy of the judgment to the moving party within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, the motion for judgment notwithstanding the verdict may be filed no later than ten (10) days after the earliest date on which the court records show that a copy of the judgment was mailed to the moving party. A motion for judgment notwithstanding the verdict filed after the announcement of the verdict but before the filing of the judgment shall be deemed filed immediately after the filing of the judgment or decree.

R.L. 1910, § 5140. Amended by Laws 1961, p. 64, § 1; Laws 1990, c. 251, § 12, eff. Jan. 1, 1991; Laws 1991, c. 251, § 8, eff. June 1, 1991; Laws 1993, c. 351, § 12, eff. Oct. 1, 1993; Laws 1994, c. 343, § 2, eff. Sept. 1, 1994; Laws 1997, c. 102, § 5, eff. May 1, 1997.

§12-699. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-700. Judgment against infant - Right of infant to show cause against judgment one year after reaching majority.

It shall not be necessary to reserve in a judgment or order the right of a minor to show cause against him after his attaining full age; but in any case in which, but for this section, such reservation would have been proper, the minor, within one (1) year after arriving at the age of eighteen (18) years, may show cause against such order or judgment.

R.L. 1910, § 5142. Amended by Laws 1973, c. 14, § 1, eff. Oct. 1, 1973.

§12-701. Repealed by Laws 1971, c. 245, § 3, eff. Oct. 1, 1971.

§12-702. Repealed by Laws 1972, c. 119, § 4, emerg. eff. March 31, 1972.

§12-703. Repealed by Laws 1972, c. 119, § 4, emerg. eff. March 31, 1972.

§12-704. Renumbered as Section 32.1 of this title by Laws 1972, c. 119, § 5, emerg. eff. March 31, 1972.

§12-705. Renumbered as Section 32.2 of this title by Laws 1972, c. 119, § 5, emerg. eff. March 31, 1972.

§12-706. Scope of section - Creation of lien - Judgment index - Execution of judgment - Effect of filing or recording a judgment - Acceptance by county clerk.

A. Scope. This section applies to all judgments of courts of record of this state, and judgments of courts of record of the United States not subject to the registration procedures of the Uniform Federal Lien Registration Act, which award the payment of money, regardless of whether such judgments also include other orders or relief.

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

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

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

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

1. It shall be the duty of the county clerk, immediately after the filing of the Statement of Judgment, to make in the judgment index a separate entry in alphabetical order of the name of each judgment debtor named therein, which entry shall also contain the name(s) of the judgment creditor(s), the name of the court which granted the judgment, the number and style of the case in which the

judgment was filed, the amount of the judgment, including interest, costs and attorney's fees if shown on the Statement of Judgment, the date of the filing of the judgment with the court clerk of the court which granted it, and the date of filing of the Statement of Judgment with the county clerk.

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

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

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

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

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

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

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

2. The lien of any judgment which has been satisfied in full, vacated or become dormant or otherwise unenforceable and which has

not been released by the judgment creditor shall be released by the court upon written motion.

a. The motion shall be accompanied by an affidavit stating the grounds for the motion, and shall contain or be accompanied by a notice to the judgment creditor that, if the judgment creditor does not file with the court a response or objection to the motion within fifteen (15) days after the mailing of a copy of the motion to the judgment creditor, the court will order the judgment lien released.

b. A copy of the motion shall be mailed by certified mail by the party seeking release of the lien to the judgment creditor at the last-known address of the judgment creditor, and to the attorney of record of the judgment creditor, if any. There shall be attached to the filed motion, and to each copy of the motion to be mailed, a Certificate of Mailing showing to whom copies of the motion were mailed, the addresses to which they were mailed, and the date of mailing.

c. If the judgment creditor does not file a response or objection to the motion within fifteen (15) days after the mailing of a copy of the motion, the court shall order the judgment lien released.

d. When a judgment lien is ordered released by the court, the court shall cause a Release of Judgment Lien, in the form provided by the Administrative Director of the Courts, to be prepared. Instructions shall be printed on such form advising the judgment debtor to file the Release in the office of the county clerk of the county in which the real estate is situated in order to obtain the release of the lien of the judgment upon the real estate of the judgment debtor in such county.

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

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

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

R.L.1910, § 5148. Amended by Laws 1931, p. 3, § 1, emerg. eff. April 21, 1931; Laws 1943, p. 34, § 1, emerg. eff. April 13, 1943; Laws 1978, c. 138, § 1, eff. Oct. 1, 1978; Laws 1983, c. 56, § 1, eff.

Nov. 1, 1983; Laws 1988, c. 102, § 1, eff. Nov. 1, 1988; Laws 1990, c. 251, § 19, eff. Jan. 1, 1991; Laws 1991, c. 251, § 9, eff. June 1, 1991; Laws 1993, c. 351, § 13, eff. Oct. 1, 1993; Laws 1997, c. 320, § 1, eff. Nov. 1, 1997; Laws 2011, c. 187, § 2, eff. Nov. 1, 2011.

§12-706.1. Repealed by Laws 1981, c. 120, § 5.

§12-706.2. Cash deposit on appeal from money judgment - Release of lien - Hearing.

In the event of an appeal from a money judgment granted by a court of this state, the lien of such judgment, and any lien by virtue of an attachment issued and levied in the action in which such judgment was granted, shall cease when the judgment debtor or debtors deposit with the clerk of the court in which such judgment was granted cash sufficient to cover the whole amount of the judgment, including interest, costs, and any attorney fees, together with costs and interest on the appeal. This amount shall be determined by court order upon application of the judgment debtor indicating that such deposit is made to discharge the lien of the judgment and any lien by virtue of an attachment issued and levied in the action. The cash deposit shall be accompanied by the statement of ownership required pursuant to Section 151.1 of Title 28 of the Oklahoma Statutes.

It shall be the duty of the judgment debtor to deliver the court order of deposit to the court clerk, department head or supervisor. Upon receipt of such a cash deposit, statement of ownership and an order of the court directing deposit, it shall be the duty of the court clerk to immediately record receipt of the order and the amount of the cash deposit upon the appearance docket in the cause. It also shall be the duty of the court clerk to place the cash deposit in the court clerk’s official depository account and to hold the deposit in an interest-bearing account, unless otherwise ordered by the court, pending final determination of the action. The court clerk shall mail notice of receipt of the cash deposit to counsel for the judgment creditor or, if the judgment creditor is not represented by counsel, to the judgment creditor at the last-known address provided by the judgment debtor’s application. The notice shall contain a statement that, if the judgment creditor does not file with the court a response or objection to the cash deposit within twenty (20) days after the mailing of the notice to the judgment creditor, the judgment lien may be released. This objection period shall not be extended because of mailing time or for intervening weekends or holidays.

If no objection is filed with the court by the judgment creditor within twenty (20) days after the mailing of the notice, the court clerk, upon request of the judgment debtor, shall prepare a Release of Judgment Lien for the judgment debtor on the form provided by the Administrative Director of the Courts. Instructions shall be printed

on the Release of Judgment Lien advising the judgment debtor to file the Release in the office of the county clerk of the county in which the real estate is situated. The lien of the judgment upon real estate of the judgment debtor in a county shall be released when the Release of Judgment Lien is filed in the office of the county clerk of that county. The judgment debtor making the deposit shall pay all costs and recording fees relating to the release procedure.

Upon final determination of the appeal, the court may order the deposit together with accrued interest to be applied to any final judgment granted against the depositor or depositors, and refund any balance in excess of the judgment to the depositor or depositors. In the event judgment against the depositor or depositors is reversed in its entirety, the whole amount of the cash deposit together with accrued interest shall be refunded to the depositor or depositors.

A judgment debtor may also apply to the district court where the judgment was rendered for an order releasing a judgment lien to permit a particular transfer of property otherwise subject to the judgment lien on such terms as the court deems proper for the protection of the parties. Such a release of judgment lien may be granted only upon notice to the judgment creditor and hearing, and if granted the court shall endeavor to fully protect the rights of the judgment creditor to the security otherwise afforded by the judgment lien, for example, by determining the adequacy of consideration for the property and directing that such consideration be deposited into the court registry as security for the judgment.

Added by Laws 1955, p. 135, § 1. Amended by Laws 1983, c. 56, § 2, eff. Nov. 1, 1983; Laws 1993, c. 351, § 14, eff. Oct. 1, 1993; Laws 1995, c. 253, § 2, eff. Nov. 1, 1995; Laws 2004, c. 450, § 1, eff. Nov. 1, 2004.

§12-706.3. Additional cash deposits.

If during the appeal of a money judgment, money has been deposited by the judgment debtor pursuant to Section 706.2 of this title and the deposit has become insufficient, the judgment creditor may request the trial court to order the deposit of additional cash. The request shall be in the form of a written motion which shall recite the facts which support the request.

If the court finds that the cash deposited is insufficient to cover the whole amount of the judgment, including interest, costs, and any attorneys fees, together with costs and interest on the appeal, the court shall order the deposit of additional cash. If the additional cash is not deposited within a reasonable time set by the court, the judgment creditor may thereafter file a Statement of Judgment, which shall create a lien effective upon its filing with the county clerk as provided in Section 706 of this title, and may enforce the judgment against the property of the judgment debtor including the cash previously deposited with the court clerk.

Added by Laws 1955, p. 135, § 2. Amended by Laws 1983, c. 56, § 3, eff. Nov. 1, 1983; Laws 1993, c. 351, § 15, eff. Oct. 1, 1993.

§12-706.4. Repealed by Laws 1995, c. 253, § 8, eff. Nov. 1, 1995.

§12-707. Dismissal or default judgment against state - Necessity of proof of notice.

No order shall be made by any county, district or superior court in this state dismissing, for want of prosecution, any action now pending or hereafter filed, wherein the State of Oklahoma is an interested party and in which the Attorney General or any assistant Attorney General shall appear as attorney of record, for the state, nor shall any judgment by default against the State of Oklahoma be rendered by any such court in such action, unless proof is made (that the Attorney General or assistant Attorney General appearing as counsel for the state, shall have been notified) in writing by registered mail, at least ten (10) days prior to the date set for such trial or hearing that the action has been set for trial.
Added by Laws 1919, c. 45, p. 73, § 1, emerg. eff. April 3, 1919.

§12-708. Form and proof of notice - Fee.

A printed docket or other written notice, setting forth the style of the cause and the day that the same is set for trial or hearing, may be mailed, by registered mail, by the court clerk or opposing counsel, addressed to the Attorney General or the assistant Attorney General appearing as attorney of record for the State of Oklahoma, not less than ten (10) days prior to the date set for such trial or hearing, and the registry return of such notice shall be sufficient proof of the notice herein required. The court clerk is authorized to tax up as cost for each notice given twenty-five cents ($0.25).
Added by Laws 1919, c. 45, p. 73, § 2, emerg. eff. April 3, 1919.

§12-709. Effect of violation.

All orders and judgments rendered in the absence of proof of the notice herein required and in violation of the provisions of this section shall be void, and the court shall on its own motion vacate and set aside same when the same is brought to its attention.
Added by Laws 1919, c. 45, p. 73, § 3, emerg. eff. April 3, 1919.

§12-710. Repealed by Laws 2009, c. 283, § 13, eff. Nov. 1, 2009.

§12-711. Repealed by Laws 2009, c. 283, § 13, eff. Nov. 1, 2009.

§12-712. Repealed by Laws 2009, c. 283, § 13, eff. Nov. 1, 2009.

§12-713. Repealed by Laws 2009, c. 283, § 13, eff. Nov. 1, 2009.

§12-714. Repealed by Laws 2009, c. 283, § 13, eff. Nov. 1, 2009.

§12-715. Repealed by Laws 2009, c. 283, § 13, eff. Nov. 1, 2009.

§12-716. Repealed by Laws 2009, c. 283, § 13, eff. Nov. 1, 2009.

§12-717. Repealed by Laws 2009, c. 283, § 13, eff. Nov. 1, 2009.

§12-718. Repealed by Laws 2009, c. 283, § 13, eff. Nov. 1, 2009.

§12-718.1. Short title.

This act shall be known and may be cited as the "Uniform Foreign-Country Money Judgments Recognition Act".

Added by Laws 2009, c. 283, § 1, eff. Nov. 1, 2009.

§12-718.2. Definitions.

As used in the Uniform Foreign-Country Money Judgments Recognition Act:

1. "Foreign country" means a government other than:
   a. the United States,
   b. a state, district, commonwealth, territory, or insular possession of the United States, or
   c. any other government with regard to which the decision in this state as to whether to recognize a judgment of the courts of that government is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution; and
2. "Foreign-country judgment" means a judgment of a court of a foreign country.

Added by Laws 2009, c. 283, § 2, eff. Nov. 1, 2009.

§12-718.3. Applicability.

A. Except as otherwise provided in subsection B of this section, the Uniform Foreign-Country Money Judgments Recognition Act applies to a foreign-country judgment to the extent that the judgment:

1. Grants or denies recovery of a sum of money; and
2. Under the law of the foreign country where rendered, is final, conclusive, and enforceable.

B. The Uniform Foreign-Country Money Judgments Recognition Act does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is:

1. A judgment for taxes;
2. A fine or other penalty; or
3. A judgment for divorce, support, or maintenance, or other judgment rendered in connection with domestic relations.

C. A party seeking recognition of a foreign-country judgment has the burden of establishing that the Uniform Foreign-Country Money Judgments Recognition Act applies to the foreign-country judgment.
Added by Laws 2009, c. 283, § 3, eff. Nov. 1, 2009.

§12-718.4. Standards for recognition of foreign-country judgment.

A. Except as otherwise provided in subsections B and C of this section, a court of this state shall recognize a foreign-country judgment to which the Uniform Foreign-Country Money Judgments Recognition Act applies.

B. A court of this state may not recognize a foreign-country judgment if:

1. The judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

2. The foreign court did not have personal jurisdiction over the defendant; or

3. The foreign court did not have jurisdiction over the subject matter.

C. A court of this state need not recognize a foreign-country judgment if:

1. The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend;

2. The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case;

3. The judgment or the cause of action on which the judgment is based is repugnant to the public policy of this state or of the United States;

4. The judgment conflicts with another final and conclusive judgment;

5. The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court;

6. In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;

7. The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or

8. The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

D. A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection B or C of this section exists.
Added by Laws 2009, c. 283, § 4, eff. Nov. 1, 2009.

§12-718.5. Personal jurisdiction.

A. A foreign-country judgment may not be refused recognition for lack of personal jurisdiction if:

1. The defendant was served with process personally in the foreign country;

2. The defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant;

3. The defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

4. The defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country;

5. The defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action arising out of business done by the defendant through that office in the foreign country; or

6. The defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action arising out of that operation.

B. The list of bases for personal jurisdiction in subsection A of this section is not exclusive. The courts of this state may recognize bases of personal jurisdiction other than those listed in subsection A of this section as sufficient to support a foreign-country judgment.

Added by Laws 2009, c. 283, § 5, eff. Nov. 1, 2009.

§12-718.6. Procedure for recognition of foreign-country judgment.

A. If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment.

B. If recognition of a foreign-country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim, or affirmative defense.

Added by Laws 2009, c. 283, § 6, eff. Nov. 1, 2009.

§12-718.7. Effect of recognition of foreign-country judgment.

If the court in a proceeding under Section 6 of this act finds that the foreign-country judgment is entitled to recognition under the Uniform Foreign-Country Money Judgments Recognition Act then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

1. Conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this state would be conclusive; and

2. Enforceable in the same manner and to the same extent as a judgment rendered in this state.

Added by Laws 2009, c. 283, § 7, eff. Nov. 1, 2009.

§12-718.8. Stay of proceedings pending appeal of foreign-country judgment.

If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires, or the appellant has had sufficient time to prosecute the appeal and has failed to do so.

Added by Laws 2009, c. 283, § 8, eff. Nov. 1, 2009.

§12-718.9. Statute of limitations.

An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or fifteen (15) years from the date that the foreign-country judgment became effective in the foreign country.

Added by Laws 2009, c. 283, § 9, eff. Nov. 1, 2009.

§12-718.10. Uniformity of interpretation.

In applying and construing the Uniform Foreign-Country Money Judgments Recognition Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Added by Laws 2009, c. 283, § 10, eff. Nov. 1, 2009.

§12-718.11. Saving clause.

The Uniform Foreign-Country Money Judgments Recognition Act does not prevent the recognition under principals of comity or otherwise of a foreign-country judgment not within the scope of the Uniform Foreign-Country Money Judgments Recognition Act.

Added by Laws 2009, c. 283, § 11, eff. Nov. 1, 2009.

§12-718.12. Effective date.

The Uniform Foreign-Country Money Judgments Recognition Act applies to all actions commenced on or after the effective date of the Uniform Foreign-Country Money Judgments Recognition Act in which the issue of recognition of a foreign-country judgment is raised.

Added by Laws 2009, c. 283, § 12, eff. Nov. 1, 2009.

§12-718A. Foreign defamation judgments.

A. For the purposes of this section only, a "foreign defamation judgment" shall mean any judgment for a cause of action equivalent or fundamentally similar to an action for libel or slander that is rendered by a court or tribunal outside the United States or its territories or possessions. This section shall not apply to any judgment for defamation, slander or libel rendered by a federal court or a court or tribunal in this or any other state of the United States, an American Indian tribe recognized by the United States, or one of the United States territories or possessions.

B. In addition to any other defenses that may exist, no foreign defamation judgment shall be recognized or enforced if:

1. It is determined by a court of this state that the judgment was rendered by a judicial system that does not provide impartial tribunals or procedures substantially compatible with the requirements of due process of law applicable to courts of this state;

2. The court or tribunal issuing the foreign defamation judgment did not have personal jurisdiction over the defendant in accordance with the principles applicable under Oklahoma law; or

3. The court or tribunal issuing the foreign defamation judgment did not have subject matter jurisdiction over the action.

C. A foreign defamation judgment shall not be recognized by any court of this state until it is established by a preponderance of the evidence that the defamation, libel or slander law applied in the foreign defamation court's jurisdiction provides the same or higher protection for freedom of speech and press as would be provided under both the United States and Oklahoma Constitutions. If it is determined that the law in the foreign defamation judgment's jurisdiction provides the same or greater protection, then the court may proceed to consider if the judgment shall be recognized as a foreign judgment. If it is determined that the law in the foreign defamation judgment's jurisdiction does not provide the same or greater protection, or if no finding is made on this point, then the court shall not recognize or enforce the foreign defamation judgment and the judgment shall be void.

D. For the purpose of rendering declaratory relief with respect to a person's liability for a foreign defamation judgment and determining whether the foreign defamation judgment should be deemed nonrecognizable, this state's courts have personal jurisdiction over any person who obtains a foreign defamation judgment against any person who:

1. Is a resident of this state;

2. Is a person or entity amenable to the jurisdiction of this state;

3. Has assets in this state; or

4. May have to take action in this state to comply with the foreign defamation judgment.

E. This section shall apply to foreign defamation judgments filed for enforcement on or after November 1, 2013.
Added by Laws 2013, c. 272, § 1, eff. Nov. 1, 2013.

§12-719. Uniform Enforcement of Foreign Judgments Act.
This act may be cited as the Uniform Enforcement of Foreign Judgments Act.
Added by Laws 1968, c. 170, § 1, emerg. eff. April 15, 1968.

§12-720. Definition.
In this act "foreign judgment" means any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state.
Added by Laws 1968, c. 170, § 2, emerg. eff. April 15, 1968.

§12-721. Filing and status of foreign judgments.
A copy of any foreign judgment authenticated in accordance with the applicable Act of Congress or of the statutes of this state may be filed in the office of the court clerk of any county of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of the district court of any county of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a district court of this state and may be enforced or satisfied in like manner. Provided, however, that no such filed foreign judgment shall be a lien on real estate of the judgment debtor until the judgment creditor complies with the requirements of subsection B of Section 706 of this title.
Added by Laws 1968, c. 170, § 3, emerg. eff. April 15, 1968. Amended by Laws 1978, c. 138, § 2, eff. Oct. 1, 1978; Laws 2004, c. 181, § 3, eff. Nov. 1, 2004.

§12-722. Notice of filing.
(a) At the time of the filing of the foreign judgment, the judgment creditor or his lawyer shall make and file with the clerk of the court an affidavit setting forth the name and last-known post-office address of the judgment debtor, and of the judgment creditor.
(b) Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post-office address of the judgment creditor and the judgment creditor's lawyer, if any, in this state. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of notice of filing by the clerk shall not affect the enforcement

proceedings if proof of mailing by the judgment creditor has been filed.

(c) No execution or other process for enforcement of a foreign judgment filed hereunder shall issue until twenty (20) days after the date the judgment is filed.

Added by Laws 1968, c. 170, § 4, emerg. eff. April 15, 1968.

§12-723. Stay.

(a) If the judgment debtor shows the district or superior court of the county in which the judgment is filed that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, or until the time for appeal expires, or until the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the law of the state in which it was rendered.

(b) If the judgment debtor shows the district or superior court of the county in which the judgment is filed any ground upon which enforcement of a judgment of that court would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this state.

Added by Laws 1968, c. 170, § 5, emerg. eff. April 15, 1968.

§12-724. Fees.

Any person filing a foreign judgment shall pay to the court clerk those fees now and hereafter prescribed by statute for the filing of an action in the court in which such judgment is filed. Fees for docketing, transcription, or other enforcement proceedings shall be the same as provided for judgments of the district courts of this state.

Added by Laws 1968, c. 170, § 6, emerg. eff. April 15, 1968.

§12-725. Optional procedure.

The right of a judgment creditor to bring an action to enforce his judgment instead of proceeding under this act remains unimpaired.

Added by Laws 1968, c. 170, § 7, emerg. eff. April 15, 1968.

§12-726. Uniformity of interpretation.

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Added by Laws 1968, c. 170, § 8, emerg. eff. April 15, 1968.

§12-727. Interest on judgments rendered on or after January 1, 2000, but before January 1, 2005.

POSTJUDGMENT INTEREST

A. 1. Except as otherwise provided by this section, all judgments of courts of record, including costs and attorney fees authorized by statute or otherwise and allowed by the court, shall bear interest at a rate prescribed pursuant to this section.

2. Costs and attorney fees allowed by the court shall bear interest from the earlier of the date the judgment or order is pronounced, if expressly stated in the written judgment or order awarding the costs and attorney fees, or the date the judgment or order is filed with the court clerk.

B. Judgments, including costs and attorney fees authorized by statute or otherwise and allowed by the court, against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, shall bear interest during the term of judgment at a rate prescribed pursuant to this section, but not to exceed ten percent (10%), from the date of rendition. No judgment against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, inclusive of postjudgment interest, shall exceed the total amount of liability of the governmental entity pursuant to The Governmental Tort Claims Act.

C. The postjudgment interest authorized by subsection A or subsection B of this section shall accrue from the earlier of the date the judgment is rendered as expressly stated in the judgment, or the date the judgment is filed with the court clerk, and shall initially accrue at the rate in effect for the calendar year during which the judgment is rendered until the end of the calendar year in which the judgment was rendered, or until the judgment is paid, whichever first occurs. Beginning on the first day of January of the next succeeding calendar year until the end of that calendar year, or until the judgment is paid, whichever first occurs, the judgment, together with postjudgment interest previously accrued, shall bear interest at the rate in effect for judgments rendered during that calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. For each succeeding calendar year, or part of a calendar year, during which a judgment remains unpaid, the judgment, together with postjudgment interest previously accrued, shall bear interest at the rate in effect for judgments rendered during that calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. A separate computation using the interest rate in effect for judgments as provided by subsection I of this section shall be made for each calendar year, or part of a calendar year, during which the judgment remains unpaid in order to determine the total amount of interest for which the judgment debtor is liable.

The postjudgment interest rate for each calendar year or part of a calendar year a judgment remains unpaid shall be multiplied by the original amount of the judgment, including any prejudgment interest, together with postjudgment interest previously accrued. Interest shall accrue on a judgment in the manner prescribed by this subsection until the judgment is satisfied or released.

D. If a rate of interest is specified in a contract, the rate specified shall apply and be stated in the journal entry of judgment. The rate of interest shall not exceed the lawful rate for that obligation. Postjudgment interest shall be calculated and accrued in the same manner as prescribed in subsection C of this section.

PREJUDGMENT INTEREST

E. Except as provided by subsection F of this section, if a verdict for damages by reason of personal injuries or injury to personal rights including, but not limited to, injury resulting from bodily restraint, personal insult, defamation, invasion of privacy, injury to personal relations, or detriment due to an act or omission of another is accepted by the trial court, the court in rendering judgment shall add interest on the verdict at a rate prescribed pursuant to subsection I of this section from the date the suit resulting in the judgment was commenced to the earlier of the date the verdict is accepted by the trial court as expressly stated in the judgment, or the date the judgment is filed with the court clerk. The interest rate for computation of prejudgment interest shall begin with the rate prescribed by subsection I of this section which is in effect for the calendar year in which the suit resulting in the judgment is commenced. This rate shall be in effect until the end of the calendar year in which the suit resulting in judgment was filed or until the date judgment is filed, whichever first occurs. Beginning on the first day of January of the next succeeding calendar year until the end of that calendar year, or until the date the judgment is filed, whichever first occurs, and for each succeeding calendar year thereafter, the prejudgment interest rate shall be the rate in effect for judgments rendered during each calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. After the computation of all prejudgment interest has been completed, the total amount of prejudgment interest shall be added to the amount of the judgment rendered pursuant to the trial of the action, and the total amount of the resulting judgment shall become the amount upon which postjudgment interest is computed pursuant to subsection A of this section.

F. If a verdict of the type described by subsection E of this section is rendered against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, the judgment shall bear interest at the rate

prescribed pursuant to subsection I of this section, but not to exceed ten percent (10%) from the date the suit was commenced to the earlier of the date the verdict is accepted by the trial court as expressly stated in the judgment or the date the judgment is filed with the court clerk. The interest rate for computation of prejudgment interest shall begin with the rate prescribed by subsection I of this section which is in effect for the calendar year in which the suit resulting in the judgment is commenced. This rate shall be in effect until the end of the calendar year in which the suit resulting in judgment was filed or until the date the judgment is rendered as expressly stated in the judgment, whichever first occurs. Beginning on the first day of January of the next succeeding calendar year until the end of that calendar year, or until the date judgment is rendered, whichever first occurs, and for each succeeding calendar year thereafter, the prejudgment interest rate shall be the rate in effect for judgments rendered during each calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. After the computation of prejudgment interest has been completed, the amount shall be added to the amount of the judgment rendered pursuant to the trial of the action, and the total amount of the resulting judgment shall become the amount upon which postjudgment interest is computed pursuant to subsection B of this section. No award of prejudgment interest against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, including the amount of the judgment awarded pursuant to trial of the action, shall exceed the total amount of liability of the governmental entity pursuant to The Governmental Tort Claims Act.

G. If exemplary or punitive damages are awarded in an action for personal injury or injury to personal rights including, but not limited to, injury resulting from bodily restraint, personal insult, defamation, invasion of privacy, injury to personal relations, or detriment due to an act or omission of another, the interest on that award shall begin to accrue from the earlier of the date the judgment is rendered as expressly stated in the judgment, or the date the judgment is filed with the court clerk.

H. If a judgment is rendered establishing the existence of a lien against property and no rate of interest exists, the court shall allow prejudgment interest at a rate prescribed pursuant to subsection I of this section from the date the lien is filed to the date of verdict.

I. For purposes of computing either postjudgment interest or prejudgment interest as authorized by this section, interest shall be determined using a rate equal to the average United States Treasury Bill rate of the preceding calendar year as certified to the Administrative Director of the Courts by the State Treasurer on the

first regular business day in January of each year, plus four percentage points.

J. For purposes of computing postjudgment interest, the provisions of this section, including the amendments prescribed by Chapter 320, O.S.L. 1997, shall be applicable to all judgments of the district courts rendered on or after January 1, 2000 but before January 1, 2005. Until January 1, 2005, the method for computing postjudgment interest prescribed by this section shall be applicable to all judgments remaining unpaid rendered prior to January 1, 2000.

K. For purposes of computing prejudgment interest, the provisions of this section, including the amendments prescribed by Chapter 320, O.S.L. 1997, shall be applicable to all actions which are filed in the district courts on or after January 1, 2000, but before January 1, 2005, for which an award of prejudgment interest is authorized by the provisions of this section.

R.L.1910, § 1008. Amended by Laws 1968, c. 71, § 1, emerg. eff. March 25, 1968; Laws 1971, c. 252, § 1. Renumbered from § 274 of Title 15 by Laws 1971, c. 252, § 2. Amended by Laws 1979, c. 60, § 1, eff. Oct. 1, 1979; Laws 1982, c. 78, § 1, emerg. eff. April 1, 1982; Laws 1984, c. 83, § 1, emerg. eff. April 4, 1984; Laws 1985, c. 257, § 1, eff. Nov. 1, 1985; Laws 1986, c. 315, § 4, eff. Nov. 1, 1986; Laws 1997, c. 320, § 2, eff. Jan. 1, 1998; Laws 1999, c. 293, § 7, eff. Nov. 1, 1999; Laws 2004, c. 368, § 6, eff. Nov. 1, 2004.

§12-727.1. Interest on judgments rendered on or after January 1, 2005.

POSTJUDGMENT INTEREST

A. 1. Except as otherwise provided by this section, all judgments of courts of record, including costs and attorney fees authorized by statute or otherwise and allowed by the court, shall bear interest at a rate prescribed pursuant to this section.

2. Costs and attorney fees allowed by the court shall bear interest from the earlier of the date the judgment or order is pronounced, if expressly stated in the written judgment or order awarding the costs and attorney fees, or the date the judgment or order is filed with the court clerk.

B. Judgments, including costs and attorney fees authorized by statute or otherwise and allowed by the court, against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, shall bear interest during the term of judgment at a rate prescribed pursuant to this section from the date of rendition. No judgment against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, inclusive of postjudgment interest, shall exceed the total amount of

liability of the governmental entity pursuant to The Governmental Tort Claims Act.

C. The postjudgment interest authorized by subsection A or subsection B of this section shall accrue from the earlier of the date the judgment is rendered as expressly stated in the judgment, or the date the judgment is filed with the court clerk, and shall initially accrue at the rate in effect for the calendar year during which the judgment is rendered until the end of the calendar year in which the judgment was rendered, or until the judgment is paid, whichever first occurs. Beginning on January 1 of the next succeeding calendar year until the end of that calendar year, or until the judgment is paid, whichever first occurs, the judgment, together with postjudgment interest previously accrued, shall bear interest at the rate in effect for judgments rendered during that calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. For each succeeding calendar year, or part of a calendar year, during which a judgment remains unpaid, the judgment, together with postjudgment interest previously accrued, shall bear interest at the rate in effect for judgments rendered during that calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. A separate computation using the interest rate in effect for judgments as provided by subsection I of this section shall be made for each calendar year, or part of a calendar year, during which the judgment remains unpaid in order to determine the total amount of interest for which the judgment debtor is liable. The postjudgment interest rate for each calendar year or part of a calendar year a judgment remains unpaid shall be multiplied by the original amount of the judgment, including any prejudgment interest, together with postjudgment interest previously accrued. Interest shall accrue on a judgment in the manner prescribed by this subsection until the judgment is satisfied or released.

D. If a rate of interest is specified in a contract, the rate specified shall apply and be stated in the journal entry of judgment. The rate of interest shall not exceed the lawful rate for that obligation. Postjudgment interest shall be calculated at the contractual rate and accrued in the same manner as prescribed in subsection C of this section.

PREJUDGMENT INTEREST

E. Except as provided by subsection F of this section, beginning November 1, 2009, if a verdict for damages by reason of personal injuries or injury to personal rights including, but not limited to, injury resulting from bodily restraint, personal insult, defamation, invasion of privacy, injury to personal relations, or detriment due to an act or omission of another is accepted by the trial court, the court in rendering judgment shall add interest on the verdict at a rate prescribed pursuant to subsection I of this section from the

date which is twenty-four (24) months after the suit resulting in the judgment was commenced to the earlier of the date the verdict is accepted by the trial court as expressly stated in the judgment, or the date the judgment is filed with the court clerk. No prejudgment interest shall begin to accrue until twenty-four (24) months after the suit resulting in the judgment was commenced. The interest rate for computation of prejudgment interest shall begin with the rate prescribed by subsection I of this section which is in effect for the calendar year which is twenty-four (24) months after the suit resulting in the judgment was commenced. This rate shall be in effect until the end of the calendar year in which interest begins to accrue or until the date judgment is filed, whichever first occurs. Beginning on January 1 of the next succeeding calendar year until the end of that calendar year, or until the date the judgment is filed, whichever first occurs, and for each succeeding calendar year thereafter, the prejudgment interest rate shall be the rate in effect for judgments rendered during each calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. After the computation of all prejudgment interest has been completed, the total amount of prejudgment interest shall be added to the amount of the judgment rendered pursuant to the trial of the action, and the total amount of the resulting judgment shall become the amount upon which postjudgment interest is computed pursuant to subsection A of this section.

F. If a verdict of the type described by subsection E of this section is rendered against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, the judgment shall bear interest at the rate prescribed pursuant to subsection I of this section from the date the suit was commenced to the earlier of the date the verdict is accepted by the trial court as expressly stated in the judgment or the date the judgment is filed with the court clerk. The interest rate for computation of prejudgment interest shall begin with the rate prescribed by subsection I of this section which is in effect for the calendar year in which the suit resulting in the judgment is commenced. This rate shall be in effect until the end of the calendar year in which the suit resulting in judgment was filed or until the date the judgment is rendered as expressly stated in the judgment, whichever first occurs. Beginning on January 1 of the next succeeding calendar year until the end of that calendar year, or until the date judgment is rendered, whichever first occurs, and for each succeeding calendar year thereafter, the prejudgment interest rate shall be the rate in effect for judgments rendered during each calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. After the computation of prejudgment interest has been completed, the amount

shall be added to the amount of the judgment rendered pursuant to the trial of the action, and the total amount of the resulting judgment shall become the amount upon which postjudgment interest is computed pursuant to subsection B of this section. No award of prejudgment interest against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, including the amount of the judgment awarded pursuant to trial of the action, shall exceed the total amount of liability of the governmental entity pursuant to The Governmental Tort Claims Act.

G. If exemplary or punitive damages are awarded in an action for personal injury or injury to personal rights including, but not limited to, injury resulting from bodily restraint, personal insult, defamation, invasion of privacy, injury to personal relations, or detriment due to an act or omission of another, the interest on that award shall begin to accrue from the earlier of the date the judgment is rendered as expressly stated in the judgment, or the date the judgment is filed with the court clerk.

H. If a judgment is rendered establishing the existence of a lien against property and no rate of interest exists, the court shall allow prejudgment interest at a rate prescribed pursuant to subsection I of this section from the date the lien is filed to the date of verdict.

I. For purposes of computing postjudgment interest as authorized by this section, interest shall be the prime rate, as listed in the first edition of the Wall Street Journal published for each calendar year and as certified to the Administrative Director of the Courts by the State Treasurer on the first regular business day following publication in January of each year, plus two percent (2%). For purposes of computing prejudgment interest as authorized by this section, interest shall be determined using a rate equal to the average United States Treasury Bill rate of the preceding calendar year as certified to the Administrative Director of the Courts by the State Treasurer on the first regular business day in January of each year.

J. For purposes of computing postjudgment interest, the provisions of this section shall be applicable to all judgments of the district courts rendered on or after January 1, 2005. Effective January 1, 2005, the method for computing postjudgment interest prescribed by this section shall be applicable to all judgments remaining unpaid rendered prior to January 1, 2005.

K. For purposes of computing prejudgment interest, the provisions of this section shall be applicable to all actions which are filed in the district courts on or after January 1, 2010, for which an award of prejudgment interest is authorized by the provisions of this section.

Added by Laws 2004, c. 368, § 7, eff. Nov. 1, 2004. Amended by Laws 2009, c. 228, § 7, eff. Nov. 1, 2009; Laws 2013, c. 48, § 1, eff. Nov. 1, 2013.

§12-728. Standards for recognizing records and proceedings of tribal courts - Reciprocity.

A. This act affirms the power of the Supreme Court of the State of Oklahoma to issue standards for extending full faith and credit to the records and judicial proceedings of any court of any federally recognized Indian nation, tribe, band or political subdivision thereof, including courts of Indian offenses.

B. In issuing any such standard the Supreme Court of the State of Oklahoma may extend such recognition in whole or in part to such type or types of judgments of the tribal courts as it deems appropriate where tribal courts agree to grant reciprocity of judgments of the courts of the State of Oklahoma in such tribal courts.

Added by Laws 1992, c. 384, § 1, eff. Sept. 1, 1992.

§12-729. Force and effect of certain judgment, decree or appealable order of a district court.

Any judgment, decree or appealable order of a district court rendered or granted on or after January 1, 1991, and before the effective date of this act, which substantially complies with this act, Chapter 251, O.S.L. 1991, Chapter 251, O.S.L. 1990 or the law which was effective prior to January 1, 1991, shall have the same force and effect as any other properly rendered or granted judgment, decree or appealable order.

From Laws 1991, c. 251, § 23, eff. June 1, 1991. Amended by Laws 1993, c. 351, § 16, eff. Oct. 1, 1993. Codified as § 729 of Title 12 by Laws 1993, § 17, eff. Oct. 1, 1993.

§12-729.1. Short title.

This act shall be known and may be cited as the "Oklahoma Uniform Foreign-Money Claims Act".

Added by Laws 1994, c. 165, § 1, eff. Jan. 1, 1995.

§12-729.2. Definitions.

As used in this act:

1. "Action" means a judicial proceeding or arbitration in which a payment in money may be awarded or enforced with respect to a foreign-money claim;

2. "Bank-offered spot rate" means the spot rate of exchange at which a bank will sell foreign money at a spot rate;

3. "Conversion date" means the banking day next preceding the date on which money, in accordance with this act, is:

a. paid to a claimant in an action or distribution proceeding,
b. paid to the official designated by law to enforce a judgment or award on behalf of a claimant, or
c. used to recoup, set-off or counterclaim in different moneys in an action or distribution proceeding;

4. "Distribution proceeding" means a judicial or nonjudicial proceeding for the distribution of a fund in which one or more foreign-money claims is asserted and includes, but is not limited to, an accounting, an assignment for the benefit of creditors, a foreclosure, the liquidation or rehabilitation of a corporation or other entity, and the distribution of an estate, trust or other fund;

5. "Foreign money" means money other than money of the United States of America;

6. "Foreign-money claim" means a claim upon an obligation to pay, or a claim for recovery of a loss, expressed in or measured by a foreign money;

7. "Money" means a medium of exchange for the payment of obligations or a store of value authorized or adopted by a government or by intergovernmental agreement;

8. "Money of the claim" means the money determined as proper pursuant to Section 5 of this act;

9. "Person" means an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, joint venture, partnership, association, limited liability company, two or more persons having a joint or common interest or any other legal or commercial entity;

10. "Rate of exchange" means the rate at which money of one country may be converted into money of another country in a free financial market convenient to or reasonably usable by a person obligated to pay or to state a rate of conversion. If separate rates of exchange apply to different kinds of transactions, the term means the rate applicable to the particular transaction giving rise to the foreign-money claim;

11. "Spot rate" means the rate of exchange at which foreign money is sold by a bank or other dealer in foreign exchange for immediate or next day availability or for settlement by immediate payment in cash or equivalent, by charge to an account or by an agreed delayed settlement not exceeding two days; and

12. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or a territory or insular possession subject to the jurisdiction of the United States.
Added by Laws 1994, c. 165, § 2, eff. Jan. 1, 1995.

§12-729.3. Application of act.

A. This act applies only to a foreign-money claim in an action or distribution proceeding.

B. This act applies to foreign-money issues even if other law under the conflict of laws rules of this state applies to other issues in the action or distribution proceeding.
Added by Laws 1994, c. 165, § 3, eff. Jan. 1, 1995.

§12-729.4. Variation of act by agreement of parties.

A. The effect of this act may be varied by agreement of the parties made before or after commencement of an action or distribution proceeding or the entry of judgment.

B. Parties to a transaction may agree upon the money to be used in a transaction giving rise to a foreign-money claim and may agree to use different moneys for different aspects of the transaction. Stating the price in a foreign money for one aspect of a transaction does not alone require the use of that money for other aspects of the transaction.
Added by Laws 1994, c. 165, § 4, eff. Jan. 1, 1995.

§12-729.5. Determining proper money of claim.

A. The money in which the parties to a transaction have agreed that payment is to be made is the proper money of the claim for payment.

B. If the parties to a transaction have not otherwise agreed, the proper money of the claim, as in each case may be appropriate, is the money:

1. Regularly used between the parties as a matter of usage or course of dealing;

2. Used at the time of a transaction in international trade, by trade usage or common practice, for valuing or settling transactions in the particular commodity or service involved; or

3. In which the loss was ultimately felt or will be incurred by the party claimant.
Added by Laws 1994, c. 165, § 5, eff. Jan. 1, 1995.

§12-729.6. Determining amount to be paid in foreign money.

A. If an amount contracted to be paid in a foreign money is measured by a specified amount of a different money, the amount to be paid is determined on the conversion date.

B. If an amount contracted to be paid in a foreign money is to be measured by a different money at the rate of exchange prevailing on a date before default, that rate of exchange applies only to payments made within a reasonable time after default, not exceeding thirty (30) days. Thereafter, conversion is made at the bank-offered spot rate on the conversion date.

C. A monetary claim is neither usurious nor unconscionable because the agreement on which it is based provides that the amount of the debtor's obligation to be paid in the debtor's money, when received by the creditor, must equal a specified amount of the

foreign money of the country of the creditor. If, because of unexcused delay in payment of a judgment or award, the amount received by the creditor does not equal the amount of the foreign money specified in the agreement, the court or arbitrator shall amend the judgment or award accordingly.
Added by Laws 1994, c. 165, § 6, eff. Jan. 1, 1995.

§12-729.7. Assertion of claim or defense using a foreign money.

A. A person may assert a claim in a specified foreign money. If a foreign-money claim is not asserted, the claimant makes the claim in United States dollars.

B. An opposing party may allege and prove that a claim, in whole or in part, is in a different money than that asserted by the claimant.

C. A person may assert a claim as a defense, set-off, recoupment or counterclaim in any money appropriate for the claim without regard to the money of other claims.

D. The determination of the proper money of the claim is a question of law.
Added by Laws 1994, c. 165, § 7, eff. Jan. 1, 1995.

§12-729.8. Judgment or award on foreign-money claim.

A. Except as provided in subsection C of this section, a judgment or award on a foreign-money claim must be stated in an amount of the money of the claim.

B. A judgment or award on a foreign-money claim is payable in that foreign money or, at the option of the debtor, in the amount of United States dollars which will purchase that foreign money on the conversion date at a bank-offered spot rate.

C. Assessed costs must be entered in United States dollars.

D. Each payment in United States dollars must be accepted and credited on a judgment or award on a foreign-money claim in the amount of the foreign money that could be purchased by the dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date for that payment.

E. A judgment or award made in an action or distribution proceeding on both:

1. A defense, set-off, recoupment or counterclaim; and

2. The adverse party's claim,

must be netted by converting the money of the smaller into the money of the larger, and by subtracting the smaller from the larger, and specify the rates of exchange used.

F. A judgment substantially in the following form complies with subsection A of this section:

IT IS ADJUDGED AND ORDERED, that Defendant (insert name) pay to Plaintiff (insert name) the sum of (insert amount in the foreign money) plus interest on that sum at the rate of (insert rate - see

Section 10 of this act) percent a year or, at the option of the judgment debtor, the number of United States dollars which will purchase the (insert name of foreign money) with interest due, at a bank-offered spot rate at or near the close of business on the banking day next before the day of payment, together with assessed costs of (insert amount) United States dollars.

G. If a contract claim is of the type covered by subsection A or B of Section 6 of this act, the judgment or award must be entered for the amount of money stated to measure the obligation to be paid in the money specified for payment or, at the option of the debtor, the number of United States dollars which will purchase the computed amount of the money of payment on the conversion date at a bank-offered spot rate.

H. In order to create a lien, a judgment in foreign money must be filed and indexed in the same manner as other judgments. It may be discharged in the same manner as other judgments.

Added by Laws 1994, c. 165, § 8, eff. Jan. 1, 1995.

§12-729.9. Rate of exchange.

The rate of exchange prevailing at or near the close of business on the day the distribution proceeding is initiated governs all exchanges of foreign money in a distribution proceeding. A foreign-money claimant in a distribution proceeding shall assert its claim in the named foreign money and show the amount of United States dollars resulting from a conversion as of the date the proceeding was initiated.

Added by Laws 1994, c. 165, § 9, eff. Jan. 1, 1995.

§12-729.10. Interest.

A. With respect to a foreign-money claim, recovery of prejudgment or pre-award interest and the rate of interest to be applied in the action or distribution proceeding, except as provided in subsection B of this section, are matters of the substantive law governing the right to recovery under the conflict-of-laws rules of this state.

B. The court or arbitrator shall increase or decrease the amount of prejudgment or pre-award interest otherwise payable in a judgment or award in foreign money to the extent required by the law of this state governing a failure to make or accept an offer of settlement or offer of judgment, or conduct by a party or its attorney causing undue delay or expense.

C. A judgment or award on a foreign-money claim bears interest at the rate applicable to judgments of this state.

Added by Laws 1994, c. 165, § 10, eff. Jan. 1, 1995.

§12-729.11. Enforcement of foreign judgment.

A. If an action is brought to enforce a judgment of another jurisdiction expressed in a foreign money and the judgment is recognized in this state as enforceable, the enforcing judgment must be entered as provided in Section 8 of this act, whether or not the foreign judgment confers an option to pay in an equivalent amount of United States dollars.

B. A foreign judgment may be filed in accordance with any rule or statute of this state providing a procedure for its recognition and enforcement.

C. A satisfaction or partial payment made upon the foreign judgment, on proof thereof, must be credited against the amount of foreign money specified in the judgment, notwithstanding the entry of judgment in this state.

D. A judgment entered on a foreign-money claim only in United States dollars in another state must be enforced in this state in United States dollars only.

Added by Laws 1994, c. 165, § 11, eff. Jan. 1, 1995.

§12-729.12. Enforcement of provisional remedies.

A. Computations under this section are for the limited purposes of the section and do not affect computation of the United States dollar equivalent of the money of the judgment for the purpose of payment.

B. For the limited purpose of facilitating the enforcement of provisional remedies in an action, the value in United States dollars of assets to be seized or restrained pursuant to a writ of attachment, garnishment, execution or other legal process, the amount of United States dollars at issue for assessing costs, or the amount of United States dollars involved for a surety bond or other court-required undertaking, must be ascertained as provided in subsections C and D of this section.

C. A party seeking the process, costs, bond or other undertaking under subsection B of this section shall compute in United States dollars the amount of the foreign money claimed from a bank-offered spot rate prevailing at or near the close of business on the banking day next preceding the filing of a request or application for the issuance of process or for the determination of costs, or an application for a bond or other court-required undertaking.

D. A party seeking the process, costs, bond or other undertaking under subsection B of this section shall file with each request or application an affidavit or certificate executed in good faith by its counsel or a bank officer, stating the market quotation used and how it was obtained, and setting forth the calculation. Affected court officials incur no liability, after a filing of the affidavit or certificate, for acting as if the judgment were in the amount of United States dollars stated in the affidavit or certificate.

Added by Laws 1994, c. 165, § 12, eff. Jan. 1, 1995.

§12-729.13. Foreign money revalorization.

A. If, after an obligation is expressed or a loss is incurred in a foreign money, the country issuing or adopting that money substitutes a new money in place of that money, the obligation or the loss is treated as if expressed or incurred in the new money at the rate of conversion the issuing country establishes for the payment of like obligations or losses denominated in the former money.

B. If substitution under subsection A of this section occurs after a judgment or award is entered on a foreign-money claim, the court or arbitrator shall amend the judgment or award by a like conversion of the former money.

Added by Laws 1994, c. 165, § 13, eff. Jan. 1, 1995.

§12-729.14. Principles of law and equity - Construction of act.

Unless displaced by particular provisions of this act, the principles of law and equity, including the law merchant, and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy or other validating or invalidating causes supplement its provisions.

Added by Laws 1994, c. 165, § 14, eff. Jan. 1, 1995.

§12-729.15. Prospective applicability of act.

This act applies to actions and distribution proceedings commenced after its effective date.

Added by Laws 1994, c. 165, § 15, eff. Jan. 1, 1995.

§12-729.16. Construction to effectuate general purpose of act.

This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

Added by Laws 1994, c. 165, § 16, eff. Jan. 1, 1995.

§12-731. Executions - Defined - How issued - Different counties.

Executions shall be deemed process of the court, and shall be issued by the clerk, and directed to the sheriff of the county. They may be directed to different counties at the same time.

R.L. 1910, § 5149.

§12-732. Kinds of executions.

Executions are of three kinds:

First, against the property of the judgment debtor.

Second, for the delivery of possession of real or personal property, with damages for withholding the same, and costs.

Third, executions in special cases.

R.L. 1910, § 5150.

§12-733. Property subject to levy.

Lands, tenements, goods and chattels, not exempt by law shall be subject to the payment of debts, and shall be liable to be taken on execution and sold, as hereinafter provided.
R.L. 1910, § 5151.

§12-734. Property bound after seizure.

All real estate not bound by the lien of the judgment, as well as goods and chattels of the debtor, shall be bound from the time they shall be seized in execution.
R.L. 1910, § 5152.

§12-735. Must be issued within five years or judgment becomes unenforceable - Inapplicable to municipalities or child support judgments.

A. A judgment shall become unenforceable and of no effect if, within five (5) years after the date of filing of any judgment that now is or may hereafter be filed in any court of record in this state:

1. Execution is not issued by the court clerk and filed with the county clerk as provided in Section 759 of this title;

2. A notice of renewal of judgment substantially in the form prescribed by the Administrative Director of the Courts is not filed with the court clerk;

3. A garnishment summons is not issued by the court clerk; or

4. A certified copy of a notice of income assignment is not sent to a payor of the judgment debtor.

B. A judgment shall become unenforceable and of no effect if more than five (5) years have passed from the date of:

1. The last execution on the judgment was filed with the county clerk;

2. The last notice of renewal of judgment was filed with the court clerk;

3. The last garnishment summons was issued; or

4. The sending of a certified copy of a notice of income assignment to a payor of the judgment debtor.

C. This section shall not apply to judgments against municipalities or to child support judgments by operation of law.
R.L. 1910, § 5153. Amended by Laws 1981, c. 120, § 1, eff. Oct. 1, 1981; Laws 1988, c. 22, § 1, eff. Nov. 1, 1988; Laws 1989, c. 236, § 5, eff. July 1, 1989; Laws 1997, c. 320, § 3, eff. Nov. 1, 1997; Laws 2000, c. 384, § 1, eff. Nov. 1, 2000; Laws 2002, c. 468, § 4, eff. Nov. 1, 2002.

§12-736. Execution to command levy on personalty before levy on realty - Endorsement of amount of debt, damages, and costs on execution.

The writ of execution against the property of the judgment debtor, issuing from any court of record in this state, shall command the officer to whom it is directed, that of the goods and chattels of the debtor he cause to be made the money specified in the writ; and for want of goods and chattels, he cause the same to be made of the lands and tenements of the debtor; and the amount of the debt, damages and costs, for which the judgment is entered, shall be endorsed on the execution.
R.L. 1910, § 5154.

§12-737. Priority among executions.

When two or more writs of execution against the same debtor shall be sued out during the term in which judgment was rendered, or within ten (10) days thereafter, and when two or more writs of execution against the same debtor shall be delivered to the officer on the same day, no preference shall be given to either of such writs; but if a sufficient sum of money be not made to satisfy all such executions, the amount made shall be distributed to the several creditors in proportion to the amount of their respective demands. In all other cases, the writ of execution first delivered to the officer shall be first satisfied. And it shall be the duty of the officer to endorse on every writ of execution the time when he received the same; but nothing herein contained shall be so construed as to affect any preferable lien which one or more of the judgments, on which execution issued, may have on the lands of the judgment debtor.
R.L. 1910, § 5155.

§12-751. Levy on goods and chattels, then on realty - Sale of lands subject to liens - Appraisement.

The officer to whom a writ of execution is delivered, shall proceed immediately to levy the same upon the goods and chattels of the debtor; but if no goods and chattels can be found, the officer shall endorse on the writ of execution, "No goods," and forthwith levy the writ of execution upon the lands and tenements of the debtor, which may be liable to satisfy the judgment; and if any of the lands and tenements of the debtor which may be liable shall be encumbered by a mortgage or any other lien or liens, such lands and tenements may be levied upon and appraised. If the appraisal reveals any equity in excess of such mortgage or liens, the lands and tenements may be sold, subject to such mortgage or liens, stated in the appraisal. If the appraisal reveals no equity, the lands and tenements of the debtor shall not be sold.
R.L. 1910, § 5156. Amended by Laws 1985, c. 277, § 10, eff. Nov. 1, 1985.

§12-752. Attachments and executions, who levied by.

It shall be unlawful for anyone to levy an attachment or execution within this state who is not a bonded officer.
Added by Laws 1919, c. 139, p. 199, § 1.

§12-753. Same void when issued to or levied otherwise.
Any attachment or execution issued to, or levied by anyone other than a bonded officer shall be void and of no effect and the court clerk or judge of the district court, or clerks of the judge of the district court issuing same, or officer levying same, as the case may be, together with their bondsmen shall be liable for any damage caused thereby.
Added by Laws 1919, c. 139, p. 199, § 2.

§12-754. Penalty.
Anyone violating the provisions of this act shall be punished by a fine not to exceed One Hundred Dollars ($100.00) or confinement in the county jail not to exceed thirty (30) days or both.
Added by Laws 1919, c. 139, p. 200, § 3.

§12-755. Property claimed by third person - Plaintiff to secure officer.
If the officer, by virtue of an execution issued from any court of record in this state, shall levy the same on any goods and chattels claimed by any person other than the defendant, or be requested by the plaintiff to levy on any such goods and chattels, the officer may require the plaintiff to give him an undertaking, with good and sufficient securities to pay all costs and damages that he may sustain by reason of the detention or sale of such property; and until such undertaking shall be given, the officer may refuse to proceed as against such property.
R.L. 1910, § 5157.

§12-756. Redelivery to defendant, when - Undertaking.
In all cases where a sheriff or other officer shall, by virtue of an execution, levy upon any goods and chattels which shall remain upon his hands unsold, for want of bidders, for the want of time to advertise and sell, or any other reasonable cause, the officer may, for his own security, take of the defendant an undertaking, with security, in such sum as he may deem sufficient, to the effect that the said property shall be delivered to the officer holding an execution for the sale of the same, at the time and place appointed by said officer, either by notice, given in writing, to said defendant in execution, or by advertisement published in a newspaper printed in the county, naming therein the day and place of sale. If the defendant shall fail to deliver the goods and chattels at the time and place mentioned in the notice to him, given, or to pay to the officer holding the execution the full value of said goods and

chattels, or the amount of said debt and costs, the undertaking, given as aforesaid, may be proceeded on as in other cases.
R.L. 1910, § 5158.

§12-757. Notice of sale of chattels - Acceptance of bids - Inventory for want of bidders.

A. 1. No goods or chattels levied upon by an officer pursuant to an execution issued by a court of record shall be sold unless the party causing the execution to be issued:

a. causes a written notice of sale executed by the sheriff describing the goods or chattels subject to sale and stating the date, time and place where the sale shall occur to be mailed, by first class mail, postage prepaid, to the judgment debtor, any holder of record of an interest in the property, and all other persons of whom the party causing the execution to be issued has notice who claim a lien or any interest in the goods or chattels, at least ten (10) days prior to the date of the sale, if the names and actual addresses of such persons are known, and

b. causes public notice to be given of the date, time and place of sale, for at least ten (10) days before the day of sale. The notice shall be executed by the sheriff and shall state the name of any person having an interest in the property whose actual address is unknown, and shall designate the person or persons whose unknown successors are being notified. The notice shall be given by advertisement, published in some newspaper published in the county, or, in case no newspaper be published therein, by setting up advertisements in five public places in the county. Two advertisements shall be put up in the township where the sale is to be held, and

c. files in the case an affidavit of proof of mailing and of publication or posting;

2. A written notice of sale executed prior to the effective date of this act by the party causing the execution to be issued but otherwise conforming to the provisions of this section shall, for all purposes, be deemed valid.

B. 1. If a purchaser other than the party causing the execution to be issued, when required by the sheriff, fails to post cash or certified funds equal to ten percent (10%) of the amount bid for the property within twenty-four (24) hours of the sale, excluding Sundays and legal holidays, or otherwise fails to complete the sale, the sheriff may proceed with the sale and may accept the next highest bid.

2. When goods and chattels levied upon cannot be sold for want of bidders, the officer making such return shall affix a true and correct inventory of such goods and chattels to the execution, and the party causing such execution to be issued may thereupon sue out another writ of execution, directing the sale of the property levied upon as provided for in this section.
R.L. 1910, § 5159. Amended by Laws 1986, c. 227, § 2, eff. Nov. 1, 1986; Laws 1987, c. 189, § 1, operative Nov. 1, 1987.

§12-758. Further levy when property taken insufficient.
When any writ shall issue, directing the sale of property previously taken in execution, the officer issuing said writ shall, at the request of the person entitled to the benefit thereof, his agent or attorney, add thereto a command to the officer to whom such writ shall be directed, that if the property remaining in his hands not sold shall, in his opinion, be insufficient to satisfy the judgment, he shall levy the same upon lands and tenements, goods and chattels, or either, as the law shall permit, being the property of the judgment debtor, sufficient to satisfy the debt.
R.L. 1910, § 5160.

§12-759. Filing and index of execution - Appraisement of property - Extension of judgment lien.
A. When a general execution is issued and placed in the custody of a sheriff for levy, a certified copy of the execution shall be filed in the office of the county clerk of the county whose sheriff holds the execution and shall be indexed in the same manner as judgments. At the time the execution is filed, the court clerk shall collect from the party seeking a general execution all fees necessary for the payment of the disinterested persons or a legal entity for services in appraising the subject property pursuant to the requirements of subsection B of this section.
B. If a general or special execution is levied upon lands and tenements, the sheriff shall endorse on the face of the writ the legal description and shall have three disinterested persons who have taken an oath to impartially appraise the property levied on or a legal entity which has provided a written affidavit of impartiality, upon actual view; and the disinterested persons or legal entity shall return to the officer a signed estimate of the real value of the property. If an estimate is obtained from a disinterested legal entity, such estimate shall be developed by the legal entity using at least three independent, credible sources, each of which has estimated the real value of the subject property independently. The disinterested persons or legal entity shall be paid for such services by the court clerk of the county where the property is located within thirty (30) days of the date that they return their estimate of the real value of the property.

C. To extend a judgment lien beyond the initial or any subsequent statutory period, prior to the expiration of such period, a certified copy of one of the following must be filed and indexed in the same manner as judgments in the office of the county clerk in the county in which the statement of judgment was filed and the lien thereof is sought to be retained:

1. A general execution upon the judgment;

2. A notice of renewal of judgment;

3. A garnishment summons issued against the judgment debtor; or

4. A notice of income assignment sent to a payor of the judgment debtor.

R.L.1910, § 5161. Amended by Laws 1981, c. 120, § 2; Laws 1988, c. 22, § 2, eff. Nov. 1, 1988; Laws 1997, c. 320, § 4, eff. Nov. 1, 1997; Laws 2000, c. 384, § 2, eff. Nov. 1, 2000; Laws 2010, c. 404, § 1, eff. Nov. 1, 2010; Laws 2019, c. 122, § 1, eff. Nov. 1, 2019.

§12-760. Waiver of appraisement - Order of sale not to issue until six months after judgment.

If the words "appraisement waived" or other words of similar import, shall be inserted in any deed, mortgages, bonds, notes, bill or written contract, any court rendering judgment thereon, shall order as a part of the judgment that the same, and any process issued thereon, shall be enforced, and that lands and tenements may be sold thereunder without appraisement; and such judgment, and any process issued thereon shall be enforced, and sales of land and tenements made thereunder, without any appraisement or valuation being made of the property, to be sold: Provided, that no order of sale or execution shall be issued upon such judgment until the expiration of six (6) months from the time of the rendition of the initial judgment.

R.L. 1910, § 5162. Amended by Laws 2017, c. 201, § 1, eff. Nov. 1, 2017.

§12-761. Return of appraisement - Sale.

The officer receiving such return shall forthwith deposit a copy thereof with the clerk of the court from which the writ issued, and advertise and sell such property, agreeably to the provisions of this article.

R.L. 1910, § 5163.

§12-762. Lien restricted to property levied on when two-thirds of appraised value sufficient to satisfy judgment - Amount for which property sold - Sale for debt or taxes due state.

If, upon such return, as aforesaid, it appear, by the inquisition, that two-thirds (2/3) of the appraised value of said lands and tenements, so levied upon is sufficient to satisfy the execution, with costs, the judgment on which such execution issued

shall not operate as a lien on the residue of the debtor's estate, to the prejudice of any other judgment creditor; but no such property shall be sold for less than two-thirds (2/3) of the value returned in the inquest; and nothing in this section contained shall, in any wise, extend to affect the sale of lands by the state, but all lands, the property of individuals indebted to the state for any debt or taxes, or in any other manner, shall be sold without valuation, for the discharge of such debt or taxes, agreeably to the laws in such cases made and provided.
R.L. 1910, § 5164.

§12-763. Judgments against public officers - Sale without valuation.
If the property of any clerk, sheriff, coroner, judge of the district court, constable or any collector of state, county, town or township tax, shall be levied on for, or on account of, any monies that now are, or may hereafter be, by them collected or received in their official capacity, the property so levied on shall be sold without valuation.
R.L. 1910, § 5165.

§12-764. Notice of sale of realty.
A. Lands and tenements taken on execution shall not be sold unless the party causing the execution to be issued:
1. Causes a written notice of sale executed by the sheriff containing the legal description of the property to be sold and stating the date, time and place where the property will be sold to be mailed, by first class mail, postage prepaid, to the judgment debtor, any holder of interest of record in the property to be sold whose interest is sought to be extinguished, and all other persons of whom the party causing the execution to be issued has notice who claim a lien or any interest in the property whose interest is sought to be extinguished, at least ten (10) days prior to the date of the sale, if the names and addresses of such persons are known; and
2. Causes public notice of the date, time and place of sale to be given by publication for two (2) successive weeks in a newspaper published in the county in which the property to be sold is situated, or in case no newspaper be published in such county, then in a newspaper of general circulation therein and by putting up an advertisement upon the courthouse door and in five other public places in such county, two of which shall be in the township where such lands and tenements lie; provided, that in counties now having a population of one hundred ten thousand (110,000) or more according to the last Federal Census, the advertisement shall be published in some newspaper published in the city or township where said lands and tenements lie or if there be no newspaper in such city or township then in some newspaper published in the county. Notice shall be executed by the sheriff and state the name of any person having an

interest in the property to be sold whose interest is sought to be extinguished and whose actual address is unknown, and shall designate the person or persons whose unknown successors are being notified; and

3. Files in the case an affidavit of proof of mailing and of publication or posting.

B. A written notice of sale executed prior to the effective date of this act by the party causing the execution to be issued but otherwise conforming to the provisions of this section shall, for all purposes, be deemed valid.

C. Such sale shall not be held less than thirty (30) days after the date of first publication of the notice required in paragraph 2 of subsection A of this section. If a purchaser other than the party causing the execution to be issued, when required by the sheriff, fails to post cash or certified funds equal to ten percent (10%) of the amount bid for the property within twenty-four (24) hours of the sale, excluding Sundays and legal holidays, or otherwise fails to complete the sale, the sheriff may accept the next highest bid. Except as otherwise provided for in subsection B of this section, sales for which the provisions of subsection A of this section have not been complied with shall be set aside on motion by the court to which the execution is returnable.

R.L. 1910, § 5166. Amended by Laws 1927, c. 117, p. 184, § 1; Laws 1957, p. 81, § 1; Laws 1986, c. 227, § 3, eff. Nov. 1, 1986; Laws 1987, c. 189, § 2, operative Nov. 1, 1987.

§12-765. Confirmation of sale - Objections.

A. Upon the return of any writ of execution for the satisfaction of which any lands or tenements have been sold, the party causing the execution to be issued shall:

1. Cause a written notice of hearing on the confirmation of the sale to be mailed, by first class mail, postage prepaid, to all persons to whom mailing of the notice of the execution sale was required to be made pursuant to Section 764 of this title and to the high bidder at such sale, at least ten (10) days before the hearing on the confirmation of the sale, and if the name or address of any such person is unknown, shall cause a notice of the hearing on the confirmation of the sale to be published in a newspaper authorized by law to publish legal notices in the county in which the property is situated. If no newspaper authorized by law to publish legal notices is published in such county, the notice shall be published in some such newspaper of general circulation which is published in an adjoining county. The notice shall state the name of any person being so notified and shall be published once at least ten (10) days prior to the date of the hearing on the confirmation of the sale; and

2. Files in the case an affidavit of proof of mailing, and if required, of publication.

B. Any person filing a written objection to the confirmation of the sale shall cause a copy of such written objection to be mailed, prior to the hearing on the confirmation of the sale, by first class mail, postage prepaid, to all persons to whom mailing of the notice of the hearing on the confirmation of the sale was required to be made pursuant to this section. The court may continue the hearing or make such other orders as are necessary to allow the interested persons to adequately support or oppose any such objections to the confirmation of the sale. If the court, after having carefully examined the proceedings of the officer, is satisfied that the sale has, in all respects, been made in conformity with the provisions of this article, the court shall direct the clerk to make an entry on the journal that the court is satisfied of the legality of such sale and shall order that the officer make to the purchaser a deed for such lands and tenements; and the officer, on making such sale, shall deposit the purchase money with the clerk of the court from which said writ of execution issued, where same shall remain until the court shall have examined his proceedings as aforesaid, when said clerk of the court shall pay the same to the person entitled thereto, agreeable to the order of the court.
R.L. 1910, § 5167. Amended by Laws 1959, p. 80, § 1; Laws 1986, c. 227, § 4, eff. Nov. 1, 1986; Laws 1987, c. 189, § 3, operative Nov. 1, 1987.

§12-766. Sheriff's deed - Title transferred - Requisites.

The sheriff or other officer who, upon such writ or writs of execution, shall sell the said lands and tenements, or any part thereof, shall make to the purchaser as good and sufficient deed of conveyance of the land sold, as the person or persons against whom such writ or writs of execution were issued could have made of the same, at or any time after they became liable to the judgment. The deed shall be sufficient evidence of the legality of such sale, and the proceedings therein, until the contrary be proved, and shall vest in the purchaser as good and as perfect an estate in the premises therein mentioned, as was vested in the party at, or after, the time when such lands and tenements became liable to the satisfaction of the judgment; and such deed of conveyance, to be made by the sheriff or other officer, shall recite the execution or executions, or the substance thereof, and the names of the parties, the amount and date of rendition of each judgment, by virtue whereof the said lands and tenements were sold as aforesaid, and shall be executed, acknowledged and recorded as is or may be provided by law, to perfect the conveyance of real estate in other cases.
R.L. 1910, § 5168.

§12-767. Officers may require advance of printer's fees.

The officer who levies upon goods and chattels, or lands and tenements, or who is charged with the duty of selling the same by virtue of any writ of execution, may refuse to publish a notice of the sale thereof by advertisement in a newspaper until the party for whose benefit such execution issued, his agent or attorney, shall advance to such officer so much money as will be sufficient to discharge the fees of the printer for publishing such notice.
R.L. 1910, § 5169.

§12-768. Same - Officer must make demand.

Before any officer shall be excused from giving the notification mentioned in the last section, he shall demand of the party for whose benefit the execution was issued, his agent or attorney provided either of them reside in the county, the fees in said section specified.
R.L. 1910, § 5170.

§12-769. Place of sale - Officers or appraisers not to purchase.

All sales of lands or tenements under execution shall be held at the court house in the county in which such lands or tenements are situated, unless some other place within said county is designated by the judge having jurisdiction in the case. No sheriff or other officer making the sale of property, either personal or real, nor any appraiser of such property, shall either directly or indirectly, purchase the same; and every purchase so made shall be considered fraudulent and void.
R.L. 1910, § 5171. Amended by Laws 1965, c. 173, § 1, emerg. eff. June 2, 1965.

§12-770. Other executions of realty not sold.

If lands or tenements, levied on as aforesaid, are not sold upon one execution, other executions may be issued to sell the property so levied upon.
R.L. 1910, § 5172.

§12-771. Levy on realty under several executions.

In all cases where two or more executions shall be put into the hands of any sheriff or other officer, and it shall be necessary to levy on real estate to satisfy the same, and either of the judgment creditors, in whose favor one or more of said executions are issued, shall require the sheriff or other officer to levy said executions, or so many thereof as may be required, on separate parcels of the real property of the judgment debtor or debtors, giving to the officer making the levy on behalf of the creditors, whose execution may, by the provisions of this article, be entitled to a preference, the choice of such part of the real property of the judgment debtor or debtors, as will be sufficient, at two-thirds (2/3) of the

appraised value, to satisfy the same; and in all cases where two or more executions, which are entitled to no preference over each other, are put in the hands of the same officer, it shall be the duty of the officer, when required, to levy the same on separate parcels of the real property of the judgment debtor or debtors, when, in the opinion of the appraisers, the same may be divided without material injury; and if the real property of said debtors will not be sufficient, at two-thirds (2/3) of its appraised value, to satisfy all the executions chargeable thereon, such part of the same shall be levied on, to satisfy each execution, as will bear the same proportion in value to the whole, as the amount due to the execution bears to the amount of all the executions chargeable thereon, as near as may be according to the appraised value of each separate parcel of said real property.
R.L. 1910, § 5173.

§12-772. Deed by successor of officer making sale.

If the term of service of the sheriff or other officer who has made, or shall hereafter make sale of any lands and tenements, shall expire, or if the sheriff or other officer shall be absent, or be rendered unable by death or otherwise, to make a deed of conveyance of the same, any succeeding sheriff or other officer, on receiving a certificate from the court from which the execution issued for the sale of said lands and tenements, signed by the clerk, by order of said court, setting forth that sufficient proof has been made to the court that said sale was fairly and legally made, and on tender of the purchase money, or if the same or any part thereof be paid then on proof of such payment and tender of the balance, if any, may execute to the said purchaser or purchasers, or his or their legal representatives, a deed of conveyance of said lands and tenements so sold. Such deed shall be as good and valid in law and have the same effect as if the sheriff or other officer who made the sale had executed the same.
R.L. 1910, § 5174.

§12-773. Payment to defendant of overplus after sale.

If, on any sale made as aforesaid, there shall be in the hands of the sheriff or other officer more money than is sufficient to satisfy the writ or writs of execution, with interest and costs, the sheriff or other officer shall, on demand, pay the balance to the defendant in execution.
R.L. 1910, § 5175.

§12-774. Reversal of judgment after sale of land.

If any judgment or judgments, in satisfaction of which any lands or tenements are sold, shall at any time thereafter be reversed, such reversal shall not defeat or affect the title of the purchaser or

purchasers; but in such cases, restitution shall be made, by the judgment creditors, of the money, for which such lands or tenements were sold, with lawful interest from the day of sale.
R.L. 1910, § 5176.

§12-775. Execution on judgment in favor of state - Purchase by state - Resale - Disposition of funds received.

In all civil actions wherein the State of Oklahoma, as plaintiff, has heretofore or may hereafter recover judgment, and where, in any such action an execution has or may be issued, the State of Oklahoma, through the officer or officers on whose relation the action was brought, may bid at such execution sale, and buy said property offered for sale, for any amount not to exceed the amount of the judgment in such action, said amount to be credited upon the judgment.

And further, when such property offered for sale at execution is bought by the State of Oklahoma, said property may be sold for the state by the officer or officers upon whose relation the state was party plaintiff, and further provided that at such execution sales the attorney or attorneys representing the State of Oklahoma may bid for the state, not to exceed the amount of the judgment, provided, however, that said bid is not more than One Hundred Dollars ($100.00) higher than the next best bid, and if there be no other bidder, then not to exceed One Hundred Dollars ($100.00).

And further provided that in disposing of such property so acquired, if it be personal property the officer or successor of the officer upon whose relation the State of Oklahoma was plaintiff may sell said property by executing a good and sufficient bill of sale, to be attested by the Secretary of State. And in disposing of real property so acquired or any interest or equity therein, the officer or successor in office on whose relation the state was party plaintiff may execute in the name of the State of Oklahoma by said officer a good and sufficient deed, to be attested by the Secretary of the State of Oklahoma. Provided, however, that in no event shall any sale be valid under this act for any amount less than the amount for which said property was originally bid in by the state. The funds obtained upon the sale of any such property shall be placed in the fund for which the judgment was obtained.
Added by Laws 1941, p. 37, § 1.

§12-801. Reappraisal where realty twice advertised for sale.

In all cases where real estate has been or may hereafter be taken on execution and appraised and twice advertised and offered for sale, and shall remain unsold for the want of bidders it shall be the duty of the court from which such execution issued, on motion of the plaintiff, to set aside such appraisement and order a new one to be

made, or to set aside such levy and appraisement and award a new execution to issue, as the case may require.
R.L.1910, § 5177. Amended by Laws 2000, c. 380, § 1, eff. Nov. 1, 2000.

§12-802. Return.

The sheriff or other officer to whom any writ of execution shall be directed, shall return such writ to the court to which the same is returnable, within sixty (60) days from the date thereof.
R.L. 1910, § 5178.

§12-803. Principal and surety - Levy against principal before surety.

In all cases where judgment is rendered in any court of record within this state, upon any instrument of writing in which two or more persons are jointly and severally bound, and it shall be made to appear to the court, by parol or other testimony, that one or more of said persons so bound, signed the same as surety or bail, for his or their codefendant, it shall be the duty of the clerk of said court, in recording the judgment thereon to certify which of the defendants is principal debtor, and which are sureties or bail. And the clerk of the court aforesaid shall issue execution on such judgment, commanding the sheriff or other officer to cause the money to be made of the goods and chattels, lands and tenements, of the principal debtor; but for want of sufficient property of the principal debtor to make the same, that he cause the same to be made of the goods and chattels, lands and tenements, of the surety or bail. In all cases, the property, both personal and real, of the principal debtor, within the jurisdiction of the court, shall be exhausted before any of the property of the surety or bail shall be taken in execution.
R.L. 1910, § 5179.

§12-811. Action for officer's neglect or refusal - Notice.

A. If any sheriff or other officer shall refuse or neglect to execute any writ of execution to him directed, which has come to his hands, or shall neglect or refuse to sell any goods and chattels, lands and tenements; or shall neglect to call an inquest and return a copy thereof forthwith, to the clerk's office, or shall neglect to return any writ of execution to the proper court on or before the return day thereof, or shall neglect to return a just and perfect inventory of all and singular the goods and chattels by him taken in execution, unless the said sheriff or other officer shall return that he has levied and made the amount of the debt, damages and costs; or shall refuse or neglect, on demand, to pay over to the plaintiff, his agent or attorney of record, all monies by him collected or received for the use of said party at any time after collecting or receiving the same, except as provided in Section 765 of this title, or shall

neglect or refuse, on demand made by the defendant, his agent or attorney of record, to pay over all monies by him received for any sale made, beyond what is sufficient to satisfy the writ or writs of execution, with interest and legal costs, the party aggrieved by the alleged neglect or refusal may file an action in district court to recover damages sustained.

B. Before an aggrieved party shall proceed in an action pursuant to this section, the party shall serve written notice upon the sheriff, detailing the alleged act or acts of negligence or refusal to act. Said notice shall be served personally upon the sheriff at least twenty (20) days before a petition is filed in district court. The sheriff or other officer shall have twenty (20) days from receipt of notice to perform the act which is the basis for the alleged neglect or refusal to act or to respond as to reason for failure to do so. If the sheriff performs the act required within the twenty-day period no action for damages shall be authorized.

Notice also shall be served upon the surety from whom the bond, required by Section 167 of Title 19 of the Oklahoma Statutes, was purchased. Proof of service of notice required by this subsection shall be attached to the petition filed by the aggrieved party. R.L. 1910, § 5180. Amended by Laws 1990, c. 185, § 1, eff. Sept. 1, 1990.

§12-812. Action against clerk of court for refusal or neglect to pay over money - Notice.

A. If any clerk of a court shall neglect or refuse on demand made by the person entitled thereto, his agent or attorney of record, to pay over all money by him received in his official capacity, for the use of such persons, the party aggrieved by the alleged neglect or refusal may file an action in district court to recover damages sustained.

B. Before an aggrieved party shall proceed in an action pursuant to this section, the party shall serve written notice upon the court clerk, detailing the alleged act or acts of negligence or refusal to act. Said notice shall be served personally upon the court clerk at least twenty (20) days before a petition is filed in district court. The court clerk shall have twenty (20) days from receipt of notice to perform the act which is the basis for the alleged neglect or refusal to act or to respond as to reason for failure to do so. If the court clerk performs the act required within the twenty-day period no action for damages shall be authorized.

Notice also shall be served upon the surety from whom the bond, required by Section 167 of Title 19 of the Oklahoma Statutes, was purchased. Proof of service of notice required by this subsection shall be attached to the petition filed by the aggrieved party. R.L. 1910, § 5181. Amended by Laws 1990, c. 185, § 2, eff. Sept. 1, 1990.

§12-813. Action for refusal to pay over money - Amount liable for.

When the cause of action provided for in Section 811 or 812 of this title is for refusing to pay over money collected, the sheriff or other officer or court clerk shall not be liable for a greater sum than the amount so withheld.

R.L. 1910, § 5182. Amended by Laws 1990, c. 185, § 3, eff. Sept. 1, 1990.

§12-814. Execution to sheriff of another county.

When execution is issued to the sheriff of any county other than that in which the judgment was rendered, the sheriff shall endorse the date of its reception thereon, and following the time of its levy, shall return any such writ to the clerk of the court from which issued.

R.L. 1910, § 5183. Amended by Laws 1981, c. 120, § 3.

§12-815. Return by sheriff of other county - Proof of timely mailing of return.

When execution shall be issued in any county in this state and directed to the sheriff of another county, it shall be lawful for such sheriff having the execution, after having discharged all the duties required of him by law, to inclose such execution, by mail, to the clerk of the court who issued the same. On proof being made by such sheriff that the execution was mailed soon enough to have reached the office where it was issued within the time prescribed by law, the sheriff shall not be liable for any penalty or damages if it does not reach the office in due time.

R.L. 1910, § 5184. Amended by Laws 1990, c. 185, § 4, eff. Sept. 1, 1990.

§12-816. Forwarding of proceeds of execution by mail.

No sheriff shall forward, by mail any money made on any such execution, unless he shall be especially instructed to do it by the plaintiff, his agent or attorney of record.

R.L. 1910, § 5185. Amended by Laws 1990, c. 185, § 5, eff. Sept. 1, 1990.

§12-817. Sureties of sheriff made parties on amercement - Attachment.

Every surety of any sheriff or other officer may be made party to the judgment rendered as aforesaid, against the sheriff or other officer, by action, to be commenced and prosecuted as in other cases; but the goods and chattels, lands and tenements of any such surety shall not be liable to be taken on execution, when sufficient goods and chattels, lands and tenements of the sheriff or other officer against whom execution may be issued can be found to satisfy the

same. Nothing herein contained shall prevent either party from proceeding against such sheriff or other officer, by attachment, at his election.
R.L. 1910, § 5186.

§12-818. Officer or court clerk subject to action for neglect or refusal to perform certain duties may collect on original judgment.

In cases where a sheriff or other officer or court clerk may be subject to an action provided for in Section 811 or 812 of this title, and shall not have collected the amount of the original judgment, he shall be permitted to sue out an execution and collect the amount of said judgment, in the name of the original plaintiff, for his use.
R.L. 1910, § 5187. Amended by Laws 1990, c. 185, § 6, eff. Sept. 1, 1990.

§12-831. Joint debtors or sureties may have contribution or repayment.

When property, liable to an execution against several persons, is sold thereon, and more than a due proportion of the judgment is laid upon the property of one of them, or one of them pays, without a sale, more than his proportion, he may regardless of the nature of the demand upon which the judgment was rendered, compel contribution from the others; and when a judgment is against several, and is upon an obligation of one of them, as security for another, and the surety pays the amount, or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal; in such case, the person so paying or contributing, is entitled to the benefit of the judgment, to enforce contribution or repayment, if within ten (10) days after his payment he file with the clerk of court where the judgment was rendered, notice of his payment and claim to contribution or repayment. Upon a filing of such notice, the clerk shall make an entry thereof in the margin of the docket.
R.L. 1910, § 5188.

§12-832. Joint tort-feasors - Contribution - Indemnity - Exemptions - Release, covenant not to sue, etc.

A. When two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them except as provided in this section.

B. The right of contribution exists only in favor of a tort-feasor who has paid more than their pro rata share of the common liability, and the total recovery is limited to the amount paid by the tort-feasor in excess of their pro rata share. No tort-feasor is

compelled to make contribution beyond their pro rata share of the entire liability.

C. There is no right of contribution in favor of any tort-feasor who has intentionally caused or contributed to the injury or wrongful death.

D. A tort-feasor who enters into a settlement with a claimant is not entitled to recover contribution from another tort-feasor whose liability for the injury or wrongful death is not extinguished by the settlement nor in respect to any amount paid in a settlement which is in excess of what was reasonable.

E. A liability insurer which by payment has discharged, in full or in part, the liability of a tort-feasor and has thereby discharged in full its obligation as insurer, is subrogated to the tort-feasor's right of contribution to the extent of the amount it has paid in excess of the tort-feasor's pro rata share of the common liability. This provision does not limit or impair any right of subrogation arising from any other relationship.

F. This act does not impair any right of indemnity under existing law. When one tort-feasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of the indemnity obligation.

G. This act shall not apply to breaches of trust or of other fiduciary obligation.

H. When a release, covenant not to sue, or a similar agreement is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

1. It does not discharge any other tort-feasor from liability for the injury or wrongful death unless the other tort-feasor is specifically named; but it reduces the claim against others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is greater; and

2. It discharges the tort-feasor to whom it is given from all liability for contribution to any other tort-feasor.

Added by Laws 1978, c. 78, § 1, eff. Oct. 1, 1978. Amended by Laws 1980, c. 109, § 1, eff. Oct. 1, 1980; Laws 1995, c. 218, § 1, emerg. eff. May 23, 1995.

§12-832.1. Product liability actions – Duty of manufacturer to indemnify seller.

A. A manufacturer shall indemnify and hold harmless a seller against loss arising out of a product liability action, except for any loss caused by the seller’s negligence, intentional misconduct, or other act or omission, such as negligently modifying or altering the product, for which the seller is independently liable.

B. For purposes of this section, "loss" includes court costs and other reasonable expenses, reasonable attorney fees, and any reasonable damages.

C. Damages awarded by the trier of fact shall, on final judgment, be deemed reasonable for purposes of this section.

D. For purposes of this section, a wholesale distributor or retail seller who completely or partially assembles a product in accordance with the manufacturer's instructions shall be considered a seller.

E. The duty to indemnify under this section:

1. Applies without regard to the manner in which the action is concluded; and

2. Is in addition to any duty to indemnify established by law, contract, or otherwise.

F. A seller eligible for indemnification under this section shall give reasonable notice to the manufacturer of a product claimed in a petition or complaint to be defective, unless the manufacturer has been served as a party or otherwise has actual notice of the action.

G. A seller is entitled to recover from the manufacturer court costs and other reasonable expenses, reasonable attorney fees, and any reasonable damages incurred by the seller to enforce the seller's right to indemnification under this section.

H. Nothing contained in this section shall operate to permit or require dismissal of a party with a right of indemnification arising under this section and nothing in this section shall be used as a basis for dismissal of a plaintiff's claim against the seller.
Added by Laws 2004, c. 368, § 8, eff. Nov. 1, 2004.

§12-841. Property, equitable interests subject to execution.

At any time after judgment, any property of the judgment debtor, including any equitable interest he may have, unless by law expressly excluded from being reached by creditors shall be subject to the payment of such judgment, by action, or as hereinafter provided.
R.L. 1910, § 5189. Amended by Laws 1965, c. 300, § 1.

§12-842. Debtor's appearance and answer regarding property - Subpoena - Contempt citation or bench warrant upon failure to appear - Discovery - Attorney fee.

A. At any time after a final judgment, order, or decree is filed, on application of the judgment creditor, a judge of the court in which the final judgment, order, or decree was rendered shall order the judgment debtor to appear before the judge, or a referee appointed by the judge, at a time and place specified in the order, to answer concerning the judgment debtor's property. The judge may, by order, enjoin the judgment debtor from alienating, concealing, or encumbering any of the judgment debtor's nonexempt property pending

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

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

1. Subpoena the judgment debtor, pursuant to Section 2004.1 of this title, to appear at any place in the county in which the judgment, order, or decree was rendered, or the judgment debtor's county of residence, to answer concerning the judgment debtor's property, income, or liabilities, or to produce documents concerning the debtor's property, income, or liabilities. The judgment debtor shall not be entitled to an attendance fee or mileage;

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

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

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

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

R.L.1910, § 5190. Amended by Laws 1965, c. 300, § 2; Laws 1999, c. 293, § 8, eff. Nov. 1, 1999; Laws 2001, c. 177, § 1, eff. Nov. 1,

2001; Laws 2004, c. 450, § 2, eff. Nov. 1, 2004; Laws 2011, c. 187, § 3, eff. Nov. 1, 2011.

§12-843. Repealed by Laws 1965, c. 300, § 10.

§12-844. Arrest of debtor in danger of leaving state, concealing himself or transferring assets - Undertaking - Commitment.

When by affidavit of the judgment creditor or otherwise it shall be made to appear to the satisfaction of the judge of any court of record having civil jurisdiction in a county wherein the defendant may be arrested, that there is danger of the judgment debtor leaving the state, or of concealing himself, or of his removal or transfer of his assets outside the state, the judge shall issue a warrant requiring the sheriff of the county to arrest the judgment debtor and bring him before such judge. Upon being brought before the judge, the judgment debtor shall be examined on oath and other witnesses on either side may be summoned by the judge and examined upon oath. If on such examination, it appears that the judgment debtor has in his possession or under his control property which he unjustly refuses to apply to the satisfaction of the creditor's judgment, the judge may order application thereof as provided in 12 O.S. 1961, Section 850. In addition, if it shall clearly appear on the examination that there is danger of the judgment debtor leaving the state or of his removing or transferring his property therefrom, the judge shall order him to enter into an undertaking, in such sum as the judge may prescribe with one or more sureties that he will from time to time attend for examination before the judge or a referee as may be directed. In default of entering into such an undertaking, he may be committed to the jail of the county, by warrant of the judge, as for contempt. R.L. 1910, § 5192. Amended by Laws 1965, c. 300, § 3.

§12-845. Defendant must answer questions - Answers inadmissible in prosecution for fraud.

No person shall, on examination pursuant to this article, be excused from answering any question on the ground that his examination will tend to convict him of a fraud; but his answer shall not be used as evidence against him in a prosecution for such fraud. R.L. 1910, § 5193.

§12-846. Debtor of defendant may pay execution - Sheriff's receipt as discharge.

After the issuing of execution against property, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution; and the sheriff's receipt shall be a sufficient discharge for the amount so paid, or directed to be credited by the judgment creditor on the execution.

R.L. 1910, § 5194.

§12-847. Repealed by Laws 1965, c. 297, § 17.

§12-848. Evidence on inquiry - Witnesses.

Witnesses may be required, upon the order of the judge, to appear and testify upon any proceedings herein provided in the same manner as upon the trial of an issue.

R.L. 1910, § 5196. Amended by Laws 1965, c. 300, § 4.

§12-849. Examination under oath - Answer by corporation.

The party or witness may be required to attend before the judge, or before a referee appointed by the judge. When a corporation is required to attend, the answers on its behalf shall be made by an officer thereof. All examinations and answers before a judge or a referee must be on oath.

R.L. 1910, § 5197. Amended by Laws 1965, c. 300, § 5.

§12-850. Order for application of property to satisfaction of judgment - Contempt proceedings - Installment payments from earnings - Modification of order.

The judge after the hearing provided herein may order any property of the judgment debtor, not exempt by law, in his possession or under his control to be applied toward the satisfaction of the judgment, and may enforce the same by proceedings for contempt in case of refusal or disobedience.

The judge may further order the judgment debtor to pay to the judgment creditor or apply on the judgment in installments, such portion of his nonexempt income, however or wherever earned or acquired, as the court may deem proper after due regard for any payments required to be made by the judgment debtor by virtue of law or prior order of a court or under wage assignments outstanding. Where the judgment debtor claims or is proved to be rendering services to or employed by a relative or other person or by a corporation owned or controlled by a relative or other person, without salary or compensation, or at a salary or compensation so inadequate as to satisfy the court that such salary or compensation is merely colorable and designed to defraud or impede the creditors of such debtor, the court may direct such debtor to make payments on account of the judgment, in installments, based upon a reasonable value of the services rendered by such judgment debtor under his said employment or upon said debtor's then earning ability. The court may, from time to time, modify an order made under this section upon application of either party upon notice to the other. A failure or neglect to comply with an order of direction of the court, shall be punished as for contempt.

R.L. 1910, § 5198. Amended by Laws 1965, c. 300, § 6.

§12-851. Repealed by Laws 1965, c. 301, § 3.

§12-852. Receiver may be appointed - Forbidding transfer of property.

The judge may also, by order, appoint the sheriff of the proper county, or other suitable person, a receiver of the property of the judgment debtor, in the same manner and with like authority as if the appointment was made by the court. The judge may also, by order, forbid a transfer or other disposition of the property of the judgment debtor, not exempt by law, and any interference therewith.
R.L. 1910, § 5200.

§12-853. Sale of equitable interests in realty.

If it shall appear that the judgment debtor has any equitable interest in real estate in the county in which proceedings are had, as mortgagor or mortgagee, or otherwise, and the interest of said debtor can be ascertained as between himself and the person or persons holding the legal estate, or the person or persons having a lien on or interest in the same, without controversy as to the interest of such person or persons holding such legal estate or interest therein, or lien on the same, the receiver may be ordered to sell and convey such real estate, or the debtor's interest therein. Such sale shall be conducted in all respects in the same manner as is provided by this code for the sale of real estate upon execution; and the proceedings of the sale shall, before the execution of the deed, be approved by the court in which the judgment was rendered, or the transcript has been filed as aforesaid, as in case of sale upon execution.
R.L. 1910, § 5201.

§12-854. Sheriff as receiver - Bond of receiver - Other person appointed receiver.

If the sheriff shall be appointed receiver, he and his sureties shall be liable on his official bond for the faithful discharge of his duties as receiver, and no additional oath shall be required of him; if any other person shall be appointed receiver, he shall give a written undertaking, in such sum as shall be prescribed by the judge, with one or more sureties, to the effect that he will faithfully discharge the duties of receiver, and he shall also take an oath to the same effect before acting as such receiver. The undertaking mentioned in this section shall be to the State of Oklahoma, and actions may be prosecuted for a breach thereof, by any person interested, in the same manner as upon a sheriff's official bond.
R.L. 1910, § 5202.

§12-855. Rights and powers of receiver.

The receiver shall be vested with the property and effects and rights in action of the judgment debtor, not exempt by law, or such part thereof as the court or judge may order, and may sue for, collect, and recover, and dispose of the same, and apply the proceeds according to the order of the court or judge, and generally may do such acts concerning the property as the court or judge may authorize.
R.L. 1910, § 5203.

§12-856. Receiver entitled to possession of property.
The court or judge may order the delivery, to the receiver, by the judgment debtor, or any other person in whose possession the same may be, of any notes, bills, accounts, contracts, books or other evidence of indebtedness or right in action, of the judgment debtor, and may enforce such order by attachment, as for a contempt.
R.L. 1910, § 5204.

§12-857. Continuance.
The judge or referee shall have power to continue his proceedings, from time to time, until they shall be completed.
R.L. 1910, § 5205. Amended by Laws 1965, c. 300, § 7.

§12-858. Reference.
The judge may, in his discretion, order a reference to a referee, agreed upon or appointed by him, to report the evidence or the facts.
R.L. 1910, § 5206.

§12-859. Contempts.
If any person, party or witness disobey an order of the judge or referee, duly served, such person, party or witness may be punished by the judge, as for a contempt.
R.L. 1910, § 5207.

§12-860. Form, service and filing of orders.
The orders mentioned herein shall be in writing, and signed by the judge making the same, and shall be served as a summons in other cases. The judge shall reduce all his orders to writing, which, together with a minute of his proceedings, signed by himself, shall be filed with the clerk of the court of the county in which the judgment is rendered, or the transcript of the justice filed, and the clerk shall enter on his execution docket the time of filing the same.
R.L. 1910, § 5208. Amended by Laws 1965, c. 300, § 8.

§12-861. Fees allowed taxed as costs.
The judge shall allow to clerks, sheriffs, referees, receivers and witnesses such compensation as is allowed for like services in

other cases, to be taxed as costs in the case, and shall enforce, by order, the collection thereof, from such party or parties as ought to pay the same.
R.L. 1910, § 5209.

§12-862. Clerk's fees.
The clerk shall be allowed such fees for services as are allowed for similar services in other cases.
R.L. 1910, § 5210. Amended by Laws 1965, c. 300, § 9.

§12-863. Repealed by Laws 1965, c. 297, § 17.

§12-864. Repealed by Laws 1965, c. 297, § 17.

§12-865. Repealed by Laws 1965, c. 297, § 17.

§12-891. Repealed by Laws 1947, p. 188, § 248.

§12-892. Repealed by Laws 1947, p. 188, § 248.

§12-893. Repealed by Laws 1947, p. 188, § 248.

§12-894. Repealed by Laws 1947, p. 188, § 248.

§12-895. Repealed by Laws 1947, p. 188, § 248.

§12-896. Repealed by Laws 1947, p. 188, § 248.

§12-901. Execution for delivery of property.
If the execution be for the delivery of the possession of real or personal property, it shall require the officer to deliver the same, particularly describing the property, to the party entitled thereto, and may, at the same time, require the officer to satisfy any costs or damages, recovered in the same judgment, out of the goods and chattels of the party against whom it was rendered; and, for the want of such goods and chattels, then out of the lands and tenements; and in this respect it shall be deemed an execution against the property.
R.L. 1910, § 5214.

§12-902. Enforcing judgment in other cases.
When the judgment is not for the recovery of money or real property, the same may be enforced by attachment, by the court rendering judgment, upon motion made, or by a rule of the court upon the defendant; but in either case, notice of the motion or a service of a copy of the rule shall be made on the defendant, a reasonable time before the order of attachment is made.
R.L. 1910, § 5215.

§12-903. Execution must conform to judgment.

In special cases not hereinbefore provided for, the execution shall conform to the judgment or order of the court. When a judgment for any specified amount, and also for the sale of specific real or personal property, shall have been rendered, and an amount sufficient to satisfy the amount of the debt or damages and costs, be not made from the sale of property specified, an execution may issue for the balance, as in other cases.
R.L. 1910, § 5216.

§12-904. Repealed by Laws 1974, c. 54, § 1.

§12-905. Repealed by Laws 1974, c. 54, § 1.

§12-906. Repealed by Laws 1974, c. 54, § 1.

§12-907. Repealed by Laws 1974, c. 54, § 1.

§12-908. Repealed by Laws 1974, c. 54, § 1.

§12-909. Filing to be without charge.

Any document required to be filed under Section 759 of this title in the office of the county clerk, bearing the filing stamp of the court clerk of the county wherein such filing is to be made, and duly certified, shall be filed without charge.
Added by Laws 1981, c. 120, § 4. Amended by Laws 1982, c. 6, § 1, emerg. eff. March 11, 1982.

§12-921. Repealed by Laws 1968, c. 359, § 9, eff. July 1, 1968.

§12-921.1. Legal Services Revolving Fund.

A. The Attorney General shall allocate funds from the Legal Services Revolving Fund to provide legal representation to indigent persons in this state in civil legal matters to the extent that funds are available from the Legal Services Revolving Fund. The Attorney General shall be responsible for allocating these funds pursuant to contract with eligible regional or statewide organizations which ordinarily render legal services to indigent persons. The Attorney General may charge an administrative fee for administering the contracts. The funds shall be allocated for the benefit of indigent clients in all seventy-seven (77) counties of the state on a pro rata basis, utilizing an allocation formula that distributes funds according to the number of residents whose incomes are less than the official United States federal poverty guidelines, based on the United States census data, as a percentage of the total number of

these residents in this state and which reserves funds for services for specialized areas of law.

B. As used in this section, "eligible organization" means an entity that:

1. Is organized as a not-for-profit corporation that is tax exempt pursuant to the provisions of paragraph (3) of subsection (c) of Section 501 of the United States Internal Revenue Code of 1986, as amended;

2. Has as its primary purpose the furnishing of legal assistance to eligible clients;

3. Has a board of directors or other governing body the majority of which is comprised of attorneys who are admitted to practice in this state and who are approved to serve on such body by the governing bodies of the state or county bar associations and has at least one-third (1/3) of the membership who, when selected, are eligible clients; and

4. Is incorporated pursuant to any applicable laws of this state.

C. As a condition of the contract, the organization shall be required to determine the eligibility of any person seeking legal services pursuant to this section.

D. The Attorney General shall prepare annually and distribute to the Judiciary committees of the Senate and the House of Representatives and the Legal Services Committee of the Oklahoma Bar Association a report detailing expenditures of funds for representation to indigent persons in civil legal matters.

E. Each organization that contracts to provide legal services pursuant to subsection A of this section shall maintain books and records in accordance with generally accepted accounting principles. The books and records shall account for the receipt and expenditure of all funds paid pursuant to contract. Books and records shall be maintained for a period of five (5) years from the close of the fiscal year of the contract period. The State Auditor and Inspector shall audit each organization annually. The necessary expense of each audit, including, but not limited to, the cost of typing, printing, and binding, shall be paid from funds of the organization. In lieu of the audit by the State Auditor and Inspector, the organization may submit an audit prepared by an independent auditing firm for compliance with federal auditing requirements. A copy of the audit prepared by or submitted to the State Auditor and Inspector shall be submitted to the Attorney General.

F. Funds for representation of indigent persons in civil legal matters shall be limited to family law legal services with priority given to cases involving domestic and family violence and abuse. In no event shall such funds ever be used for any of the following activities:

1. Provision of legal services in a fee-generating case unless appropriate private representation is not available;

2. Provision of legal services in any criminal proceeding;

3. Provision of legal services collaterally attacking the validity of a criminal conviction;

4. Provision of legal services which seek to procure an abortion;

5. Provision of legal representation relating to the desegregation of any school or school system;

6. Provision of legal services involving any proceeding derived from the Military Selective Service Act;

7. Provision of legal services to advocate for or oppose any altering of a legislative, judicial, or elective district at any level of government; and

8. Provision of legal services to challenge a census of the United States of America.

G. There is hereby created in the State Treasury a revolving fund for the Office of the Attorney General to be designated the "Legal Services Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Office of the Attorney General for indigent legal services from funds appropriated to the fund, federal funds, gifts, donations, and grants. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Attorney General for the purpose of providing legal services to indigent clients pursuant to the provisions of this section. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment.

Added by Laws 1996, c. 361, § 1, eff. July 1, 1996. Amended by Laws 1998, c. 201, § 5, emerg. eff. May 11, 1998; Laws 2011, c. 143, § 1, eff. Nov. 1, 2011; Laws 2012, c. 304, § 52.

§12-922. Affidavit in forma pauperis.

The affidavit provided for in the preceding section shall be in the form following, and attached to the petition, viz.:

State of Oklahoma, _____ County, _____, in the district court of said county: I do solemnly swear that the cause of action set forth in the petition hereto prefixed is just, and I (or we) do further swear that by reason of my (or our) poverty, I am unable to give security for costs.

R.L. 1910, § 5223.

§12-923. False swearing in such case.

Any person willfully swearing falsely in making the affidavit aforesaid, shall, on conviction, be adjudged guilty of the felony of perjury, and punished as the law prescribes.
R.L. 1910, § 5224. Amended by Laws 1997, c. 133, § 131, eff. July 1, 1999.
NOTE: Laws 1998, 1st Ex.Sess., c. 2, § 23 amended the effective date of Laws 1997, c. 133, § 131 from July 1, 1998, to July 1, 1999.

§12-924. Repealed by Laws 1969, c. 202, § 4, eff. April 18, 1969.

§12-925. Repealed by Laws 1969, c. 202, § 4, eff. April 18, 1969.

§12-926. Costs where defendant disclaims.
Where defendants disclaim having any title or interest in land or other property, the subject matter of the action, they shall recover their costs, unless for special reasons the court decide otherwise.
R.L. 1910, § 5227.

§12-927. Certain costs taxed at discretion of court.
Unless otherwise provided by statute, the costs of motions, continuances, amendments and the like, shall be taxed and paid as the court, in its discretion, may direct.
R.L. 1910, § 5228.

§12-928. Costs to successful plaintiff as matter of course.
Where it is not otherwise provided by this and other statutes, costs shall be allowed of course to the plaintiff, upon a judgment in his favor, in actions for the recovery of money only, or for the recovery of specific, real or personal property.
R.L. 1910, § 5229.

§12-929. Costs to successful defendant as matter of course.
Costs shall be allowed of course to any defendant, upon a judgment in his favor in the actions mentioned in the last section.
R.L. 1910, § 5230.

§12-930. Costs in other cases - Apportionment of costs - Discretion of court.
In other actions, the court may award and tax costs, and apportion the same between the parties on the same or adverse sides, as in its discretion it may think right and equitable.
R.L. 1910, § 5231.

§12-931. Several actions on joint instrument.
Where several actions are brought on one bill of exchange, promissory note or other obligation, or instrument in writing, against several parties who might have been joined as defendants in

the same action, no costs shall be recovered by the plaintiff in more than one of such actions, if the parties proceeded against in the other actions were, at the commencement of the previous action, openly within the state.
R.L. 1910, § 5232.

§12-932. Repealed by Laws 1971, c. 105, § 6, eff. Oct. 1, 1971.

§12-933. Repealed by Laws 1991, c. 165, § 2, eff. Sept. 1, 1991.

§12-934. Repealed by Laws 1991, c. 165, § 2, eff. Sept. 1, 1991.

§12-935. Deposit insufficient - Apportionment to claimants.
Whenever the amount of money deposited as security for costs in any such action or proceeding, or whenever the amount collected therein shall be insufficient, at the termination of the action or proceeding, to pay all the costs in such action or proceeding, then the amount so deposited or collected shall be apportioned ratably among the different officers and persons entitled thereto in the same proportion that the amount due each officer or person bears to the whole amount so deposited or collected.
Added by Laws 1913, c. 14, p. 15, § 2.

§12-936. Attorney fees taxed as costs in actions for labor or services rendered or on certain accounts, bills and contracts.
A. In any civil action to recover for labor or services rendered, or on an open account, a statement of account, account stated, note, bill, negotiable instrument, or contract relating to the purchase or sale of goods, wares, or merchandise, unless otherwise provided by law or the contract which is the subject of the action, the prevailing party shall be allowed a reasonable attorney fee to be set by the court, to be taxed and collected as costs.
B. In any civil action to recover unpaid fees, fines, costs, expenses or any other debt owed to this state or its agencies, as defined pursuant to Section 152 of Title 51 of the Oklahoma Statutes, unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney fee to be set by the court, to be taxed and collected as costs.
Added by Laws 1961, p. 64, § 1, emerg. eff. April 13, 1961. Amended by Laws 1967, c. 135, § 1, emerg. eff. April 27, 1967; Laws 1970, c. 282, § 1; Laws 2002, c. 468, § 5, eff. Nov. 1, 2002; Laws 2011, c. 187, § 4, eff. Nov. 1, 2011.

§12-937. Attorney fees taxed as costs in actions to collect on checks.
In any civil action to enforce payment of or to collect upon a check, draft or similar bill of exchange drawn on a bank or

otherwise, payment upon which said instrument has been refused because of insufficient funds or no account, the party prevailing on such cause of action shall be awarded a reasonable attorney's fee, such fee to be assessed by the court as costs against the losing party; provided, that said fee shall not be allowed unless the plaintiff offers proof during the trial of said action that prior to the filing of the petition in the action demand for payment of the check, draft or similar bill of exchange had been made upon the defendant by registered or certified mail not less than ten (10) days prior to the filing of such suit.
Added by Laws 1965, c. 466, § 1, emerg. eff. July 12, 1965.

§12-938. Attorney fees taxed as costs in certain actions relating to public utilities.

In any civil action or proceeding to recover for the overpayment of any charge for water, sanitary sewer, garbage, electric or natural gas service from any person, firm or corporation, or to determine the right of any person, firm or corporation to receive any such service, the prevailing party shall be allowed a reasonable attorney fee to be set by the court, to be taxed and collected as costs.
Added by Laws 1972, c. 120, § 1, eff. Oct. 1, 1972.

§12-939. Attorney fees taxed as costs in actions for breach of an express warranty.

In any civil action brought to recover damages for breach of an express warranty or to enforce the terms of an express warranty made under Section 2-313 of Title 12A of the Oklahoma Statutes, against the seller, retailer, manufacturer, manufacturer's representative or distributor, the prevailing party shall be allowed a reasonable attorney fee to be set by the court, which shall be taxed and collected as costs.
Added by Laws 1975, c. 168, § 1.

§12-940. Negligent or willful injury to property - Attorney's fees and costs - Offer and acceptance of judgment.

A. In any civil action to recover damages for the negligent or willful injury to property and any other incidental costs related to such action, the prevailing party shall be allowed reasonable attorney's fees, court costs and interest to be set by the court and to be taxed and collected as other costs of the action.

B. Provided that, the defendant in such action may, not less than ten (10) days after being served with summons, serve upon the plaintiff or his attorney a written offer to allow judgment to be taken against him. If the plaintiff accepts the offer and gives notice thereof to the defendant or his attorney, within five (5) days after the offer was served, the offer, and an affidavit that the notice of acceptance was delivered within the time limited, may be

filed by the plaintiff, or the defendant, verified by affidavit. The offer and acceptance shall be noted in the journal, and judgment shall be rendered accordingly. If the notice of acceptance is not given in the period limited, the offer shall be deemed withdrawn, and shall not be given in evidence or mentioned at the trial. If upon the action being adjudicated the judgment rendered is for the defendant or for the plaintiff and is for a lesser amount than the defendant's offer, then the plaintiff shall not be entitled to recover attorney's fees, court costs and interest. If the judgment rendered is for the plaintiff, and is for the same amount as the defendant's offer, then the plaintiff and defendant shall incur their own attorney's fees, court costs and interest. And if the judgment rendered is for the plaintiff, and is for a larger amount than the defendant's offer, then the plaintiff shall be entitled to recover attorney's fees, court costs and interest.
Added by Laws 1979, c. 57, § 1, eff. Oct. 1, 1979.

§12-941. Actions by state entities - Court costs, witness fees and attorney fees.

A. The defendant in any civil action brought in any court of this state by any state agency, board, commission, department, authority or bureau authorized to make rules or formulate orders shall be entitled to recover against such state entity court costs, witness fees and reasonable attorney fees if the court determines that the action was brought without reasonable basis or is frivolous. This subsection shall apply to any action commenced on or after October 1, 1982.

B. The respondent in any proceeding brought before any state administrative tribunal by any state agency, board, commission, department, authority or bureau authorized to make rules or formulate orders shall be entitled to recover against such state entity court costs, witness fees and reasonable attorney fees if the tribunal or a court of proper jurisdiction determines that the proceeding was brought without reasonable basis or is frivolous; provided, however, if the tribunal is required by law to act upon complaints and determines that the complaint had no reasonable basis or is frivolous, the tribunal may assess the respondent's costs, witness fees and reasonable attorney fees against the complainant. This subsection shall apply to any proceeding before any state administrative tribunal commenced on or after November 1, 1987.
Added by Laws 1982, c. 38, § 1, operative Oct. 1, 1982. Amended by Laws 1987, c. 127, § 1, eff. Nov. 1, 1987.

§12-942. Costs which judges are required to award.

A judge of any court of this state may award the following as costs:

1. Any fees assessed by the court clerk or the clerk of the appellate court;

2. Reasonable expenses for the giving of notice, including expenses for service of summons and other judicial process and expenses for publication;

3. Statutory witness fees and reasonable expenses for service of subpoenas;

4. Costs of copying papers necessarily used at trial, limited to the amount authorized by law. If no amount is specified, costs of copying papers shall be limited to ten cents ($0.10) per page;

5. Transcripts of the trial or another proceeding that the court determines are necessary to resolve the case;

6. Reasonable expenses for taking and transcribing deposition testimony, for furnishing copies to the witness and opposing counsel, and for recording deposition testimony on videotape, but not to exceed One Hundred Dollars ($100.00) per two-hour videotape, unless the court determines that a particular deposition was neither reasonable nor necessary; and

7. Any other expenses authorized by law to be collected as costs.

Added by Laws 1991, c. 165, § 1, eff. Sept. 1, 1991. Amended by Laws 1997, c. 403, § 4, eff. Nov. 1, 1997.

§12-951. Appellate jurisdiction of the district court.

(a) A judgment rendered, or final order made, by any tribunal, board or officer exercising judicial functions, and inferior in jurisdiction to the district court, may be reversed, vacated or modified by the district court except where an appeal to some other court is provided by law.

(b) Unless otherwise provided by law, proceedings for review of a judgment or final order shall be commenced by filing a petition in the district court of the county where the inferior tribunal, board or officer rendered the order within thirty (30) days of the date that a copy of the judgment or final order is mailed to the appellant, as shown by the certificate of mailing attached to the judgment or final order.

R.L. 1910, § 5235. Amended by Laws 1998, c. 374, § 1, eff. Nov. 1, 1998.

§12-952. Jurisdiction of Supreme Court.

(a) The Supreme Court may reverse, vacate or modify judgments of the district court for errors appearing on the record, and in the reversal of such judgment may reverse, vacate or modify any intermediate order involving the merits of the action, or any portion thereof.

(b) The Supreme Court may reverse, vacate or modify any of the following orders of the district court, or a judge thereof:

1. A final order;

2. An order that discharges, vacates or modifies or refuses to vacate or modify a provisional remedy which affects the substantial rights of a party; or grants, refuses, vacates, modifies or refuses to vacate or modify an injunction; grants or refuses a new trial; or vacates or refuses to vacate a final judgment;

3. Any other order, which affects a substantial part of the merits of the controversy when the trial judge certifies that an immediate appeal may materially advance the ultimate termination of the litigation; provided, however, that the Supreme Court, in its discretion, may refuse to hear the appeal. If the Supreme Court assumes jurisdiction of the appeal, it shall indicate in its order whether the action in the trial court shall be stayed or shall continue.

The failure of a party to appeal from an order that is appealable under either subdivision 2 or 3 of subsection (b) of this section shall not preclude him from asserting error in the order after the judgment or final order is rendered.

R.L. 1910, § 5236. Amended by Laws 1955, p. 135, § 1; Laws 1968, c. 290, § 1, eff. Jan. 13, 1969.

§12-953. Final order defined.

An order affecting a substantial right in an action, when such order, in effect, determines the action and prevents a judgment, and an order affecting a substantial right, made in a special proceeding or upon a summary application in an action after judgment, is a final order, which may be vacated, modified or reversed, as provided in this article.

R.L. 1910, § 5237.

§12-954. Repealed by Laws 1968, c. 290, § 4, eff. Jan. 13, 1969.

§12-955. Repealed by Laws 1968, c. 290, § 4, eff. Jan. 13, 1969.

§12-956. Repealed by Laws 1968, c. 290, § 4, eff. Jan. 13, 1969.

§12-956.1. Repealed by Laws 1968, c. 290, § 4, eff. Jan. 13, 1969.

§12-956.2. Repealed by Laws 1968, c. 290, § 4, eff. Jan. 13, 1969.

§12-956.3. Repealed by Laws 1968, c. 290, § 4, eff. Jan. 13, 1969.

§12-956.4. Repealed by Laws 1968, c. 290, § 4, eff. Jan. 13, 1969.

§12-956.5. Repealed by Laws 1968, c. 290, § 4, eff. Jan. 13, 1969.

§12-956.6. Repealed by Laws 1968, c. 290, § 4, eff. Jan. 13, 1969.

§12-956.7. Repealed by Laws 1968, c. 290, § 4, eff. Jan. 13, 1969.

§12-956.8. Repealed by Laws 1968, c. 290, § 4, eff. Jan. 13, 1969.

§12-956.9. Repealed by Laws 1968, c. 290, § 4, eff. Jan. 13, 1969.

§12-956.10. Repealed by Laws 1968, c. 290, § 4, eff. Jan. 13, 1969.

§12-956.11. Repealed by Laws 1968, c. 290, § 4, eff. Jan. 13, 1969.

§12-957. Repealed by Laws 1968, c. 290, § 4, eff. Jan. 13, 1969.

§12-958. Repealed by Laws 1968, c. 290, § 4, eff. Jan. 13, 1969.

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§12-961. Repealed by Laws 1968, c. 290, § 4, eff. Jan. 13, 1969.

§12-962. Repealed by Laws 1968, c. 290, § 4, eff. Jan. 13, 1969.

§12-963. Repealed by Laws 1968, c. 290, § 4, eff. Jan. 13, 1969.

§12-964. Repealed by Laws 1968, c. 290, § 4, eff. Jan. 13, 1969.

§12-965. Repealed by Laws 1968, c. 290, § 4, eff. Jan. 13, 1969.

§12-966. Repealed by Laws 1968, c. 290, § 4, eff. Jan. 13, 1969.

§12-967. Repealed by Laws 1968, c. 290, § 4, eff. Jan. 13, 1969.

§12-968. Repealed by Laws 1990, c. 251, § 20, eff. Jan. 1, 1991.

§12-968.1. Repealed by Laws 1993, c. 351, § 29, eff. Oct. 1, 1993.

§12-969. Repealed by Laws 1990, c. 251, § 20, eff. Jan. 1, 1991.

§12-969.1. Repealed by Laws 1993, c. 351, § 29, eff. Oct. 1, 1993.

§12-970. Repealed by Laws 1990, c. 251, § 20, eff. Jan. 1, 1991.

§12-970.1. Repealed by Laws 1993, c. 351, § 29, eff. Oct. 1, 1993.

§12-971. Repealed by Laws 1990, c. 251, § 20, eff. Jan. 1, 1991.

§12-971.1. Repealed by Laws 1993, c. 351, § 29, eff. Oct. 1, 1993.

§12-972. Repealed by Laws 1968, c. 290, § 4, eff. Jan. 13, 1969.

§12-973. Repealed by Laws 1968, c. 295, § 6, eff. Jan. 13, 1969.

§12-974. Repealed by Laws 1990, c. 251, § 20, eff. Jan. 1, 1991.

§12-974.1. Repealed by Laws 1993, c. 351, § 29, eff. Oct. 1, 1993.

§12-975. Judgment on appeal - Mandate to issue to lower court.

When a judgment or final order shall be reversed on appeal, either in whole or in part, the court reversing the same shall proceed to render such judgment as the court below should have rendered, or remand the cause to the court below for such judgment. The court reversing such judgment or final order shall not issue execution in causes that are removed before them on error, on which they pronounce judgment as aforesaid, but shall send a special mandate to the court below as the case may require, to award execution thereupon; and such court, to which such special mandate is sent, shall proceed in such cases in the same manner as if such judgment or final order had been rendered therein. In cases decided by the Supreme Court, when the facts are agreed to by the parties or found by the court below, or a referee, and when it does not appear, by exception or otherwise, that such findings are against the weight of the evidence in the case, the Supreme Court shall send a mandate to the court below directing it to render such judgment in the premises as it should have rendered on the facts agreed to or found in the case.

R.L. 1910, § 5258.

§12-976. Repealed by Laws 1968, c. 290, § 3, eff. Jan. 13, 1969.

§12-977. Repealed by Laws 1968, c. 290, § 3, eff. Jan. 13, 1969.

§12-978. Costs on appeal.

When a judgment or final order is reversed, the plaintiff in error shall recover his costs, including the costs of the transcript of the proceedings, or case-made, filed with the petition in error; and when reversed in part and affirmed in part, costs shall be equally divided between the parties.

R.L. 1910, § 5261.

§12-978.1. Recovery of costs for review of certain interlocutory orders on appeal or on certiorari.

When an interlocutory order of a district court is reviewed on appeal or on certiorari and the interlocutory order is reversed, the

prevailing party shall recover his costs, exclusive of attorney fees, including the cost deposit and the costs of preparing the record on appeal or on certiorari, regardless of the ultimate disposition of the action; and when the interlocutory order is reversed in part and affirmed in part, the costs shall be equally divided between the parties.
Added by Laws 1980, c. 14, § 1.

§12-979. Neglect of clerk not error.
A mistake, neglect or omission of the clerk shall not be ground of error, until the same has been presented and acted upon in the court in which the mistake, neglect or omission occurred.
R.L. 1910, § 5262.

§12-980. Writs of error and certiorari abolished.
Writs of error and certiorari, to reverse, vacate or modify judgments or final orders in civil cases, are abolished; but courts shall have the same power to compel complete and perfect transcripts of the proceedings containing the judgment or final order sought to be reversed, to be furnished as they heretofore had under writs of error and certiorari.
R.L. 1910, § 5263.

§12-981. Repealed by Laws 1968, c. 295, § 6, eff. Jan. 13, 1969.

§12-982. Repealed by Laws 1968, c. 295, § 6, eff. Jan. 13, 1969.

§12-983. Repealed by Laws 1970, c. 289, § 3, eff. July 1, 1970.

§12-984. Applicable to what courts.
The provisions of this article shall apply to all the courts of record of the state so far as the same may be applicable to the judgments or final orders of such courts.
R.L. 1910, § 5275.

§12-985. Who need not give bond on appeal.
Executors, administrators and guardians who have given bond in this state, with sureties, according to law, are not required to give an undertaking on appeal or proceedings in error.
R.L. 1910, § 5276.

§12-986. Repealed by Laws 1968, c. 295, § 6, eff. Jan. 13, 1969.

§12-987. Repealed by Laws 1961, p. 64, § 1.

§12-988. Repealed by Laws 1970, c. 88, § 2.

§12-989. Repealed by Laws 1970, c. 88, § 2.

§12-990. Repealed by Laws 1990, c. 251, § 20, eff. Jan. 1, 1991.

§12-990.1. Jurisdiction of certain appeals - Time limit for counter-appeals and cross-appeals.

When a petition in error is timely filed, the Supreme Court shall have jurisdiction of the entire action that is the subject of the appeal. No additional jurisdictional steps shall be necessary to enable the Supreme Court to rule upon any errors made in the trial of the action which are asserted by any party to the appeal and involve any other party to the appeal.

The Supreme Court may prescribe by rule the time limits for filing counter-appeals and cross-appeals.

Added by Laws 1984, c. 31, § 1, eff. Nov. 1, 1984.

§12-990.2. Time for appeal - Effect of post-trial motions.

A. Post-Trial Motions Filed Within Ten (10) Days. When a post-trial motion for a new trial, for judgment notwithstanding the verdict, or to correct, open, modify, vacate or reconsider a judgment, decree or final order, other than a motion only involving costs or attorney fees, is filed within ten (10) days after the judgment, decree or final order is filed with the court clerk, an appeal shall not be commenced until an order disposing of the motion is filed with the court clerk. The unsuccessful party may then appeal from the order disposing of the motion within thirty (30) days after the date such order was filed. If the decision on the motion was against the moving party, the moving party may appeal from the judgment, decree or final order, from the ruling on the motion, or from both, in one appeal, within thirty (30) days after the filing of the order disposing of the motion. Successive appeals from the original judgment, decree or final order and the order disposing of the motion shall not be allowed.

B. Post-Trial Motions Filed After Ten (10) Days. The time to appeal from a judgment, decree or final order is not extended or affected by the filing of a motion to correct, open, modify, vacate or reconsider the judgment, decree or final order that is filed more than ten (10) days after the judgment, decree or final order is filed with the clerk of the trial court, and an appeal that is commenced before such a motion is filed is not premature. If the motion is filed after a petition in error is filed, the moving party shall advise the Supreme Court the motion was filed. If a petition in error is filed after such a motion is filed, the appellant shall advise the Supreme Court in the petition in error that the motion is pending. When the trial court disposes of the motion where a petition in error has been filed, the successful party shall advise the Supreme Court of the action taken on the motion.

C. If the appellant did not prepare the judgment, decree, or final order, and Section 696.2 of this title required a copy of the judgment, decree, or final order to be mailed to the appellant, and the court records do not reflect the mailing of a copy of the judgment, decree, or final order to the appellant within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or final order, all times referred to in this section shall run from the earliest date on which the court records show that a file-stamped copy of the judgment, decree, or final order was mailed to the appealing party, rather than from the date of filing.

D. Costs and Attorney Fees. The filing of a motion for costs or attorney fees shall not extend or affect the time to appeal.
Added by Laws 1993, c. 351, § 19, eff. Oct. 1, 1993. Amended by Laws 1997, c. 102, § 6, eff. May 1, 1997; Laws 2004, c. 181, § 4, eff. Nov. 1, 2004.

§12-990.3. Time for enforcement of judgments, decrees or final orders.

A. Where only the payment of money is awarded, no execution or other proceeding shall be taken for the enforcement of the judgment, decree or final order until ten (10) days after the judgment, decree or order is filed with the court clerk. Asset hearing proceedings shall not be stayed under this section.

B. Where relief other than the payment of money is awarded or where relief in addition to the payment of money is awarded, the enforcement of the judgment, decree or final order shall be stayed until ten (10) days after the judgment, decree or order is filed with the court clerk, but the court, in its discretion, may impose any conditions on the parties that are necessary for the protection of the property or interests that are the subject of the action, including distribution of part or all of the property involved where the court requires the filing of a superseded bond.

C. This section shall not apply in actions for divorce, separate maintenance, annulment, post-decree matrimonial proceedings, paternity, custody, adoption, termination of parental rights, juvenile matters, probate proceedings, habeas corpus proceedings, special executions in foreclosures, conservatorship or guardianship proceedings, mental health, quiet title actions, and partition proceedings or actions, involving temporary or permanent injunctions, proceedings under the Small Claims Procedure Act, writs of assistance in foreclosure, and other real property actions, post-judgment replevin, and forcible entry and detainer proceedings. The court, in its discretion, may impose any conditions that are necessary to protect the interests of the parties in such actions.

D. It shall be the responsibility of the judgment creditor or counsel for the judgment creditor to ensure that no execution or

other proceeding for enforcement of the judgment is sought or taken within the ten-day stay.
Added by Laws 1993, c. 351, § 20, eff. Oct. 1, 1993. Amended by Laws 1994, c. 343, § 3, eff. Sept. 1, 1994.

§12-990.4. Stay of enforcement - Judgments, decrees or final orders.

A. Except as provided in subsection C of this section, a party may obtain a stay of the enforcement of a judgment, decree or final order:

1. While a posttrial motion is pending;

2. During the time in which an appeal may be commenced in any court in or outside of this state; or

3. While an appeal is pending in any court in or outside of this state.

Such stay may be obtained by filing with the court clerk a written undertaking and the posting of a supersedeas bond or other security as provided in this section. In the undertaking the appellant shall agree to satisfy the judgment, decree or final order, and pay the costs and interest on appeal, if it is affirmed. The undertaking and supersedeas bond or security may be given at any time. The stay is effective when the bond and the sufficiency of the sureties are approved by the trial court or the security is deposited with the court clerk. The enforcement of the judgment, decree or order shall no longer be stayed, and the judgment, decree or order may be enforced against any surety on the bond or other security:

1. If neither a posttrial motion nor a petition in error is filed, and the time for appeal has expired;

2. If a posttrial motion is no longer pending, no petition in error has been filed, and the time for appeal has expired; or

3. If an appeal is no longer pending.

B. The amount of the bond or other security shall be as follows:

1. When the judgment, decree or final order is for payment of money:

   a. Subject to the limitations hereinafter provided, the bond shall be double the amount of the judgment, decree or final order, unless the bond is executed or guaranteed by a surety as hereinafter provided. The bond shall be for the amount of the judgment, decree or order including costs and interest on appeal where it is executed or guaranteed by an entity with suretyship powers as provided by the laws of Oklahoma.

   b. Upon a showing by the judgment debtor that the judgment debtor is likely to suffer substantial economic harm if required to post bond in the amount required by this paragraph, the court shall balance the likely substantial economic harm to the judgment debtor with the ability of the judgment creditor to collect the

judgment in the event the judgment is affirmed on appeal and may lower the bond accordingly. "Substantial economic harm" means insolvency or creating a significant risk of insolvency. The court shall not lower a bond as provided in this paragraph to the extent there is in effect an insurance policy, or agreement under which a third party is liable to satisfy part or all of the judgment entered and such party is required to post all or part of the bond.

c. Subject to the limitations contained in this paragraph, the bond shall not exceed Twenty-five Million Dollars ($25,000,000.00).

d. Upon limiting the bond pursuant to subparagraphs b or c of this paragraph, the court shall enter an order enjoining a judgment debtor from dissipating or transferring assets to avoid satisfaction of the judgment, but the court shall not make any order that interferes with the judgment debtor's use of assets in the normal course of business. If it is proven by a preponderance of the evidence that the appellant for whom the bond would be or has been limited pursuant to subparagraph b or c of this paragraph likely will be or is intentionally dissipating or diverting assets or engaging in other conduct outside of the ordinary course of its business for the purpose of avoiding payment of the judgment, the court shall enter such orders as are necessary to prevent such conduct including, but not limited to, requiring that a bond be posted equal to the full amount of security required pursuant to this section, without the reduction or limitations allowed by subparagraph b or c of this paragraph.

e. Instead of filing a supersedeas bond, the appellant may obtain a stay by depositing cash with the court clerk in the amount of the judgment or order plus an amount that the court determines will cover costs and interest on appeal. The court shall have discretion to accept United States Treasury notes or general obligation bonds of the State of Oklahoma in lieu of cash. If the court accepts such notes or bonds, it shall make appropriate orders for their safekeeping and maintenance during the stay;

2. When the judgment, decree or final order directs execution of a conveyance or other instrument, the amount of the bond shall be determined by the court. Instead of posting a supersedeas bond or other security, the appellant may execute the conveyance or other instrument and deliver it to the clerk of the court for deposit with

a public or private entity for safekeeping, as directed by the court in writing;

3. When the judgment, decree or final order directs the delivery of possession of real or personal property, the bond shall be in an amount, to be determined by the court, that will protect the interests of the parties. The court may consider the value of the use of the property, any waste that may be committed on or to the property during the pendency of the stay, the value of the property, and all costs. When the judgment, decree or final order is for the sale of mortgaged premises and the payment of a deficiency arising from the sale, the bond must also provide for the payment of the deficiency;

4. When the judgment or final order directs the assignment or delivery of documents, they may be placed in the custody of the clerk of the court in which the judgment or order was rendered, for deposit with a public or private entity for safekeeping during the pendency of the stay, as directed by the court in writing, or the bond shall be in such sum as may be prescribed by the court;

5. The bond in any action or litigation brought under any legal theory involving a nonparticipating manufacturer to the Master Settlement Agreement dated November 23, 1998, shall be in an amount not to exceed one hundred percent (100%) of the judgment, exclusive of interest and costs, ten percent (10%) of the net worth of the judgment debtor, or Twenty-five Million Dollars ($25,000,000.00), whichever is less. Provided, however, these bond limitations shall not apply to judgments in favor of the State of Oklahoma, its agencies or officers; or

6. In order to protect any monies payable to the Tobacco Settlement Fund as set forth in Section 50 of Title 62 of the Oklahoma Statutes, the bond in any action or litigation brought under any legal theory involving a signatory, successor of a signatory or an affiliate of a signatory to the Master Settlement Agreement dated November 23, 1998, or a signatory, successor of a signatory or an affiliate of a signatory to the Smokeless Tobacco Master Settlement Agreement, also dated November 23, 1998, shall be in an amount not to exceed one hundred percent (100%) of the judgment, exclusive of interest and costs, ten percent (10%) of the net worth of the judgment debtor, or Twenty-five Million Dollars ($25,000,000.00), whichever is less. However, if it is proved by a preponderance of the evidence that the appellant for whom the bond has been limited pursuant to this paragraph is intentionally dissipating or diverting assets outside of the ordinary course of its business for the purpose of avoiding payment of the judgment, the court shall enter such orders as are necessary to prevent dissipation or diversion, including, but not limited to, requiring that a bond be posted equal to the full amount of security required pursuant to this section. For purposes of this paragraph, "Master Settlement Agreement" shall

have the same meaning as that term is defined in paragraph 5 of Section 600.22 of Title 37 of the Oklahoma Statutes, and "Smokeless Tobacco Master Settlement Agreement" means the settlement agreement and related documents entered into on November 23, 1998, by this state and leading United States smokeless tobacco product manufacturers.

C. Subsections A and B of this section shall not apply in actions involving temporary or permanent injunctions, actions for divorce, separate maintenance, annulment, paternity, custody, adoption, or termination of parental rights, or in juvenile matters, postdecree matrimonial proceedings or habeas corpus proceedings. The trial or appellate court, in its discretion, may stay the enforcement of any provision in a judgment, decree or final order in any of the types of actions or proceedings listed in this subsection during the pendency of the appeal or while any posttrial motion is pending upon such terms as to bond or otherwise as it considers proper for the security of the rights of the parties. If a temporary or permanent injunction is denied or dissolved, the trial or appellate court, in its discretion, may restore or grant an injunction during the pendency of the appeal and while any posttrial motions are pending upon such terms as to bond or otherwise as it considers proper for the security of the rights of the parties.

D. In any action not provided for in subsection A, B or C of this section, the court may stay the enforcement of any judgment, decree or final order during the pendency of the appeal or while any posttrial motion is pending upon such terms as to bond or otherwise as it considers proper for the security of the rights of the parties.

E. The trial court shall have continuing jurisdiction during the pendency of any posttrial motion and appeal to modify any order it has entered regarding security or other conditions in connection with a stay.

F. The execution of a supersedeas bond shall not be a condition for the granting of a stay of judgment, decree or final order of any judicial tribunal against any county, municipality, or other political subdivision of the State of Oklahoma.

G. Executors, administrators and guardians who have given bond in this state, with sureties, according to law, are not required to provide a supersedeas bond if they are granted a stay of enforcement of a judgment, decree or final order.

H. After an appeal has been decided, but before the mandate has issued, a party whose trial court judgment has been affirmed, may move the appellate court to order judgment on the bond or other security in the amount of the judgment plus interest, appeals costs and allowable appeal-related attorney fees. After mandate has issued, a party who has posted a bond or other security may move for exoneration of the bond or other security only in the trial court;

and all motions concerning the bond or other security must be addressed to the trial court.

I. For judgments entered after November 1, 2009, appeal bonds shall not be required for appeals of punitive damages.

Added by Laws 1993, c. 351, § 21, eff. Oct. 1, 1993. Amended by Laws 2001, c. 66, § 3, emerg. eff. April 10, 2001; Laws 2004, c. 450, § 3, eff. Nov. 1, 2004; Laws 2005, c. 1, § 6, emerg. eff. March 15, 2005; Laws 2009, c. 228, § 8, eff. Nov. 1, 2009; Laws 2010, c. 124 § 1, eff. Nov. 1, 2010.

NOTE: Laws 2004, c. 368, § 9 repealed by Laws 2005, c. 1, § 7, emerg. eff. March 15, 2005.

§12-990.5. Stay of enforcement against political subdivisions of the state.

Notwithstanding any other provision of this title, the execution of a judgment or final order of any judicial tribunal against any county, municipality, or other political subdivision of this state is automatically stayed without the execution of supersedeas bond until any appeal of such judgment or final order has finally been determined.

Added by Laws 1994, c. 343, § 4, eff. Sept. 1, 1994.

§12-990A. Appeal to Supreme Court by filing petition in error - Rules - Record on appeal - Premature appeal - Designation of record.

A. An appeal to the Supreme Court of Oklahoma, if taken, must be commenced by filing a petition in error with the Clerk of the Supreme Court of Oklahoma within thirty (30) days from the date a judgment, decree, or appealable order prepared in conformance with Section 696.3 of this title is filed with the clerk of the trial court. If the appellant did not prepare the judgment, decree, or appealable order, and Section 696.2 of this title required a copy of the judgment, decree, or appealable order to be served upon the appellant, and the court records do not reflect the service of a copy of the judgment, decree, or appealable order to the appellant within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or appealable order, the petition in error may be filed within thirty (30) days after the earliest date on which the court records show that a copy of the judgment, decree, or appealable order was served upon the appellant.

B. The filing of the petition in error may be accomplished either by delivery or mailing by certified or first-class mail, postage prepaid, to the Clerk of the Supreme Court. The date of filing or the date of mailing, as shown by the postmark affixed by the post office or other proof from the post office of the date of mailing, shall constitute the date of filing of the petition in error. If there is no proof from the post office of the date of

mailing, the date of receipt by the Clerk of the Supreme Court shall constitute the date of filing of the petition in error.

C. The Supreme Court shall provide by rule, which shall have the force of statute, and be in furtherance of this method of appeal:

1. For the filing of cross-appeals;

2. The procedure to be followed by the trial courts or tribunals in the preparation and authentication of transcripts and records in cases appealed under this act; and

3. The procedure to be followed for the completion and submission of the appeal taken hereunder.

D. In all cases the record on appeal shall be complete and ready for filing in the Supreme Court within the time prescribed by rule.

E. Except for the filing of a petition in error as provided herein, all steps in perfecting an appeal are not jurisdictional.

F. 1. If a petition in error is filed before the time prescribed in this section, it shall be dismissed as premature; however, if the time to commence the appeal accrues before the appeal is dismissed, the appellant may file a supplemental petition in error, without the payment of any additional costs. Such supplemental petition in error shall state when the time for commencing the appeal began and shall set out all matters which have occurred since the filing of the original petition in error and which should be included in a timely petition in error. When a proper supplemental petition in error is filed, the appeal shall not be dismissed on the ground that it was premature.

2. If an appeal is dismissed on the ground that it was premature, the appellant may file a new petition in error within the time prescribed in this section for filing petitions in error or within thirty (30) days after notice is mailed to the parties which states that the appeal was dismissed on the ground that it was premature, whichever date is later. A notice that an appeal was dismissed on the ground that it was premature shall include the date of mailing and the ground for dismissal.

G. 1. No designation of record shall be accepted by the district court clerk for filing unless it contains one of the following:

a. where a transcript is designated: A signed acknowledgment from the court reporter who reported evidence in the case indicating receipt of the request for transcript, the date received, and the amount of deposit received, if applicable, in substantially the following form: I, _____, court reporter for the above-styled case, do hereby acknowledge this request for transcript on this ____ day of____, 20__, and have received a deposit in the sum of $____., or

b. where a transcript is not designated: A signed statement by the attorney preparing the designation of

record stating that a transcript has not been ordered and a brief explanation why, in substantially the following form: I, _____, attorney for the appellant, hereby state that I have not ordered a transcript because:
(1) a transcript is not necessary for this appeal, or
(2) no stenographic reporting was made.

2. No counter-designation of record shall be accepted by the district court clerk for filing unless it contains one of the following:

a. where additional transcript is designated: A signed acknowledgment from the court reporter who reported evidence in the case indicating receipt of the request for transcript and the date received, in substantially the following form: I, _____, court reporter for the above-styled case, do hereby acknowledge this request for transcript on this ____ day of____, 20__., or

b. where no additional transcript is designated: A signed statement by the attorney preparing the designation of record stating that a transcript has not been ordered and a brief explanation why, in substantially the following form: I, _____, attorney for the appellant, hereby state that I have not ordered a transcript because:
(1) no additional transcript is necessary for this appeal, or
(2) no stenographic reporting was made.

Added by Laws 1991, c. 251, § 15, eff. June 1, 1991. Amended by Laws 1993, c. 351, § 18, eff. Oct. 1, 1993; Laws 1994, c. 343, § 5, eff. Sept. 1, 1994; Laws 1997, c. 102, § 7, eff. May 1, 1997; Laws 2002, c. 468, § 6, eff. Nov. 1, 2002; Laws 2011, c. 13, § 1, eff. Nov. 1, 2011; Laws 2017, c. 147, § 1, eff. Nov. 1, 2017.

§12-991. Right to perfect appeal to Supreme Court without filing motion for new trial - Exemption.

(a) The right of a party to perfect an appeal from a judgment, order or decree of the trial court to the Supreme Court shall not be conditioned upon his having filed in the trial court a motion for a new trial, but in the event a motion for a new trial is filed in the trial court by a party adversely affected by the judgment, order or decree, no appeal to the Supreme Court may be taken until subsequent to the ruling by the trial court on the motion for a new trial. This provision shall not apply, however, to an appeal from an order of the Corporation Commission.

(b) If a motion for a new trial be filed and a new trial be denied, the movant may not, on the appeal, raise allegations of error

that were available to him at the time of the filing of his motion for a new trial but were not therein asserted.
Added by Laws 1968, c. 395, § 1.

§12-992. Errors in perfecting appeals - Raising - Waiver.

Where possible, errors in perfecting an appeal must be raised promptly in the trial court, and errors in perfecting an appeal that could have been raised in the trial court may not be raised for the first time in the appellate court. The parties may waive any defect or error in perfecting an appeal except the timely filing of a petition in error as prescribed in Section 15 of this act, and of a petition to review a certified interlocutory order under paragraph 3 of subsection (b) of Section 952 of this title.
Added by Laws 1970, c. 88, § 1. Amended by Laws 1990, c. 251, § 13, eff. Jan. 1, 1991; Laws 1991, c. 251, § 16, eff. June 1, 1991.

§12-993. Appeals from certain orders.

A. When an order:

1. Discharges, vacates, or modifies or refuses to discharge, vacate, or modify an attachment;

2. Denies a temporary or permanent injunction, grants a temporary or permanent injunction except where granted at an ex parte hearing, or discharges, vacates, or modifies or refuses to discharge, vacate, or modify a temporary or permanent injunction;

3. Discharges, vacates, or modifies or refuses to discharge, vacate, or modify a provisional remedy which affects the substantial rights of a party;

4. Appoints a receiver except where the receiver was appointed at an ex parte hearing, refuses to appoint a receiver, or vacates or refuses to vacate the appointment of a receiver;

5. Directs the payment of money pendente lite except where granted at an ex parte hearing, refuses to direct the payment of money pendente lite, or vacates or refuses to vacate an order directing the payment of money pendente lite;

6. Certifies or refuses to certify an action to be maintained as a class action;

7. Denies a motion in a class action asserting lack of jurisdiction because an agency of this state has exclusive or primary jurisdiction of the action or a part of the action, or asserting that a party has failed to exhaust administrative remedies, but only if the class is subsequently certified and only as part of the appeal of the order certifying the class action; or

8. Grants a new trial or opens or vacates a judgment or order, the party aggrieved thereby may appeal the order to the Supreme Court without awaiting the final determination in said cause, by filing the petition in error and the record on appeal with the Supreme Court within thirty (30) days after the order prepared in conformance with

Section 696.3 of this title, is filed with the court clerk. If the appellant did not prepare the order, and Section 696.2 of this title required a copy of the order to be mailed to the appellant, and the court records do not reflect the mailing of a copy of the order to the appellant within three (3) days, exclusive of weekends and holidays, after the filing of the order, the petition in error may be filed within thirty (30) days after the earliest date on which the court records show that a copy of the order was mailed to the appellant. The Supreme Court may extend the time for filing the record upon good cause shown.

B. If the order discharges or modifies an attachment or temporary injunction and it becomes operative, the undertaking given upon the allowance of an attachment or temporary injunction shall stay the enforcement of said order and remain in full force until final order of discharge shall take effect.

C. If a receiver shall be or has been appointed, upon the appellant filing an appeal bond, with sufficient sureties, in such sum as may have been required of the receiver by the court or a judge thereof, conditioned for the due prosecution of the appeal and the payment of all costs or damages that may accrue to the state or any officer or person by reason thereof, the authority of the receiver shall be suspended until the final determination of the appeal, and if the receiver has taken possession of any property, real or personal, it shall be returned and surrendered to the appellant upon the filing and approval of the bonds.

Added by Laws 1970, c. 289, § 1, eff. July 1, 1970. Amended by Laws 1978, c. 245, § 8, eff. July 1, 1978; Laws 1984, c. 40, § 1, eff. Nov. 1, 1984; Laws 1990, c. 251, § 14, eff. Jan. 1, 1991; Laws 1991, c. 251, § 17, eff. June 1, 1991; Laws 1993, c. 351, § 22, eff. Oct. 1, 1993; Laws 1996, c. 61, § 1, eff. Nov. 1, 1996; Laws 1997, c. 102, § 8, eff. May 1, 1997; Laws 2013, 1st Ex.Sess., c. 10, § 2, emerg. eff. Sept. 10, 2013; Laws 2013, 1st Ex.Sess., c. 10, § 3, emerg. eff. Sept. 10, 2013; Laws 2013, 1st Ex.Sess., c. 23, § 2, emerg. eff. Sept. 10, 2013; Laws 2013, 1st Ex.Sess., c. 23, § 3, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2013, 1st Ex.Sess., c. 10, § 3 and Laws 2013, 1st Ex.Sess., c. 23, § 3 made identical amendments.

NOTE: Laws 2009, c. 228, § 9 was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013) and repealed by Laws 2013, 1st Ex.Sess., c. 10, § 1, emerg. eff. Sept. 10, 2013 and Laws 2013, 1st Ex.Sess., c. 23, § 1, emerg. eff. Sept. 10, 2013.

§12-994. Judgment involving multiple claims or parties.

A. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct

the preparation and filing of a final judgment, decree, or final order as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the filing of a final judgment, decree, or final order. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the final judgment, decree, or final order adjudicating all the claims and the rights and liabilities of all the parties is filed with the court clerk.

B. When a court has ordered a final judgment, decree, or final order under the conditions stated in subsection A of this section, the court may stay enforcement of that final judgment, decree or final order until the filing of a subsequent final judgment, decree or final order and may prescribe such conditions as are necessary to protect the interests of all parties to the action. If the court stays the enforcement of a final judgment, decree, or final order until the filing of a subsequent final judgment, decree, or final order, notice of the vacation or modification of the stay or of any condition that was imposed on the enforcement of the final judgment, decree, or final order shall be given to the parties affected by the stay or condition.

Added by Laws 1990, c. 251, § 6, eff. Jan. 1, 1991. Amended by Laws 1991, c. 251, § 18, eff. June 1, 1991; Laws 1993, c. 351, § 23, eff. Oct. 1, 1993. Renumbered from § 1006 of this title by Laws 1993, c. 351, § 30, eff. Oct. 1, 1993. Amended by Laws 1995, c. 253, § 3, eff. Nov. 1, 1995.

§12-994.1. Repealed by Laws 2013, 1st Ex.Sess., c. 14, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 10, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). See, now, Title 12, § 994.2.

§12-994.2. Medicaid recovery - Oklahoma Health Care Authority recovery - Calculations.

A. Recovery against the party that received payment.

1. General rule. Medicaid reduces its recovery to take account of the cost of procuring the judgment or settlement, as provided in this section, if:

a. procurement costs are incurred because the claim is disputed, and

b. those costs are borne by the party against which the Oklahoma Health Care Authority seeks to recover.

2. Special rule. If the Oklahoma Health Care Authority must file suit because the party that received payment opposes the Authority's recovery, the recovery amount is as set forth in subsection E of this section.

B. Recovery against the third-party payer. If the Oklahoma Health Care Authority seeks recovery from the third-party payer, the recovery amount will be no greater than the amount determined under subsection C, D or E of this section.

C. Medicaid payments are less than the judgment or settlement amount. If Medicaid payments are less than the judgment or settlement amount, the recovery is computed as follows:

1. Determine the ratio of the procurement costs to the total judgment or settlement payment;

2. Apply the ratio to the Medicaid payment. The product is the Medicaid share of procurement costs;

3. Subtract the Medicaid share of procurement costs from the Medicaid payments. The remainder is the Medicaid recovery amount.

D. Medicaid payments equal or exceed the judgment or settlement amount. If Medicaid payments equal or exceed the judgment or settlement amount, the recovery amount is the total judgment or settlement payment minus the total procurement costs.

E. The Oklahoma Health Care Authority incurs procurement costs because of opposition to its recovery. If the Oklahoma Health Care Authority must bring suit against the party that received payment because that party opposes the Authority's recovery, the recovery amount is the lower of the following:

1. Medicaid payment; or

2. The total judgment or settlement amount, minus the party's total procurement cost.

F. Medicaid recovery worksheet. The amount to be recovered from the beneficiary is the amount Medicaid paid, less a proportionate share of the costs of procuring the judgment or settlement. The amount to be refunded is determined as follows:

If the Medicaid payment is less than the amount of judgment or settlement:

a. determine the ratio of the Medicaid payments to the total amount of the judgment or settlement,

b. apply this ratio to the costs of procuring the judgment or settlement, including attorney fees, and

c. subtract the Medicaid share of procurement costs from Medicaid payments. The remainder is the amount of reimbursement to be refunded to the Medicaid Program.

Step 1:

| | | | | |
|---|---|---|---|---|
| $_____ | / | $_____ | = | _____ |
| Medicaid Payment | | Judgment/Settlement | | Ratio |

Carry out 6 digits

Step 2:

| | | | | |
|---|---|---|---|---|
| _____ | X | $_____ | = | _____ |
| Ratio from Step 1 Carry out 6 digits | | Procurement Costs | | Medicaid Share of Procurement Costs |

Step 3:

| | | | | |
|---|---|---|---|---|
| $_____ | - | $_____ | = | _____ |
| Medicaid Payment | | Medicaid Share of Procurement Costs | | Refund to Medicare |

G. If the Medicaid payments equal or exceed the amount of the judgment or settlement, subtract the total procurement costs from the judgment or settlement. The remainder is the amount of reimbursement to be refunded to the Medicaid Program. The individual will not be required to refund more than the liability insurance payment minus the procurement costs.

| | | | | |
|---|---|---|---|---|
| $_____ | - | $_____ | = | $_____ |
| Judgment/Settlement | | Procurement Costs | | Refund |

H. The Oklahoma Health Care Authority is authorized to seek from the Centers for Medicare and Medicaid Services any waivers or amendments to existing waivers or to amend the state Medicaid plan in order to accomplish the purposes outlined in this section.

Added by Laws 2013, 1st Ex.Sess., c. 14, § 2, emerg. eff. Sept. 10, 2013.

NOTE: Text formerly resided under repealed Title 12, § 994.1, which was derived from Laws 2009, c. 228, § 10, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§12-995. Frivolous appeals, cross-appeals or original proceedings - Dismissal and sanctions.

The Oklahoma Supreme Court or Court of Civil Appeals shall dismiss an appeal that is frivolous, and may impose sanctions against the appellant, the appellant's attorney, or both. The sanctions that may be imposed may include the reasonable expenses incurred because of the filing of the appeal, including a reasonable attorney's fee. The court shall dismiss a cross-appeal or an original proceeding that is frivolous and may impose sanctions as provided by this section.

Added by Laws 1993, c. 351, § 24, eff. Oct. 1, 1993. Amended by Laws 1996, c. 97, § 1, eff. Nov. 1, 1996.

§12-1001. Repealed by Laws 1991, c. 251, § 22, eff. June 1, 1991.

§12-1002. Repealed by Laws 1991, c. 251, § 22, eff. June 1, 1991.

§12-1003. Repealed by Laws 1991, c. 251, § 22, eff. June 1, 1991.

§12-1004. Repealed by Laws 1991, c. 251, § 22, eff. June 1, 1991.

§12-1005. Repealed by Laws 1991, c. 251, § 22, eff. June 1, 1991.

§12-1006. Renumbered as § 994 of this title by Laws 1993, c. 351, § 30, eff. Oct. 1, 1993.

§12-1007. Repealed by Laws 1991, c. 251, § 22, eff. June 1, 1991.

§12-1008. Repealed by Laws 1991, c. 251, § 22, eff. June 1, 1991.

§12-1031. District court - Power to vacate or modify its judgments, when.

The district court shall have power to vacate or modify its own judgments or orders within the times prescribed hereafter:

1. By granting a new trial for the cause, within the time and in the manner prescribed in Sections 651 through 655 of this title;

2. As authorized in subsection C of Section 2004 of this title where the defendant had no actual notice of the pendency of the action at the time of the filing of the judgment or order;

3. For mistake, neglect, or omission of the clerk or irregularity in obtaining a judgment or order;

4. For fraud, practiced by the successful party, in obtaining a judgment or order;

5. For erroneous proceedings against an infant, or a person of unsound mind, where the condition of such defendant does not appear in the record, nor the error in the proceedings;

6. For the death of one of the parties before the judgment in the action;

7. For unavoidable casualty or misfortune, preventing the party from prosecuting or defending;

8. For errors in a judgment, shown by an infant in twelve (12) months after arriving at full age, as prescribed in Section 700 of this title; or

9. For taking judgments upon warrants of attorney for more than was due to the plaintiff, when the defendant was not summoned or otherwise legally notified of the time and place of taking such judgment.

R.L. 1910, Section 5267. Amended by Laws 1969, c. 304, § 3, emerg. eff. April 28, 1969; Laws 1999, c. 293, § 9, eff. Nov. 1, 1999.

§12-1031.1. Authorization to correct, open, modify or vacate judgments - Time - Notice.

A. A court may correct, open, modify or vacate a judgment, decree, or appealable order on its own initiative not later than thirty (30) days after the judgment, decree, or appealable order prepared in conformance with Section 696.3 of this title has been

filed with the court clerk. Notice of the court's action shall be given as directed by the court to all affected parties.

B. On motion of a party made not later than thirty (30) days after a judgment, decree, or appealable order prepared in conformance with Section 696.3 of this title has been filed with the court clerk, the court may correct, open, modify, or vacate the judgment, decree, or appealable order. If the moving party did not prepare the judgment, decree, or appealable order, and Section 696.2 of this title required a copy of the judgment, decree, or appealable order to be mailed to the moving party, and the court records do not reflect the mailing of a copy of the judgment, decree, or appealable order to the moving party within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or appealable order, the motion to correct, open, modify, or vacate the judgment, decree, or appealable order may be filed no later than thirty (30) days after the earliest date on which the court records show that a copy of the judgment, decree, or appealable order was mailed to the moving party. The moving party shall give notice to all affected parties. A motion to correct, open, modify, or vacate a judgment or decree filed after the announcement of the decision on all issues in the case but before the filing of the judgment or decree shall be deemed filed immediately after the filing of the judgment or decree.

C. If more than thirty (30) days have passed since the filing of a judgment, decree, or appealable order, proceedings to vacate or modify the judgment, decree, or appealable order shall be by petition in conformance with Section 1033 of this title unless approved by all parties who have entered an appearance in the lawsuit.

D. The party that prevails in an action to vacate any judgment, decree or appealable order shall only be considered the prevailing party for the purpose of the award of costs, to include a reasonable attorney fee, if such party prevails on the merits in the underlying action.

Added by Laws 1969, c. 304, § 1, emerg. eff. April 28, 1969. Amended by Laws 1990, c. 251, § 15, eff. Jan. 1, 1991; Laws 1991, c. 251, § 19, eff. June 1, 1991; Laws 1993, c. 351, § 25, eff. Oct. 1, 1993; Laws 1994, c. 343, § 6, eff. Sept. 1, 1994; Laws 1997, c. 102, § 9, eff. May 1, 1997; Laws 1999, c. 293, § 10, eff. Nov. 1, 1999; Laws 2013, c. 18, § 1, eff. Nov. 1, 2013.

§12-1032. Proceedings to be by motion - Notice.

The proceedings to correct mistakes or omissions of the clerk, or irregularity in obtaining a judgment or order, shall be by motion, upon reasonable notice to the adverse party or his attorney in the action.

R.L. 1910, § 5268. Amended by Laws 1969, c. 304, § 4, emerg. eff. April 28, 1969; Laws 1993, c. 351, § 26, eff. Oct. 1, 1993.

§12-1033. Proceedings by petition, when - Summons.

If more than thirty (30) days after a judgment, decree, or appealable order has been filed, proceedings to vacate or modify the judgment, decree, or appealable order, on the grounds mentioned in paragraphs 2, 4, 5, 6, 7, 8, and 9 of Section 1031 of this title, shall be by petition, verified by affidavit, setting forth the judgment, decree, or appealable order, the grounds to vacate or modify it, and the defense to the action, if the party applying was defendant. On this petition, a summons shall issue and be served as in the commencement of a civil action.

R.L. 1910, § 5269. Amended by Laws 1999, c. 293, § 11, eff. Nov. 1, 1999

§12-1034. Trial of application to vacate.

The court may first try and decide upon the grounds to vacate or modify a judgment or order before trying or deciding upon the validity of the defense or cause of action.

R.L. 1910, § 5270.

§12-1035. Liens and securities preserved.

If a judgment is modified, all liens and securities obtained under it shall be preserved to the modified judgment.

R.L. 1910, § 5271. Amended by Laws 1990, c. 251, § 16, eff. Jan. 1, 1991.

§12-1036. Suspending proceedings - Bond.

The party seeking to vacate or modify a judgment or order, may obtain an order suspending proceedings on the whole or part thereof; which order may be granted by the court, or any judge thereof, upon its being rendered probable, by affidavit, or by exhibition of the record, that the party is entitled to have such judgment or order vacated or modified. On the granting of any such order, the court, or judge, may require the party obtaining any such order to enter into an undertaking to the adverse party to pay all damages that may be caused by granting of the same.

R.L. 1910, § 5272.

§12-1037. Suspension where judgment given prematurely.

When the judgment was rendered before the action stood for trial, the suspension may be granted, as provided in the last section, although no valid defense to the action is shown; and the court shall make such orders, concerning the executions to be issued on the judgment as shall give to the defendant the same rights of delay he would have had if the judgment had been rendered at the proper time.

R.L. 1910, § 5273.

§12-1038. Limitations.

Proceedings to vacate or modify a judgment, decree or order, for the causes mentioned in paragraphs 4, 5 and 7 of Section 1031 of this title must be commenced within two (2) years after the filing of the judgment, decree or order, unless the party entitled thereto be an infant, or a person of unsound mind and then within two (2) years after removal of such disability. Proceedings for the causes mentioned in paragraphs 3 and 6 of Section 1031 of this title, shall be within three (3) years, and in paragraph 9 of Section 1031 of this title, within one (1) year after the defendant has notice of the judgment, decree or order. A void judgment, decree or order may be vacated at any time, on motion of a party, or any person affected thereby.
R.L. 1910, § 5274. Amended by Laws 1990, c. 251, § 17, eff. Jan. 1, 1991; Laws 1991, c. 251, § 20, eff. June 1, 1991; Laws 1993, c. 351, § 27, eff. Oct. 1, 1993.

§12-1051. Causes of action that survive.
In addition to the causes of action which survive at common law, causes of action for mesne profits, or for an injury to the person, or to real or personal estate, or for any deceit or fraud, shall also survive; and the action may be brought, notwithstanding the death of the person entitled or liable to the same.
R.L. 1910, § 5279.

§12-1052. Actions which abate on death of party.
No action pending in any court shall abate by the death of either or both the parties thereto, except an action for libel, slander or malicious prosecution, which shall abate by the death of the defendant. An action for libel, slander or malicious prosecution shall not abate after a jury verdict or a decision by the court where the trial is by the court, unless a new trial is ordered.
R.L. 1910, § 5280. Amended by Laws 1965, c. 299, § 1.

§12-1053. Wrongful death - Limitation of actions - Damages.
A. When the death of one is caused by the wrongful act or omission of another, the personal representative of the former may maintain an action therefor against the latter, or his or her personal representative if he or she is also deceased, if the former might have maintained an action, had he or she lived, against the latter, or his or her representative, for an injury for the same act or omission. The action must be commenced within two (2) years.
B. The damages recoverable in actions for wrongful death as provided in this section shall include the following: Medical and burial expenses, which shall be distributed to the person or governmental agency as defined in Section 5051.1 of Title 63 of the Oklahoma Statutes who paid these expenses, or to the decedent’s estate if paid by the estate.

The loss of consortium and the grief of the surviving spouse, which shall be distributed to the surviving spouse.

The mental pain and anguish suffered by the decedent, which shall be distributed to the surviving spouse and children, if any, or next of kin in the same proportion as personal property of the decedent.

The pecuniary loss to the survivors based upon properly admissible evidence with regard thereto including, but not limited to, the age, occupation, earning capacity, health habits, and probable duration of the decedent's life, which must inure to the exclusive benefit of the surviving spouse and children, if any, or next of kin, and shall be distributed to them according to their pecuniary loss.

The grief and loss of companionship of the children and parents of the decedent, which shall be distributed to them according to their grief and loss of companionship.

C. In proper cases, as provided by Section 9.1 of Title 23 of the Oklahoma Statutes, punitive or exemplary damages may also be recovered against the person proximately causing the wrongful death or the person's representative if such person is deceased. Such damages, if recovered, shall be distributed to the surviving spouse and children, if any, or next of kin in the same proportion as personal property of the decedent.

D. Where the recovery is to be distributed according to a person's pecuniary loss or loss of companionship, the judge shall determine the proper division.

E. The above-mentioned distributions shall be made after the payment of legal expenses and costs of the action.

F. 1. The provisions of this section shall also be available for the death of an unborn child as defined in Section 1-730 of Title 63 of the Oklahoma Statutes.

2. The provisions of this subsection shall not apply to:

a. acts which cause the death of an unborn child if those acts were committed during a legal abortion to which the pregnant woman consented, or

b. acts which are committed pursuant to the usual and customary standards of medical practice during diagnostic testing or therapeutic treatment.

3. Under no circumstances shall the mother of the unborn child be found liable for causing the death of the unborn child unless the mother has committed a crime that caused the death of the unborn child.

R.L. 1910, § 5281. Amended by Laws 1925, c. 125, p. 177, § 1; Laws 1943, p. 35, § 1, emerg. eff. April 13, 1943; Laws 1978, c. 106, § 1, eff. Oct. 1, 1978; Laws 1979, c. 235, § 1, eff. Oct. 1, 1979; Laws 2005, c. 200, § 1, emerg. eff. May 20, 2005.

§12-1054. Action for death - Who may sue.

In all cases where the residence of the party whose death has been caused as set forth in the preceding section of this article is at the time of his death in any other state or territory, or when, being a resident of this state, no personal representative is or has been appointed, the action provided in the said section may be brought by the widow, or where there is no widow, by the next of kin of such deceased.
R.L. 1910, § 5282.

§12-1055. Death of a child.

In all actions hereinafter brought to recover damages for the death of an unmarried, unemancipated minor child, the damages recoverable shall include medical and burial expense, loss of anticipated services and support, loss of companionship and love of the child, destruction of parent-child relationship and loss of monies expended by parents or guardian in support, maintenance and education of such minor child, in such amount as, under all circumstances of the case, may be just.
Added by Laws 1975, c. 132, § 1, eff. Oct. 1, 1975.

§12-1061. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-1062. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-1063. Repealed by Laws 1965, c. 299, § 8.

§12-1064. Repealed by Laws 1965, c. 299, § 8.

§12-1065. Repealed by Laws 1965, c. 299, § 8.

§12-1066. Repealed by Laws 1965, c. 299, § 8.

§12-1067. Repealed by Laws 1965, c. 299, § 8.

§12-1068. Repealed by Laws 1965, c. 299, § 8.

§12-1069. Repealed by Laws 1965, c. 299, § 8.

§12-1070. Repealed by Laws 1965, c. 299, § 8.

§12-1071. Repealed by Laws 1965, c. 299, § 8.

§12-1072. Repealed by Laws 1965, c. 299, § 8.

§12-1073. Repealed by Laws 1965, c. 299, § 8.

§12-1074. Repealed by Laws 1965, c. 299, § 8.

§12-1075. Repealed by Laws 1965, c. 299, § 8.

§12-1076. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-1077. Repealed by Laws 1965, c. 299, § 8.

§12-1078. Repealed by Laws 1965, c. 299, § 8.

§12-1079. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-1080. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-1081. Death of party after verdict or judgment.

(a) If a party dies after verdict is rendered, judgment may be rendered on the verdict although the representative or successor of the decedent has not been substituted as a party to the action.

(b) If a plaintiff dies after verdict or after judgment and the verdict and judgment are in his favor, his representative or successor may be substituted for him upon motion of any party to the action with notice to the representative or successor, or substitution may be made upon motion of the representative or successor of the decedent. Such motion may be made at any time before the judgment becomes dormant but it must be made before action is taken to enforce the judgment. A delay in substituting the representative or successor of the decedent shall not affect the validity of a judgment lien.

(c) If a defendant dies after verdict or after judgment and the verdict and judgment are in favor of the plaintiff, the judgment shall be filed with the representative of the decedent within the time allowed for filing other claims and the judgment shall be treated as if it has been allowed by the representative and it shall be payable in the due course of administration.

Added by Laws 1965, c. 299, § 3.

§12-1082. Dissolved partnerships.

(a) A partnership may sue and be sued in its firm name, and after a partnership has been dissolved, actions may be brought by and against the partnership in its firm name to enforce obligations that arose before the dissolution, the partnership being deemed to continue for the purpose of the suit. Where the dissolution is caused by the death of a partner, an action to enforce an obligation that arose before the dissolution may be brought by or against the partnership in its firm name, or by or against the surviving partners, or by or against the surviving partners and the estate of the deceased partner, if an action is brought against the partnership

in its firm name, the estate of the deceased partner may be made a party to the action by being properly served with process.

(b) When a partner dies after suit is brought by or against a partnership, the action will not abate, whether it is brought by or against the partnership in its firm name or in the names of the partners and it shall not be necessary to make the representative of the deceased partner a party to the action although he may be substituted for the decedent if the decedent was named as a party plaintiff or was served with process, but judgment may not be enforced against the decedent's estate if the partner dies before the verdict was rendered and the decedent's representative was not made a party to the action.

(c) When a partner dies after judgment has been rendered in favor of or against the partnership of which the decedent was a member, the judgment may be enforced in favor of or against the partnership and against the estate of the deceased partner although the estate of the deceased partner is not made a party to the judgment.

Added by Laws 1965, c. 299, § 4.

§12-1083. Dismissal of any actions in which no pleadings have been filed for a year.

Any action in which no pleading has been filed or other action taken for a year and in which no motion or demurrer has been pending during any part of said year shall be dismissed without prejudice by the court on its own motion after notice to the parties or their attorneys of record; providing, the court may upon written application and for good cause shown, by order in writing allow the action to remain upon its docket.

Added by Laws 1965, c. 299, § 5. Amended by Laws 2007, c. 12, § 4, eff. Nov. 1, 2007.

§12-1084. Enforcement of contracts or obligations.

If a person who is either jointly or jointly and severally liable on a contract or obligation dies before an action is brought to enforce the contract or obligation and if the cause of action survives, the decedent's estate may be joined as a party to an action to enforce the contract or obligation.

Added by Laws 1965, c. 299, § 6.

§12-1085. Death of nonresident.

When a nonresident who is subject to the jurisdiction of a court of this state dies, the action shall continue and his personal representative shall be substituted as a party to the action although he was appointed as personal representative in some other jurisdiction if

(1) the personal representative is served in this state with notice of his substitution as a party to the action; or,

(2) the cause of action arose in this state and the personal representative is given actual notice by mail or by personal service outside of this state of his substitution as a party to the action;

(3) the action may continue as a proceeding in rem if a reasonable effort is made to notify the personal representative of the existence of the action.

Added by Laws 1965, c. 299, § 7.

§12-1101. Offer to allow judgment to be taken.

The defendant, in an action for the recovery of money only, may, at any time before the trial, serve upon the plaintiff or his attorney an offer, in writing, to allow judgment to be taken against him for the sum specified therein. If the plaintiff accept the offer and give notice thereof to the defendant or his attorney, within five days after the offer was served, the offer, and an affidavit that the notice of acceptance was delivered within the time limited, may be filed by the plaintiff, or the defendant may file the acceptance, with a copy of the offer, verified by affidavit; and in either case, the offer and acceptance shall be noted in the journal, and judgment shall be rendered accordingly. If the notice of acceptance be not given in the period limited, the offer shall be deemed withdrawn, and shall not be given in evidence or mentioned on the trial. If the plaintiff fails to obtain judgment for more than was offered by the defendant, he shall pay the defendant's costs from the time of the offer.

R.L. 1910, § 5301.

§12-1101.1. Civil actions - Offers of judgment - Counteroffers - Recovery of costs and attorney fees.

A. Actions for personal injury, wrongful death, and certain specified actions.

1. Subject to the provisions of paragraph 5 of this subsection, after a civil action is brought for the recovery of money as the result of a claim for personal injury, wrongful death, or pursuant to Chapter 21 of Title 25 or Section 5 of Title 85 of the Oklahoma Statutes, any defendant may file with the court, at any time more than ten (10) days prior to trial, an offer of judgment for a sum certain to any plaintiff with respect to the action or any claim or claims asserted in the action. An offer of judgment shall be deemed to include any costs or attorney fees otherwise recoverable unless it expressly provides otherwise. If an offer of judgment is filed, each plaintiff to whom an offer of judgment is made shall, within ten (10) days, file:

a. a written acceptance or rejection of such offer, or

b. a counteroffer of judgment, as described in paragraph 2 of this subsection.

If the plaintiff fails to file a timely response, the offer of judgment shall be deemed rejected. The fact an offer of judgment is made but not accepted or is deemed rejected does not preclude subsequent timely offers of judgment.

2. In the event a defendant files an offer of judgment, the plaintiff may, within ten (10) days, file with the court a counteroffer of judgment directed to each defendant who has filed an offer of judgment. If a counteroffer of judgment is filed, each defendant to whom the counteroffer of judgment is made shall, within ten (10) days, file a written acceptance or rejection of the counteroffer of judgment. If a defendant fails to file a timely response, the counteroffer of judgment shall be deemed rejected. The fact a counteroffer of judgment is made but not accepted or deemed rejected does not preclude subsequent counteroffers of judgment if subsequent offers of judgment are made.

3. In the event the plaintiff rejects the offer(s) of judgment and the judgment awarded the plaintiff is less than the final offer of judgment, then the defendant filing the offer of judgment shall be entitled to recover reasonable litigation costs and reasonable attorney fees incurred by that defendant from the date of filing of the final offer of judgment until the date of the verdict. Such costs and fees may be offset from the judgment entered against the offering defendant; provided, however, that prior to any such offset, the plaintiff's attorney may:

a. exercise any attorneys lien claimed in an amount not to exceed twenty-five percent (25%) of the judgment, and

b. recover the plaintiff's reasonable litigation costs, not to exceed an additional fifteen percent (15%) of the judgment or Five Thousand Dollars ($5,000.00), whichever is greater.

4. In the event a defendant rejects the counteroffer(s) of judgment and the judgment awarded to the plaintiff is greater than the final counteroffer of judgment, the plaintiff shall be entitled to recover reasonable litigation costs and reasonable attorney fees incurred by the plaintiff from the date of filing of the final counteroffer of judgment until the date of the verdict. Such costs and fees may be added to the judgment entered in favor of the plaintiff.

5. The provisions of this subsection shall apply only where the plaintiff demands in a pleading or in trial proceedings more than One Hundred Thousand Dollars ($100,000.00), or where the defendant makes an offer of judgment more than One Hundred Thousand Dollars ($100,000.00). Any offer of judgment may precede the demand.

B. Other actions.

1. After a civil action is brought for the recovery of money or property in an action other than for personal injury, wrongful death or pursuant to Chapter 21 of Title 25 or Section 5 of Title 85 of the

Oklahoma Statutes, any defendant may file with the court, at any time more than ten (10) days prior to trial, an offer of judgment for a sum certain to any plaintiff with respect to the action or any claim or claims asserted in the action. An offer of judgment shall be deemed to include any costs and attorney fees otherwise recoverable unless it expressly provides otherwise. If an offer of judgment is filed, the plaintiff or plaintiffs to whom the offer of judgment is made shall, within ten (10) days, file:

a. a written acceptance or rejection of the offer, or

b. a counteroffer of judgment, as described in paragraph 2 of this subsection.

If a plaintiff fails to file a timely response, the offer of judgment shall be deemed rejected. The fact an offer of judgment is made but not accepted or is deemed rejected does not preclude subsequent timely offers of judgment.

2. In the event a defendant files an offer of judgment, the plaintiff may, within ten (10) days, file with the court a counteroffer of judgment to each defendant who has filed an offer of judgment and the claim or claims which are the subject thereof. If a counteroffer of judgment is filed, each defendant to whom a counteroffer of judgment is made shall, within ten (10) days, file a written acceptance or rejection of the counteroffer of judgment. If a defendant fails to file a timely response, the counteroffer of judgment shall be deemed rejected. The fact a counteroffer of judgment is made but not accepted or is deemed rejected does not preclude subsequent counteroffers of judgment if subsequent offers of judgment are made.

3. If no offer of judgment or counteroffer of judgment is accepted and the judgment awarded the plaintiff is less than one or more offers of judgment, the defendant shall be entitled to reasonable litigation costs and reasonable attorney fees incurred by the defendant with respect to the action or the claim or claims included in the offer of judgment from and after the date of the first offer of judgment which is greater than the judgment until the date of the judgment. Such costs and fees may be offset from the judgment entered against the offering defendant.

4. If no offer of judgment or counteroffer of judgment is accepted and the judgment awarded the plaintiff is greater than one or more counteroffers of judgment, the plaintiff shall be entitled to recover the reasonable litigation costs and reasonable attorney fees incurred by the plaintiff with respect to the action or the claim or claims included in the counteroffer of judgment from and after the date of the first counteroffer of judgment which is less than the judgment until the date of the judgment. Such costs and fees may be added to the judgment entered in favor of the plaintiff.

5. An award of reasonable litigation costs and reasonable attorneys fees under paragraph 3 of this subsection shall not

preclude an award under paragraph 4 of this subsection, and an award under paragraph 4 of this subsection shall not preclude an award under paragraph 3 of this subsection.

6. This subsection shall not apply to actions brought pursuant to Chapter 21 of Title 25 or Section 5 of Title 85 of the Oklahoma Statutes.

C. For purposes of comparing the amount of a judgment with the amount of an offer under paragraph 3 or 4 of subsection A of this section or paragraph 3 or 4 of subsection B of this section, attorney fees and costs otherwise recoverable shall be included in the amount of the compared judgment only if the offer was inclusive of attorney fees and costs. Fees or costs recoverable for work performed after the date of the offer shall not be included in the amount of the judgment for purposes of comparison.

D. Evidence of an offer of judgment or a counteroffer of judgment shall not be admissible in any action or proceeding for any purpose except in proceedings to enforce a settlement arising out of an offer of judgment or counteroffer of judgment or to determine reasonable attorneys fees and reasonable litigation costs under this section.

E. This section shall apply whether or not litigation costs or attorneys fees are otherwise recoverable.

F. The provisions of this section are severable, and if any part or provision thereof shall be held void, the decision of the court shall not affect or impair any of the remaining parts or provisions thereof.

G. This section shall apply to all civil actions filed after the effective date of this act.

Added by Laws 1995, c. 287, § 1. Amended by Laws 1999, c. 293, § 12, eff. Nov. 1, 1999; Laws 2002, c. 468, § 7, eff. Nov. 1, 2002.

§12-1102. Offer not ground for continuance.

The making of an offer, pursuant to the provisions contained in the foregoing section, shall not be a cause for a continuance of an action or a postponement of the trial.

R.L. 1910, § 5302.

§12-1103. Submission of controversy without suit.

Parties to a question, which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court, which would have jurisdiction if an action had been brought. But it must appear, by affidavit, that the controversy is real, and the proceedings in good faith to determine the rights of the parties. The court shall thereupon hear and determine the case, and render judgment as if an action were pending.

R.L. 1910, § 5303.

§12-1104. Record, submission without suit.

The case, the submission and a copy of the judgment shall constitute the record.

R.L. 1910, § 5304.

§12-1105. Judgment and reversal, submission without suit.

The judgment shall be with costs, may be enforced, and shall be subject to reversal in the same manner as if it had been rendered in an action unless otherwise provided in the submission.

R.L. 1910, § 5305.

§12-1106. Offer to confess judgment in part.

After an action for the recovery of money is brought, the defendant may offer in court to confess judgment for part of the amount claimed, or part of the causes involved in the action; whereupon, if the plaintiff, being present, refuse to accept such confession of judgment in full of his demands against the defendant in the action, or, having had such notice that the offer would be made, of its amount, and of the time of making it, as the court shall deem reasonable, fail to attend, and on the trial do not recover more than was so offered to be confessed, such plaintiff shall pay all the costs of the defendant incurred after the offer. The offer shall not be deemed to be an admission of the cause of action, or the amount to which the plaintiff is entitled, nor be given in evidence upon the trial.

R.L. 1910, § 5306.

§12-1107. Surety may sue principal for performance.

A surety may maintain an action against his principal, to compel him to discharge the debt or liability for which the surety is bound, after the same has become due.

R.L. 1910, § 5307.

§12-1108. Suit by surety before liability due.

A surety may maintain an action against his principal, to obtain indemnity against the debt or liability for which he is bound, before it is due, whenever any of the grounds exist, upon which, by the provisions of this code, an order may be made for arrest and bail, or for an attachment.

R.L. 1910, § 5308.

§12-1109. Remedies.

In such action the surety may obtain any of the provisional remedies mentioned in Articles eight, nine and ten upon the grounds and in the manner therein prescribed.

R.L. 1910, § 5309.

§12-1110. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-1111. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-1112. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-1113. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-1114. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-1115. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-1116. Order defined.

Every direction of a court or judge made or entered in writing, and not included in a judgment, is an order.

R.L. 1910, § 5316.

§12-1117. Orders to be entered.

Orders made out of court shall be forthwith entered by the clerk in the journal of the court, in the same manner as orders made in term.

R.L. 1910, § 5317.

§12-1118. Powers of judges at chambers.

Judges of the district, superior and county courts shall within their respective districts and counties be authorized to hear and determine at chambers, motions to dissolve attachments and injunctions, and generally to exercise such supervisory control of the other officers and processes of their courts as to prevent abuses or oppression thereby or thereof.

R.L. 1910, § 5318.

§12-1141. Action to quiet title - Sham legal process.

A. An action may be brought by any person in possession, by himself or tenant, of real property against any person who claims an estate or any interest therein adverse to the person bringing the action for the purpose of determining such adverse estate or interest, and such action may be joined with an action to recover possession of such real property by any person not in possession. The person or persons bringing such action shall not be required to allege the particular estate or interest claimed adversely by the person or persons against whom the action is brought, but may allege that the defendants' claim is adverse to that of the plaintiffs.

B. If an action is brought to quiet title alleging that the adverse claim is sham legal process, as defined by Section 1533 of Title 21 of the Oklahoma Statutes, the court may award costs and

reasonable attorneys fees to the prevailing party. If the plaintiff prevails in the action, the court shall order the defendant to pay the plaintiff three times the damages that the plaintiff may have sustained as a result of the sham legal process. A quiet title action pursuant to this subsection shall be independent of any criminal action that may be filed against the defendant, and there shall be no requirement that the defendant in such an action be convicted of any criminal act.
R.L. 1910, § 4927. Amended by Laws 1910-11, c. 10, p. 25, § 1; Laws 1957, p. 82, § 1, emerg. eff. June 1, 1957; Laws 1983, c. 33, § 1, eff. Nov. 1, 1983; Laws 1997, c. 405, § 5, emerg. eff. June 13, 1997; Laws 1998, c. 57, § 1, emerg. eff. April 7, 1998; Laws 2000, c. 147, § 6, eff. Nov. 1, 2000.

§12-1141.1. Short title.
This act shall be known and may be cited as the "Nonjudicial Marketable Title Procedures Act".
Added by Laws 2000, c. 147, § 1, eff. Nov. 1, 2000.

§12-1141.2. Definitions.
As used in this act:
1. "Apparent cloud" means an effect, without a judgment of a court of competent jurisdiction, which in the good faith opinion of a requestor results in a condition of title to real property located in the State of Oklahoma that fails to meet the standard of "marketable title" as defined by the "Oklahoma Title Examination Standards" as adopted and revised by the House of Delegates of the Oklahoma Bar Association;
2. "Certified mail" means that method of transmitting items through the United States Post Office pursuant to which the addressee of the item mailed is either required to indicate an acceptance of delivery or refusal or which results in a record by the United States Post Office that the addressee was contacted regarding the item, but refused delivery or refused to claim the item;
3. "Conveyance" means an instrument, recorded in the real property records of a county of the State of Oklahoma, pursuant to which a grantor makes a transfer of an estate in real property;
4. "Corrective action" means some procedure, other than the execution and delivery of a curative instrument, identified in a notice and communicated to a respondent with the intended effect of removing a cloud or an apparent cloud on the title to real property;
5. "Curative instrument" means a conveyance or instrument identified by a requestor that the requestor in good faith believes has the effect of curing a title defect;
6. "Entity" means a person, firm, partnership, general partnership, limited partnership, corporation, limited liability

company, limited liability partnership or other legally constituted entity;

7. "Estate" means a quantity or duration of ownership in real property located in the State of Oklahoma whether in fee simple absolute or some lesser quantity or duration and includes both the surface estate and mineral estate;

8. "Execute" means to subscribe an instrument or a conveyance as either a natural person acting in an individual or a representative capacity;

9. "Good faith" means having a basis in facts ascertainable to a requestor or which should be ascertainable with the exercise of reasonable diligence and the reasonable application of law to facts known or which, through the exercise of reasonable diligence, should be known to a requestor regarding the effect of an instrument upon the title to real property located in the State of Oklahoma;

10. "Instrument" means a document, executed with formalities authorized or required by law, pursuant to which either a conveyance is made or pursuant to which some aspect of the title to real property located in the State of Oklahoma is affected or may be affected;

11. "Interest" means either legal title or an equitable claim which is made in good faith;

12. "Notice" means the document described in Section 3 of this act;

13. "Parcel" means real property capable of separate description from any other real property located in the State of Oklahoma, pursuant to a description which is adequate for a conveyance pursuant to the requirements of the laws of the State of Oklahoma;

14. "Person" means a natural person acting in an individual capacity or a natural person acting in a representative capacity;

15. "Quiet title action" means a civil action filed pursuant to the authority of Section 1141 of Title 12 of the Oklahoma Statutes and in which the plaintiff requests a determination or judgment from the court regarding the title to a parcel of real property;

16. "Real property" means land and fixtures and includes the surface estate and the minerals underlying lands located in the State of Oklahoma;

17. "Refuse" means that the respondent either will not take the action specified in a notice or that the respondent will not take action which the requestor communicates as an acceptable response to the notice;

18. "Requestor" means any person or entity transmitting a notice to a respondent pursuant to Section 3 of this act or if the requestor engages the services of an agent or fiduciary to prepare the notice, the agent or fiduciary of the requestor;

19. "Respondent" means the person or entity to whom a notice is transmitted pursuant to Section 3 of this act or, if the respondent

engages the services of an agent or fiduciary to prepare a response to a requestor, the agent or fiduciary of the requestor;

20. "Response" means the document transmitted by the respondent to the requestor within the time prescribed by Section 4 of this act;

21. "Subject parcel" means the specific real property identified in a notice transmitted to a respondent as provided by Section 3 of this act;

22. "Title" means the judicial or nonjudicial conclusion regarding either legal or equitable ownership of real property or an estate in real property located in the State of Oklahoma; and

23. "Title defect" means a deficiency, as measured or determined by reference to the statutes of the State of Oklahoma, cases decided by the courts of the State of Oklahoma or by reference to the Title Examination Standards published by the Real Property Section of the Oklahoma Bar Association, in the legal or equitable title of real property located in the State of Oklahoma.

Added by Laws 2000, c. 147, § 2, eff. Nov. 1, 2000.

§12-1141.3. Procedures alternative to quiet title action to remove cloud on title.

A. Any person or any entity having an interest or claiming an interest with respect to any parcel of real property who in good faith asserts that there is an instrument filed in the real property records of the county in which the real property, or some portion of the real property, is located and who would otherwise be required to file a quiet title action with respect to the parcel pursuant to the provisions of Section 1141 of Title 12 of the Oklahoma Statutes, may use the procedures authorized by this act to attempt to remove a cloud or an apparent cloud on the title of the real property by requesting a respondent to prepare a curative instrument or to take corrective action.

B. The provisions of this act are permissive and shall not be required as a condition precedent to the filing of a petition to quiet title pursuant to Section 1141 of Title 12 of the Oklahoma Statutes.

C. If making a request pursuant to this act, the requestor shall send a notice to the respondent which shall include:

1. The specific identity of the person or entity requesting the respondent to execute or to execute and deliver a curative instrument or take other corrective action the purpose of which is to remove a cloud or an apparent cloud on the title of the subject parcel;

2. A specific identification of the conveyance, instrument or other document, by reference to:

   a. the county or counties in which the instrument or document is filed for record,

   b. the book and page number in which the instrument or other document is recorded,

c. the identity of the grantor or the person or entity subscribing the instrument, (if different than the identified grantor),
d. the identity of the grantee or grantees,
e. the legal description of the real property contained in the instrument,
f. the date the instrument was executed,
g. the date the instrument was filed for record, and
h. such other information as may be required in order for the respondent to know with reasonable certainty the exact instrument or instruments to which the requestor is referring;

3. The nature of the assertion by the requestor regarding the effect of the instrument or document as a cloud or an apparent cloud upon the title of the subject parcel; and

4. The nature of the corrective action sought by the requestor, including, but not limited to, the exact instrument or conveyance which the requestor would accept from the respondent as a curative instrument or other corrective action.

D. The requestor shall prepare and send with the notice the exact instrument or conveyance which the requestor would accept from the respondent as a curative instrument or other corrective action. Added by Laws 2000, c. 147, § 3, eff. Nov. 1, 2000.

§12-1141.4. Notice – Respondent's request for clarification or information – Failure of respondent to deliver curative instrument or take corrective action.

A. The requestor shall prepare the notice as described in Section 3 of this act and shall transmit the notice by certified mail to the person or entity identified in the notice as the respondent.

B. The respondent shall have a period of thirty (30) days from the receipt of the notice within which to respond to the notice and any request for the execution or delivery of a curative instrument or for corrective action.

C. A respondent may ask for clarification by the requestor or for further information prior to making either a negative response or an affirmative response. The respondent may communicate with the requestor within the period of time required for the respondent to make a response to the requestor, but any request made pursuant to this subsection shall not extend the time within which to respond.

D. The respondent may make a formal request of the requestor for clarification or for further information by certified mail if the formal request for clarification or additional information is received by the original requestor within the original period of time prescribed by subsection B of this section for a response by the respondent. If a respondent makes a formal request for clarification or for additional information, the original requestor shall have a

period of twenty (20) days within which to transmit a clarification or additional information. The respondent shall then have a period of twenty (20) days from the date the clarification or additional information is received in order to provide a final response.

E. If a respondent declines to execute and deliver the curative instrument requested or take the corrective action requested, and the respondent communicates the refusal to the requestor, the requestor may pursue the remedies authorized by this section.

F. If the requestor properly transmits the notice by certified mail and the respondent does not claim the item as indicated by the records of the United States Post Office, the refusal to claim the item shall be treated as a refusal to respond to the request.

G. If a respondent executes and delivers or causes to be executed and delivered the curative instrument requested in the notice or takes the corrective action requested, the respondent shall not be liable for the damages specified in subsection A of Section 5 of this act in a quiet title action notwithstanding that the respondent is named as a defendant in such an action.
Added by Laws 2000, c. 147, § 4, eff. Nov. 1, 2000.

§12-1141.5. Liability for damages, costs and attorney fees.

A. If a requestor prepares a notice pursuant to Section 3 of this act, and:

1. The respondent receives the notice and fails to respond, or

2. The respondent requests clarification or additional information and then subsequently refuses to execute and deliver a curative instrument or to take the corrective action identified in the notice, or

3. The respondent refuses to claim the notice, or

4. The respondent receives the notice and refuses to take the action requested in the notice,

then in the event that the requestor files an action to quiet title to the subject parcel pursuant to Section 1141 of Title 12 of the Oklahoma Statutes, and the civil action results in a judgment for the plaintiff which could have been accomplished through the execution and delivery of a curative instrument or the taking of corrective action identified in a notice, the plaintiff in the quiet title action, in addition to any other requested relief, shall be entitled to recover damages equal to the actual expenses incurred by the plaintiff in identifying the relevant instrument, preparing the notice to the respondent pursuant to Section 3 of this act, and the expenses of litigation directly related to obtaining judgment quieting title in the plaintiff with respect to the interest or apparent interest forming the basis of the action against the respondent, including costs and reasonable attorney fees.

B. If a defendant in the quiet title action who either failed to respond to a notice pursuant to Section 4 of this act or who refused

to execute and deliver a curative instrument or take corrective action identified in the notice prevails in the quiet title action, the defendant in the quiet title action, in addition to any other requested relief, shall be entitled to recover damages equal to the actual expenses incurred by the defendant in responding to the notice from the requestor pursuant to Section 4 of this act, and the expenses of litigation directly related to obtaining judgment quieting title in the defendant or asserting an affirmative defense with respect to the interest or apparent interest forming the basis of the action against the defendant, including costs and reasonable attorney fees.
Added by Laws 2000, c. 147, § 5, eff. Nov. 1, 2000.

§12-1142. Actions to recover real property.
In actions for the recovery of real property, it shall be necessary for the plaintiff to set forth in detail the facts relied upon to establish his claim, and to attach to his petition copies of all deeds or other evidences of title, as in actions upon written contracts; and he must establish the allegations of his petition, whether answer be filed or not.
R.L. 1910, § 4928.

§12-1143. Answer in action to recover real property.
It shall be sufficient in such action, if the defendant in his answer, deny, generally, the title alleged in the petition, or that he withholds the possession, as the case may be, but if he deny the title of the plaintiff, possession by the defendant shall be taken as admitted. Where he does not defend for the whole premises, the answer shall describe the particular part of which defense is made.
R.L. 1910, § 4929.

§12-1144. Action by tenant against cotenant.
In an action, by a tenant in common of real property, against a cotenant, the plaintiff must, in addition to what is required in the second preceding section, state, in his petition, that the defendant either denied the plaintiff's right, or did some act amounting to such denial.
R.L. 1910, § 4930.

§12-1145. Recovery where plaintiff's right ceases during action.
In an action for the recovery of real property, where the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment must be according to the fact, and the plaintiff may recover for withholding the property.
R.L. 1910, § 4931.

§12-1146. New trial in action to recover real property.

In all actions for the recovery of real property one trial only shall be granted as a matter of right, but the party against whom the judgment is rendered may secure a new trial in the same manner and for the same reasons as new trials are awarded in other civil cases.
R.L. 1910, § 4932.

§12-1147.1. Determination of rights of living persons and persons not in being - Direction for sale and holding proceeds in trust.

If it shall appear in any suit or proceeding in a district court involving real estate that any person or persons not in being are or may become entitled to, or may upon coming into being claim to be entitled to, any future interest in such real estate, legal or equitable, and if it further appears to be expedient or for the best interests of all concerned, the court may by order determine the rights of all living persons in such real estate and the circumstances under which persons not then in being may claim an interest therein in the future and determine the nature and extent of any such interest or claim and may direct the sale of the full title to the real estate in which such future interest may be claimed, and direct that the proceeds of the sale shall be held as a trust in lieu of the real estate so sold to be administered as hereinafter provided.
Added by Laws 1953, p. 58, § 1, emerg. eff. June 1, 1953.

§12-1147.2. Possible claim affecting undivided interest.

When, under the circumstances stated in Section 1, the possible claim of persons not in being affect only an undivided interest in the full fee simple title to a tract of real estate, such undivided interest only may be sold under the provisions of this act, and the title to the other undivided interest therein shall not, in such case, be affected by said sale.
Added by Laws 1953, p. 58, § 2, emerg. eff. June 1, 1953.

§12-1147.3. Parties to proceedings - Representation of persons not in being - Guardian ad litem.

No sale of real estate hereunder shall be made unless all persons interested in the real estate to be sold (which shall be the full fee simple title in the tract sold if the possible claims of the person or persons not in being affect the full fee simple title thereto, or the full undivided interest in the tract sold if such possible claims affect only such undivided interest) are made parties to said proceedings; provided that where the real estate to be sold is subject to a mortgage or other lien, the mortgagee or lienholder need not be made a party to said proceedings if the sale is made subject to such mortgage or lien. Where the person or persons not in being who may claim an interest in the real estate sold belong to a class

of which there is a living member or members whose interests do not conflict with those not in being, such living member or members of said class may be made parties plaintiff or defendant and may appear on behalf of themselves and the unborn members of the class, but in every case the court shall appoint a disinterested person as guardian ad litem for such person or persons not in being, and such guardian ad litem shall be required to file a written answer or other pleading fully disclosing the possible interests of such unborn persons and take all appropriate steps to protect their interests.
Added by Laws 1953, p. 58, § 3, emerg. eff. June 1, 1953.

§12-1147.4. Sale - Trustee - Notice - Terms - Return - Deed - Confirmation.

Where a sale is made under the provisions of this act, the court may appoint a trustee to make such sale on such terms as it may deem advisable, at public or private sale, with or without notice, and on such terms as to the payment of the purchase price as the court may direct and in the event the sale is made partly in cash and partly on credit, the unpaid balance of the purchase money shall be evidenced by a first mortgage secured by the real estate sold. The trustee appointed to sell said real estate shall make a verified return of sale and, upon confirmation by the court, shall execute a trustee's deed conveying the fee simple title to the real estate sold. Said deed shall vest in the purchaser the full fee simple title to said real estate and the rights and claims of all persons who held an interest therein prior to the sale, including all those of a class not then in being, shall be forever barred. The court shall not confirm said sale unless it shall have received satisfactory evidence that the sale was fairly conducted and that a higher price cannot be obtained and furthermore that the sale is for the best interest of all parties who have or may claim an interest therein.
Added by Laws 1953, p. 58, § 4, emerg. eff. June 1, 1953.

§12-1147.5. Trust in proceeds of sale.

Upon confirming the sale of real estate under the provisions of Section 1147.4 of this title, the court shall direct that the proceeds of the sale, including any purchase money mortgage which may be accepted as a part of the purchase price, less any costs chargeable against the same, constitute a trust to be managed and invested under the continuing jurisdiction of the court and, except as may be otherwise directed by the court, in accordance with the provisions of the Oklahoma Trust Act and the Oklahoma Uniform Prudent Investor Act. The trustee appointed to make said sale may be continued as trustee for the administration of the trust or the court may appoint a different trustee for the purpose of administering the trust. In the order of confirmation of sale and the appointment of the trustee to administer the trust, the court shall make appropriate

provisions with respect to the term during which the trust shall be administered and how the income and principal thereof shall be distributed.
Added by Laws 1953, p. 59, § 5, emerg. eff. June 1, 1953. Amended by Laws 1995, c. 351, § 17, eff. Nov. 1, 1995.

§12-1147.6. Fees and costs.

The court shall fix all fees and costs including reasonable compensation for the guardian or guardians ad litem and trustee and assess the same against the trust assets or, in the event the sale is not made, against the parties to the proceedings who are sui juris as equity may require.
Added by Laws 1953, p. 58, § 6, emerg. eff. June 1, 1953.

§12-1148.1. Jurisdiction - Forcible entry and detention - Joinder of actions - Judgments no bar.

The district court shall have jurisdiction to try all actions for the forcible entry and detention, or detention only, of real property, and claims for the collection of rent or damages to the premises, or claims arising under the Oklahoma Residential Landlord and Tenant Act, may be included in the same action, but other claims may not be included in the same action. A judgment in an action brought under this act shall be conclusive as to any issues adjudicated therein, but it shall not be a bar to any other action brought by either party.
Added by Laws 1968, c. 172, § 1, eff. Jan. 13, 1969. Amended by Laws 1978, c. 257, § 36, eff. Oct. 1, 1978.

§12-1148.2. Powers of court.

The court shall have power to inquire, in the manner hereinafter directed, as well against those who make unlawful and forcible entry into lands and tenements, and detain the same, as against those who, having a lawful and peaceable entry into land or tenements, unlawfully and by force hold the same, and if it be found, upon such inquiry, that an unlawful and forcible entry has been made, and that the same lands and tenements are held unlawfully, then the court shall cause the party complaining to have restitution thereof.
Added by Laws 1968, c. 172, § 2, eff. Jan. 13, 1969.

§12-1148.3. Extent of jurisdiction.

Proceedings under this act may be had in all cases against tenants holding over their terms and, incident thereto, to determine whether or not tenants are holding over their terms; in sales or real estate on executions, orders or other judicial process, when the judgment debtor was in possession at the time of the rendition of the judgment or decree, by virtue of which such sale was made; in sales by executors, administrators, guardians and on partition, where any

of the parties to the partition were in possession at the commencement of the suit, after such sales, so made, on execution or otherwise, shall have been examined by the proper court, and the same by said court, adjudged valid; and in cases where the defendant is a settler or occupier of lands and tenements without color of title, and to which the complainant has the right of possession. This section is not to be construed as limiting the provisions of the preceding section.
Added by Laws 1968, c. 172, § 3, eff. Jan. 13, 1969. Amended by Laws 1978, c. 87, § 1, eff. Oct. 1, 1978.

§12-1148.4. Issuance and return of summons - Content - Amending pleading to conform to evidence.

The summons shall be issued and returned as in other cases, except that it shall command the sheriff, or other person serving it, to summon the defendant to appear for trial at the time and place specified therein, which time shall be not less than five (5) days nor more than ten (10) days from the date that the summons is issued. The summons shall apprise the defendant of the nature of the claim that is being asserted against him; and there shall be endorsed upon the summons the relief sought and the amount for which the plaintiff will take judgment if the defendant fails to appear. In all cases, pleadings may be amended to conform to the evidence.
Added by Laws 1968, c. 172, § 4. Amended by Laws 1969, c. 136, § 1, emerg. eff. April 9, 1969; Laws 1980, c. 63, § 1, eff. Oct. 1, 1980.

§12-1148.5. Service of summons.

The summons may be served as in other cases except that such service shall be at least three (3) days before the day of trial, and the return day shall not be later than the day of trial, and it may also be served by leaving a copy thereof with some person over fifteen (15) years of age, residing on the premises, at least three (3) days before the day of trial; or, if service cannot be made by the exercise of reasonable diligence on the tenant or on any person over the age of fifteen (15) years residing on the premises, the same may be served by certified mail with return receipt postmarked at least three (3) days before the date of trial.
Added by Laws 1968, c. 172, § 5, eff. Jan. 13, 1969. Amended by Laws 1989, c. 347, § 1, eff. Nov. 1, 1989.

§12-1148.5A. Constructive service of summons.

If, in the exercise of reasonable diligence, service cannot be made upon the defendant personally nor upon any person residing upon the premises over fifteen (15) years of age, then in lieu of service by certified mail, service may be obtained for the sole purpose of adjudicating the right to restitution of the premises by the sheriff's posting or by private process service posting of said

summons conspicuously on the building on the premises, and, if there be no building on said premises, then by posting the same at some conspicuous place on the premises sought to be recovered at least five (5) days prior to the date of trial, and by the claimant's mailing a copy of said summons to the last-known address of the defendant by certified mail at least five (5) days prior to said date of trial. Such service shall confer no jurisdiction upon the court to render any judgment against the defendant for the payment of money nor for any relief other than the restoration of possession of the premises to the claimant, unless the defendant appears at trial. If the court only renders a judgment for restoration of possession of the premises, the claimant shall not be precluded from pursuing a subsequent action for the payment of rent. A judgment for forcible entry and detainer shall not preclude the property owner from pursuing a subsequent action for other monetary relief. Such service shall not be rendered ineffectual by the failure of the defendant to actually see or receive such posted process nor by the failure of the defendant to actually receive or sign a return receipt for such mailed process.
Added by Laws 1976, c. 68, § 1. Amended by Laws 1989, c. 205, § 1, eff. Nov. 1, 1989; Laws 1989, c. 347, § 2, eff. Nov. 1, 1989; Laws 1990, c. 89, § 1, eff. Sept. 1, 1990; Laws 1996, c. 339, § 1, eff. Nov. 1, 1996; Laws 2018, c. 103, § 1, eff. Nov. 1, 2018.

§12-1148.6. Answer or affidavit by defendant.

A. In all cases in which the defendant wishes to assert title to the land or that the boundaries of the land are in dispute, he shall, before the time for the trial of the cause, file a verified answer or an affidavit which contains a full and specific statement of the facts constituting his defense of title or boundary dispute. If the defendant files such a verified answer or affidavit, the action shall proceed as one in ejectment before the proper division of the district court. If the defendant files an affidavit he shall file answer within ten (10) days after the date the affidavit is filed.

B. In all cases in which the cause of action is based on an asserted breach of a lease by the defendant, or the termination or expiration of a lease under which the defendant claims an interest in the property in a verified answer or affidavit, the plaintiff may proceed with the forcible entry and detainer action instead of an ejectment action.

C. No answer by the defendant shall be required before the time for trial of the cause.
Added by Laws 1968, c. 172, § 6, eff. Jan. 13, 1969. Amended by Laws 1978, c. 87, § 2, eff. Oct. 1, 1978.

§12-1148.7. Jury trial - Trial by court.

If neither party demands a jury trial on or before the day of trial, the court shall try the cause.
Added by Laws 1968, c. 172, § 7, eff. Jan. 13, 1969.

§12-1148.8. Procedure where no jury available.

If a jury be demanded by either party, and no jury is available from the general panel, the judge shall immediately direct that an open venire be issued to the sheriff of the county, or one of his deputies, for such number of jurors as may be deemed necessary, to be selected from the body of the county without resorting to the jury wheel. The persons selected shall have the qualifications of jurors.
Added by Laws 1968, c. 172, § 8, eff. Jan. 13, 1969.

§12-1148.9. Attorney fee.

A reasonable attorney fee shall be allowed by the court to the prevailing party.
Added by Laws 1968, c. 172, § 9, eff. Jan. 13, 1969.

§12-1148.10. Writ of execution - Form - New trial.

If judgment be for plaintiff, the court shall, at the request of the plaintiff, his agent or attorney, issue a writ of execution thereon, which shall be in substantially the following form:

The State of Oklahoma, _____ County.

The State of Oklahoma to the Sheriff of _____ County:

Whereas, in a certain action for the forcible entry and detention (or for the forcible detention as the case may be) of the following described premises, to wit: _____ lately tried before me, wherein _____ was plaintiff, and _____ was defendant, judgment was rendered on the ____ day of _____, 19__, that the plaintiff have restitution of said premises; and also that he recover rent, attorney fees and costs in the sum of _____; you, therefore, are hereby commanded to cause the defendant to be forthwith removed from said premises and the said plaintiff to have restitution of the same; also that you levy on the goods and chattels of the said defendant, and make the costs aforesaid, and all accruing costs, and of this writ, make legal service and due return.

Witness my hand this _____ day of _____, 19__.

_____
A.B., Judge

A motion for a new trial may be filed only within three (3) days of judgment but shall not operate to stay execution.
Added by Laws 1968, c. 172, § 10, eff. Jan. 13, 1969.

§12-1148.10A. Notice of writ - Filing of original - Execution of writ - Refusal to surrender possession - Assistance of law enforcement - Appeal.

A. The plaintiff or agent of the plaintiff or officer shall immediately notify the defendant in person or by posting of said notice that the plaintiff or agent of the plaintiff or officer shall return in forty-eight (48) hours to restore the plaintiff possession of the premises by executing the writ prescribed in Section 1148.10 of this title and shall make levy to collect the amount of the judgment and all accruing costs.

B. The original writ of execution issued as provided by Section 1148.10 of this title shall be filed in the action in the manner provided for judgments in civil cases.

C. The plaintiff or agent of the plaintiff may execute the writ upon the defendant by personally serving a certified copy of the writ upon the defendant or upon a person authorized to receive service of process as provided by Section 2004 of this title. If the plaintiff or agent of the plaintiff is unable to personally serve the defendant or a person authorized to receive service of process as provided by Section 2004 of this title, the plaintiff or agent of the plaintiff may post a notice in a conspicuous place at the premises address that the plaintiff or agent of the plaintiff shall return at a specified date and time, which shall be not less than forty-eight (48) hours from the time of posting, to restore the plaintiff to possession of the premises by executing the writ prescribed in Section 1148.10 of this title.

D. Any person who wrongfully refuses to surrender possession of the premises described in the writ of execution upon service of the writ by the plaintiff or the agent of the plaintiff shall, upon conviction, be deemed guilty of a trespass and may be punished by a fine in an amount not to exceed Five Hundred Dollars ($500.00) or by confinement in the county jail for a period not to exceed thirty (30) days or by both such fine and imprisonment.

E. The plaintiff or the agent of the plaintiff may summon either the sheriff of the county or the law enforcement agency of the city or town in which the premises are located for assistance in executing the writ.

F. The plaintiff's, the agent of the plaintiff's, or the officer's return shall be as upon other executions. Within two (2) days of the date of the judgment, the defendant may post supersedeas bond conditioned as provided by law. This time limit may be enlarged by a trial judge's order to not more than seven (7) days after the date of judgment. The posting of a supersedeas bond shall not be construed to relieve the defendant of his duty to pay current rent as it becomes due while the appeal is pending. The rent shall be paid into the court clerk's office together with poundage. If there be controversy as to the amount of rent, the judge shall determine by order how much shall be paid in what time intervals. Withdrawal by the plaintiff of rent deposited in the court clerk's office pending appeal shall not operate to estop him from urging on appeal his right

to the possession of the premises. Failure to pay current rentals while the appeal is pending shall be considered as abandonment of the appeal.
Added by Laws 1971, c. 205, § 1, eff. Oct. 1, 1971. Amended by Laws 1991, c. 150, § 1, eff. Sept. 1, 1991; Laws 1995, c. 149, § 1, eff. Nov. 1, 1995.

§12-1148.10B. Curing of default - Good faith claim of failure to provide minimum services.

A. A tenant shall be allowed to cure a default in a forcible entry and detainer action in the following instance:

The default of the tenant was due to unpaid rent which was unpaid due to the good faith claim of a tenant that the landlord failed to provide the minimum services required by subsection C of Section 121 of Title 41 of the Oklahoma Statutes; provided that written notice of said claim or actual notice to the landlord's agent for collecting rent is provided within ten (10) days of the date that rent became due.

B. In such instance, the order of the court must recite that the tenant by paying the judgment including court costs and attorney fees, by cash or cashier's check, within seventy-two (72) hours can avoid a writ of execution, cure the breach and remain in the premises.
Added by Laws 1990, c. 172, § 1, eff. Sept. 1, 1990.

§12-1148.11. Repealed by Laws 1971, c. 205, § 3, eff. Oct. 1, 1971.

§12-1148.12. Repealed by Laws 1970, c. 107, § 1, eff. April 1, 1970.

§12-1148.13. Codification.

This act shall be incorporated in Title 12, Oklahoma Statutes.
Added by Laws 1968, c. 172, § 13, eff. Jan. 13, 1969.

§12-1148.14. Forcible entry and detainer action not exceeding jurisdictional amount for small claims court - Small claims docket.

An action for forcible entry and detainer brought pursuant to procedures prescribed otherwise in this title standing alone or when joined with a claim for recovery of rent, damages to the premises, or a claim arising under the Oklahoma Residential Landlord and Tenant Act, where the total recovery sought, exclusive of attorney's fees and other court costs, does not exceed the jurisdictional amount for the small claims court, shall be placed on the small claims docket of the district court. The district courts may provide by court rule that any action for forcible entry and detainer may be assigned to the small claims division for determination of the right to possession, regardless of the underlying amount in controversy, at the conclusion of which, the matter shall be returned to the assigned

judge for further proceedings. The court clerk shall in connection with such actions prepare the affidavit, by which the action is commenced, and the summons, and generally assist unrepresented plaintiffs to the same extent that he is now required so to do under the Small Claims Procedure Act, Section 1751 et seq. of this title. Added by Laws 1971, c. 339, § 5, eff. Oct. 1, 1971. Amended by Laws 1978, c. 257, § 35, eff. Oct. 1, 1978; Laws 1994, c. 343, § 7, eff. Sept. 1, 1994.

§12-1148.15. Affidavit - Form.

The actions for unlawful entry and detainer standing alone or when joined with a claim for collection of rent or damages to the premises, or both, shall be commenced by filing an affidavit in substantially the following form with the clerk of the court:

In the District Court, County of _____, State of Oklahoma.

_____

Plaintiff

vs. No._____

_____

Defendant

STATE OF OKLAHOMA)
) ss
COUNTY OF _____)

AFFIDAVIT

_____, being duly sworn, deposes and says:

The defendant resides at _____, in the above-named county, and defendant's mailing address is _____ _____.

The defendant is indebted to the plaintiff in the sum of $_____ for rent and for the further sum of $_____ for damages to the premises rented by the defendant; the plaintiff has demanded payment of said sum(s) but the defendant refused to pay the same and no part of the amount sued for herein has been paid,

and/or

the defendant is wrongfully in possession of certain real property described as _____ _____; the plaintiff is entitled to possession thereof and has made demand on the defendant to vacate the premises, but the defendant refused to do so.

_____

Subscribed and sworn to before me this _____ day of _____, 19__.

_____

Notary Public (or Clerk or Judge)

Added by Laws 1971, c. 339, § 6, eff. Oct. 1, 1971.

§12-1148.16. Summons - Form.

The summons to be issued in an action for forcible entry and detainer shall be in the following form:

SUMMONS

The State of Oklahoma to the within-named defendant:

You are hereby directed to relinquish immediately to the plaintiff herein total possession of the real property described as _____ or to appear and show cause why you should be permitted to retain control and possession thereof.

This matter shall be heard at _____ (name or address of building), in _____, County of _____, State of Oklahoma, at the hour of _____ o'clock of _____ day of _____ month, 19__, or at the same time and place three (3) days after service hereof, whichever is the latter. (This date shall be not less than five (5) days from the date summons is issued). You are further notified that if you do not appear on the date shown, judgment will be given against you as follows:

For the amount of the claim for deficient rent and/or damages to the premises, as it is stated in the affidavit of the plaintiff and for possession of the real property described in said affidavit, whereupon a writ of assistance shall issue directing the sheriff to remove you from said premises and take possession thereof.

In addition, a judgment for costs of the action, including attorney's fees and other costs, may also be given.

Dated this _____ day of _____, 19__.

_____

Clerk of the Court (or Judge)

_____

Plaintiff or Attorney

_____

Address

_____

Telephone Number

Added by Laws 1971, c. 339, § 7, eff. Oct. 1, 1971. Amended by Laws 1973, c. 187, § 1, emerg. eff. May 17, 1973.

§12-1151. Grounds for attachment.

The plaintiff in a civil action for the recovery of money may, at or after the commencement thereof, have an attachment against the property of the defendant, and upon the grounds herein stated:

1. When the defendant, or one of several defendants, is a foreign corporation, or a nonresident of this state, (but no order of attachment shall be issued on the ground or grounds in this clause stated for any claim other than a debt or demand arising upon contract, judgment or decree, unless the cause of action arose wholly

within the limits of this state, which fact must be established on the trial):

2. When the defendant, or one of several defendants, has absconded with intention to defraud his creditors; or,

3. Has left the county of his residence to avoid the service of summons; or,

4. So conceals himself that a summons cannot be served upon him; or,

5. Is about to remove his property, or a part thereof, out of the jurisdiction of the court, with the intent to defraud his creditors; or,

6. Is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or,

7. Has property or rights in action, which he conceals; or,

8. Has assigned, removed or disposed of, or is about to dispose of, his property, or a part thereof, with the intent to defraud, hinder or delay his creditors; or,

9. Fraudulently contracted the debt, or fraudulently incurred the liability or obligations for which the suit is about to be or has been brought; or,

10. Where the damages for which the action is brought are for injuries arising from the commission of some felony or misdemeanor, or the seduction of any female; or,

11. When the debtor has failed to pay the price or value of any article or thing delivered, which by contract he was bound to pay upon delivery.

R.L. 1910, § 4812.

§12-1152. Attachment affidavit.

An order of attachment shall be issued by the judge of the court in which the action is brought, when:

1. There is filed in the office of the court clerk an application that the court issue an order of attachment which states facts which show:

First, The nature of the plaintiff's claim;

Second, That it is just;

Third, The amount which the affiant believes the plaintiff ought to recover; and,

Fourth, The existence of some one of the grounds for an attachment enumerated in Section 1151 of this title.

2. The application must be verified by the plaintiff or, where his agent or attorney has personal knowledge of the facts, by said agent or attorney.

3. The defendant has been served with a notice, issued by the clerk, which shall notify the defendant that an order of attachment of property is requested and that he may object to the issuance of

such an order by a written objection which is filed with the court clerk and mailed or delivered to the plaintiff's attorney within five (5) days of the receipt of the notice. A copy of plaintiff's application shall be attached to and served with the notice, and the notice and application may be served with the summons in the action.

4. If no written objection is filed within the five-day period, no hearing is necessary and the clerk may issue the order of attachment. If a written objection is filed within the five-day period, the court shall, at the request of either party, set the matter for a prompt hearing with notice to the adverse party. If the plaintiff proves the probable merit of his cause and the truth of the matters asserted in his application for an order of attachment, the court may issue the order of attachment. Provided, however, before an order of attachment is issued by either the court or the clerk, the plaintiff has executed an undertaking pursuant to Section 1153 of this title.

5. If the court finds that the defendant cannot be given notice as provided herein although a reasonable effort was made to notify him, but at the hearing the plaintiff proves the probable merit of his cause and the truth of the matters asserted in his application, the court may issue the order of attachment. The defendant may subsequently move to have the attachment vacated as provided in Section 1241 of this title.

R.L. 1910, § 4813. Amended by Laws 1976, c. 87, § 1, emerg. eff. May 4, 1976.

§12-1153. Attachment bonds.

The order of attachment shall not be issued until an undertaking on the part of the plaintiff has been executed by one or more sufficient sureties, approved by the clerk and filed in his office, in a sum not less than double the amount of the plaintiff's claim, to the effect that the plaintiff shall pay to the defendant all damages that he may sustain by reason of the attachment, including reasonable attorney's fees, if the order be wrongfully obtained; but no undertaking shall be required where the State of Oklahoma is the party plaintiff.

R.L. 1910, § 4814. Amended by Laws 1923, c. 73, p. 140, § 1; Laws 1976, c. 87, § 2, emerg. eff. May 4, 1976.

§12-1154. Order of attachment.

The order of attachment shall be directed and delivered to the sheriff. It shall require him to attach the lands, tenements, goods, chattels, stocks, rights, credits, moneys and effects of the defendant in his county, not exempt by law from being applied to the payment of the plaintiff's claim, or so much thereof as will satisfy the plaintiff's claim, to be stated in the order as in the affidavit,

and the probable cost of the action not exceeding Fifty Dollars ($50.00).
R.L. 1910, § 4815.

§12-1155. Orders to several counties.
Orders of attachment may be issued to the sheriffs of different counties, and several of them may, at the option of the plaintiff, be issued at the same time, or in succession; but only such as have been executed shall be taxed in the costs, unless otherwise directed by the court.
R.L. 1910, § 4816.

§12-1156. Returnable, when.
The return day of the order of attachment when issued at the commencement of the action, shall be the same as that of the summons. When issued afterwards, it shall be twenty (20) days after it is issued.
R.L. 1910, § 4817.

§12-1157. Order of execution.
Where there are several orders of attachment against the defendant, they shall be executed in the order in which they are received by the sheriff.
R.L. 1910, § 4818.

§12-1158. Execution of order.
The order of attachment shall be executed by the sheriff, without delay. He shall go to the place where the defendant's property may be found, and declare that, by virtue of said order, he attaches said property at the suit of the plaintiff; and the officer, with two householders, who shall be first sworn or affirmed by the officer, shall make a true inventory and appraisement of all the property attached, which shall be signed by the officer and householders, and returned with the order.
R.L. 1910, § 4819.

§12-1159. Service of order - Custody of attached property - Filing of order.
When the property attached is real property, the officer shall leave a copy of the order with the occupant, or, if there be no occupant, then a copy of the order shall be posted in a conspicuous place on the real property. Where it is personal property, and he can get possession, he shall take such into his custody, and hold it subject to the order of the court.
When the property attached is real property, third parties shall not be affected until a copy of the attachment order and the legal description of the real property attached shall be filed and placed

of record with the county clerk of the county where the real property is located.
R.L. 1910, § 4820. Amended by Laws 1980, c. 234, § 1, eff. Oct. 1, 1980.

§12-1160. Redelivery on bond.
The sheriff shall deliver the property attached to the person in whose possession it was found, upon the execution, by such person, in the presence of the sheriff, of an undertaking to the plaintiff, with one or more sufficient sureties, resident in the county, to the effect that the parties to the same are bound, in double the appraised value thereof, that the property, or its appraised value in money, shall be forthcoming to answer the judgment of the court in the action; but if it shall appear to the court that any part of said property has been lost or destroyed by unavoidable accident, the value thereof shall be remitted to the person so bound.
R.L. 1910, § 4821.

§12-1170. Definitions.
A. For the purposes of this subsection and Sections 1171.2 through 1171.4 of this title:
1. "Arrearage" means the total amount of unpaid support obligations;
2. "Delinquency" means any payment under an order for support which becomes due and remains unpaid;
3. "Income" or "earnings" means any form of payment to an individual regardless of source including, but not limited to, wages, salary, commission, compensation as an independent contractor, workers' compensation, disability, annuity and retirement benefits, and any other payments made by any person, private entity, federal or state government, any unit of local government, school district, or any entity created by law;
4. "Disposable income" means income or earnings less any amounts required by law to be withheld, including, but not limited to, federal, state, and local taxes, Social Security, and public assistance payments;
5. "Obligor" means the person who is required to make payments under an order for support;
6. "Person entitled" or "obligee" means the person to whom a duty of support is owed as designated in the support order or as otherwise specified by the court;
7. "Payor" means any person or entity paying monies, income, or earnings to an obligor. In the case of a self-employed person, the "payor" and "obligor" may be the same person;
8. "Support order" means an order for the payment of child support issued by a district court or the Department of Human Services;

9. "Income assignment" is a provision of a support order which directs the obligor to assign a portion of the monies, income, or periodic earnings due and owing to the obligor to the person entitled to the support or to another person designated by the support order or assignment for payment of support or arrearages or both. The assignment shall be in an amount which is sufficient to meet the periodic support arrearages or other maintenance payments or both imposed by the court order or administrative order. The income assignment shall be made a part of the support order;

10. "Child support" means and includes all payments or other obligations due and owing to the person entitled by the obligor pursuant to a child support order, including but not limited to medical insurance or health care premiums and other medical expenses, current child care obligations, child care arrearages and any fixed child care obligations and such other expenses and requirements as specified in Section 118 of Title 43 of the Oklahoma Statutes; and

11. "Notice of income assignment" means the standardized form prescribed by the United States Secretary of Health and Human Services that is required to be used in all cases to notify a payor of an order to withhold for payment of child support and other maintenance payments.

B. For the purposes of prejudgment garnishments, "judgment creditor" includes prejudgment garnishors.

Added by Laws 1985, c. 297, § 10, operative Oct. 1, 1985. Amended by Laws 1986, c. 176, § 1, emerg. eff. May 15, 1986; Laws 1990, c. 309, § 6, eff. Sept. 1, 1990; Laws 1995, c. 338, § 1, eff. Nov. 1, 1995; Laws 1997, c. 272, § 1, eff. Nov. 1, 1997; Laws 1999, c. 422, § 1, eff. Nov. 1, 1999; Laws 2000, c. 345, § 1, emerg. eff. June 6, 2000.

§12-1171. Right to garnishment - Classes of garnishment.

A. Any creditor shall be entitled to proceed by garnishment in any court having jurisdiction against any person whom the creditor, in good faith, believes to be indebted to the creditor's debtor or has possession or control of any property belonging to such creditor's debtor, in the cases, upon the conditions, and in the manner described by law.

B. Subject to the limitations and exceptions otherwise provided by law, there shall be two classes of garnishments:

1. Prejudgment garnishments, which shall consist only of general garnishments pursuant to Section 1173.3 of this title; and

2. Postjudgment garnishments, which shall consist of the following types of garnishments:

   a. income assignment for child support pursuant to the provisions of Section 1171.2 of this title,

   b. noncontinuing earnings garnishment pursuant to Section 1173 of this title,

c. garnishment for collection of child support pursuant to Section 1173.2 of this title,
d. general garnishment pursuant to Section 1173.3 of this title, and
e. continuing earnings garnishment pursuant to Section 1173.4 of this title.

R.L. 1910, § 4822. Amended by Laws 1965, c. 297, § 1; Laws 1989, c. 236, § 1, eff. July 1, 1989; Laws 1995, c. 338, § 2, eff. Nov. 1, 1995; Laws 2016, c. 248, § 1, eff. Nov. 1, 2016.

§12-1171.1. Money earned from prejudgment garnishment - Exemption.

A. Money that was earned by a natural person as wages, salary, bonus or commission for personal services shall be exempt from garnishment issued before judgment of the trial court except as provided for support in a divorce proceeding interlocutory order pursuant to this title, and as otherwise specifically provided by statute.

B. Seventy-five percent (75%) of all earnings for personal or professional services earned during the last ninety (90) days shall be exempt from garnishment except for collection of child support obligations.

Added by Laws 1971, c. 158, § 1, eff. Oct. 1, 1971. Amended by Laws 1976, c. 187, § 1, emerg. eff. June 4, 1976; Laws 1978, c. 190, § 1, eff. Oct. 1, 1978.

§12-1171.2. Child support payment - Income assignment or garnishment proceedings.

A. Any person awarded custody of and support for a minor child by the district court or awarded periodic child support payments by the Department of Human Services, or the Department of Human Services on behalf of a recipient of Temporary Assistance for Needy Families or on behalf of a person not receiving Temporary Assistance for Needy Families shall be entitled to proceed to collect any current child support and child support due and owing through income assignment pursuant to the provisions of this section and Section 1171.3 of this title or Sections 240 through 240.3 of Title 56 of the Oklahoma Statutes or by garnishment, if the minor child is in the custody and care of the person entitled to receive the child support or as is otherwise provided by the court or administrative order at the time of the income assignment or garnishment proceedings.

B. The maximum part of the aggregate disposable earnings of any person for any workweek which is subject to garnishment or income assignment for the support of a minor child shall not exceed:

1. Fifty percent (50%) of such person's disposable earnings for that week, if such person is supporting his spouse or a dependent child other than the child with respect to whose support such order is used; and

2. Sixty percent (60%) of such person's disposable earnings for that week if such person is not supporting a spouse or dependent child.

The fifty percent (50%) specified in paragraph 1 of this subsection shall be deemed to be fifty-five percent (55%) and the sixty percent (60%) specified in paragraph 2 of this subsection shall be deemed to be sixty-five percent (65%), if and to the extent that such earnings are subject to garnishment or income assignment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

C. When responding to a notice of income assignment pursuant to Section 1171.3 of this title and a National Medical Support Notice issued pursuant to Section 118.1 of Title 43 and Section 6058A of Title 36 of the Oklahoma Statutes, the payor shall allocate available income in the following priority:

1. Current child and spousal support;
2. Health insurance premiums;
3. Arrearages; and
4. Other child support obligations.

If after payment of current child and spousal support there is insufficient income to pay the premiums necessary to provide dependent health insurance, the payor shall allocate the remaining withholding to arrearages and then to other child support obligations. An obligor may voluntarily elect to have the payor withhold amounts in excess of the limits in subsection B of this section to pay the obligor’s portion of the health insurance premium for a dependent child.

Added by Laws 1978, c. 190, § 2, eff. Oct. 1, 1978. Amended by Laws 1985, c. 297, § 11, operative Oct. 1, 1985; Laws 1997, c. 402, § 6, eff. July 1, 1997; Laws 2007, c. 41, § 2, eff. Nov. 1, 2007.

NOTE: Laws 1997, c. 272, § 2 repealed by Laws 1998, c. 5, § 29, emerg. eff. March 4, 1998.

§12-1171.3. Income assignment proceedings.

A. In all child support cases arising out of an action for divorce, paternity or other proceedings, the court shall order the payment of child support as provided under Section 115 of Title 43 of the Oklahoma Statutes.

B. 1. A notice of income assignment shall be sent by the applicant to the payor on a standardized form prescribed by the Secretary of the United States Department of Health and Human Services and available through the Administrative Office of the Courts. The notice shall be sent by certified mail, return receipt requested or served according to law. The payor shall be required to comply with the provisions of this subsection and the provisions stated in the notice.

2. The income assignment shall take effect on the next payment of earnings to the obligor after the payor receives notice. The amount withheld shall be sent to the Centralized Support Registry as provided for in Section 413 of Title 43 of the Oklahoma Statutes within seven (7) days after the date upon which the obligor is paid. The payor shall include with each payment a statement reporting the date the obligor's support obligation was withheld.

3. Each pay period the payor shall withhold the amounts specified in the notice from the obligor’s income and earnings. The amount withheld by the payor shall not exceed the limits on the percentage of an obligor's income which may be assigned for support pursuant to Section 1171.2 of this title.

4. The income assignment is binding upon the payor until released or until further order of the court.

5. All payments shall be made through the Centralized Support Registry as provided in Section 413 of Title 43 of the Oklahoma Statutes.

6. If the amount of support due under all income assignments against the obligor exceeds the maximum amount authorized by Section 1171.2 of this title, the payor shall pay the amount due up to the statutory limit, and the payor shall send written notice to the person or agency designated to receive payments that the amount due exceeds the amount subject to withholding. If the payor wrongfully fails to pay or notify as required in this subsection, the payor may be liable for an amount up to the accumulated amount due upon receipt of the notice.

7. If the payor is the obligor's employer, the payor shall send written notice to the person or agency designated to receive payments within ten (10) days of the date the obligor terminates employment, and shall provide the obligor's last-known address and the name of the obligor's new employer, if known.

8. If the payor has no income due or to be due to the obligor in the payor's possession or control or if the obligor has terminated employment with the payor prior to the receipt of notice of income assignment required pursuant to this subsection, the payor shall send written notice to the person or agency designated to receive payments within ten (10) days. Failure to notify the person or agency entitled to support within the required time limit may subject the payor to liability for an amount up to the accumulated amount due upon receipt of the notice of income assignment.

9. The payor is liable for any amount up to the accumulated amount that should have been withheld and paid, and may be fined up to Two Hundred Dollars ($200.00) for each failure to make the required deductions if the payor:

a. fails to withhold or pay the support in accordance with the provisions of the income assignment notice, or

b. fails to notify the person or agency designated to receive payments as required.

10. The payor may combine withheld amounts from earnings of two or more obligors subject to the same support order in a single payment and separately identify that portion of the single payment which is attributable to each individual obligor.

11. An income assignment for child support shall have priority over any prior or subsequent garnishments of the same wages.

12. The payor may deduct from any earnings of the obligor a sum not exceeding Five Dollars ($5.00) per pay period but not to exceed Ten Dollars ($10.00) per month as reimbursement for costs incurred by the payor for the income assignment.

13. The income assignment shall remain in effect regardless of a change of payor.

14. The income assignment shall remain in effect as long as current support is due or until all arrearages for support are paid, whichever is later. Payment of arrearages shall not prevent the income assignment from taking effect.

15. The payor may not discipline, suspend, discharge, or refuse to promote an obligor because of an income assignment executed pursuant to this section. Any payor who violates this section shall be liable to the obligor for all income, wages, and employment benefits lost by the obligor from the period of unlawful discipline, suspension, discharge, or refusal to promote until the time of reinstatement or promotion.

C. Income assignment shall be available to collect any amounts due for child support, child care and medical expenses, as well as current support alimony payments; provided, child support shall be paid prior to any alimony payments.

D. Any existing support order or income assignment which is brought before the court shall be modified by the court to conform to the provisions of this section.

E. Any person obligated to pay support, who has left or is beyond the jurisdiction of the court, may be prosecuted under any other proceedings available pursuant to the laws of this state for the enforcement of the duty of support and maintenance.

F. The income assignment proceedings specified in this section shall be available to other states for the enforcement of support and maintenance or to enforce out-of-state orders. Venue for these proceedings is, at the option of the obligee:

1. In the county in this state in which the support order was entered;

2. In the county in this state in which the obligee resides; or

3. In the county in this state in which the obligor resides or receives income.

G. 1. In all child support cases in which child support services are being provided under the state child support plan as

provided under Section 237 of Title 56 of the Oklahoma Statutes, all orders for support are subject to immediate income assignment without need for a hearing by the district or administrative court.

2. In all child support cases arising out of an action for divorce, paternity, or other proceeding in which services are not being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes, the court shall order the income of any parent ordered to pay child support to be subject to immediate income assignment regardless of whether child support payments are in arrears at the time of the order, unless:

a. one of the parties demonstrates and the court finds that there is good cause not to require immediate income withholding. Any finding that there is good cause not to require immediate income assignment must be based upon at least:

(1) a written determination and explanation by the court or administrative authority of why implementing immediate income assignment would not be in the best interests of the child, and

(2) proof of timely payment of previously ordered support in cases involving modification of support orders, or

b. a written agreement is reached between the parties which provides for an alternative arrangement. For purposes of this subparagraph, "written agreement" means a written alternative arrangement signed by both the custodial and noncustodial parents which has been reviewed by the court and entered into the record by the court or administrative authority.

Added by Laws 1985, c. 297, § 12, operative Oct. 1, 1985. Amended by Laws 1986, c. 176, § 2, emerg. eff. May 15, 1986; Laws 1989, c. 362, § 1, eff. Nov. 1, 1989; Laws 1990, c. 309, § 7, eff. Sept. 1, 1990; Laws 1991, c. 278, § 1, emerg. eff. May 28, 1991; Laws 1994, c. 356, § 23, eff. Sept. 1, 1994; Laws 1997, c. 402, § 7, eff. July 1, 1997; Laws 1998, c. 323, § 5, eff. Oct. 1, 1998; Laws 2000, c. 384, § 3, eff. Nov. 1, 2000; Laws 2004, c. 393, § 1, emerg. eff. June 3, 2004. NOTE: Laws 1997, c. 272, § 3 repealed by Laws 1998, c. 5, § 29, emerg. eff. March 4, 1998.

§12-1171.4. Repealed by Laws 2000, c. 384, § 22, eff. Nov. 1, 2000.

§12-1172. Commencement of garnishment proceedings - Affidavit.

A. Garnishment proceedings, whether prejudgment or postjudgment, shall be commenced by the filing of an affidavit, on a form prescribed by the Administrative Director of the Courts, stating:

1. The name(s) of the plaintiff(s);

2. The name(s) of the defendant(s);

3. In the case of prejudgment garnishments, the amount of the plaintiff's original claim against the defendant or defendants over and above all offsets;

4. In the case of postjudgment garnishments, the amount of the interest-bearing balance;

5. In the case of postjudgment garnishments, the rate and the date the interest begins to accrue; and

6. That the plaintiff verily believes that some person, naming him, whether within or without the county, is indebted to or has property in his possession or under his control belonging to the defendant, or either or any of the defendants, in the action or execution and that the indebtedness or property is, to the best of the knowledge and belief of the person making such affidavit, not by law exempt from seizure or sale upon execution.

B. The affidavit may be filed by the plaintiff or the plaintiff's attorney at or before the time of filing of a garnishment summons.

C. Only one garnishee may be embraced in any affidavit or garnishment summons.

R.L.1910, § 4823. Amended by Laws 1923, c. 45, p. 56, § 1; Laws 1965, c. 297, § 2; Laws 1974, c. 71, § 1, emerg. eff. April 15, 1974; Laws 1989, c. 236, § 2, eff. July 1, 1989; Laws 2004, c. 450, § 4, eff. Nov. 1, 2004.

§12-1172.1. Prejudgment and postjudgment summons - Procedure.

A. A garnishee summons shall not be issued in any action prior to judgment until:

1. Defendant has been served with a notice, to which the affidavit required by Section 1172 of this title is attached, which notifies the defendant that the issuance of a garnishee summons is requested and that the defendant may object to the issuance of the summons by filing a written objection with the court clerk and delivering or mailing a copy to the plaintiff's attorney within five (5) days of the service of the notice. The service of the notice on the defendant satisfies the notice requirement of Section 1174 of this title;

2. If no written objection is filed within the five-day period, and if the undertaking has been executed as provided herein, the court clerk shall issue the garnishee summons;

3. Should a written objection be filed within the five-day period, the court shall, at the request of either party, set the matter for a prompt hearing with notice to the adverse party. If, at the hearing, the plaintiff proves the probable merit of the plaintiff's cause and the truth of the matters asserted in the affidavit and if the plaintiff executes an undertaking, as provided herein, the court may issue the garnishee summons; and

4. An undertaking on the part of the plaintiff has been executed by one or more sufficient sureties, approved by the clerk or the court and filed in the clerk's office, in a sum not less than double the amount of the plaintiff's claim, to the effect that the plaintiff shall pay to the defendant all damages which the defendant may sustain by reason of the garnishment, together with a reasonable attorney's fee, if the order be wrongfully obtained.

B. If the court finds that the defendant cannot be given notice as provided by paragraph 1 of subsection A of this section, although a reasonable effort was made to notify the defendant, and at the hearing the plaintiff proves the probable merit of the plaintiff's cause of action and the truth of the matters asserted in the affidavit and the plaintiff has executed an undertaking as provided herein, the court may issue a garnishee summons after which the defendant may move to have the garnishee summons quashed. Notice of a motion to quash, with the date of the hearing, shall be served on the attorney for the plaintiff. The motion shall be heard promptly, and in any case within five (5) days after the date that it is filed. The court must grant the defendant's motion unless, at the hearing on defendant's motion, the plaintiff proves the probable merit of the plaintiff's cause and the truth of the matters asserted in the affidavit. The court clerk may issue an order to pay the money into the court after the hearing, at the direction of the court.

C. A prejudgment or postjudgment garnishment may be amended as in other civil actions. Upon request of the garnishor, alias or additional summons shall issue against the garnishee.

Added by Laws 1974, c. 71, § 2, emerg. eff. April 15, 1974. Amended by Laws 1976, c. 87, § 4, emerg. eff. May 4, 1976; Laws 1982, c. 302, § 1, operative Oct. 1, 1982; Laws 1983, c. 50, § 1, emerg. eff. April 26, 1983; Laws 1999, c. 293, § 13, eff. Nov. 1, 1999.

§12-1172.2. Notice of garnishment and exemptions - Payment of funds by garnishee.

A. When a garnishment summons is issued in any action after the judgment is filed, the court clerk shall attach to the garnishment summons a notice of garnishment and exemptions required by subsection C of Section 1174 of this title and an application for the defendant to request a hearing. If the garnishee is indebted to or holds property or money belonging to the defendant, the garnishee shall immediately mail by first-class mail a copy of the notice of garnishment and exemptions and the application for hearing to the defendant at the last-known address of the defendant shown on the records of the garnishee at the time the garnishment summons was served on the garnishee. If more than one address is shown on the records of the garnishee at the time of service of the summons, the garnishee shall discharge the duty by mailing the required items to any one of the addresses shown on its records. In lieu of mailing,

the garnishee may hand-deliver a copy of the notice of garnishment and exemptions and the application for hearing to the defendant. The garnishee shall have no liability except for willful failure to mail or hand-deliver the copy of the notice of garnishment and exemptions and the application for hearing to the defendant. The answer of the garnishee shall contain a statement indicating substantial compliance with this section. If the application requesting a hearing is filed, the court shall set the matter for hearing within not less than two (2) nor more than ten (10) days from receipt of the returned application, and the court clerk shall give notice of the hearing to each of the parties by first-class mail. The defendant shall have the burden of proof to show that some or all of the assets subject to the garnishment are exempt. The court shall issue an order determining the exemption and directing distribution of funds, as appropriate. The court may direct such other orders to the judgment creditor as are necessary to prevent subsequent garnishment of the exempt property.

B. In any case in which the garnishee is required by law or by order of the court to pay garnishment funds, the garnishee shall pay the funds directly to the judgment creditor, unless otherwise ordered by the court upon good cause shown, to pay the funds directly to the court clerk or unless due to federal law or federal regulation it is necessary that payment be made directly to the court clerk.

C. Any funds paid to the court clerk on a judgment, whether or not pursuant to a garnishment summons shall be paid to the judgment creditor's attorney, or to the judgment creditor if there is no attorney within twenty-one (21) days from receipt by the court clerk, notwithstanding the various times set forth above unless otherwise directed by the court. No order of disbursement shall be necessary. In distribution of funds to the judgment creditor's attorney or judgment creditor, if received pursuant to a garnishment, the court shall not have the duty to determine whether or not the garnishee has complied with the mailing or hand-delivery required of this section or be held liable for complete or partial noncompliance with the notice delivery requirement by the garnishee.

Added by Laws 1983, c. 50, § 2, emerg. eff. April 26, 1983. Amended by Laws 1983, c. 308, § 1, operative Oct. 1, 1983; Laws 1986, c. 185, § 1, eff. Sept. 1, 1986; Laws 1994, c. 343, § 8, eff. Sept. 1, 1994; Laws 1995, c. 338, § 3, eff. Nov. 1, 1995.

§12-1173. Noncontinuing earnings garnishment - Summons - Answer - Priority of lien.

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

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

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

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

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

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

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

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

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

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

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

G. The garnishment summons served on the garnishee under this section is a lien on the defendant's property due at the time of

service or the effective date of the summons to the extent the property is not exempt from garnishment.

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

2. When a garnishment summons is served under this section on a garnishee while a previous garnishment lien is still in effect, the garnishee shall answer the subsequent garnishment lien or garnishment summons by stating that the garnishee is presently holding defendant's property under a previous garnishment lien or garnishment summons and by giving the date when all previous garnishment liens or garnishment summonses are expected to end.

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

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

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

R.L.1910, § 4824. Amended by Laws 1965, c. 297, § 3; Laws 1974, c. 71, § 3, emerg. eff. April 15, 1974; Laws 1976, c. 87, § 5, emerg. eff. May 4, 1976; Laws 1978, c. 190, § 3, eff. Oct. 1, 1978; Laws 1982, c. 159, § 1, emerg. eff. April 12, 1982; Laws 1983, c. 50, § 3, emerg. eff. April 26, 1983; Laws 1984, c. 22, § 1, emerg. eff. March 20, 1984; Laws 1985, c. 297, § 14, operative Oct. 1, 1985; Laws 1986, c. 185, § 2, eff. Sept. 1, 1986; Laws 1990, c. 248, § 1, emerg. eff. May 21, 1990; Laws 1995, c. 338, § 4, eff. Nov. 1, 1995; Laws 1999, c. 293, § 14, eff. Nov. 1, 1999; Laws 2011, c. 187, § 5, eff. Nov. 1, 2011.

§12-1173.1. Repealed by Laws 2004, c. 393, § 5, emerg. eff. June 3, 2004.

§12-1173.2. Summons - Garnishment for collection of support.

Upon the filing of such affidavit and the undertaking and, when a hearing is required, after said hearing, where the garnishment is for the collection of support, garnishee summons shall be issued by the judge of the district court if prejudgment garnishment is sought or by the clerk of the district court if postjudgment garnishment is sought and served upon each of the garnishees, in the manner provided for service of summons, and shall be returned with proof of service within five (5) days of its date except when issued to another county it shall be returned with proof of service within ten (10) days from its date. The garnishee summons shall be on a form prescribed by the Administrative Office of the Courts.

Added by Laws 1986, c. 185, § 6, eff. Sept. 1, 1986. Amended by Laws 1990, c. 248, § 2, emerg. eff. May 21, 1990; Laws 1997, c. 272, § 6, eff. Nov. 1, 1997.

§12-1173.3. General garnishment - Affidavit - Summons - Answer.

A. A general garnishment shall be commenced by filing the affidavit provided for by Section 1172 of this title.

B. The summons required by this section shall be on a form prescribed by the Office of the Administrative Director of the Courts.

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

D. The garnishee's answer shall be on a form prescribed by the Office of the Administrative Director of the Courts.

E. Within ten (10) days after service of the garnishment, the garnishee shall file its answer with the court clerk and pay or deliver to the judgment creditor's attorney or to the judgment creditor if there is no attorney the indebtedness or property belonging to or owed to the defendant, together with a copy of the answer which shall state:

1. Whether the garnishee was indebted or under any liability to or had in garnishee's possession or control, any property belonging to the defendant. When the garnishee shall be in doubt respecting any such liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the court;

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

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

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

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

F. The garnishment summons and affidavit served on the garnishee under this section are a lien on the defendant's property due at the time of service of the summons to the extent the property is not exempt from garnishment.

Added by Laws 1986, c. 185, § 7, eff. Sept. 1, 1986. Amended by Laws 1990, c. 248, § 3, emerg. eff. May 21, 1990; Laws 1995, c. 338, § 5, eff. Nov. 1, 1995.

§12-1173.4. Continuing earnings garnishment.

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

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

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

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

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

F. Within seven (7) days after the end of each pay period, or, if the judgment debtor does not have regular pay periods or is not paid by the garnishee within thirty (30) days from the date of the garnishment summons, and after any payment by the garnishee to the judgment debtor, the garnishee shall file an answer with the court clerk, and pay the amount withheld to the judgment creditor's attorney or to the judgment creditor, if there is no attorney, together with a copy of the answer which shall state:

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

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

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

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

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

G. The garnishment summons served on the garnishee under this section is a lien on the defendant's property due at the time of service or the effective date of the summons, to the extent the property is not exempt from garnishment. This lien attaches to subsequent nonexempt earnings until one of the following occurs:

1. The judgment against the defendant is vacated, modified, or satisfied in full;

2. The summons is dismissed; or

3. One hundred eighty (180) days from the effective date of the summons have elapsed; provided, an affidavit and summons shall continue in effect and shall apply to a pay period beginning before the end of the one-hundred-eighty-day period even if the conclusion extends beyond the end of the period.

H. 1. A garnishment lien under this section has priority over any subsequent garnishment lien or garnishment summons served on the garnishee during the period it is in effect, regardless of whether the amounts withheld by the garnishee are reduced by the court or by agreement of the parties.

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

stating that the garnishee is presently holding defendant's property under a previous garnishment lien or garnishment summons, and by giving the date when all previous garnishment liens or garnishment summons are expected to end.

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

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

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

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

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

Added by Laws 1989, c. 236, § 3, eff. July 1, 1989. Amended by Laws 1990, c. 248, § 4, emerg. eff. May 21, 1990; Laws 1995, c. 338, § 6, eff. Nov. 1, 1995; Laws 1999, c. 293, § 15, eff. Nov. 1, 1999; Laws 2004, c. 450, § 5, eff. Nov. 1, 2004; Laws 2011, c. 187, § 6, eff. Nov. 1, 2011.

§12-1174. Notice to defendant of garnishment proceedings.

A. In all cases of garnishment before judgment, the defendant in the principal action shall be given notice of the issuance in said

action of any garnishee summons, the date of issuance of said summons, and the name of the garnishee.

B. In all cases of garnishment for the collection of child support, the defendant shall be given notice as required by this section.

C. In all cases of postjudgment garnishment, the court clerk shall attach notice, in a form prescribed by the Administrative Director of the Courts, with the garnishment, in the manner provided by Section 1172.2 of this title that the defendant may be entitled to claim an exemption for any assistance received pursuant to the terms of the Federal or Oklahoma Social Security Act and other exemptions that may be available to the defendant, and that any such claim should be filed with the court clerk within five (5) days from receipt of notice in a form prescribed by the Administrative Director of the Courts, requesting a hearing as to the status of any assets which the defendant asserts are exempt. Any proceeding to claim an exemption initiated subsequent to five (5) days after receipt of notice shall be by motion unless otherwise agreed by the parties.

D. Said notification may be accomplished by:

1. Serving a copy of the garnishee summons on the defendant or on his attorney of record in the manner provided for the service of summons; or

2. Sending the notice or a copy of the garnishee summons to the defendant or his attorney of record by registered or certified mail with return receipt requested, which receipt shall be filed in the action; or

3. Attaching the notice on the summons issued in the principal action prior to its service; or

4. Including the notice in the publication notice when service in the principal action is by publication; or

5. Publication one time in a newspaper of general circulation in the county in which the action is filed at least five (5) days prior to the date on which the garnishee’s answer is due if the defendant is a nonresident or if the defendant’s whereabouts are unknown to plaintiff.

Added by Laws 1910-11, c. 126, p. 280, § 1. Amended by Laws 1965, c. 297, § 4; Laws 1978, c. 190, § 4, eff. Oct. 1, 1978; Laws 1982, c. 302, § 2, operative Oct. 1, 1982; Laws 1983, c. 50, § 4, emerg. eff. April 26, 1983; Laws 1983, c. 308, § 2, operative Oct. 1, 1983; Laws 1986, c. 185, § 3, eff. Sept. 1, 1986; Laws 2004, c. 450, § 6, eff. Nov. 1, 2004.

§12-1175. Subsequent proceedings.

The judgment creditor may in like manner subsequently proceed against other garnishees, or against the same garnishees, upon a new affidavit, if the judgment creditor shall have reason to believe they have subsequently become liable.

R.L. 1910, § 4825. Amended by Laws 1965, c. 297, § 5; Laws 1995, c. 338, § 7, eff. Nov. 1, 1995.

§12-1176. Repealed by Laws 1995, c. 338, § 22, eff. Nov. 1, 1995.

§12-1177. Trial of issue - Judgment on answer.

The answer of the garnishee shall in all cases be conclusive of the truth of the facts therein stated, with reference to the garnishee's liability to the defendant unless the judgment creditor shall within twenty (20) days from the receipt of the garnishee's answer, from the date of the deposition of the garnishee, or from receipt of the garnishee's answers to interrogatories, whichever is later, serve upon the garnishee or the garnishee's attorney of record personally or by certified mail, return receipt requested, a notice in writing that the judgment creditor elects to take issue with the garnishee's answer; in which case, the issue shall stand for trial as a civil action in which the affidavit on the part of the judgment creditor shall be deemed the petition and the garnishee's answer the answer thereto. If an issue for trial shall be joined between the judgment creditor and a garnishee resident in another county other than that in which the action is pending, the court may, on motion, change the place of trial of such issue to the county of the garnishee's residence. The judgment creditor may, in all cases, move the court, upon the answer of the garnishee, and of the defendant, if the defendant shall also answer, for such judgment to which the judgment creditor shall be entitled, but any such judgment shall be no bar beyond the facts stated in the answer.
R.L. 1910, § 4827. Amended by Laws 1965, c. 297, § 7; Laws 1995, c. 338, § 8, eff. Nov. 1, 1995.

§12-1178. Garnishee's affidavit where garnishment summons on earnings.

A. For the purposes of this section, "earnings" means any form of payment to an individual including, but not limited to, salary, wages, commission, or other compensation, but does not include reimbursement for travel expenses for state employees.

B. Where the garnishment summons is on earnings and is issued under Section 1173 of this title, the garnishee shall, within seven (7) days after the end of defendant's present pay period or where a payment of earnings is due, or thirty (30) days from the service of the summons, whichever is earlier, file an affidavit with the clerk of the court in which the action is pending and deliver or mail a copy thereof to the judgment creditor or the judgment creditor's attorney of record. The affidavit shall state:

1. Whether the garnishee was the employer of or indebted or under any liability to the defendant named in the notice in any manner or upon any account for earnings or wages, specifying, as

applicable, the beginning and ending dates of the pay period existing at the time of the service of the garnishee summons, the total amounts earned in the pay period, and all of the facts and circumstances necessary to a complete understanding of such indebtedness or liability. When the garnishee shall be in doubt respecting any such liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the court;

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

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

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

5. The garnishee shall state that he has mailed or hand-delivered a copy of the notice of garnishment and exemptions, application for hearing, and the manner and date of compliance.

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

R.L. 1910, § 4828. Amended by Laws 1965, c. 297, § 8; Laws 1976, c. 87, § 7, emerg. eff. May 4, 1976; Laws 1982, c. 302, § 3, operative Oct. 1, 1982; Laws 1983, c. 50, § 5, emerg. eff. April 26, 1983; Laws 1986, c. 185, § 5, eff. Sept. 1, 1986; Laws 1990, c. 248, § 6, emerg. eff. May 21, 1990; Laws 1995, c. 338, § 9, eff. Nov. 1, 1995.

§12-1178.1. Summons for collection of support - Affidavit - Garnishee's answer.

A. For the purposes of this section, "wages" or "earnings" means any form of payment to an individual including, but not limited to, salary, commission, or other compensation, but does not include reimbursement for travel expenses for state employees.

B. Where the garnishment summons is for the collection of support and is issued under Section 1173.2 of this title, the garnishee shall, within ten (10) days from the service of the garnishee's summons or within seven (7) days after the end of defendant's current pay period or thirty (30) days from the date of service of this summons, whichever is earlier, file an affidavit with the clerk of the court in which the action is pending and deliver or mail a copy thereof to the judgment creditor's attorney or to the judgment creditor if there is no attorney. The affidavit shall state:

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

2. Whether the garnishee was indebted or under any liability to or had in garnishee's possession or control, any property belonging to the defendant. When the garnishee shall be in doubt respecting any such liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the court;

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

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

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

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

C. The answer of the garnishee shall be on a form prescribed by the Administrative Office of the Courts.

Added by Laws 1986, c. 185, § 8, eff. Sept. 1, 1986. Amended by Laws 1990, c. 248, § 7, emerg. eff. May 21, 1990; Laws 1995, c. 338, § 10, eff. Nov. 1, 1995; Laws 1997, c. 272, § 7, eff. Nov. 1, 1997.

§12-1178.2. General garnishee summons - Affidavit - Garnishee's answer.

A. Where the garnishment summons is not on earnings, is not for the collection of child support and is issued under Section 1173.3 of this title, then unless the garnishee shall make the affidavit provided for in Section 1176 of this title, the garnishee shall, within ten (10) days from the service of the garnishee's summons, file an affidavit with the clerk of the court in which the action is pending and deliver or mail a copy thereof to the judgment creditor's

attorney or to the judgment creditor if there is no attorney. The affidavit shall state:

1. Whether the garnishee was indebted or under any liability to the defendant named in the notice in any manner or upon any account specifying if indebted or liable, the amount, the interest thereon, the manner in which evidenced, when payable, whether an absolute or contingent liability and all of the facts and circumstances necessary to a complete understanding of such indebtedness or liability. When the garnishee shall be in doubt respecting any such liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the court;

2. Whether the garnishee was indebted or under any liability to or had in garnishee's possession or control, any property belonging to the defendant. When the garnishee shall be in doubt respecting any such liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the court;

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

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

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

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

B. The answer of the garnishee shall be on a form prescribed by the Administrative Office of the Courts.

Added by Laws 1986, c. 185, § 9, eff. Sept. 1, 1986. Amended by Laws 1995, c. 338, § 11, eff. Nov. 1, 1995; Laws 1996, c. 339, § 2, eff. Nov. 1, 1996.

§12-1179. Failure of garnishee to answer.

If any garnishee, having been duly summoned, shall fail to file and deliver or mail the answer as required by Sections 1172.2, 1178, 1178.1 or 1178.2 of this title, to appear for deposition or to answer interrogatories as provided in Section 1183 of this title, the court shall enter an order to the garnishee to file and deliver or mail the answer, to appear for deposition, or to answer the interrogatories within a time prescribed by the court, not to be less than seven (7)

days, in the order and also to deliver within the same period of time to the court or the judgment creditor any money or property of defendant that the garnishee is required to pay or deliver under this title. The court shall also direct the manner in which notice of the order shall be given to the garnishee. The order for giving notice shall specify a manner of giving notice which is calculated to be most likely to give actual notice to the garnishee or its managing officers, directors, or agents. The order shall specifically inform the garnishee that the garnishee has failed to respond to the summons and shall specifically advise the garnishee that judgment will be rendered against it in the principal amount of the judgment against the defendant plus costs, which amounts will be specified, upon failure to conform with the requirements of the order. If the garnishee shall fail to file and deliver or mail the answer affidavit as required in the order, appear for deposition, or to answer interrogatories as provided in the order, then the court shall render judgment against the garnishee for the amount of the judgment and costs due the judgment creditor from the defendant in the principal action together with the costs of the garnishment, including a reasonable attorney's fee to the judgment creditor for prosecuting the garnishment. The garnishee may also be subject to punishment for contempt; provided, however, the court shall have power to vacate or modify any order issued pursuant to this section in the manner provided in Sections 1031 or 1031.1 of this title.
R.L. 1910, § 4829. Amended by Laws 1965, c. 297, § 9; Laws 1976, c. 87, § 8, emerg. eff. May 4, 1976; Laws 1992, c. 156, § 1, eff. Sept. 1, 1992; Laws 1995, c. 338, § 12, eff. Nov. 1, 1995.

§12-1180. Persons authorized to make answer.

The answer of a corporation summoned as a garnishee may be made by any officer or attorney thereof; and of any other garnishee may be made by any agent or attorney of the garnishee.
R.L. 1910, § 4830. Amended by Laws 1965, c. 297, § 10; Laws 1968, c. 259, § 1, emerg. eff. April 29, 1968; Laws 1995, c. 338, § 13, eff. Nov. 1, 1995.

§12-1181. Mutual defense by garnishee and defendant.

At any time before final order or judgment against the garnishee, the defendant may in all cases, by answer duly verified defend the proceedings against any garnishee, upon the ground that the indebtedness of the garnishee, or any property held by him, is exempt from execution against such defendant, or for any other reason is not liable to garnishment; or upon any ground upon which a garnishee might defend the same; and may participate in the trial of any issue between the plaintiff and garnishee for the protection of his interests. The garnishee may at his option, defend the principal

action for the defendant, if the latter does not, but shall be under no obligations so to do.
R.L. 1910, § 4831. Amended by Laws 1965, c. 297, § 11.

§12-1182. Proceedings deemed actions - Judgment and enforcement - Trial and dismissal - Unmatured or unliquidated debts.

The proceedings against a garnishee shall be deemed an action by the judgment creditor against garnishee and defendant, as parties defendant, and all of the provisions for enforcing judgment shall be applicable thereto. No trial shall be had of the garnishee action until the judgment creditor shall have judgment in the principal action, and if the defendant have judgment, the garnishee action shall be dismissed with costs, unless the judgment creditor shall perfect an appeal according to law, in which event the garnishment proceeding shall be continued until the disposition of the appeal, and it shall not be necessary to appeal the garnishment proceedings, or make the garnishee a party to the appeal. The court shall render such judgment in all cases as shall be just to all of the parties and shall properly protect their respective interests, and may adjudge the recovery of any indebtedness, the conveyance, transfer, or delivery to the sheriff, or any officer appointed by the judgment, of any property disclosed or found to be liable to be applied to the judgment creditor's demand, or by the judgment pass the title thereto; and may therein, or by its order when proper, direct the manner of making sale and of disposing of the proceeds thereof, or of any money or other things paid over or delivered to the clerk or officer. The judgment against a garnishee shall acquit and discharge from all demands by the defendant or the defendant's representatives for all moneys, goods, effects, or credits paid, delivered or accounted for by the garnishee by force of such judgment; provided, it shall be no defense to proceedings against a garnishee that the debt owing by the garnishee to the defendant was unliquidated or was not due.
R.L. 1910, § 4832. Amended by Laws 1913, c. 121, p. 232, § 1; Laws 1965, c. 297, § 12; Laws 1995, c. 338, § 14, eff. Nov. 1, 1995.

§12-1183. Examination of garnishee.

The garnishee may be examined by the judgment creditor in any manner prescribed by the Oklahoma Discovery Code. Discovery may commence at any time after the service of the garnishee summons. If the garnishee is a corporation, any principal officer thereof may be so examined. Within forty-five (45) days after the filing of the answer affidavit by the garnishee, the judgment creditor may commence discovery concerning any matter contained in the answer or germane to any liability on the garnishee's part to the principal defendant. A copy of the discovery request or notice of deposition and such statement shall be served upon the garnishee or the garnishee's

attorney of record in the manner provided for service of summons. The garnishee within twenty (20) days of the date of service of a discovery request shall deliver by mail a copy to the judgment creditor or the judgment creditor's attorney of record, full and true answers to all discovery requests, verified by affidavit, in the manner prescribed by the Oklahoma Discovery Code.
R.L.1910, § 4833. Amended by Laws 1965, c. 297, § 13; Laws 1995, c. 338, § 15, eff. Nov. 1, 1995; Laws 1999, c. 293, § 16, eff. Nov. 1, 1999; Laws 2011, c. 187, § 7, eff. Nov. 1, 2011.

§12-1184. Disclaimer by garnishee - Interpleading interested party.

When the answer of the garnishee shall disclose that any other person than the defendant claims the indebtedness or property in his hands, and the name and residence of such claimant, the court may, on motion, order that such claimant be interpleaded, as a defendant to the garnishee action; and that notice thereof, setting forth the facts, with a copy of such order, in such form as the court shall direct, be served upon him; and that after such service shall have been made, the garnishee may pay or deliver to the officer or the clerk such indebtedness or property, and have a receipt therefor, which shall be a complete discharge from all liability to any party for the amount paid or property so delivered. Such notice shall be served in the manner required for service of a summons in a civil action, and may be made without the state, or by publication thereof, if the order shall so direct. Upon such service being made, such claimant shall be deemed a defendant to the garnishee action and within ten (10) days shall answer, setting forth his claim or any defense which the garnishee might have made. In case of default, judgment may be rendered, which shall conclude any claim upon the part of such defendant.
R.L. 1910, § 4834. Amended by Laws 1965, c. 297, § 14.

§12-1185. Liability of garnishee.

From the time of the service of the summons upon the garnishee he shall stand liable to the plaintiff to the amount of the property, monies, credits and effects in his possession or under his control, belonging to the defendant or in which he shall be interested, to the extent of his right or interest therein, and of all debts due or to become due to the defendant, except such as may be by law exempt from execution. Any property, monies, credits and effects held by a conveyance or title void as to the creditors of the defendant, shall be embraced in such liability. In case such monies, credits and effects in the possession or under the control of the garnishee shall exceed the amount of the plaintiff's claim, the garnishee shall stand liable to the plaintiff only for the amount of the plaintiff's claim as disclosed by the garnishment affidavit, together with such further

amount as shall be equal to all costs and damages, which the plaintiff may recover in the action and garnishment proceedings.
R.L. 1910, § 4835.

§12-1186. Garnishee not liable for what - Judgment on unmatured obligation.

No judgment shall be rendered upon a liability of the garnishee arising --

First, By reason of his having drawn, accepted, made, endorsed or guaranteed any negotiable bill, draft, note, or other security.

Second, By reason of any money or other thing received or collected by him as sheriff or other officer, by force of an execution or other legal process in favor of the defendant.

Third, By reason of any money in his hands as a public officer, and for which he is accountable to the defendant merely as such officer.

Fourth, By reason of any money or other thing owing from him to the defendant, unless before judgment against the defendant it shall become due absolutely and without depending on any future emergency. Judgment may be given for any money or other thing owing, although it has not become payable, in which case the garnishee shall not be required to pay or deliver it before the time appointed by the contract.
R.L. 1910, § 4836.

§12-1187. Action by defendant against garnishee.

No action shall be commenced by the defendant or his assignee against a garnishee upon any claim or demand liable to garnishment, or to recover any property garnished, or execution be issued upon a judgment in favor of defendant against such garnishee subsequent to the service of the garnishee summons upon him, until the termination of the garnishee action; and if an action shall have been commenced or an execution issued, it shall be stayed by the court or a judge thereof, upon the garnishee's application; except that upon cause shown, the court or a judge may by order permit the commencement of such an action, or the issue of an execution, or the further prosecution of one stayed.
R.L. 1910, § 4837.

§12-1188. Bond by defendant.

The defendant may, at any time after the garnishment affidavit is filed, and before judgment, file with the clerk of the court an undertaking, executed by at least two sureties, resident freeholders of the state, to the effect that they will, on demand, pay to the plaintiff the amount of the judgment that may be recovered against such defendant in the action, with all costs not exceeding a sum specified, which sum shall not be less than double the amount

demanded by the complaint on file, or in such less sum as the court shall, upon application, direct. The sureties shall justify their responsibility by affidavit annexed stating a sum which each is worth, in property within this state, over and above all his debts and liabilities and property exempt from execution, the aggregate of which sums shall be double the amount specified in the undertaking. The defendant shall serve a copy of such undertaking, with a notice where and when the same was filed, on the plaintiff. Within three (3) days after the receipt thereof the plaintiff shall give notice to the defendant that he excepts to the sufficiency of the sureties, or he shall be deemed to have waived all objections to them.
R.L. 1910, § 4838.

§12-1189. Justification of sureties - Garnishees discharged.

When the plaintiff excepts, the sureties shall appear for justification before the judge of the district court or the county judge of the county in which the action is brought, at a time and place to be mentioned in the notice given by the plaintiff, and may be examined on oath on the part of the plaintiff touching their sufficiency, in such manner as the judge in his discretion may think proper. The examination shall be reduced to writing and subscribed by the sureties, if required by the plaintiff. If the judge find the sureties sufficient he shall annex the examination to the undertaking, endorse his allowance thereon, and cause them to be filed with the clerk of the district court. Thereafter all the garnishees shall be discharged, and the garnishment proceedings shall be deemed discontinued, and any money or property paid or delivered to any officer shall be surrendered to the person entitled thereto, and the costs shall be taxable as disbursements of the plaintiff in the action if he recovers. The judge may in his discretion require the costs of the justification before him, including fees to the sureties as witnesses, to be forthwith paid by the party requiring justification.
R.L. 1910, § 4839.

§12-1190. Costs - Attorney fee.

A. 1. A garnishee may deduct a fee of Ten Dollars ($10.00) from the funds of the judgment debtor in the garnishee's possession as reimbursement for costs incurred in answering a garnishment issued pursuant to subparagraph a, b, c, d or e of paragraph 2 of subsection B of Section 1171 of this title, except as to garnishments set out in paragraph 2 of this subsection. If the garnishee is not indebted to the judgment debtor and the garnishee's answer evidencing that is filed and mailed or delivered to the judgment creditor or to the judgment creditor's attorney of record, the garnishee may assess the judgment creditor a fee of Ten Dollars ($10.00) as reimbursement for

such costs. Any fee paid to a garnishee pursuant to this paragraph shall be taxed and collected as costs.

2. A judgment creditor shall remit a fee of Twenty-five Dollars ($25.00) as reimbursement for costs incurred in answering a garnishment issued pursuant to subparagraph d of paragraph 2 of subsection B of Section 1171 of this title to garnishees which are federally insured depository institutions. Such fee shall be delivered to the garnishee with the garnishment summons. Any fee paid to a garnishee pursuant to this paragraph shall be taxed and collected as costs.

B. 1. In case of the trial of any issue between the judgment creditor and any garnishee, costs shall be awarded to the judgment creditor and against the garnishee, in addition to the garnishee's liability, if the judgment creditor recovered more than the garnishee admitted by the garnishee's answer; and if the judgment creditor does not, the garnishee shall recover costs from the judgment creditor. The costs shall include a reasonable attorney fee to be taxed in favor of the prevailing party.

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

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

D. In addition to sums otherwise due pursuant to a judgment, a judgment creditor, if represented by an attorney, shall be entitled to an attorney fee of Fifty Dollars ($50.00) for prosecuting a garnishment pursuant to subparagraphs b, c and d of paragraph 2 of subsection B of Section 1171 of this title, and an attorney fee of One Hundred Dollars ($100.00) for prosecuting a garnishment pursuant to subparagraph e of paragraph 2 of subsection B of Section 1171 of this title, not to exceed a total of Two Hundred Dollars ($200.00) in any calendar year.

R.L. 1910, § 4840. Amended by Laws 1965, c. 297, § 15; Laws 1978, c. 190, § 5, eff. Oct. 1, 1978; Laws 1986, c. 185, § 10, eff. Sept. 1, 1986; Laws 1992, c. 156, § 2, eff. Sept. 1, 1992; Laws 1995, c. 338, § 16, eff. Nov. 1, 1995; Laws 1999, c. 293, § 17, eff. Nov. 1, 1999; Laws 2002, c. 26, § 1, emerg. eff. April 5, 2002; Laws 2011, c. 187, § 8, eff. Nov. 1, 2011; Laws 2016, c. 248, § 2, eff. Nov. 1, 2016.

§12-1191. Repealed by Laws 1965, c. 297, § 17.

§12-1192. Garnishment of money due from state, county or municipality - Exceptions.

That it shall be lawful for any creditor of any person, firm or corporation in this state, to whom the state or any county, city, town, school board, board of education or any municipal subdivision of the state is indebted, to cause a garnishment to issue to, and to garnishee sums, wages or other sums due such creditor of the state or such municipality to the same extent and in like manner as if such creditor of the state or such municipality was a creditor of a private individual, firm or corporation; provided, however, that such officer or employee of said state, county or municipality shall be entitled to the exemptions as to amount of such wages, salary, fund or compensation due thereto, as is exempt from attachment, execution or garnishment in favor of officers or employees of private individuals or corporations.
Added by Laws 1925, c. 33, p. 51, § 1.

§12-1193. Summons - Service when state, state department or institution, county or municipality garnished - Warrants.

Where the state is garnisheed, service shall be made by summons, as in other cases, upon the officer having control of the department or institution which caused the state to become indebted to the defendant in the case in which the garnishment summons is issued. Where the state department is under the control of a board or commission, service of the garnishment summons may be had upon either the chairman or the secretary of said board or commission. Service upon the officer having control of a state institution shall be had upon the president of the school, college or university, the superintendent of the institution, or the warden of the penitentiary or reformatory involved, although such persons may not be technically officers. It is the intent and purpose of this section that the officer, board or commission which caused the state to become indebted, and whose duty it is to see that the indebtedness is paid, shall be the agency of the state upon which the garnishment summons shall be served. Upon request of any such agency of the state, the State Treasurer shall draw warrants, or cancel warrants already drawn by him, and reissue same in such amounts as will enable the agency of the state served to comply with the garnishment proceedings. The State Treasurer shall not deliver any warrant direct to the payee thereof, but he shall in every instance deliver warrants drawn by him to the agency of the state which caused the indebtedness, to be paid by the warrant, to be incurred. Provided, that when a state officer not under the control of a state department or institution of the state is the defendant, service of garnishment shall be made by summons, as in other cases, upon the State Treasurer. Where the county is garnisheed, service shall be made by summons, as in other cases, upon the county clerk; where a city is garnisheed, service shall be made by summons, as in other cases, upon the city clerk; where towns are garnisheed, service shall be made by summons, as in

other cases, upon the town clerk; where townships are garnisheed, service shall be made by summons, as in other cases, upon the township clerk; where township government has heretofore been abolished and the functions and powers of township government are being performed by a board of county commissioners, service herein shall be made by summons, as in other cases, upon the county clerk; where school boards or board of education are garnisheed, service herein shall be made by summons, as in other cases, upon the clerk of such boards.
Added by Laws 1925, c. 33, p. 51, § 2. Amended by Laws 1939, p. 1, § 1; Laws 1949, p. 97, § 1; Laws 1979, c. 47, § 5, emerg. eff. April 9, 1979.

§12-1194. State or political subdivisions as garnishee - Judgments.
No judgment shall be rendered against the state, or any county, city, town, board of education, school board or any municipal subdivision of the state named as garnishee, but judgment may be rendered against any person served pursuant to Section 1193 of this title, who shall willfully fail, neglect or refuse to answer garnishment summons; provided, no person employed by the state or any county, city, town, board of education, school board, or any municipal subdivision of the state shall be held personally liable unless the failure, neglect, or refusal to answer is willful.
Added by Laws 1925, c. 33, p. 51, § 3, emerg. eff. Feb. 23, 1925. Amended by Laws 1965, c. 297, § 16; Laws 2005, c. 78, § 1, eff. Nov. 1, 2005.

§12-1195. Garnishment bond not required when state is plaintiff.
That in all actions in which the State of Oklahoma is party plaintiff, no garnishment bond shall be required of the plaintiff, but that garnishment writ shall issue upon the filing of proper affidavits, as provided by law.
Added by Laws 1923, c. 74, p. 141, § 1, emerg. eff. March 31, 1923.

§12-1196. Judgment - Garnishee liability to defendant.
If the plaintiff takes issue with the answer of the garnishee, the plaintiff may have a copy of the garnishee's answer and a copy of the plaintiff's notice which takes issue with the answer served on the defendant. If the defendant is served copies of the garnishee's answer and the plaintiff's notice, the determination of the court as to the liability of the garnishee to the defendant will be binding on the defendant in any future action involving him and the garnishee whether or not the defendant participates in the trial of the issues raised by the garnishee's answer.
Added by Laws 1976, c. 87, § 9, emerg. eff. May 4, 1976.

§12-1221. Different attachments of same property.

Different attachments of the same property may be made by the same officer, and one inventory and appraisement shall be sufficient; and it shall not be necessary to return the same with more than one order.
R.L. 1910, § 4842.

§12-1222. Subsequent attachment.
Where property is under attachment, it shall be attached under subsequent orders, as follows:
First, if it be real property, it shall be attached in the same manner prescribed in Section 4820.
Second, if it be personal property, it shall be attached as in the hands of an officer, and subject to any previous attachment.
Third, if the same person or corporation be made a garnishee, a copy of the order and notice shall be left with him in the manner prescribed in Section 4841.
R.L. 1910, § 4843.

§12-1223. Return of order.
The officer shall return, upon every order of attachment, what he has done under it. The return must show the property attached, and the time it was attached; when garnishees are served, their names, and the time each was served, must be stated. The officer shall also return with the order all undertakings given under it.
R.L. 1910, § 4844.

§12-1224. Appointment and bond of receiver.
The court, or any judge thereof, during vacation, may, on application of the plaintiff, and on good cause shown, appoint a receiver, who shall take an oath faithfully to discharge his duty and shall give an undertaking to the State of Oklahoma, in such sum as the court or judge may direct, and with such security as shall be approved by the clerk of such court, for the faithful performance of his duty as such receiver, and to pay over all money and account for all property which may come into his hands by virtue of his appointment, at such times and in such manner as the court may direct.
R.L. 1910, § 4845.

§12-1225. Duties of receiver.
Such receiver shall take possession of all notes, due bills, books of account, accounts and all other evidences of debt that have been taken, by the sheriff or other officer, as the property of the defendant in attachment, and shall proceed to settle and collect the same. For that purpose, he may commence and maintain actions in his own name as such receiver; but in such actions no right of defense shall be impaired or affected.

R.L. 1910, § 4846.

§12-1226. Notice to debtors.

Such receiver shall forthwith give notice of his appointment to the persons indebted to the defendant in attachment. The notice shall be written or printed, and shall be served on the debtor or debtors, by copy personally, or by copy left at the residence of the debtor or debtors; and from the date of such service, the debtors shall stand liable to the plaintiff in attachment for the amount of money or credits in their hands, or due from them to the defendant in attachment, and shall account therefor to the receiver.
R.L. 1910, § 4847.

§12-1227. Report to courts.

Such receiver shall, when required, report his proceedings to the court, and hold all monies collected by him, and the property which may come into his hands, subject to the order of the court.
R.L. 1910, § 4848.

§12-1228. Sheriff to act as receiver - When.

Where a receiver is not appointed by the court or a judge thereof, the sheriff or other officer attaching the property, shall have all the powers and perform all the duties of a receiver appointed by the court or a judge, and may, if necessary, commence and maintain actions in his own name as such officer. He may be required to give security other than his official undertaking.
R.L. 1910, § 4849.

§12-1229. Disposition of property.

The court shall make proper orders for the preservation of the property during the pendency of the suit; it may direct a sale of property, when, because of its perishable nature; or of the costs of keeping it, a sale will be for the benefit of the parties. In vacation, such sale may be ordered by the judge of the court. The sale shall be public, after such advertisement as is prescribed for the sale of like property on execution, and shall be made in such manner and upon such terms of credit, with security, as the court or judge, having, regard to the probable duration of the action, may direct. The proceeds, if collected by the sheriff, with all the monies received by him from garnishees, shall be held and paid over by him, under the same requirement and responsibility of himself and sureties, as are provided in respect to money deposited in lieu of bail.
R.L. 1910, § 4850.

§12-1230. Bond to discharge attachment.

If the defendant, or other person on his behalf, at any time before judgment, cause an undertaking to be executed to the plaintiff, by one or more sureties, resident in the county, to be approved by the court, in double the amount of the plaintiff's claim as stated in his affidavit, to the effect that the defendant shall perform the judgment of the court, the attachment in such action shall be discharged, and restitution made of any property taken under it or the proceeds thereof. Such undertaking shall, also, discharge the liability of a garnishee in such action, for any property of the defendant in his hands.
R.L. 1910, § 4851.

§12-1231. Bond - Execution in vacation.
The undertaking mentioned in the last section may, in vacation, be executed in the presence of the sheriff having the order of attachment in his hands, or after the return of the order, before the clerk, with the same effect as if executed in court, the sureties in either case to be approved by the officer before whom the undertaking is executed.
R.L. 1910, § 4852.

§12-1232. Repealed by Laws 1965, c. 297, § 17.

§12-1233. Garnishee may pay money into court.
A garnishee may pay the money owing to the defendant by him to the sheriff having the order of attachment, or into court. He shall be discharged from liability to the defendant for any money so paid, not exceeding the plaintiff's claim. He shall not be subject to costs, beyond those caused by his resistance of the claim against him; and if he discloses the property in his hands, or the true amount owing by him, and deliver and pay the same, according to the order of the court, he shall be allowed his costs.
R.L. 1910, § 4854.

§12-1234. Discharge of attachment - Proceedings.
If judgment be rendered in the action for the defendant the attachment shall be discharged and the property attached, or its proceeds, shall be returned to him. If the attachment or garnishment shall be discharged on motion prior to final judgment, the defendant may, upon proper supplemental answer, recover his damages, as in other cases for such wrongful attachment or garnishment.
R.L. 1910, § 4855.

§12-1235. Judgment for plaintiff - How satisfied - Surplus.
If judgment be rendered for the plaintiff, it shall be satisfied as follows: So much of the property remaining in the hands of the officer, after applying the monies arising from the sale of

perishable property, and so much of the personal property and lands and tenements, if any, whether held by legal or equitable title, as may be necessary to satisfy the judgment, shall be sold by order of the court, under the same restrictions and regulations as if the same had been levied on by execution; and the money arising therefrom, with the amount which may be recovered from the garnishee, shall be applied to satisfy the judgment and costs. If there be not enough to satisfy the same, the judgment shall stand, and execution may issue thereon for the residue, in all respects as in other cases. Any surplus of the attached property or its proceeds shall be returned to the defendant.
R.L. 1910, § 4856.

§12-1236. Delivery to sheriff of attached property.
The court may compel the delivery to the sheriff, for sale, of any of the attached property for which an undertaking may have been given, and may proceed summarily, on such undertaking, to enforce the delivery of the property, or the payment of such sum as may be due upon the undertaking, by rules and attachments, as in cases of contempt.
R.L. 1910, § 4857.

§12-1237. Possession by sheriff.
The court may order the sheriff to repossess himself, for the purpose of selling it, of any of the attached property, which may have passed out of his hands, without having been sold or converted into money; and the sheriff shall, under such order, have the same power to take the property as he would have under an order of attachment.
R.L. 1910, § 4858.

§12-1238. Reference to ascertain priority of attachments.
Where several attachments are executed upon the same property, or the same persons are made garnishees, the court, on motion of any of the plaintiffs, may order a reference, to ascertain and report the amounts and priorities of the several attachments, or may determine any such amount and priorities without such reference.
R.L. 1910, § 4859.

§12-1239. Jurisdiction after issuance of order of attachment - Proceedings not abated by death or expiration of charter, etc.
From the time of the issuing of the order of attachment, the court shall be deemed to have acquired jurisdiction and to have control of all subsequent proceedings under the attachment; and if, after the issuing of the order, the defendant, being a person, should die, or a corporation, and its charter should expire by limitation, forfeiture or otherwise, the proceedings shall be carried on; but in

all such cases, other than where the defendant was a foreign corporation, his legal representatives shall be made parties to the action.
R.L. 1910, § 4860.

§12-1240. Additional security by plaintiff.
The defendant may, at any time before judgment, after reasonable notice to the plaintiff, move the court for additional security on the part of the plaintiff; and if, on such motion, the court is satisfied that the surety in the plaintiff's undertaking has removed from this state, or is not sufficient for the amount thereof, it may vacate the order of attachment and direct restitution of any property taken under it, unless, in a reasonable time, to be fixed by the court, sufficient security be given by the plaintiff.
R.L. 1910, § 4861.

§12-1241. Motion to discharge attachment.
The defendant may, at any time before judgment upon reasonable notice to the plaintiff, move to discharge an attachment, as to the whole or part of the property attached. A motion to discharge an attachment shall be heard promptly, and in any case within five (5) days after the date that it was filed. Where the defendant did not receive actual notice of the hearing, the court must grant his motion unless, at the hearing on defendant's motion, the plaintiff proves the probable merit of his cause and the truth of the averments in his application.
R.L. 1910, § 4862. Amended by Laws 1976, c. 87, § 3, emerg. eff. May 4, 1976.

§12-1242. Affidavits and evidence in opposition to motion.
If the motion be made upon affidavits, on the part of the defendant, or papers and evidence in the case, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to that on which the order of attachment was made.
R.L. 1910, § 4863.

§12-1243. Action and attachment against fraudulent debtor.
Where a debtor has sold, conveyed or otherwise disposed of his property with the fraudulent intention of cheating or defrauding his creditors, or to hinder or delay them in the collection of their debts, or is about to make such sale or conveyance or disposition of his property with such fraudulent intent, or is about to remove his property or a material part thereof, with intent or to the effect of cheating or defrauding his creditors or of hindering or delaying them in the collection of their debts, a creditor may bring an action upon his claim before it is due, and have an attachment against the property of the debtor as in other cases; but before such attachment

shall be issued or such action maintained, the plaintiff or his agent or attorney shall make oath in writing setting forth the grounds of such attachment as in other cases, and also showing the nature of plaintiff's claim that it is just, when the same will become due, and the existence of some one or more of the grounds for an attachment enumerated in this section.
R.L. 1910, § 4864.

§12-1244. No judgment until claim due.
The plaintiff in such action shall not have judgment on his claim before it is due, but the proceedings on the attachment may be conducted without delay.
R.L. 1910, § 4865.

§12-1271. Renumbered as § 101 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1272. Renumbered as § 102 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1272.1. Renumbered as § 103 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1272.2. Renumbered as § 104 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1273. Renumbered as § 105 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1274. Renumbered as § 106 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1274.1. Renumbered as § 107 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1275. Renumbered as § 108 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1275.4. Renumbered as § 109 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1276. Renumbered as § 110 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1276.1. Renumbered as § 68 of this title by Laws 1977, c. 26, § 2, eff. Oct. 1, 1977.

§12-1276.2. Renumbered as § 111 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1276.3. Renumbered as § 111.1 of Title 43 by Laws 1990, c. 171, § 3, operative July 1, 1990 and Laws 1990, c. 188, § 2, eff. Sept. 1, 1990.

§12-1277. Renumbered as § 112 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1277.1. Renumbered as § 113 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1277.2. Renumbered as § 109.2 of Title 43 by Laws 1994, c. 356, § 35, eff. Sept. 1, 1994.

§12-1277.3. Renumbered as § 114 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1277.4. Renumbered as § 115 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1277.5. Renumbered as § 116 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1277.6. Renumbered as § 117 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1277.7. Renumbered as § 118 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1277.7A. Renumbered as § 118.1 of Title 43 by Laws 1990, c. 171, § 3, operative July 1, 1990 and Laws 1990, c. 188, § 2, eff. Sept. 1, 1990.

§12-1277.8. Renumbered as § 119 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1277.8A. Renumbered as § 119.1 of Title 43 by Laws 1990, c. 171, § 3, operative July 1, 1990 and Laws 1990, c. 188, § 2, eff. Sept. 1, 1990.

§12-1277.9. Renumbered as § 120 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1278. Renumbered as § 121 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1279. Renumbered as § 122 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1280. Renumbered as § 123 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1281. Renumbered as § 124 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1281a. Renumbered as § 125 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1281b. Renumbered as § 126 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1282. Renumbered as § 127 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1283. Renumbered as § 128 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1284. Renumbered as § 129 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1285. Renumbered as § 130 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1286. Renumbered as § 131 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1287. Renumbered as § 132 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1288. Renumbered as § 133 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1289. Renumbered as § 134 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1289.1. Renumbered as § 135 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1290. Renumbered as § 136 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1291. Renumbered as § 137 of Title 43 by Laws 1989, c. 333, § 1, eff. Nov. 1, 1989.

§12-1331. Persons who may prosecute writ.

Every person restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus to enquire into the cause of the restraint, and shall be delivered therefrom when illegal.

R.L. 1910, § 4882.

§12-1332. Application - How made - Contents.

Application for the writ shall be made by petition, signed and verified either by the plaintiff or by some person in his behalf, and shall specify:

First. By whom the person in whose behalf the writ is applied for is restrained of his liberty, and the place where, naming all the parties, if they are known, or describing them, if they are not known.

Second. The cause or pretense of the restraint, according to the best of the knowledge and belief of the applicant.

Third. If the restraint be alleged to be illegal, in what the illegality consists.

R.L. 1910, § 4883.

§12-1333. Courts which may grant writ - Grant without delay.

Writs of habeas corpus may be granted by any court of record in term time, or by a judge of any such court, either in term or vacation; and upon application the writ shall be granted without delay.

R.L. 1910, § 4884.

§12-1334. Direction and command of writ.

The writ shall be directed to the officer or party having the person under restraint, commanding him to have such person before the court, or judge, at such time and place as the court or judge shall direct, to do and receive what shall be ordered concerning him and have then and there the writ.

R.L. 1910, § 4885.

§12-1335. Delivery to sheriff.

If the writ be directed to the sheriff, it shall be delivered by the clerk to him without delay.

R.L. 1910, § 4886.

§12-1336. Service on party other than sheriff.

If the writ be directed to any other person, it shall be delivered to the sheriff and shall be by him served by delivering to such person without delay.
R.L. 1910, § 4887.

§12-1337. Service when person not found or refuses admittance.
If the person to whom such writ is directed cannot be found, or shall refuse admittance to the sheriff, the same may be served by leaving it at the residence of the person to whom it is directed, or by affixing the same on some conspicuous place, either of his dwelling house or where the party is confined under restraint.
R.L. 1910, § 4888.

§12-1338. Return of writ - Enforcing obedience.
The sheriff or other person to whom the writ is directed shall make immediate return thereof, and if he neglect or refuse, after due service, to make return, or shall refuse or neglect to obey the writ by producing the party named therein, and no sufficient excuse be shown for such neglect or refusal, the court shall enforce obedience by attachment.
R.L. 1910, § 4889.

§12-1339. Return - Signature and verification - Contents - Production of party.
The return must be signed and verified by the person making it, who shall state:
First. The authority or cause of restraint of the party in his custody.
Second. If the authority be in writing, he shall return a copy and produce the original on the hearing.
Third. If he has had the party in his custody or under his restraint, and has transferred him to another, he shall state to whom, the time, place and cause of the transfer.
He shall produce the party on the hearing, unless prevented by sickness or infirmity, which must be shown in the return.
R.L. 1910, § 4890.

§12-1340. Proceedings in case of allegation of sickness or imfirmity - Exceptions to return - Controverting - New matter - Amendments.
The court or judge, if satisfied with the truth of the allegation of sickness or infirmity, may proceed to decide on the return, or the hearing may be adjourned until the party can be produced, or for other good cause. The plaintiff may except to the sufficiency of, or controvert the return or any part thereof, or allege any new matter in avoidance; the new matter shall be verified, except in cases of commitment on a criminal charge; the return and pleadings may be amended without causing any delay.

R.L. 1910, § 4891.

§12-1341. Hearing and discharge.

The court or judge shall thereupon proceed in a summary way to hear and determine the cause, and if no legal cause be shown for the restraint or for the continuance thereof, shall discharge the party.
R.L. 1910, § 4892.

§12-1342. Inquiry into legality of judgment or process - Limitations.

No court or judge shall inquire into the legality of any judgment or process, whereby the party is in custody, or discharge him when the term of commitment has not expired in either of the cases following:

First. Upon process issued by any court or judge of the United States, or where such court or judge has exclusive jurisdiction; or,

Second. Upon any process issued on any final judgment of a court of competent jurisdiction; or,

Third. For any contempt of any court, officer or body having authority to commit; but an order of commitment as for a contempt, upon proceedings to enforce the remedy of a party, is not included in any of the foregoing specifications;

Fourth. Upon a warrant or commitment issued from the district court, or any other court of competent jurisdiction, upon an indictment or information.
R.L. 1910, § 4893.

§12-1343. Procedure when person committed for want of bail - Defects in charge or process - Want of probable cause.

No person shall be discharged from an order of commitment issued by any judicial or peace officer for want of bail, or in cases not bailable, on account of any defect in the charge or process, or for alleged want of probable cause; but in all such cases, the court or judge shall summon the prosecuting witnesses, investigate the criminal charge, and discharge, let to bail or recommit the prisoner, as may be just and legal, and recognize witnesses when proper.
R.L. 1910, § 4894.

§12-1344. Writ may issue to admit to bail.

The writ may be had for the purpose of letting a prisoner to bail in civil and criminal actions.
R.L. 1910, § 4895.

§12-1345. Notice to interested persons before discharge.

When any person has an interest in the detention, the prisoner shall not be discharged until the person having such interest is notified.

R.L. 1910, § 4896.

§12-1346. Power of court - Attendance of witnesses.
The court or judge shall have power to require and compel the attendance of witnesses and to do all other acts necessary to determine the case.
R.L. 1910, § 4897.

§12-1347. Officers not liable for obeying orders.
No sheriff or other officer shall be liable to a civil action for obeying any writ of habeas corpus or order of discharge made thereon.
R.L. 1910, § 4898.

§12-1348. Issuance of warrant to prevent removal from jurisdiction.
Whenever it shall appear by affidavit that anyone is illegally held in custody or restraint, and that there is good reason to believe that such person will be carried out of the jurisdiction of the court or judge before whom the application is made, or will suffer some irreparable injury before compliance with the writ can be enforced, such court or judge may cause a warrant to be issued, reciting the facts, and directed to the sheriff or any constable of the county, commanding him to take the person thus held in custody or restraint, and forthwith bring him before the court or judge, to be dealt with according to law.
R.L. 1910, § 4899.

§12-1349. Arrest of party causing restraint.
The court or judge may also, if the same be deemed necessary, insert in the warrant a command for the apprehension of the person charged with causing the illegal restraint.
R.L. 1910, § 4900.

§12-1350. Execution of writ - Return and proceedings.
The officer shall execute the writ by bringing the person therein named before the court or judge; and the like return and proceedings shall be required and had as in case of writs of habeas corpus.
R.L. 1910, § 4901.

§12-1351. Temporary orders - Change of custody.
The court or judge may make any temporary orders in the cause or disposition of the party during the progress of the proceedings, that justice may require. The custody of any party restrained may be changed from one person to another, by order of the court or judge.
R.L. 1910, § 4902.

§12-1352. Writs and processes - Issuance and service on Sunday.

Any writ or process authorized by this article may be issued and served, in case of emergency, on Sunday.
R.L. 1910, § 4903.

§12-1353. Issue, service and amendment of process.

All writs and other process, authorized by the provisions of this article, shall be issued by the clerk of the court, and except summons, sealed with the seal of such court, and shall be served and returned forthwith, unless the court or judge shall specify a particular time for any such return. And no writ or other process shall be disregarded for any defect therein, if enough is shown to notify the officer or person of the purport of the process. Amendments may be allowed, and temporary commitments, when necessary.
R.L. 1910, § 4904.

§12-1354. Grant of writ to parents, etc. - Protection of infants and insane persons - Proceedings.

Writ of habeas corpus shall be granted in favor of parents, guardians, masters, husbands and wives; and to enforce the rights and for the protection of infants and insane persons; and the proceedings shall, in all such cases, conform to the provisions of this article.
R.L. 1910, § 4905.

§12-1355. Deposit or security costs not required for initial application - Payment of court costs required.

No deposit or security for costs shall be required of an applicant for the initial application for a writ of habeas corpus. An applicant for a writ of habeas corpus shall be required to pay court costs pursuant to the procedures provided in Section 566.3 of Title 57 of the Oklahoma Statutes.
R.L. 1910, § 4906. Amended by Laws 2004, c. 168, § 3, emerg. eff. April 27, 2004.

§12-1381. Injunction defined.

The injunction provided by this code is a command to refrain from a particular act. It may be the final judgment in an action, or may be allowed as a provisional remedy, and, when so allowed, it shall be by order. The writ of injunction is abolished.
R.L. 1910, § 4866.

§12-1382. Cause for injunction - Temporary injunction.

When it appears, by the petition, that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which, during the litigation, would produce injury to the plaintiff; or when, during the litigation, it appears that the defendant is doing, or threatens, or is about to do

or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act. And when, during the pendency of an action, it shall appear, by affidavit, that the defendant threatens or is about to remove or dispose of his property with intent to defraud his creditors, or to render the judgment ineffectual, a temporary injunction may be granted to restrain such removal or disposition. It may, also, be granted in any case where it is specially authorized by statute.
R.L. 1910, § 4867.

§12-1383. When and by whom injunction granted - Affidavit showing right to.

The injunction may be granted at the time of commencing the action, or any time afterwards, before judgment by the district court, or the judge thereof, or, in his absence from the county or disqualification, by the county judge, upon its appearing satisfactorily to the court or judge, by the affidavit of the plaintiff or his agent, that the plaintiff is entitled thereto.
R.L. 1910, § 4868.

§12-1384. Repealed by Laws 1989, c. 230, § 4, eff. Nov. 1, 1989.

§12-1384.1. Temporary injunction - Temporary restraining order - Notice - Granting without notice.

A. No temporary injunction shall be issued without notice to the adverse party.

B. A temporary restraining order may be granted without written or oral notice to the adverse party or the attorney for the adverse party only if:

1. It clearly appears from specific facts shown by affidavit or by the verified petition that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or the attorney for the adverse party can be heard in opposition; or

2. The attorney for the applicant certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required; and the court determines that the efforts of the applicant to give notice, if any, were reasonable under the circumstances.

C. Every temporary restraining order granted without notice:

1. Shall be endorsed with the date and hour of issuance;

2. Shall be filed in the office of the court clerk and entered of record; and

3. Shall define the injury and state why it is irreparable and why the order was granted without notice.

D. If a temporary restraining order is granted without notice, the motion for a temporary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character. When the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a temporary injunction and, if the party does not do so, the court shall dissolve the temporary restraining order. On two (2) days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution, modification, or require the posting of an undertaking, and in that event the court shall proceed to hear and determine the motion as expeditiously as the ends of justice require.

E. This section shall not apply to temporary restraining orders in actions for a divorce, alimony without a divorce, separate maintenance, an annulment, custody, or similar matters, guardianship or juvenile proceedings, or to proceedings brought pursuant to special statutes that provide alternate procedures for the obtaining of temporary restraining orders or temporary injunctions.
Added by Laws 1989, c. 230, § 2, eff. Nov. 1, 1989.

§12-1384.2. Granting temporary restraining order - Recovery of damages.

If a temporary restraining order is granted, the party restrained may recover the damages he sustained, including reasonable attorney's fees, if it be finally decided that the restraining order ought not to have been granted.
Added by Laws 1989, c. 230, § 3, eff. Nov. 1, 1989.

§12-1385. Repealed by Laws 1989, c. 230, § 4, eff. Nov. 1, 1989.

§12-1386. Order and service of injunction.

The order of injunction shall be addressed to the party enjoined, shall state the injunction, and shall be issued by the clerk. Where the injunction is allowed at the commencement of the action, the clerk shall endorse upon the summons "Injunction allowed," and it shall not be necessary to issue the order of injunction, nor shall it be necessary to issue the same where notice of application therefor has been given to the party enjoined. The service of the summons so endorsed, or the notice of an application for an injunction, shall be notice of its allowance.
R.L. 1910, § 4871.

§12-1387. Injunction during litigation without notice - Service of order.

Where the injunction is allowed during the litigation, and without notice of the application therefor, the order of injunction shall be issued and the sheriff shall forthwith serve the same upon each party enjoined, in the manner prescribed for serving a summons, and make return thereof without delay.
R.L. 1910, § 4872.

§12-1388. Injunction binding - When.
An injunction binds the party from the time he has notice thereof, and the undertaking required by the applicant therefor is executed.
R.L. 1910, § 4873.

§12-1389. Injunction not granted where motion overruled on merits - Inferior court not to grant.
No injunction shall be granted by a judge, after a motion therefor has been overruled on the merits of the application, by his court; and where it has been refused by the court in which the action is brought, or a judge thereof, it shall not be granted to the same applicant, by a court of inferior jurisdiction, or any judge thereof.
R.L. 1910, § 4874.

§12-1390. Enforcement - Disobedience punishable as contempt - Penalties - Jury trial.
An injunction granted by a judge may be enforced as the act of the court. Disobedience of any injunction may be punished as a contempt, by the court or any judge who might have granted it in vacation. An attachment may be issued by the court or judge, upon being satisfied, by affidavit, of the breach of the injunction, against the party guilty of the same, who may be required to make immediate restitution to the party injured, and give further security to obey the injunction; or, in default thereof, he may be committed to close custody, until he shall fully comply with such requirements, or be otherwise legally discharged, or be punished by fine not exceeding Two Hundred Dollars ($200.00) for each day of contempt, to be paid into the court fund, or by confinement in the county jail for not longer than six (6) months, or by both such fine and imprisonment. This act shall in no way alter the right to trial by jury.
R.L. 1910, § 4875. Amended by Laws 1972, c. 149, § 1.

§12-1391. Additional security.
A party enjoined may, at any time before judgment, upon reasonable notice to the party who has obtained the injunction, move the court for additional security; and if it appear that the surety in the undertaking has removed from the state, or is insufficient,

the court may vacate the injunction, unless, in a reasonable time, sufficient security is given.
R.L. 1910, § 4876.

§12-1392. Plaintiff to give bond - Amount - Attorney's fees.

Unless otherwise provided by special statute, no injunction shall operate until the party obtaining the same shall give an undertaking, with sufficient surety, to be approved by the clerk of the court granting such injunction, in an amount to be fixed by the court or judge allowing the same, to secure the party injured the damages he may sustain, including reasonable attorney's fees, if it be finally decided that the injunction ought not to have been granted.
R.L. 1910, § 4877.

§12-1393. Affidavits on hearing.

On the hearing of an application for an injunction, each party may read affidavits. All affidavits shall be filed.
R.L. 1910, § 4878.

§12-1394. Application to vacate or modify injunction - Return and record of orders of judge.

If the injunction be granted without notice, the defendant, at any time before the trial, may apply, upon notice, to the court in which the action is brought, or any judge thereof, to vacate or modify the same. The application may be made upon the petition and affidavits upon which the injunction is granted, or upon affidavits on the part of the party enjoined, with or without answer. The order of the judge, allowing, dissolving or modifying an injunction, shall be returned to the office of the clerk of the court in which the action is brought, and recorded and obeyed, as if made by the court.
R.L. 1910, § 4878a.

§12-1395. Counter affidavits or evidence.

If application be made upon affidavits or other evidence on the part of the defendant, but not otherwise, the plaintiff may oppose the same, by affidavits or other evidence, in addition to that on which the injunction was granted.
R.L. 1910, § 4879.

§12-1396. Injunction by defendant.

A defendant may obtain an injunction upon an answer, in the nature of a counterclaim. He shall proceed in the manner hereinbefore prescribed.
R.L. 1910, § 4880.

§12-1397. Tax or nuisance may be enjoined - Petition - No bond required.

An injunction may be granted to enjoin the enforcement of a void judgment, the illegal levy of any tax, charge or assessment, or the collection of any illegal tax, charge or assessment, or any proceeding to enforce the same; and any number of persons whose property is affected by a tax or assessment so levied may unite in the petition filed to obtain such injunction. An injunction may be granted in the name of the state to enjoin and suppress the keeping and maintaining of a common nuisance. The petition therefor shall be verified by the district attorney of the proper county, or by the Attorney General, upon information and belief, and no bond shall be required, but the county shall, in all other respects, be liable as other plaintiffs.
R.L. 1910, § 4881.

§12-1398. Injunction prohibiting workplace harassment – Employer liability.

A. As used in the Protection from Workplace Harassment and Violence Act:

1. "Course of conduct" means a pattern of conduct composed of a series of two or more separate acts over a period of time, however short, evidencing a continuity of purpose;

2. "Credible threat of violence" is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose;

3. "Employer" means an individual, partnership, association or corporation or a person or group of persons who act, directly or indirectly, on behalf of or in the interest of an employer and with the consent of the employer. "Employer" includes this state and any political subdivision of this state; and

4. "Workplace harassment" means a pattern or course of conduct that is directed toward another individual in a workplace that includes repeated or continuing contact that would cause a reasonable person to suffer emotional distress and that actually causes emotional distress to the victim. "Workplace harassment" includes, but is not limited to, credible threats of violence.

B. An employer or an authorized agent of an employer may file a written verified petition with the district court of the county in which the employer is located for an injunction prohibiting workplace harassment. The petition shall state:

1. The name of the employer;

2. The name and address, if known, of the defendant; and

3. A specific statement showing the events and dates of the acts that constitute workplace harassment toward the employer, any employee or any person who enters the property of the employer or who is performing official work duties on behalf of or for the benefit of the employer.

C. Any issuance of injunctive relief on a petition filed pursuant to this section shall be in accordance with the procedural requirements of Chapter 24 of Title 12 of the Oklahoma Statutes. If the court grants an ex parte or permanent injunction against workplace harassment, the court may:

1. Restrain the defendant from coming near the property of the employer or place of business and restrain the defendant from contacting the employer, an employee or other person while that employee or person is on or at the property of the employer or place of business or is performing official work duties; and

2. Grant any other relief necessary for the protection of the employer, the workplace, employees of the employer or any other person who is on or at the property of the employer or place of business or who is performing official work duties on behalf of or for the benefit of the employer.

D. An employer shall be immune from civil liability for seeking or failing to seek an injunction under this section unless the employer is seeking an injunction primarily to accomplish a purpose for which the injunction was not designed. This section shall not be construed to:

1. Expand, diminish, alter or modify the duty of an employer to provide a safe workplace for employees and other persons; or

2. Permit a court to issue a temporary restraining order or injunction that prohibits speech or other activities that are constitutionally protected or otherwise protected by law.

Added by Laws 2019, c. 506, § 2, eff. Nov. 1, 2019.

§12-1421. Repealed by Laws 1941, p. 465, § 8.

§12-1422. Repealed by Laws 1941, p. 465, § 8.

§12-1423. Repealed by Laws 1941, p. 465, § 8.

§12-1424. Repealed by Laws 1941, p. 465, § 8.

§12-1425. Repealed by Laws 1941, p. 465, § 8.

§12-1426. Repealed by Laws 1941, p. 465, § 8.

§12-1427. Repealed by Laws 1941, p. 465, § 8.

§12-1428. Repealed by Laws 1941, p. 465, § 8.

§12-1430. Short title - Oklahoma Citizens Participation Act.

A. This act may be known and shall be cited as the "Oklahoma Citizens Participation Act".

B. The purpose of the Oklahoma Citizens Participation Act is to encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely and otherwise participate in government to the maximum extent permitted by law and, at the same time, protect the rights of a person to file meritorious lawsuits for demonstrable injury.
Added by Laws 2014, c. 107, § 1, eff. Nov. 1, 2014.

§12-1431. Definitions.

As used in the Oklahoma Citizens Participation Act:

1. "Communication" means the making or submitting of a statement or document in any form or medium, including oral, visual, written, audiovisual or electronic;

2. "Exercise of the right of association" means a communication between individuals who join together to collectively express, promote, pursue or defend common interests;

3. "Exercise of the right of free speech" means a communication made in connection with a matter of public concern;

4. "Exercise of the right to petition" means any of the following:

a. a communication in or pertaining to:
   (1) a judicial proceeding,
   (2) an official proceeding, other than a judicial proceeding, to administer the law,
   (3) an executive or other proceeding before a department or agency of the state or federal government or a political subdivision of the state or federal government,
   (4) a legislative proceeding, including a proceeding of a legislative committee,
   (5) a proceeding before an entity that requires by rule that public notice be given before proceedings of that entity,
   (6) a proceeding in or before a managing board of an educational or eleemosynary institution supported directly or indirectly from public revenue,
   (7) a proceeding of the governing body of any political subdivision of this state,
   (8) a report of or debate and statements made in a proceeding described by division (3), (4), (5), (6) or (7) of this subparagraph, or
   (9) a public meeting dealing with a public purpose, including statements and discussions at the meeting or other matters of public concern occurring at the meeting,

b. a communication in connection with an issue under consideration or review by a legislative, executive,

judicial or other governmental body or in another governmental or official proceeding,

c. a communication that is reasonably likely to encourage consideration or review of an issue by a legislative, executive, judicial or other governmental body or in another governmental or official proceeding,

d. a communication reasonably likely to enlist public participation in an effort to effect consideration of an issue by a legislative, executive, judicial or other governmental body or in another governmental or official proceeding, and

e. any other communication that falls within the protection of the right to petition government under the Constitution of the United States or the Oklahoma Constitution;

5. "Governmental proceeding" means a proceeding, other than a judicial proceeding, by an officer, official or body of this state or a political subdivision of this state, including an agency, board or commission, or by an officer, official or body of the federal government;

6. "Legal action" means a lawsuit, cause of action, petition, complaint, cross-claim, counterclaim or any other judicial pleading or filing that requests legal or equitable relief;

7. "Matter of public concern" means an issue related to:

a. health or safety,

b. environmental, economic or community well-being,

c. the government,

d. a public official or public figure, or

e. a good, product or service in the marketplace;

8. "Official proceeding" means any type of administrative, executive, legislative or judicial proceeding that may be conducted before a public servant; and

9. "Public servant" means a person elected, selected, appointed, employed or otherwise designated as one of the following, even if the person has not yet qualified for office or assumed the person's duties:

a. an officer, employee or agent of government,

b. a juror,

c. an arbitrator, referee or other person who is authorized by law or private written agreement to hear or determine a cause or controversy,

d. an attorney or notary public when participating in the performance of a governmental function, or

e. a person who is performing a governmental function under a claim of right but is not legally qualified to do so.

Added by Laws 2014, c. 107, § 2, eff. Nov. 1, 2014.

§12-1432. Motion to dismiss legal actions – Time limit for filing – Suspension of discovery.

A. If a legal action is based on, relates to or is in response to a party's exercise of the right of free speech, right to petition or right of association, that party may file a motion to dismiss the legal action.

B. A motion to dismiss a legal action under this section shall be filed no later than sixty (60) days after the date of service of the legal action. The court may extend the time to file a motion under this section on a showing of good cause.

C. Except as provided in Section 6 of the Oklahoma Citizens Participation Act, on the filing of a motion under subsection A of this section, all discovery in the legal action shall be suspended until the court has ruled on the motion to dismiss.

Added by Laws 2014, c. 107, § 3, eff. Nov. 1, 2014.

§12-1433. Time limits for hearing on motion to dismiss.

A. A hearing on a motion filed pursuant to Section 3 of the Oklahoma Citizens Participation Act shall be set no later than sixty (60) days after the date of service of the motion unless the docket conditions of the court require a later hearing, upon a showing of good cause, or by agreement of the parties, but in no event shall the hearing occur more than ninety (90) days after service of the motion to dismiss, except as provided by subsection C of this section.

B. In the event that the court cannot hold a hearing in the time required by subsection A of this section, the court may take judicial notice that court docket conditions required a hearing at a later date, but in no event shall the hearing occur more than ninety (90) days after service of the motion to dismiss, except as provided by subsection C of this section.

C. If the court allows discovery under subsection B of Section 6 of this act, the court may extend the hearing date to allow discovery under that subsection, but in no event shall the hearing occur more than one hundred twenty (120) days after the service of the motion to dismiss.

Added by Laws 2014, c. 107, § 4, eff. Nov. 1, 2014.

§12-1434. Time limit for ruling on motion – Standard of proof.

A. The court shall rule on a motion filed pursuant to Section 3 of the Oklahoma Citizens Participation Act no later than thirty (30) days following the date of the hearing on the motion.

B. Except as provided by subsection C of this section, on the motion of a party filed pursuant to Section 3 of this act, a court shall dismiss a legal action against the moving party if the moving party shows by a preponderance of the evidence that the legal action is based on, relates to or is in response to the party's exercise of:

1. The right of free speech;
2. The right to petition; or
3. The right of association.

C. The court shall not dismiss a legal action under this section if the party filing the legal action establishes by clear and specific evidence a prima facie case for each essential element of the claim in question.

D. Notwithstanding the provisions of subsection C of this section, the court shall dismiss a legal action against the moving party if the moving party establishes by a preponderance of the evidence each essential element of a valid defense to the nonmovant's claim.

Added by Laws 2014, c. 107, § 5, eff. Nov. 1, 2014.

§12-1435. Evidence to consider by court – Limited discovery.

A. In determining whether a legal action shall be dismissed under the Oklahoma Citizens Participation Act, the court shall consider the pleadings and supporting and opposing affidavits stating the facts on which the liability or defense is based.

B. On a motion by a party or on the court's own motion and on a showing of good cause, the court may allow specified and limited discovery relevant to the motion to dismiss.

Added by Laws 2014, c. 107, § 6, eff. Nov. 1, 2014.

§12-1436. Request for findings – Time limit to issue findings.

A. At the request of a party making a motion filed pursuant to Section 3 of the Oklahoma Citizens Participation Act, the court shall issue findings regarding whether the legal action was brought to deter or prevent the moving party from exercising constitutional rights and is brought for an improper purpose, including to harass or to cause unnecessary delay or to increase the cost of litigation.

B. The court shall issue findings under subsection A of this section no later than thirty (30) days after the date a request is made under subsection A of this section.

Added by Laws 2014, c. 107, § 7, eff. Nov. 1, 2014.

§12-1437. Failure to rule on motion – Expedited appeals.

A. If a court does not rule on a motion to dismiss filed pursuant to Section 3 of the Oklahoma Citizens Participation Act in the time prescribed by Section 5 of the act, the motion shall be considered denied by operation of law and the moving party may appeal.

B. An appellate court shall expedite an appeal or other writ, whether interlocutory or not, from a trial court order on a motion to dismiss a legal action filed pursuant to Section 3 of this act or from a trial court's failure to rule on that motion in the time prescribed by Section 5 of this act.

Added by Laws 2014, c. 107, § 8, eff. Nov. 1, 2014.

§12-1438. Costs and fees - Sanctions.

A. If the court orders dismissal of a legal action under the Oklahoma Citizens Participation Act, the court shall award to the moving party:

1. Court costs, reasonable attorney fees and other expenses incurred in defending against the legal action as justice and equity may require; and

2. Sanctions against the party who brought the legal action as the court determines sufficient to deter the party who brought the legal action from bringing similar actions described in the Oklahoma Citizens Participation Act.

B. If the court finds that a motion to dismiss filed under the Oklahoma Citizens Participation Act is frivolous or solely intended to delay, the court may award court costs and reasonable attorney fees to the responding party.

Added by Laws 2014, c. 107, § 9, eff. Nov. 1, 2014.

§12-1439. Actions excluded.

The Oklahoma Citizens Participation Act shall not apply to:

1. An enforcement action that is brought in the name of this state or a political subdivision of this state by the Attorney General or a district attorney;

2. A legal action brought against a person primarily engaged in the business of selling or leasing goods or services, if the statement or conduct the action is based upon arises out of the sale or lease of goods, services, or an insurance product, insurance services, or a commercial transaction in which the intended audience is an actual or potential buyer or customer;

3. A legal action seeking recovery for bodily injury, wrongful death or survival or to statements made regarding that legal action; or

4. A legal action brought under the Oklahoma Insurance Code or arising out of an insurance contract.

Added by Laws 2014, c. 107, § 10, eff. Nov. 1, 2014.

§12-1440. Application with other laws - Construction.

A. The Oklahoma Citizens Participation Act shall not abrogate or lessen any other defense, remedy, immunity or privilege available under other constitutional, statutory, case or common law or rule provisions.

B. The Oklahoma Citizens Participation Act shall be construed liberally to effectuate its purpose and intent fully.

Added by Laws 2014, c. 107, § 11, eff. Nov. 1, 2014.

§12-1441. Libel defined.

Libel is a false or malicious unprivileged publication by writing, printing, picture, or effigy or other fixed representation to the eye, which exposes any person to public hatred, contempt, ridicule or obloquy, or which tends to deprive him of public confidence, or to injure him in his occupation, or any malicious publication as aforesaid, designed to blacken or vilify the memory of one who is dead, and tending to scandalize his surviving relatives or friends.
R.L. 1910, §§ 2380, 4956.

§12-1442. Slander defined.
Slander is a false and unprivileged publication, other than libel, which:
1. Charges any person with crime, or with having been indicted, convicted or punished for crime.
2. Imputes in him the present existence of an infectious, contagious or loathsome disease.
3. Tends directly to injure him in respect to his office, profession, trade or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade or business that has a natural tendency to lessen its profit.
4. Imputes to him impotence or want of chastity; or,
5. Which, by natural consequences, causes actual damage.
R.L. 1910, § 4957.

§12-1443. Repealed by Laws 1980, c. 68, § 1, emerg. eff. April 10, 1980.

§12-1443.1. Privileged communication defined - Exemption from libel.
A. A privileged publication or communication is one made:
First. In any legislative or judicial proceeding or any other proceeding authorized by law;
Second. In the proper discharge of an official duty;
Third. By a fair and true report of any legislative or judicial or other proceeding authorized by law, or anything said in the course thereof, and any and all expressions of opinion in regard thereto, and criticisms thereon, and any and all criticisms upon the official acts of any and all public officers, except where the matter stated of and concerning the official act done, or of the officer, falsely imputes crime to the officer so criticized.
B. No publication which under this section would be privileged shall be punishable as libel.
Added by Laws 1981, c. 21, § 1, operative April 7, 1981.

§12-1444. Repealed by Laws 1980, c. 68, § 1, emerg. eff. April 10, 1980.

§12-1444.1. Pleading - Proof - Defenses.

In all civil actions to recover damages for libel or slander, it shall be sufficient to state generally what the defamatory matter was, and that it was published or spoken of the plaintiff, and to allege any general or special damage caused thereby. As a defense thereto the defendant may deny and offer evidence to disprove the charges made, or he may prove that the matter charged as defamatory was true and, in addition thereto, that it was published or spoken under such circumstances as to render it a privileged communication. Added by Laws 1981, c. 21, § 2, operative April 7, 1981.

§12-1445. Repealed by Laws 1980, c. 68, § 1, emerg. eff. April 10, 1980.

§12-1446. Repealed by Laws 1986, c. 315, § 18, emerg. eff. June 24, 1986.

§12-1446a. Good faith in publishing libel - Retraction - Actual damages only - Jury question - Exceptions.

In an action for damages for the publication of a libel in a newspaper or periodical, if the evidence shows that the article was published in good faith and that its falsity was due to an honest mistake of the facts, and the question of "honest mistake" shall be a question of fact to be determined by a jury, unless a jury be waived by the parties, the plaintiff shall be entitled to recover actual damages only unless a retraction be requested and refused as hereinafter provided. The person claiming to have been libeled shall notify the publisher, either orally or in writing, stating or setting forth the particular matter claimed to be libelous and requesting that the same be retracted. If a retraction, headed "RETRACTION" in eighteen-point type or larger, be published on the same page and in the same type as were the statements complained of, in two regular issues of said newspaper or periodical, published within a reasonable time, but not to exceed two (2) weeks after such notice in a weekly newspaper, or not to exceed one (1) week in a daily newspaper, the publication of said retraction shall be full and complete satisfaction as to all other than actual damages, and the plaintiff shall not be entitled to recover other than actual damages on account of such erroneous published matter. If such a retraction be not so published, plaintiff may recover such damages as are provided by the statutes of this state, if his cause of action be maintained. This section shall not apply to any libel imputing unchastity to a woman; nor in any case in which the evidence shows the publication was made maliciously or with a premeditated intention and purpose to injure,

defame or destroy the reputation of another or to injuriously alter a person's reputation; nor to anonymous communications or publications, and provided further that this section shall not apply to any article pertaining to any candidate for any public office when said article is published within three (3) weeks of the date of the primary, runoff primary, special or general election, as the case may be.
Added by Laws 1941, p. 37, § 1.

§12-1446b. "Newspapers" or "periodicals" defined.

Newspapers or periodicals shall, for the purpose of this act, be considered publications having admission to the mails as second class mail matter and having all the other qualifications of a legal newspaper as defined in Chapter 1, Article 1, Session Laws 1935.
Added by Laws 1941, p. 38, § 2.

§12-1447.1. Defamation by radio and television - Limitation of liability.

The owner, licensee or operator of a television and/or radio broadcasting station or network of stations, and the agents or employees of any such owner, licensee or operator, shall not be liable for any damages for any defamatory statement published or uttered in or as a part of a television and/or radio broadcast, by one other than such owner, licensee or operator, or agent or employee thereof, unless it shall be alleged and proved by the complaining party, that such owner, licensee, operator or such agent or employee, has failed to exercise due care to prevent the publication or utterance of such statement in such broadcast.
Added by Laws 1957, p. 83, § 1.

§12-1447.2. Defamatory statements by candidates for public office.

In no event, however, shall any owner, licensee or operator, or the agents or employees of any such owner, licensee or operator of such television and/or radio station or network of stations be held liable for any damages for any defamatory statement uttered over the facilities of such station or network by any candidate for public office, where such statement is not subject to censorship or control by reason of any federal statute or any ruling or order of the Federal Communications Commission made pursuant thereto; PROVIDED, HOWEVER, that this section shall not apply to any owner, licensee, or operator, or any agent or employee of such owner, licensee or operator, of such visual or sound radio broadcasting station, or network of stations, when such owner, licensee, or operator, or agent or employee of such owner, licensee or operator, is a candidate for public office or speaking on behalf of a candidate for public office.
Added by Laws 1957, p. 83, § 2.

§12-1447.3. Damages recoverable.

In any action for damages for any defamatory statement published in or uttered as a part of a television and/or radio broadcast, the complaining party shall be allowed such actual and/or punitive damages as he has alleged and proved.
Added by Laws 1957, p. 83, § 3.

§12-1447.4. Recordation and preservation of political utterances.

It shall be the duty of such television and/or radio broadcasting station or network to record and preserve all political utterances. Said recording to be preserved for a period of two (2) years and made available to any person or persons instituting legal actions for libel or defamation. Any person, firm or corporation violating this section shall be guilty of a misdemeanor and upon conviction thereof fined not to exceed One Thousand Dollars ($1,000.00) and costs.
Added by Laws 1957, p. 83, § 4. Amended by Laws 1975, c. 152, § 1, emerg. eff. May 20, 1975.

§12-1447.5. Broadcast of truth statement following broadcast of untrue statement.

If any broadcasting station, at any time, broadcasts, publishes, or circulates any false statement, allegation or rumor pertaining or relating to any individual or association of individuals, or to any trade, labor business, social, economic or religious organization or to any firm, corporation or business or to any public official or candidate for a public office, the said broadcasting station upon demand of any person or persons affected or their representatives, shall broadcast, without charge, any statement setting forth in proper language the truth pertaining to such statement, allegation, or rumor, which said person or persons or their representatives shall offer to said broadcasting station for broadcast. Provided, that the truth statement shall be broadcast as many times as the untrue statement was broadcast. Provided further, that the truth statement shall be broadcast at a like or comparable time in the daily routine as was the untrue statement.
Added by Laws 1957, p. 83, § 5.

§12-1448. Deceased personality's right of publicity - Unauthorized use - Claims - Exemptions.

A. Any person who uses a deceased personality's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods, or services, without prior consent from the person or persons specified in subsection C of this section, shall be liable for any damages sustained by the person or persons injured as a result thereof, and any profits from the unauthorized use that are attributable to the use shall be taken into account in computing the actual damages. In

establishing these profits, the injured party or parties shall be required to present proof only of the gross revenue attributable to the use and the person who violated this section is required to prove his or her deductible expenses. Punitive damages may also be awarded to the injured party or parties. The prevailing party or parties in any action under this section shall also be entitled to attorney's fees and costs.

B. The rights recognized under this section are property rights, freely transferable, in whole or in part, by contract or by means of trust or testamentary documents, whether the transfer occurs before the death of the deceased personality, by the deceased personality or his or her transferees, or, after the death of the deceased personality, by the person or persons in whom such rights vest under this section or the transferees of that person or persons.

C. The consent required by this section shall be exercisable by the person or persons to whom such right of consent (or portion thereof) has been transferred in accordance with subsection B of this section, or if no such transfer has occurred, then by the person or persons to whom such right of consent (or portion thereof) has passed in accordance with subsection D of this section.

D. Subject to subsections B and C of this section, after the death of any person, the rights under this section shall belong to the decedents' spouse, issue, or parents in accordance with Section 213 of Title 84 of the Oklahoma Statutes. Said rights shall be exercised on behalf of and for the benefit of all those persons, by those persons who, in the aggregate, are entitled to more than a one-half (1/2) interest in such rights.

E. If any deceased personality does not transfer his or her rights under this section by contract, or by means of a trust or testamentary document, and there are no surviving persons as described in subsection D of this section, then the rights set forth in subsection A of this section shall terminate.

F. 1. A successor-in-interest to the rights of a deceased personality under this section or a licensee thereof may not recover damages for a use prohibited by this section that occurs before the successor-in-interest or licensee registers a claim of the rights under paragraph 2 of this subsection.

2. Any person claiming to be a successor-in-interest to the rights of a deceased personality under this section or a licensee thereof may register that claim with the Secretary of State on a form prescribed by the Secretary of State and upon payment of a fee of Ten Dollars ($10.00). The form shall be verified and shall include the name and date of death of the deceased personality, the name and address of the claimant, the basis of the claim, and the rights claimed.

3. Upon receipt and after filing of any document under this section, the Secretary of State may microfilm or reproduce by other

techniques any of the filings or documents and destroy the original filing or document. The microfilm or other reproduction of any document under the provision of this section shall be admissible in any court of law. The microfilm or other reproduction of any document may be destroyed by the Secretary of State fifty (50) years after the death of the personality named therein.

4. Claims registered under this subdivision shall be public records.

G. No action shall be brought under this section by reason of any use of a deceased personality's name, voice, signature, photograph, or likeness occurring after the expiration of one hundred (100) years from the death of the deceased personality.

H. As used in this section, "deceased personality" means any natural person whose name, voice, signature, photograph, or likeness has commercial value at the time of his or her death, whether or not during the lifetime of that natural person the person used his or her name, voice, signature, photograph, or likeness on or in products, merchandise or goods, or for purposes of advertising or selling, or solicitation of purchase of, products, merchandise, goods, or services. A "deceased personality" shall include, without limitation, any such natural person who has died within fifty (50) years prior to January 1, 1986.

I. As used in this section, "photograph" means any photograph or photographic reproduction, still or moving, or any videotape or live television transmission, of any person, such that the deceased personality is readily identifiable. A deceased personality shall be deemed to be readily identifiable from a photograph when one who views the photograph with the naked eye can reasonably determine who the person depicted in the photograph is.

J. For purposes of this section, a use of a name, voice, signature, photograph, or likeness in connection with any news, public affairs, or sports broadcast or account, or any political campaign, shall not constitute a use for which consent is required under subsection A of this section.

K. The use of a name, voice, signature, photograph, or likeness in a commercial medium shall not constitute a use for which consent is required under subsection A of this section solely because the material containing such use is commercially sponsored or contains paid advertising. Rather it shall be a question of fact whether or not the use of the deceased personality's name, voice, signature, photograph, or likeness was so directly connected with the commercial sponsorship or with the paid advertising as to constitute a use for which consent is required under subsection A of this section.

L. Nothing in this section shall apply to the owners or employees of any medium used for advertising, including, but not limited to, newspapers, magazines, radio and television networks and stations, cable television systems, billboards, and transit ads, by

whom any advertisement or solicitation in violation of this section is published or disseminated, unless it is established that such owners or employees had knowledge of the unauthorized use of the deceased personality's name, voice, signature, photograph, or likeness as prohibited by this section.

M. The remedies provided for in this section are cumulative and shall be in addition to any others provided for by law.

N. This section shall not apply to the use of a deceased personality's name, voice, signature, photograph, or likeness, in any of the following instances:

1. A play, book, magazine, newspaper, musical composition, exhibit, display, film, radio or television program, other than an advertisement or commercial announcement not exempt under paragraph 4 of this subsection;

2. Material that is of political or newsworthy value;

3. Single and original works of fine art; and

4. An advertisement or commercial announcement for a use permitted by paragraph 1, 2 or 3 of this subsection.

Added by Laws 1985, c. 159, § 1, eff. Jan. 1, 1986.

§12-1449. Unauthorized use of another person's rights of publicity - Damages - Consent - Presumptions - Fact questions - Exemptions.

A. Any person who knowingly uses another's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods, or services, without such person's prior consent, or, in the case of a minor, the prior consent of his parent or legal guardian, shall be liable for any damages sustained by the person or persons injured as a result thereof, and any profits from the unauthorized use that are attributable to the use shall be taken into account in computing the actual damages. In establishing such profits, the injured party or parties are required to present proof only of the gross revenue attributable to such use, and the person who violated this section is required to prove his or her deductible expenses. Punitive damages may also be awarded to the injured party or parties. The prevailing party in any action under this section shall also be entitled to attorney's fees and costs.

B. As used in this section, "photograph" means any photograph or photographic reproduction, still or moving, or any videotape or live television transmission, of any person, such that the person is readily identifiable.

1. A person shall be deemed to be readily identifiable from a photograph when one who views the photograph with the naked eye can reasonably determine that the person depicted in the photograph is the same person who is complaining of its unauthorized use.

2. If the photograph includes more than one person so identifiable, then the person or persons complaining of the use shall be represented as individuals rather than solely as members of a definable group represented in the photograph. A definable group includes, but is not limited to, the following examples: A crowd at any sporting event, a crowd in any street or public building, the audience at any theatrical or stage production, a glee club, or a baseball team.

3. A person or persons shall be considered to be represented as members of a definable group if they are represented in the photograph solely as a result of being present at the time the photograph was taken and have not been singled out as individuals in any manner.

C. Where a photograph or likeness of an employee of the person using the photograph or likeness appearing in the advertisement or other publication prepared by or in behalf of the user is only incidental, and not essential, to the purpose of the publication in which it appears, there shall arise a rebuttable presumption affecting the burden of producing evidence that the failure to obtain the consent of the employee was not a knowing use of the employee's photograph or likeness.

D. For purposes of this section, a use of a name, voice, signature, photograph, or likeness in connection with any news, public affairs, or sports broadcast or account, or any political campaign, shall not constitute a use for which consent is required under subsection A of this section.

E. The use of a name, voice, signature, photograph, or likeness in a commercial medium shall not constitute a use for which consent is required under subsection A of this section solely because the material containing such use is commercially sponsored or contains paid advertising. Rather it shall be a question of fact whether or not the use of the person's name, voice, signature, photograph, or likeness was so directly connected with the commercial sponsorship or with the paid advertising as to constitute a use for which consent is required under subsection A of this section.

F. Nothing in this section shall apply to the owners or employees of any medium used for advertising, including, but not limited to, newspapers, magazines, radio and television networks and stations, cable television systems, billboards, and transit ads, by whom any advertisement or solicitation in violation of this section is published or disseminated, unless it is established that such owners or employees had knowledge of the unauthorized use of the person's name, voice, signature, photograph, or likeness as prohibited by this section.

G. The remedies provided for in this section are cumulative and shall be in addition to any others provided for by law.

Added by Laws 1985, c. 159, § 2, eff. Jan. 1, 1986.

§12-1450. Online impersonation – Liability - Remedies.

A. As used in this section:

1. "Photograph" means any photograph or photographic reproduction, still or moving, or any videotape or live television transmission of any person, such that the person is readily identifiable. A person shall be deemed to be readily identifiable from a photograph when one who views the photograph with the naked eye can reasonably determine that the person depicted in the photograph is the same person who is complaining of its unauthorized use, or the person on whose behalf a complaint is being made; and

2. "Social media" means forms of electronic communication through which users create online communities to share information, ideas, personal messages and other content.

B. Any person who knowingly uses another's name, voice, signature, photograph or likeness through social media to create a false identity without such person's consent, or in the case of a minor the consent of his or her parent or legal guardian, for the purpose of harming, intimidating, threatening or defrauding such person, shall be liable for online impersonation and liable for any damages sustained by the person or persons injured as a result thereof; provided, however, there shall be no liability for any online impersonation for which the sole purpose is satire or parody.

C. At the time of filing a petition for an action pursuant to this section, the plaintiff may request an automatic injunction preventing the continued use of the plaintiff's name, voice, signature, photograph or likeness. The plaintiff may be awarded damages as provided in subsection D of this section.

D. Actual damages shall include, but not be limited to, funds spent related to counseling, identity theft or libel. Any profits from the unauthorized use of such person's likeness that are attributable to the use may be considered in the computation of actual damages. Punitive damages of no less than Five Hundred Dollars ($500.00) per individual may be awarded to the injured party or parties. The prevailing party in any action under this section shall be entitled to attorney fees and costs.

E. This section shall not apply to law enforcement agencies or their employees acting within the scope of their employment investigating Internet crimes. Nothing in this section shall be construed to impose liability on an interactive computer service, as defined in 47 U.S.C. 230(f), for content provided by another person.

F. The remedies provided for in this section are cumulative and shall be in addition to any others provided for by law.

Added by Laws 2016, c. 291, § 2, eff. Nov. 1, 2016.

§12-1451. By and to whom writ issued - Function.

The writ of mandamus may be issued by the Supreme Court or the district court, or any justice or judge thereof, during term, or at chambers, to any inferior tribunal, corporation, board or person, to compel the performance of any act which the law specially enjoins as a duty, resulting from an office, trust or station; but though it may require an inferior tribunal to exercise its judgment or proceed to the discharge of any of its functions, it cannot control judicial discretion.
R.L.1910, § 4907.

§12-1452. Writ not issued where remedy at law - Information.
This writ may not be issued in any case where there is a plain and adequate remedy in the ordinary course of the law. It may be issued on the information of the party beneficially interested.
R.L. 1910, § 4908.

§12-1453. Forms and contents of writ.
The writ is either alternative or peremptory. The alternative writ must state, concisely, the fact showing the obligation of the defendant to perform the act, and his omission to perform it, and command him that immediately upon the receipt of the writ, or at some other specified time, he do the act required to be performed or show cause before the court whence the writ issued, at a specified time and place, why he has not done so; and that he then and there return the writ with his certificate of having done as he is commanded. The peremptory writ must be in a similar form, except that the words requiring the defendant to show cause why he has not done as commanded, must be omitted.
R.L. 1910, § 4909.

§12-1454. When peremptory writ to issue.
When the right to require the performance of the act is clear, and it is apparent that no valid excuse can be given for not performing it, a peremptory mandamus may be allowed in the first instance; in all other cases, the alternative writ must be first issued.
R.L. 1910, § 4910.

§12-1455. Motion upon affidavit - Notice.
The motion for the writ must be made upon affidavit, and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.
R.L. 1910, § 4911.

§12-1456. Allowance and service - Neglect to return.

The allowance of the writ must be endorsed thereon, signed by the judge of the court granting it, and the writ must be served personally upon the defendant; if the defendant, duly served, neglect to return the same, he shall be proceeded against as for contempt.
R.L. 1910, § 4912.

§12-1457. Answer.

On the return day of the alternative writ, or such further day as the court may allow, the party on whom the writ shall have been served may show cause, by answer made in the same manner as an answer to a petition in a civil action.
R.L. 1910, § 4913.

§12-1458. Failure to answer - New matter in answer not conclusive.

If no answer be made, a peremptory mandamus must be allowed against the defendant; if answer be made, containing new matter, the same shall not, in any respect, conclude the plaintiff, who may, on the trial or other proceeding, avail himself of any valid objections to its sufficiency, or may countervail it by proof, either in direct denial or by way of avoidance.
R.L. 1910, § 4914.

§12-1459. No further pleading allowed - Similarity to civil action.

No other pleading or written allegation is allowed than the writ and answer; these are the pleadings in the case, and have the same effect, and are to be construed and may be amended in the same manner, as pleadings in a civil action; and the issues thereby joined must be tried, and the further proceedings thereon had, in the same manner as in a civil action.
R.L. 1910, § 4915.

§12-1460. Recovery by plaintiff.

If judgment be given for the plaintiff, he shall recover the damages which he shall have sustained, to be ascertained by the court or jury, or by referees, as in a civil action, and costs; and a peremptory mandamus shall also be granted to him without delay.
R.L. 1910, § 4916.

§12-1461. Damages a bar to further action.

A recovery of damages, by virtue of this article, against a party who shall have made a return to a writ of mandamus, is a bar to any other action against the same party for the making of such return.
R.L. 1910, § 4917.

§12-1462. Penalty for refusal or neglect to perform.

Whenever a peremptory mandamus is directed to any public officer, body or board, commanding the performance of any public duty

specially enjoined by law, if it appear to the court that such officer, or any member of such body or board, has, without just excuse, refused or neglected to perform the duty so enjoined, the court may impose a fine, not exceeding Five Hundred Dollars ($500.00), upon every such officer or members of such body or board. Such fine, when collected, shall be paid into the treasury of the county where the duty ought to have been performed; and the payment thereof is a bar to an action for any penalty incurred by such officer or member of such body or board, by reason of his refusal or neglect to perform the duty so enjoined.
R.L. 1910, § 4918.

§12-1481. Occupying claimant entitled to pay for improvements and taxes.

In all cases any occupying claimant being in quiet possession of any lands or tenements for which such person can show a plain and connected title in law or equity, derived from the records of some public office, or being in quiet possession of and holding the same by deed, devise, descent, contract, bond, or agreement from and under any person claiming title as aforesaid, derived from the records of some public office, or by deed duly authenticated and recorded, or being in quiet possession of, and holding the same under sale on execution or order of sale against any person claiming title as aforesaid, derived from the records of some public office, or by deed, duly authenticated and recorded; or being in possession of and holding any land under any sale for taxes authorized by the laws of this state, or any person who has made a bona fide settlement and improvement which he still occupies upon any of the Indian lands lying in this state, or any lands held in trust for the benefit of any Indian tribe at the date of such settlement, or which may have heretofore been Indian lands, and which were vacant and unoccupied at the date of such settlement, and where the records of the county show no title or claim of any person to said lands at the time of such settlement; or any person in quiet possession of any land claiming title thereto, and holding the same under a sale and conveyance made by executors, administrators or guardians, or by any other person in pursuance of any order of court or decree in chancery where lands are or have been directed to be sold and the purchaser thereof has obtained title to and possession of the same without any fraud or collusion on his part, shall not be evicted or thrown out of possession by any person or persons who shall set up and prove an adverse and better title to said lands until said occupying claimant or his heirs, shall be paid the full value of all lasting and valuable improvements made on such lands by such occupying claimant, or by the person under whom he may hold the same and all taxes paid thereon by such claimant with interest, as provided for the redemption of lands sold for taxes, previous to receiving actual

notice by the commencement of suit on such adverse claim by which eviction may be effected.
R.L. 1910, § 4933.

§12-1482. Tax title, sufficiency.

The title by which the successful claimant succeeds against the occupying claimant, in all cases of lands sold for taxes, by virtue of any of the laws of this state, shall be considered an adverse and better title, under the provisions of this article, whether it be the title under which the taxes were due, and for which said land was sold, or any other title or claim whatever; and the occupying claimant holding possession of land sold for taxes, as aforesaid, having the deed of a collector of taxes or county clerk for such sale for taxes, or a certificate of sale of said land from a collector of taxes or a county treasurer, or shall claim under the person or persons who hold such deed or certificate, or any other title or claim whatever, shall be considered as having sufficient title to said land to demand the value of improvements under the provisions of this article.
R.L. 1910, § 4934.

§12-1483. Appraisement or trial - New trial.

The court rendering judgment in any case provided for by this article against an occupying claimant, shall, at the request of such occupying claimant, for the benefit of the provisions of this article, cause an entry to be made upon the journal of such request, and shall at once set a day for the trial of the right of such occupying claimant to compensation for all lasting, valuable and permanent improvements made by such occupying claimant, or those under whom he claims upon the premises, prior to the issuing of summons in the cause; and at such trial each party shall produce his evidence relating to such improvements, and the court shall make specific findings of fact on all matters relating to the right of such occupying claimant to compensation for such improvements, and shall find specifically whether such improvements were made in good faith and under color of title and whether the occupying claimant is entitled to the benefit of this article, which findings shall be entered at length upon the journal, and if the court shall find that the occupying claimant is entitled to compensation for such improvements, it shall at once appoint three disinterested freeholders of the county who shall have the qualifications of jurors in the cause, to assess the actual value of the improvements on the date of the assessment, of which appointment and the date of assessment all parties to the action shall have five (5) days actual notice. Said appraisers shall also assess the rental value of the premises from the date of the summons to the date of the appraisement; also the actual value of the land without the

improvements; which assessments shall be made upon actual view of the premises, and said appraisers shall reduce their appraisement to writing and return the same to the court or clerk thereof forthwith; and upon such report the court shall render judgment in accordance therewith: Provided, that if either party shall at any time before the return and filing of the report of the appraisers, demand a trial by jury, the court shall at once discharge the appraisers and impanel a jury to find the facts and make the assessment of value which the appraisers were to make, which trial shall be had in open court and upon proofs to be adduced by the parties, and the trial shall be conducted in all respects as other jury trials, and the court may, in its discretion, send the jury to take an actual view of the premises. The said jury shall return their findings of value into court and the court shall then enter judgment in accordance with such findings: Provided, that if either party deem himself aggrieved by such assessment of values or findings of the court, he may, upon motion and proper showing, obtain a new trial as in other cases under the Code of Civil Procedure of this state.
R.L. 1910, § 4935.

§12-1484. Judgment for plaintiff - Execution - Bar of action for mesne profits.

If the jurors shall report a sum in favor of the plaintiff or plaintiffs in said action, for the recovery of real property, on the assessment and valuation of the valuable and lasting improvements, and the assessment of damages for waste, and the net annual value of the rents and profits, the court shall render a judgment therefor without pleadings, and issue execution thereon as in other cases; or if no excess be reported in favor of said plaintiff or plaintiffs, then, and in either case, the said plaintiff or plaintiffs shall be thereby barred from having or maintaining any action for mesne profits.
R.L. 1910, § 4936.

§12-1485. Judgment for occupying claimant - Appeal.

If the appraisers or jury appointed or impaneled as hereinbefore provided, shall find that the value of the improvements is greater than the value of the rents and damages and waste, then the court shall enter judgment that the successful claimant pay to the clerk of the court for the use of the occupying claimant the full amount of the excess of the value of the improvements over the value of the rents, damages and waste before the writ of ouster shall issue; Provided, that if either party shall deem himself aggrieved by the judgment and shall desire to contest either or both the findings of the court or the appraisement of the appraisers or the jury herein provided for, by appeals or otherwise, to a higher court, and the successful claimant shall execute an undertaking to the occupying

claimant in double the amount of the excess in value as found by the appraisers or the jury, with good and sufficient surety to be approved by the clerk of the court, conditioned that he will pay such excess with interest from the date of the judgment, if the judgment be affirmed by the appellate court, then the writ of ouster shall, at the request of the successful claimant issue at once.
R.L. 1910, § 4937.

§12-1486. Election to receive value without improvements - Neglect or refusal to pay.

If the successful claimant, his heirs, or the guardians of said heirs they being minors, shall elect to receive the value without improvements assessed as aforesaid, to be paid by the occupying claimant within such reasonable time as the court may allow, and shall tender a general warranty deed of the land in question, conveying such adverse or better title within said time allowed by the court for the payment of the money in this section mentioned, and the occupying claimant shall refuse or neglect to pay said money to the successful claimant, his heirs or their guardians, within the time limited as aforesaid, then a writ of possession shall be issued in favor of said successful claimant, his heirs or their guardians.
R.L. 1910, § 4938.

§12-1487. Sheriff's, administrator's or guardian's sale - Purchase price to be refunded on recovery of land.

Whenever any land, sold by an executor, administrator, guardian, sheriff or commissioner of court, is afterwards recovered in the proper action by any person originally liable, or in whose hands the land would be liable to pay the demand or judgment for which, or for whose benefit the land was sold, or any one claiming under such person, the plaintiff shall not be entitled to the possession of the land until he has refunded the purchase money with interest, deducting therefrom the value of the use, rents and profits, and injury done by waste and cultivation, to be assessed under the provisions of this article.
R.L. 1910, § 4939.

§12-1501. Renumbered as § 569 of Title 52 by Laws 1985, c. 120, § 2, emerg. eff. May 31, 1985.

§12-1501.1. Petition for partition - Contents - Proof required.

A. When the object of the action is to effect a partition of real property, the petition must describe the property and the respective interests of the owners thereof, if known.

B. 1. Except as provided for in this subsection, in any action involving the partition of a mineral estate, in addition to the requirements of subsection A of this section, the petition shall

specify and the plaintiff shall establish at trial by a preponderance of the evidence that:

a. one or more of the co-owners of the mineral estate are frustrating the development objective of the plaintiff for the estate; and

b. an order of the Corporation Commission to pool and develop said minerals pursuant to Section 87.1 of Title 52 of the Oklahoma Statutes and a plan of unitization created pursuant to Sections 287.1 through 287.15 of Title 52 of the Oklahoma Statutes would not effectuate a realization of the development objective.

2. The provisions of this subsection shall not apply to any action involving the partition of a mineral estate, if the person requesting the partition owns the surface estate or any part thereof and also owns an interest in the mineral estate.

R.L. 1910, § 4940. Amended by Laws 1970, c. 40, § 1, emerg. eff. March 2, 1970; Laws 1971, c. 65, § 1, emerg. eff. April 9, 1971; Laws 1984, c. 205, § 1, emerg. eff. May 14, 1984; Laws 1985, c. 120, § 1, emerg. eff. May 31, 1985. Renumbered from § 1501 of this title by Laws 1985, c. 120, § 2, emerg. eff. May 31, 1985. Amended by Laws 1987, c. 189, § 5, operative Nov. 1, 1987. Renumbered from § 569 of Title 52 by Laws 1987, c. 189, § 7, operative Nov. 1, 1987.

§12-1502. Unknown shares or owners.

If the number of shares or interests is known, but the owners thereof are unknown, or if there are, or are supposed to be, any interests which are unknown, contingent or doubtful, these facts must be set forth in the petition with reasonable certainty.

R.L. 1910, § 4941.

§12-1503. Creditors may be made parties.

Creditors having a specific or general lien upon all or any portion of the property, may be made parties.

R.L. 1910, § 4942.

§12-1504. Answer.

The answers of the defendants must state, among other things, the amount and nature of their respective interests. They may also deny the interests of any of the plaintiffs, or any of the defendants.

R.L. 1910, § 4943.

§12-1505. Order for partition.

After the interests of all the parties shall have been ascertained, the court shall make an order specifying the interests of the respective parties, and directing partition to be made accordingly.

R.L. 1910, § 4944.

§12-1506. Commissioners to partition.

Upon making such order, the court shall appoint three commissioners to make partition into the requisite number of shares.
R.L. 1910, § 4945.

§12-1507. Allotments.

For good and sufficient reasons appearing to the court, the commissioners may be directed to allot particular portions to any one of the parties.
R.L. 1910, § 4946.

§12-1508. Oath of commissioners.

Before entering upon their duties, such commissioners shall take and subscribe an oath that they will perform their duties faithfully and impartially, to the best of their ability.
R.L. 1910, § 4947.

§12-1509. Duty of commissioners - Report - Notice of time limit for filing exception or election.

A. The commissioners shall make partition of the property among the parties according to their respective interests, if such partition can be made without manifest injury. But if such partition cannot be made, the commissioners shall make a valuation and appraisement of the property. They shall make a report of their proceedings to the court, forthwith. For the purpose of this section the term "party" shall mean one who has been adjudged to own an undivided interest in the property involved in the action.

B. Within ten (10) days after the report of commissioners is filed with the court clerk, the attorney for the plaintiff shall forward by certified mail to the attorney of record for every other party in the case and to each party not represented by an attorney, a copy of the commissioners' report and a notice stating that the time limit for filing an exception or an election to take the property at the appraisement, if partition cannot be made, is not later than twenty (20) days from the date the report was filed. Before the expiration of the said twenty (20) days, the court may fix a different and longer period for the filing of an election. The mailing of notice as required herein shall be certified by affidavit to be filed, attached to the original notice. If a party has been served by publication, the notice of said time limit shall be published in one issue of a newspaper qualified to publish legal notices, at least ten (10) days prior to the expiration of the date to file exception or election.

C. The time limit for filing an exception or an election to take property at appraisement, as prescribed in subsection B of this section, shall be calculated from the date the report of the

commissioners is filed in the case. On failure of the attorney for plaintiff to give notice within the time prescribed in subsection B of this section, the court, on application of any party, may extend the time for filing an exception or an election for the period not to exceed twenty (20) days from the date the application is heard.
R.L.1910,.§ 4948. Amended by Laws 1974, c. 166, § 1, eff. Oct. 1, 1974; Laws 1975, c. 75, § 1, eff. Oct. 1, 1975; Laws 1979, c. 68, § 1, eff. Oct. 1, 1979; Laws 1995, c. 232, § 1, eff. Nov. 1, 1995.

§12-1510. Action on exceptions to report.

Any party may file exceptions to the report of the commissioners, and the court may, for good cause, set aside such report, and appoint other commissioners, or refer the matter back to the same commissioners.
R.L. 1910, § 4949.

§12-1511. Judgment on partition.

If partition be made by the commissioners, and no exceptions are filed to their report, the court shall render judgment that such partition be and remain firm and effectual forever.
R.L. 1910, § 4950.

§12-1512. Purchase at appraised value.

If partition cannot be made, and the property shall have been valued and appraised, any one or more of the parties may elect to take the same at the appraisement, and the court may direct the sheriff to make a deed to the party or parties so electing, on payment to the other parties of their proportion of the appraised value. Such election shall be filed within twenty (20) days of the filing of the commissioners' report provided that the court may, before expiration of the said twenty (20) days, fix a different and longer period for the filing of elections.
R.L. 1910, § 4951. Amended by Laws 1953, p. 60, § 1; Laws 1974, c. 166, § 2, eff. Oct. 1, 1974.

§12-1513. Property sold, when - Amount for which sold.

If none of the parties elect to take the property at the valuation, or if several of the parties elect to take the same at the valuation, in opposition to each other, the court shall make an order directing the sheriff of the county to sell the same, in the same manner as in sales of real estate on execution; but no sale shall be made at less than two-thirds (2/3) of the valuation placed upon the property by the commissioners.
R.L. 1910, § 4952.

§12-1514. Return and deed.

The sheriff shall make return of his proceedings to the court, and if the sale made by him shall be approved by the court, the sheriff shall execute a deed to the purchaser, upon the payment of the purchase money, or securing the same to be paid, in such manner as the court shall direct.
R.L. 1910, § 4953.

§12-1515. Costs and fees.
The court making partition shall tax the costs, attorney's fees and expenses which may accrue in the action, and apportion the same among the parties, according to their respective interests, and may award execution therefor, as in other cases.
R.L. 1910, § 4954.

§12-1516. Power of court.
The court shall have full power to make any order, not inconsistent with the provisions of this article, that may be necessary to make a just and equitable partition between the parties, and to secure their respective interests.
R.L. 1910, § 4955.

§12-1517. Sale of property that cannot be partitioned - Procedure.
A. In addition to other provisions of law, if, upon the filing of the commissioners' report, it appears that the property cannot be partitioned in kind and the value of the property does not exceed Five Thousand Dollars ($5,000.00), the court may forthwith dispense with further regular partition proceedings and make an order directing the sheriff of the county to sell the property, in the same manner, as in sales of real estate on execution at not less than two-thirds (2/3) of the appraised value.
B. In addition to the notice required for sales of real estate on execution, notice of the sale shall be mailed with return receipt requested at least twenty (20) days prior to the sale, to all persons owning an interest in the property or to their attorneys at their respective last-known address.
C. If it can be established to the satisfaction of the court, prior to the sale, that such property is of a value in excess of Five Thousand Dollars ($5,000.00), such sale shall not be held and the court shall appoint other commissioners to reappraise the property or refer the matter to the same commissioners.
D. Confirmation of such sale shall be set for hearing not less than ten (10) days after the day of sale. A written notice of hearing on the confirmation of the sale shall be mailed, by first-class mail, postage prepaid, to all persons having an interest in the property as previously determined by the court whose names and addresses are known, at least ten (10) days before the hearing on the confirmation of the sale, and if the name or address of any such

person is unknown, such notice shall also be published in a newspaper authorized by law to publish legal notices in each county in which the property is situated. If no newspaper authorized by law to publish legal notices is published in such county, the notice shall be published in some such newspaper of general circulation which is published in an adjoining county. The notice shall state the name of the person or persons being notified by publication and shall be published once at least ten (10) days prior to the date of the hearing on the notice of confirmation of the sale. An affidavit of proof of mailing and of publication, if publication is required, shall be filed in the case.

E. Upon such hearing, if satisfied with the validity and fairness of the sale, the court shall order the sheriff to issue a sheriff's deed to the purchaser of the property and, after apportionment of costs, attorney fees and expenses, direct disbursement of the sale proceeds to those persons legally entitled to receive the same.

Added by Laws 1980, c. 60, § 1, eff. Oct. 1, 1980. Amended by Laws 1986, c. 227, § 5, eff. Nov. 1, 1986.

§12-1531. Quo warranto abolished - Relief obtainable by civil action - Maintenance by contestants for office.

The writ of quo warranto, and proceedings by information in the nature of quo warranto, are abolished and the remedies heretofore obtainable in those forms may be had by civil action; provided, that such cause of action may be instituted and maintained by the contestant for such office at any time after the issuance of the certificate of election by the state, county, township or city election boards, and before the expiration of thirty (30) days after such official is inducted into office; provided further, that all suits now pending, contesting such elections, shall not be dismissed because of the prematurity as to time of their commencement, which shall be deemded valid and timely, if commenced after the issuance of the election certificate or after twenty (20) days after the result of said election having been declared by such election board; and provided further, that this act shall not apply to primary election.

R.L. 1910, § 4919. Amended by Laws 1925, c. 96, p. 145, § 1.

§12-1532. Grounds for action in the nature of quo warranto.

Such action may be brought in the Supreme Court or in the district court, in the following cases:

1st, When any person shall usurp, intrude into, or unlawfully hold or exercise any public office, or shall claim any franchise within this state or any office in any corporation created by authority of this state;

2nd, Whenever any public officer shall have done or suffered any act which, by the provisions of law, shall work a forfeiture of his office;

3rd, When any association or number of persons shall act within this state as a corporation without being legally incorporated;

4th, When any corporation does or admits acts which amount to a surrender or a forfeiture of its rights and privileges as a corporation, or when any corporation abuses its power or intentionally exercises powers not conferred by law;

5th, Where any corporation claims, by virtue of a congressional grant, any of the public lands or Indian lands to which the Indian title or right of occupancy has been extinguished;

6th, For any other cause for which a remedy might have been heretofore obtained by writ of quo warranto, or information in the nature of quo warranto.

R.L. 1910, § 4920.

§12-1533. Persons who may bring action - Expenses - Petition by Attorney General or district attorney - Recovery of damages.

When the action is brought by the Attorney General or the district attorney of any county of his own motion, or when directed to do so by competent authority, it shall be prosecuted in the name of the state, but where the action is brought by a person claiming an interest in the office, franchise or corporation, or claiming any interest adverse to the franchise, gift or grant, which is the subject of the action, it shall be prosecuted in the name and under the direction, and at the expense of such persons; whenever the action is brought against a person for usurping an office by the Attorney General or the district attorney, he shall set forth in the petition the name of the person rightfully (entitled) to the office and his right or title thereto; when the action in such case is brought by the person claiming title, he may claim and recover any damage he may have sustained.

R.L. 1910, § 4921.

§12-1534. Judgment in contest for office.

In every case contesting the right to an office, judgment shall be rendered according to the rights of the parties, and for the damages the plaintiff or person entitled may have sustained, if any, to the time of the judgment.

R.L. 1910, § 4922.

§12-1535. Judgment for plaintiff.

If judgment be rendered in favor of the plaintiff or person entitled, he shall proceed to exercise the functions of the office, after he has been qualified as required by law; and the court shall order the defendant to deliver over all the books and papers in his

custody or within his power, belonging to the office from which he shall have been ousted.
R.L. 1910, § 4923.

§12-1536. Enforcement of judgment.
If the defendant shall refuse or neglect to deliver over the books and papers, pursuant to the order, the court, or judge thereof, shall enforce the order by attachment and imprisonment.
R.L. 1910, § 4924.

§12-1537. Plaintiff may have separate action for damages - Judgment of ouster or dissolution.
When judgment is rendered in favor of the plaintiff, he may, if he has not claimed his damages in the action, have a separate action for the damages at any time within one (1) year after the judgment. The court may give judgment of ouster against the defendant, and exclude him from the office, franchise or corporate rights; and in cases of corporations, may give judgment that the same shall be dissolved.
R.L. 1910, § 4925.

§12-1538. Costs, in case of corporations - Scope of relief - Receiver.
If judgment be rendered against any corporation, or against any persons claiming to be a corporation, the court may cause the costs to be collected by execution against the persons claiming to be a corporation, or by attachment against the directors or other officers of the corporation, and may restrain any disposition of the effects of the corporation, appoint a receiver of its property and effects, take an account, and make a distribution thereof among the creditors and persons entitled.
R.L. 1910, § 4926.

§12-1551. Appointment of receiver.
A receiver may be appointed by a Judge of the Supreme Court or a district court judge:
1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured.
2. In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property or in connection with a

mortgagee foreclosing his mortgage by power of sale under the Oklahoma Power of Sale Mortgage Foreclosure Act:

a. where it appears that the mortgaged property is in danger of being lost, removed or materially injured, or

b. that a condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt, or

c. that a condition of the mortgage has not been performed and the mortgage instrument provides for the appointment of a receiver.

3. After judgment, to carry the judgment into effect.

4. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceeding in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment.

5. In the cases provided in this Code, and by special statutes, when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

6. In all other cases where receivers have heretofore been appointed by the usages of the courts of equity.

R.L. 1910, § 4979. Amended by Laws 1989, c. 332, § 1, eff. Nov. 1, 1989.

§12-1552. Persons ineligible.

No party, or attorney, or person interested in an action, shall be appointed receiver therein except by consent of all parties thereto.

R.L. 1910, § 4980.

§12-1553. Oath and bond.

Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with one or more sureties, approved by the court or judge; execute an undertaking to such person and in such sum as the court or judge shall direct, to the effect that he will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein.

R.L. 1910, § 4981.

§12-1554. Powers of receiver.

The receiver has, under the control of the court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, to collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the courts may authorize.

R.L. 1910, § 4982.

§12-1555. Investment of funds.

Funds in the hands of a receiver may be invested upon interest, by order of the court; but no such order shall be made, except upon the consent of all the parties to the action.
R.L. 1910, § 4983.

§12-1556. Disposition of property litigated.

When it is admitted, by the pleading or oral examination of a party, that he has in his possession or under his control any money or other thing capable of delivery, which, being the subject of litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same to be deposited in court or delivered to such party, with or without security, subject to the further direction of the court.
R.L. 1910, § 4984.

§12-1557. Punishment for disobedience of court.

Whenever, in the exercise of its authority, a court shall have ordered the deposit or delivery of money or other thing, and the order is disobeyed, the court, besides punishing the disobedience as for contempt, may make an order requiring the sheriff to take the money, or thing, and deposit or deliver it, in conformity with the direction of the court.
R.L. 1910, § 4985.

§12-1558. Repealed by Laws 1970, c. 289, § 3, eff. July 1, 1970.

§12-1559. Vacation of appointment by Supreme Court.

In all cases in the Supreme Court in which a receiver has been appointed, or refused, by any Justice of the Supreme Court, the party aggrieved may, within ten (10) days thereafter have the right to file a motion to vacate the order refusing or appointing such receiver, and hearing on such motion may be had before the Supreme Court, if the same be in session, or before a quorum of the justices of said court in vacation, at such time and place as the said court or the justices thereof may determine, and pending the final determination of the cause, if the order was one of the appointment of a receiver, the moving party shall have the right to give bond with good and sufficient sureties, and in such amount as may be fixed by order of the court or a justice thereof, conditioned for the due prosecution of such cause and the payment of all costs and damages that may accrue to the state, or any officer, or person by reason thereof, and the authority of any such receiver shall be suspended pending a final determination of such cause, and if such receiver shall have taken possession of any property in controversy in said action, the same

shall be surrendered to the rightful owner thereof, upon the filing and approval of said bond.
R.L. 1910, § 4987.

§12-1560. Foreclosure of licensed medical marijuana business – Continuation of operations.

A. In the event that a licensed medical marijuana dispensary, commercial grower or processor is foreclosed, is the subject of an order appointing a receiver, becomes insolvent, bankrupt or otherwise ceases operations, a secured party or receiver may continue operations at the dispensary, grower or processor upon submitting to the Oklahoma Medical Marijuana Authority, State Department of Health, proof that the secured party or receiver, or if the secured party or receiver is a business entity, any individual who has a financial interest in the secured party or receiver, meets the requirements and restrictions set forth in:

1. For licensed medical marijuana dispensaries, Section 421 of Title 63 of the Oklahoma Statutes;

2. For licensed commercial medical marijuana growers, Section 422 of Title 63 of the Oklahoma Statutes; or

3. For licensed medical marijuana processors, Section 423 of Title 63 of the Oklahoma Statutes.

The Authority may prescribe the form and manner of submitting proof under this subsection. Neither the state nor agency of this state shall require an additional fee from the secured party or receiver, other than payment of annual fees which may become due during the operation by the secured party or receiver.

B. Subject to the requirements of subsection A of this section, the Oklahoma Medical Marijuana Authority, State Department of Health, shall promulgate rules for the manner and conditions under which:

1. Marijuana items left by a deceased, insolvent or bankrupt person or licensee, or subject to a security interest or a court order appointing a receiver, may be foreclosed, sold under execution or otherwise disposed whether by foreclosure or by sale as a going concern;

2. The business of a licensee who is deceased, insolvent, bankrupt, or the subject of an order appointing receiver or a foreclosure by a secured party, may be operated for a reasonable period following the death, insolvency, appointment of a receiver or bankruptcy; and

3. A secured party or court-appointed receiver may continue to operate a business for which a license has been issued under Section 421, 422 or 423 of Title 63 of the Oklahoma Statutes for a reasonable period after default on the indebtedness by the debtor or after the appointment of the receiver.
Added by Laws 2019, c. 435, § 1, eff. Nov. 1, 2019.

§12-1571. Order of delivery - Procedure.

A. The plaintiff in an action to recover the possession of specific personal property may claim the delivery of the property at the commencement of suit, as provided herein.

1. The petition must allege facts which show:

a. a description of the property claimed,

b. that the plaintiff is the owner of the property or has a special ownership or interest therein, stating the facts in relation thereto, and that he is entitled to the immediate possession of the property,

c. that the property is wrongfully detained by the defendant,

d. the actual value of the property, provided that when several articles are claimed, the value of each shall be stated as nearly as practicable,

e. that the property was not taken in execution on any order or judgment against said plaintiff, or for the payment of any tax, fine or amercement assessed against him, or by virtue of an order of delivery issued under this chapter, or any other mesne or final process issued against said plaintiff; or, if taken in execution or on any order or judgment against the plaintiff, that it is exempt by law from being so taken, and

f. the prayer for relief requests that the court issue an order for the immediate delivery of the property.

2. The above allegations are verified by the party or, when the facts are within the personal knowledge of his agent or attorney and this is shown in the verification, by said agent or attorney.

3. A notice shall be issued by the clerk and served on the defendant with the summons which shall notify the defendant that an order of delivery of the property described in the petition is sought and that the defendant may object to the issuance of such an order by a written objection which is filed with the clerk and delivered or mailed to the plaintiff's attorney within five (5) days of the service of the summons. In the event that no written objection is filed within the five-day period, no hearing is necessary and the court clerk shall issue the order of delivery. Should a written objection be filed within the five-day period specified, the court shall, at the request of either party, set the matter for prompt hearing. At such hearing the court shall proceed to determine whether the order for prejudgment delivery of the property should issue according to the probable merit of plaintiff's petition. Provided, however, that no order of delivery may be issued until an undertaking has been executed pursuant to Section 1573 of this title.

Nothing contained in this act shall prohibit a party from waiving his right to a hearing or from voluntarily delivering the goods to

the party seeking them before the commencement of the proceedings or at any time after institution thereof.

B. Where the notice that is required by subsection A of this section cannot be served on the defendant but the judge finds that a reasonable effort to serve him was made and at the hearing the plaintiff has shown the probable truth of the allegations in his petition, the court may issue an order for the prejudgment delivery of the property. If an order for the delivery of the property is issued without actual notice being given the defendant, the defendant may move to have said order dissolved and, if he does not have possession of the property, for a return of the property. Notice of said motion with the date of the hearing shall be served upon the attorney for the plaintiff in the action. The motion shall be heard promptly, and in any case within five (5) days after the date that it is filed. The court must grant the motion unless, at the hearing on defendant's motion, the plaintiff proves the probable truth of the allegations contained in his petition. If said notice is filed before the sheriff turns the property over to the plaintiff, the sheriff shall retain control of the property pending the hearing on the motion.

C. The court may, on request of the plaintiff, order the defendant not to conceal, damage or destroy the property or a part thereof and not to remove the property or a part thereof from the state or county, pending the hearing on plaintiff's request for an order for the prejudgment delivery of the property, and said order may be served with the summons.

D. No action to recover the possession of specific personal property pursuant to this section may be brought against any city, county or state agency or an employee of a city, county, or state agency, if the claim alleges matters arising from incarceration, probation, parole or community supervision.

R.L. 1910, § 4798. Amended by Laws 1974, c. 129, § 1, emerg. eff. May 3, 1974; Laws 1976, c. 71, § 1, emerg. eff. April 26, 1976; Laws 2002, c. 402, § 3, eff. July 1, 2002.

§12-1571.1. Damage, concealment or removal of property subject to order of delivery - Penalty.

Any person who willfully and knowingly damages property in which there exists a valid right to issuance of an order of delivery, or on which such order has been sought under the provisions of this act, or who conceals it, with the intent to interfere with enforcement of the order, or who removes it from the jurisdiction of the court in which the action is pending with the intention of defeating enforcement of an order of delivery, or who willfully refuses to disclose its location to an officer charged with executing an order for its delivery, or, if such property is in his possession, willfully interferes with the officer charged with executing such writ, shall

be guilty of a misdemeanor, and if convicted shall be subject to a fine of not more than One Thousand Dollars ($1,000.00) and imprisonment for a term of not more than six (6) months, or both; and, in addition to such criminal penalties, shall be liable to the plaintiff for double the amount of damage done to the property together with a reasonable attorney's fee to be fixed by the court, which damages and fee shall be deemed based on tortious conduct and enforceable accordingly.
Added by Laws 1974, c. 129, § 2, emerg. eff. May 3, 1974.

§12-1572. Repealed by Laws 1976, c. 71, § 4, emerg. eff. April 26, 1976.

§12-1573. Undertaking in replevin.
The order shall not be issued until there has been executed by one or more sufficient sureties of the plaintiff, to be approved by the clerk, an undertaking in not less than double the value of the property as stated in the petition to the effect that the plaintiff shall duly prosecute the action, and pay all costs and damages which may be awarded against him, including attorney's fees and, if the property be delivered to him, that he will return the same to the defendant if a return be adjudged; provided, that where the State of Oklahoma is party plaintiff, an undertaking in replevin shall not be required of the plaintiff, but a writ shall issue upon petition duly filed as provided by law. The undertaking shall be filed with the clerk of the court.
R.L. 1910, § 4800. Amended by Laws 1923, c. 75, p. 141, § 1; Laws 1976, c. 71, § 2, emerg. eff. April 26, 1976; Laws 1977, c. 96, § 1, emerg. eff. May 30, 1977.

§12-1573.1. Replevin bond - Value.
On application of either party which is made at the time of executing the replevin bond or the redelivery bond, or at a later date, with notice to the adverse party, the court may hold a hearing to determine the value of the property which the plaintiff seeks to replevy. If the value as determined by the court is different from that stated in the petition, the value as determined by the court shall control for the purpose of Sections 1573 and 1577 of this title.
Added by Laws 1976, c. 71, § 3, emerg. eff. April 26, 1976. Amended by Laws 1977, c. 96, § 2, emerg. eff. May 30, 1977.

§12-1574. Order for delivery.
The order for the delivery of the property to the plaintiffs shall be addressed and delivered to the sheriff. It shall state the names of the parties, the court in which the action is brought, and command the sheriff to take the property, describing it, and deliver

it to the plaintiff, and to make return of the order on a day to be named therein.
R.L. 1910, § 4801.

§12-1575. Order returnable, when.
The return day of the order of delivery, when issued at the commencement of the suit, shall be the same as that of the summons; when issued afterwards, it shall be ten (10) days after it is issued.
R.L. 1910, § 4802.

§12-1576. Execution of order.
The sheriff shall execute the order by taking the property therein mentioned. He shall also deliver a copy of the order to the person charged with the unlawful detainer of the property, or leave such copy at his usual place of residence.
R.L. 1910, § 4803.

§12-1577. Redelivery on bond.
If, within twenty-four (24) hours after service of the copy of the order, there is executed by one or more sufficient sureties of the defendant, to be approved by the sheriff, an undertaking to the plaintiff, in not less than double the amount of the value of the property as stated in the affidavit of the plaintiff, to the effect that the defendant will deliver the property to the plaintiff, if such delivery be adjudged, and will pay all costs and damages that may be awarded against him, the sheriff shall return the property to the defendant. If such undertaking be not given within twenty-four (24) hours after service of the order, the sheriff shall deliver the property to the plaintiff.
R.L. 1910, § 4804.

§12-1578. Exception to sureties.
The plaintiff may, within twenty-four (24) hours from the time the undertaking referred to in Section 1577 of this title is given by the defendant, give notice as hereinafter required that he excepts to the sufficiency of the sureties. In the event plaintiff excepts to the sufficiency of the defendant's sureties, said plaintiff will file written exceptions and notice in the district court in the case involved, and the court shall set a day for hearing said exceptions, provided, however, after notice of plaintiff's exceptions have been given to the defendant, he shall have five (5) days within which to except to the sufficiency of plaintiff's sureties on the undertaking required of the plaintiff by Section 1573 above, and if a hearing is held on the exception by either party, the bonds of both shall be subject to scrutiny and a decision made upon each by the district court at the same hearing. If plaintiff or defendant fails to except, he shall be deemed to have waived all objections to the

sufficiency of the sureties involved. If either party excepts, the sureties must justify, upon notice, as bail in criminal cases.
R.L. 1910, § 4805. Amended by Laws 1986, c. 69, § 1, emerg. eff. March 25, 1968.

§12-1579. Proceedings on failure to prosecute action.

If the property has been delivered to the plaintiff, and judgment rendered against him, on demurrer, or if he otherwise fail to prosecute his action to final judgment, the court shall, on application of the defendant or his attorney, proceed to inquire into the right of property, and right of possession of the defendant to the property taken.
R.L. 1910, § 4806.

§12-1580. Judgment - Damages - Attorney fees.

In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or for the recovery of possession, or the value thereof in case a delivery cannot be had, and of damages for the detention. If the property has been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof in case a return cannot be had, and damages for taking and withholding the same. The judgment rendered in favor of the prevailing party in such action may include a reasonable attorney fee to be set by the court, to be taxed and collected as costs.
R.L. 1910, § 4807. Amended by Laws 1972, c. 173, § 1, emerg. eff. April 7, 1972.

§12-1581. Order to different counties - Separate and successive orders.

An order may be directed to any other county than the one in which the action is brought, for the delivery of the property claimed. Several orders may issue at the same time, or successively, at the option of the plaintiff; but only one of them shall be taxed in the costs, unless otherwise ordered by the court.
R.L. 1910, § 4808.

§12-1582. Officer may break into buildings.

The sheriff or other officer, in the execution of the order of delivery, may break open any building or inclosure in which the property claimed, or any part thereof, is concealed, but not until he has been refused an entrance into said building or inclosure and the delivery of the property, after having demanded the same.
R.L. 1910, § 4809.

§12-1583. Compelling delivery by attachment - Examination of party.

In an action to recover the possession of specific personal property, the court, or judge in vacation, may for good cause shown, before or after judgment, compel the delivery of the property to the officer or party entitled thereto by attachment, and may examine either party as to the possession or control of the property. Such authority shall only be exercised in aid of the foregoing provisions of this article.
R.L. 1910, § 4810.

§12-1584. Improper issue of order of delivery.
Any order for the delivery of property, issued under this article, without the affidavit and undertaking required, shall be set aside at the cost of the clerk issuing the same, and the plaintiff shall be liable, in damages, to the party injured.
R.L.1910, § 4811. Amended by Laws 2005, c. 192, § 1, eff. Nov. 1, 2005.

§12-1585. Joinder of cause of action for debt - Stay of judgment.
In any action for replevin in any court of this state, it shall be permissible for the plaintiff to join with the cause of action in replevin a cause of action founded on a debt claimed to be owing to the plaintiff if the debt shall be secured by a lien upon the property sought to be recovered in the cause of action in replevin. Upon the rendition of any judgment in replevin in any case wherein there shall be joined a cause of action from debt, judgment for such debt shall be stayed pending the determination of the amount thereof remaining due to plaintiff after any sale of the property pursuant to such liens.
Added by Laws 1951, p. 26, § 1.

§12-1600.1. Renumbered as § 301 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.2. Renumbered as § 302 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.3. Renumbered as § 303 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.4. Renumbered as § 304 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.5. Renumbered as § 305 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.6. Renumbered as § 306 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.7. Renumbered as § 307 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.8. Renumbered as § 308 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.9. Renumbered as § 309 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.10. Renumbered as § 310 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.11. Renumbered as § 311 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.12. Renumbered as § 312 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.13. Renumbered as § 313 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.14. Renumbered as § 314 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.15. Renumbered as § 315 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.16. Renumbered as § 316 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.17. Renumbered as § 317 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.18. Renumbered as § 318 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.19. Renumbered as § 319 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.20. Renumbered as § 320 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.20a. Renumbered as § 321 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.20b. Renumbered as § 322 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.20c. Renumbered as § 323 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.20d. Renumbered as § 324 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.21. Renumbered as § 325 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.22. Renumbered as § 326 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.23. Renumbered as § 327 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.24. Renumbered as § 328 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.25. Renumbered as § 329 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.26. Renumbered as § 330 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.27. Renumbered as § 331 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.28. Renumbered as § 332 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.29. Renumbered as § 333 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.30. Renumbered as § 334 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.31. Renumbered as § 335 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.31a. Renumbered as § 336 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.32. Renumbered as § 337 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.33. Renumbered as § 338 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.34. Renumbered as § 339 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.34a. Renumbered as § 340 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.35. Renumbered as § 341 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.36. Renumbered as § 342 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.37. Renumbered as § 343 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1600.38. Renumbered as § 344 of Title 43 by Laws 1990, c. 188, § 3, eff. Sept. 1, 1990.

§12-1601. Repealed by Laws 1953, p. 64, § 31.

§12-1602. Repealed by Laws 1953, p. 64, § 31.

§12-1603. Repealed by Laws 1953, p. 64, § 31.

§12-1604. Repealed by Laws 1953, p. 64, § 31.

§12-1605. Repealed by Laws 1953, p. 64, § 31.

§12-1606. Repealed by Laws 1953, p. 64, § 31.

§12-1607. Repealed by Laws 1953, p. 64, § 31.

§12-1608. Repealed by Laws 1953, p. 64, § 31.

§12-1609. Repealed by Laws 1953, p. 64, § 31.

§12-1610. Repealed by Laws 1953, p. 64, § 31.

§12-1631. Right to petition for change of name.

Any natural person, who has been domiciled in this state or who has been residing upon any military reservation located in said state, for more than thirty (30) days, and has been an actual resident of the county or such military reservation situated in said

county, or county in which the military reservation is situated, for more than thirty (30) days, next preceding the filing of the action, may petition for a change of name in a civil action in the district court; provided, no person who is required to register as a sex offender pursuant to the Oklahoma Sex Offenders Registration Act may petition for a change of name. If the person be a minor, the action may be brought by guardian or next friend as in other actions.
Added by Laws 1953, p. 57, § 1. Amended by Laws 1955, p. 141, § 1; Laws 1957, p. 83, § 1; Laws 2014, c. 35, § 1, eff. Nov. 1, 2014.

§12-1632. Petition.

The petition shall be verified and shall state: (a) The name and address of the petitioner; (b) The facts as to domicile and residence; (c) The date and place of birth; (d) The birth certificate number, and place where the birth is registered, if registered; (e) The name desired by petitioner; (f) A clear and concise statement of the reasons for the desired change; (g) A positive statement that the change is not sought for any illegal or fraudulent purpose, or to delay or hinder creditors.
Added by Laws 1953, p. 57, § 2.

§12-1633. Notice - Protest - Hearing date – Continuance - Waiver.

A. Notice of filing of the petition shall be given, in the manner provided for publication notice in civil cases, by publishing the same one time at least ten (10) days prior to the date set for hearing in some newspaper authorized by law to publish legal notices printed in the county where the petition is filed if there be any printed in such county, and if there be none, then in some such newspaper printed in this state of general circulation in that county. The notice shall contain the style and number of the case, the time, date and place where the same is to be heard, and that any person may file a written protest in the case prior to the date set for the hearing. The hearing date may be any day after completion of the publication. The court or judge, for cause, may continue the matter to a later date.

B. The court may waive the publication requirements of this section for good cause which includes, but is not limited to, cases of domestic violence in which the court proceedings are sealed.
Added by Laws 1953, p. 57, § 3, emerg. eff. May 19, 1953. Amended by Laws 1955, p. 141, § 2, emerg. eff. June 6, 1955; Laws 1976, c. 113, § 1, emerg. eff. May 14, 1976; Laws 2006, c. 136, § 3, eff. Nov. 1, 2006.

§12-1634. Evidence - Determination.

The material allegations of the petition shall be sustained by sworn evidence, and the prayer of the petition shall be granted unless the court or judge finds that the change is sought for an

illegal or fraudulent purpose, or that a material allegation in the petition is false.
Added by Laws 1953, p. 57, § 4.

§12-1635. Judgment.
The judgment shall recite generally the material facts and the change granted, or if denied, the reasons for the denial. A certified or authenticated copy of such judgment may be filed in any office, where proper to do so, and shall be regarded as a judgment in a civil action.
Added by Laws 1953, p. 57, § 5.

§12-1636. Illegal or fraudulent purpose.
Any person who obtains a judgment under this act, willfully intending to use the same for any illegal or fraudulent purpose, or who thereafter willfully and intentionally uses such judgment, or a copy thereof, for any illegal or fraudulent purpose, shall be deemed guilty of a misdemeanor.
Added by Laws 1953, p. 57, § 6.

§12-1637. Exclusiveness of statutory remedy.
After May 19, 1953, no natural person in this state may change his or her name except as provided in Sections 1631 through 1635 of this title and Section 90.4 of Title 10 of the Oklahoma Statutes and Section 1-321 of Title 63 of the Oklahoma Statutes, other than by marriage, as prescribed in Sections 5, 6, and 8 of Title 43 of the Oklahoma Statutes, or by decree of divorce, as prescribed in Section 121 of Title 43 of the Oklahoma Statutes, or by adoption, as prescribed in Section 7505-3.1 of Title 10 of the Oklahoma Statutes.
Added by Laws 1953, p. 57, § 7, emerg. eff. May 19, 1953. Amended by Laws 1986, c. 82, § 2, emerg. eff. April 3, 1986; Laws 2006, c. 311, § 1, emerg. eff. June 8, 2006.

§12-1638. Repealed by Laws 1980, c. 68, § 1, emerg. eff. April 10,1980.

§12-1639. Repealed by Laws 1980, c. 68, § 1, emerg. eff. April 10,1980.

§12-1640. Repealed by Laws 1989, c. 154, § 2, operative July 1, 1989.

§12-1651. Determination of rights, status or other legal relations - Exceptions.
District courts may, in cases of actual controversy, determine rights, status, or other legal relations, including but not limited to a determination of the construction or validity of any foreign

judgment or decree, deed, contract, trust, or other instrument or agreement or of any statute, municipal ordinance, or other governmental regulation, whether or not other relief is or could be claimed, except that no declaration shall be made concerning liability or nonliability for damages on account of alleged tortious injuries to persons or to property either before or after judgment or for compensation alleged to be due under workers' compensation laws for injuries to persons. The determination may be made either before or after there has been a breach of any legal duty or obligation, and it may be either affirmative or negative in form and effect; provided however, that a court may refuse to make a determination where the judgment, if rendered, would not terminate the controversy, or some part thereof, giving rise to the proceeding.
Added by Laws 1961, p. 58, § 1, eff. Oct. 1, 1961. Amended by Laws 1974, c. 134, § 1, emerg. eff. May 3, 1974; Laws 2004, c. 519, § 1, eff. Nov. 1, 2004.

§12-1652. Pleading.

A determination of rights, status, or other legal relations may be obtained by means of a pleading seeking that relief alone or as incident to or part of a petition, counterclaim, or other pleading seeking other relief, and, when a party seeks other relief, a court may grant declaratory relief where appropriate.
Added by Laws 1961, p. 58, § 2.

§12-1653. Parties - Venue.

A. When a declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.

B. The venue of the action shall be established by existing statutes; provided, however, where the action involves an individual defendant, the venue shall be in the county of the defendant’s residence or where the defendant may be served with summons. If the action involves two or more defendants who reside in different counties, the venue shall be in any county where any defendant resides or may be served with summons. Where the action has as a defendant the Department of Corrections, the Board of Corrections or any of the agents, officers or employees of the Department or Board, the venue shall be in the county of the official residence of the Department or Board.

C. In any proceeding which involves the validity of a municipal ordinance or regulation, the municipality shall be made a party, and shall be entitled to be heard, and if a statute or regulation is alleged to be unconstitutional, the Attorney General of the state shall also be served with a copy of the proceeding and be entitled to be heard.

Added by Laws 1961, p. 59, § 3. Amended by Laws 2002, c. 468, § 8, eff. Nov. 1, 2002; Laws 2003, c. 3, § 11, emerg. eff. March 19, 2003. NOTE: Laws 2002, c. 402, § 4 repealed by Laws 2003, c. 3, § 12, emerg. eff. March 19, 2003.

§12-1654. Effect of determination - Review.

Any determination of rights, status, or other legal relations shall have the force and effect of a final judgment, and it shall be reviewable in the same manner as other judgments.
Added by Laws 1961, p. 59, § 4.

§12-1655. Further relief.

Further relief based upon a determination of rights, status, or other legal relations may be granted whenever such relief becomes necessary and proper after the determination has been made. Application may be made by petition to any court having jurisdiction for an order directed to any party or parties whose rights have been determined to show cause why the further relief should not be granted forthwith, upon reasonable notice prescribed by the court in its order.
Added by Laws 1961, p. 59, § 5.

§12-1656. Issues of fact.

When a proceeding under this act involves the determination of an issue of fact, such issue must be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending.
Added by Laws 1961, p. 59, § 6.

§12-1657. Applicability.

This act shall not be applicable to orders, judgments, or decrees made by the State Industrial Court, the Corporation Commission, or any other administrative agency, board or commission of the State of Oklahoma.
Added by Laws 1961, p. 59, § 8.

§12-1701.01. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-1701.02. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-1701.03. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-1701.04. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-1701.05. Hearing in another forum - Stay or dismissal of action.

When the court finds that in the interest of substantial justice the action or proceeding should be heard in another forum, the court

may stay or dismiss the action in whole or in part on any conditions that may be just.
Added by Laws 1965, c. 144, art. 1, § 1.05.

§12-1702.01. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-1702.02. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-1702.03. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-1702.04. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-1703.01. Repealed by Laws 1982, c. 198, § 16.

§12-1703.02. Repealed by Laws 2002, c. 468, § 79, eff. Nov. 1, 2002.

§12-1704.01. Repealed by Laws 1980, c. 9, § 3.

§12-1704.02. Repealed by Laws 1980, c. 9, § 3.

§12-1704.03. Repealed by Laws 1980, c. 9, § 3.

§12-1705.01. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-1705.02. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-1705.03. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-1705.04. Repealed by Laws 1978, c. 285, § 1102, eff. Oct. 1, 1978.

§12-1706.01. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-1706.02. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-1706.03. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-1706.04. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-1751. Suits authorized under small claims procedure.

A. The following suits may be brought under the small claims procedure:

1. Actions for the recovery of money based on contract or tort, including subrogation claims, but excluding libel or slander, in

which the amount sought to be recovered, exclusive of attorney fees and other court costs, does not exceed Ten Thousand Dollars ($10,000.00);

2. Actions to replevy personal property the value of which does not exceed Ten Thousand Dollars ($10,000.00). If the claims for possession of personal property and to recover money are pled in the alternative, the joinder of claims is permissible if neither the value of the property nor the total amount of money sought to be recovered, exclusive of attorney fees and other costs, exceeds Ten Thousand Dollars ($10,000.00); and

3. Actions in the nature of interpleader, as provided for in Section 2022 of this title, in which the value of the money which is the subject of such action does not exceed Ten Thousand Dollars ($10,000.00).

B. No action may be brought under the small claims procedure by any collection agency, collection agent, or assignee of a claim, except that an action may be brought against an insurer or third-party administrator by a health care provider as that term is defined in Section 6552 of Title 36 of the Oklahoma Statutes, who is an assignee of benefits available under an accident and health insurance policy, trust, plan, or contract.

C. In those cases which are uncontested:

1. Except as provided in paragraph 2 of this subsection, the amount of attorney fees allowed shall not exceed ten percent (10%) of the judgment;

2. Upon application to the court supported by sufficient documentation, the court may award attorney fees not to exceed twenty-five percent (25%) of the judgment.

Nothing in this subsection shall be construed to limit the amount of attorney fees awarded in contested cases. Further, nothing in this subsection shall be construed to prohibit an award of attorney fees for the defense of an action brought under the small claims procedure.

D. No action may be brought under the small claims procedure for any alleged claim against any city, county or state agency, or employee of a city, county or state agency, if the claim alleges matters arising from incarceration, probation, parole or community supervision.

E. No action by a plaintiff who is currently incarcerated in any jail or prison in the state may be brought against any person or entity under the small claims procedure.

F. A small claims affidavit shall include a statement acknowledging that the plaintiff is disclaiming a right to a trial by jury on the merits of the case.

Added by Laws 1968, c. 322, § 1, eff. Jan. 13, 1969. Amended by Laws 1969, c. 279, § 1, emerg. eff. April 25, 1969; Laws 1971, c. 339, § 1, eff. Oct. 1, 1971; Laws 1976, c. 253, § 1, eff. Oct. 1, 1976; Laws

1981, c. 240, § 1, eff. Oct. 1, 1981; Laws 1982, c. 142, § 1; Laws 1983, c. 30, § 1, eff. Nov. 1, 1983; Laws 1989, c. 81, § 1, eff. Nov. 1, 1989; Laws 1992, c. 35, § 1, eff. Sept. 1, 1992; Laws 1995, c. 136, § 1, eff. Nov. 1, 1995; Laws 2002, c. 468, § 9, eff. Nov. 1, 2002; Laws 2003, c. 3, § 13, emerg. eff. March 19, 2003; Laws 2004, c. 70, § 1, eff. Nov. 1, 2004; Laws 2012, c. 282, § 1, eff. Nov. 1, 2012; Laws 2017, c. 389, § 1, eff. Nov. 1, 2017; Laws 2019, c. 39, § 1, eff. Nov. 1, 2019.
NOTE: Laws 2002, c. 402, § 5 repealed by Laws 2003, c. 3, § 14, emerg. eff. March 19, 2003.

§12-1752. Repealed by Laws 1971, c. 249, § 3, eff. Oct. 1, 1971.

§12-1752B. Venue of actions arising upon contract.

The venue of civil actions instituted under small claims procedure for the collection of an open account or for the collection of any note or other instrument of indebtedness shall be, at the option of the plaintiff or plaintiffs in either of the following:

(a) in any county in which venue may be properly had as provided by law; or

(b) in the county in which the debt was contracted or in which the note or other instrument of indebtedness was given.

Added by Laws 1971, c. 249, § 1, eff. Oct. 1, 1971.

§12-1753. Affidavits - Form - Filing.

A. Actions under the small claims procedure as described in paragraphs 1 and 2 of subsection A of Section 1751 of this title shall be initiated by plaintiff or plaintiff's attorney filing an affidavit in substantially the following form with the clerk of the court:

In the District Court, County of _____,
State of Oklahoma.

_____
Plaintiff

vs. Small Claims No. _____

_____
Defendant

STATE OF OKLAHOMA )
) ss
COUNTY OF _____)

_____, being duly sworn, deposes and says:

That the defendant resides at _____, in the above-named county, and that the mailing address of the defendant is _____. That the defendant is indebted to the plaintiff in the sum of $_____ for _____, that plaintiff has demanded payment of the sum, but

the defendant refused to pay the same and no part of the amount sued for has been paid,

or

That the defendant is wrongfully in possession of certain personal property described as _____ _____ that the value of the personal property is $_____, that plaintiff is entitled to possession thereof and has demanded that defendant relinquish possession of the personal property, but that defendant wholly refuses to do so.

_____

Subscribed and sworn to before me this _____ day of _____, 20__.

_____

Notary Public (or Clerk or Judge)

My Commission Expires:

_____

On the affidavit shall be printed:

ORDER

The people of the State of Oklahoma, to the within-named defendant:

You are hereby directed to appear and answer the foregoing claim and to have with you all books, papers, and witnesses needed by you to establish your defense to the claim.

This matter shall be heard at _____ (name or address of building), in _____, County of _____, State of Oklahoma, at the hour of _____ o'clock of the _____ day of _____, 20__. And you are further notified that in case you do not so appear judgment will be given against you as follows:

For the amount of the claim as it is stated in the affidavit, or for possession of the personal property described in the affidavit.

And, in addition, for costs of the action (including attorney fees where provided by law), including costs of service of the order.

Dated this _____ day of _____, 20__.

_____

Clerk of the Court (or Judge)

B. Actions under the small claims procedure as described in paragraph 3 of subsection A of Section 1751 of this title shall be initiated by plaintiff or plaintiff's attorney filing an affidavit in substantially the following form with the clerk of the court:

In the District Court, County of _____, State of Oklahoma.

_____

Plaintiff

vs. Small Claims No. _____

_____

Defendant

_____
Defendant

STATE OF OKLAHOMA )
)  ss.
COUNTY OF_____)

_____, being duly sworn, deposes and says:

That, _____, the defendant resides at _____, in the above-named county, and that the mailing address of the defendant is _____.

That, _____, the defendant resides at _____, in the above-named county, and that the mailing address of the defendant is _____.

That the plaintiff has custody or possession of money in the amount or value of $_____, held pursuant to the following:

_____
_____.

That the defendants claim or may claim to be entitled to the money.

That the plaintiff deposits herewith into the court $_____, which equals the amount of the money to be invested in accordance with the order of the court and that the plaintiff will abide with the judgment of the court as to the final disposition thereof.

Subscribed and sworn to before me this __ day of ____, 20__.

_____
Notary Public (or Clerk or Judge)

My Commission Expires:

_____

On the affidavit shall be printed:

ORDER

The people of the State of Oklahoma, to each of the within-named defendants:

You are hereby directed to appear and answer the foregoing claim and to have with you all books, papers, and witnesses needed by you to establish your claim to the money.

This matter shall be heard at _____ (name or address of building), in _____, County of _____, State of Oklahoma, at the hour of _____ o'clock of the _____ day of _____, 20__. And you are further notified that in case you do not so appear judgment will be given against you as follows:

Determining or foreclosing your claim to the above-described money as well as the disposition thereof.

And, in addition, for costs of the action, including attorney fees where provided by law, and including costs of service of the order.

Dated this _____ day of _____, 20__.

_____
Clerk of the Court (or Judge)

Added by Laws 1968, c. 322, § 3, eff. Jan. 13, 1969. Amended by Laws 1969, c. 279, § 2, emerg. eff. April 25, 1969; Laws 1971, c. 339, § 2, eff. Oct. 1, 1971; Laws 1974, c. 128, § 1; Laws 1975, c. 78, § 1, eff. Oct. 1, 1975; Laws 1982, c. 142, § 2, eff. Oct. 1, 1982; Laws 2000, c. 380, § 2, eff. Nov. 1, 2000; Laws 2002, c. 468, § 10, eff. Nov. 1, 2002.

§12-1754. Preparation of affidavit - Copies.

The claimant shall prepare such an affidavit as is set forth in Section 3 of this act, or, at his request, the clerk of said court shall draft the same for him. Such affidavit may be presented by the claimant in person or sent to the clerk by mail. Upon receipt of said affidavit, properly sworn to, the clerk shall file the same and make a true and correct copy thereof, and the clerk shall fill in the blanks in the order printed on said copy and sign the order.
Added by Laws 1968, c. 322, § 4, eff. Jan. 13, 1969.

§12-1755. Service of affidavit and order upon defendant.

Unless service by the sheriff or other authorized person is requested by the plaintiff, the defendant shall be served by mail. The clerk shall enclose a copy of the affidavit and the order in an envelope addressed to the defendant at the address stated in said affidavit, prepay the postage, and mail said envelope to said defendant by certified mail and request a return receipt from addressee only. The clerk shall attach to the original affidavit the receipt for the certified letter and the return card thereon or other evidence of service of said affidavit and order. If the envelope is returned undelivered and sufficient time remains for making service, the clerk shall deliver a copy of the affidavit and order to the sheriff who shall serve the defendant in the time set in Section 1756 of this title, or at the election of the plaintiff service shall be governed by the provisions of subsection C of Section 2004 of this title.
Added by Laws 1968, c. 322, § 5, eff. Jan. 13, 1969. Amended by Laws 1971, c. 76, § 1; Laws 1993, c. 210, § 1.

§12-1756. Date for appearance of defendant.

The date for the appearance of the defendant as provided in the order endorsed on the affidavit shall not be more than sixty (60) days nor less than ten (10) days from the date of the order. The order shall be served upon the defendant at least seven (7) days prior to the date specified in the order for the appearance of the defendant. If it is not served upon the defendant, the plaintiff shall apply to the clerk for a new order setting a new day for the appearance of the defendant, which shall not be more than sixty (60) days nor less than ten (10) days from the date of the issuance of the new order. When the clerk has fixed the date for appearance of the

defendant, the clerk shall inform the plaintiff, either in person or by certified mail, of the date and order the plaintiff to appear on that date.
Added by Laws 1968, c. 322, § 6, eff. Jan. 13, 1969. Amended by Laws 2000, c. 380, § 3, eff. Nov. 1, 2000.

§12-1757. Transfer of actions from small claims docket to another docket.

A. For matters in which the claim is less than Seven Thousand Five Hundred Dollars ($7,500.00):

1. On motion of the defendant, a small claims action may, in the discretion of the court, be transferred from the small claims docket to another docket of the court; provided, that the motion is filed and notice is given by the defendant to the opposing party or parties by mailing a copy of the motion at least forty-eight (48) hours prior to the time fixed in the order for defendant to appear or answer; and provided, further, that the defendant deposit the sum of Fifty Dollars ($50.00) as the court cost; and

2. The motion to transfer shall be heard at the time fixed in the order and consideration shall be given to any hardship on the plaintiff, complexity of the case, reason for transfer, and other relevant matters. If the motion is denied, the action shall remain on the small claims docket.

B. For matters in which the claim is Seven Thousand Five Hundred Dollars ($7,500.00) or more, on motion of the defendant, a small claims action shall be transferred from the small claims docket to another docket of the court; provided, that the motion is filed and notice is given by the defendant to the opposing party or parties by mailing a copy of the motion at least forty-eight (48) hours prior to the time fixed in the order for defendant to appear or answer; and provided, further, that the defendant deposit the sum of Fifty Dollars ($50.00) as the court cost.

C. If the motion is granted, the defendant as movant shall present within ten (10) days and the court shall cause to be filed an order on a form prepared by the Administrative Office of the Courts transferring the action from the small claims docket to another docket. If the transfer order is not filed by the movant within ten (10) days, it shall be reinstated upon the small claims docket upon motion of the small claims plaintiff, and no further transfer shall be authorized. Before the transfer is effected, the movant shall deposit with the clerk the court costs that are charged in other civil cases under Sections 151 through 157 of Title 28 of the Oklahoma Statutes, less any sums that have already been paid to the clerk. After this filing, the costs and other procedural matters shall be governed as in other civil actions, and not under small claims procedure.

D. Within twenty (20) days of the date the transfer order is signed, the plaintiff shall file a petition that conforms to the standards of pleadings prescribed by the Oklahoma Pleading Code. The answer of the defendant shall be due within twenty (20) days after the filing of the petition and the reply of the plaintiff in ten (10) days after the answer is filed.

1. For matters in which the claim is less than Seven Thousand Five Hundred Dollars ($7,500.00), if the plaintiff ultimately prevails in the action so transferred by the defendant, a reasonable attorney fee shall be allowed to plaintiff's attorney to be taxed as costs in the case, in addition to any sanctions which the court may deem appropriate.

2. For matters in which the claim is Seven Thousand Five Hundred Dollars ($7,500.00) or more, if attorney fees are otherwise allowed by law, a reasonable attorney fee shall be allowed to be taxed as costs in the case, in addition to any sanctions which the court may deem appropriate.

Added by Laws 1968, c. 322, § 7, eff. Jan. 13, 1969. Amended by Laws 1970, c. 266, § 1, eff. July 1, 1970; Laws 1974, c. 128, § 2; Laws 1975, c. 341, § 1; Laws 1978, c. 212, § 1, eff. July 1, 1978; Laws 1985, c. 284, § 1, eff. Nov. 1, 1985; Laws 1993, c. 210, § 2; Laws 1994, c. 343, § 9, eff. Sept. 1, 1994; Laws 2017, c. 389, § 2, eff. Nov. 1, 2017.

§12-1758. Counterclaim or setoff by verified answer.

No formal pleading, other than the claim and notice, shall be necessary, but if the defendant wishes to state new matter which constitutes a counterclaim or a setoff, he shall file a verified answer, a copy of which shall be delivered to the plaintiff in person, and filed with the clerk of the court not later than seventy-two (72) hours prior to the hour set for the first appearance of said defendant in such action. Such answer shall be made in substantially the following form:

COUNTERCLAIM OR SETOFF

In the District Court,
County of _____,
State of Oklahoma.

_____
Plaintiff
vs. Small Claims No. _____
_____
Defendant

Claim of defendant.

STATE OF OKLAHOMA )
) ss
COUNTY OF _____)

_____, being first duly sworn, deposes and says: That said plaintiff is indebted to said defendant in the sum of $_____ for _____, which amount defendant prays may be allowed as a claim against the plaintiff herein.

_____

Subscribed and sworn to before me this _____ day of _____, 19__.

_____

Notary Public (or Clerk or Judge)

Added by Laws 1968, c. 322, § 8, eff. Jan. 13, 1969. Amended by Laws 1985, c. 284, § 2, eff. Nov. 1, 1985; Laws 1995, c. 136, § 2, eff. Nov. 1, 1995.

§12-1759. Claim, counterclaim, or setoff maximum dollar value.

A. Except as provided by subsection C of this section, if a claim, a counterclaim, or a setoff is filed, prior to the expiration of the time prescribed by Section 1758 of this title, for an amount in excess of Ten Thousand Dollars ($10,000.00), the action shall be transferred to another docket of the district court unless both parties agree in writing and file the agreement with the papers in the action that the claim, counterclaim, or setoff shall be tried under the small claims procedure. If such an agreement has not been filed, a judgment in excess of Ten Thousand Dollars ($10,000.00) may not be enforced for the part that exceeds Ten Thousand Dollars ($10.000.00). If the action is transferred to another docket of the district court, the person whose claim exceeded Ten Thousand Dollars ($10,000.00) shall deposit with the clerk the court costs that are charged in other cases, less any sums that have been already paid to the clerk, or the claim shall be dismissed and the remaining claims, if any, shall proceed under the small claims procedure.

B. If the action is transferred to another docket of the district court, the plaintiff shall file a petition that conforms to the standards for pleadings prescribed by the Oklahoma Pleading Code, Section 2001 et seq. of this title, within twenty (20) days from the timely filing of the claim, counterclaim, or setoff. The answer of the defendant shall be due within twenty (20) days after the filing of the petition.

C. Except as provided by Section 1757 of this title, if a defendant does not file a counterclaim within the period prescribed by Section 1758 of this title, the action shall not be transferred to another docket of the district court.

Added by Laws 1968, c. 322, § 9, eff. Jan. 13, 1969. Amended by Laws 1976, c. 253, § 2, eff. Oct. 1, 1976; Laws 1981, c. 240, § 2, eff. Oct. 1, 1981; Laws 1983, c. 273, § 1, operative July 1, 1983; Laws 1989, c. 81, § 2, eff. Nov. 1, 1989; Laws 1995, c. 136, § 3, eff. Nov. 1, 1995; Laws 1996, c. 339, § 3, eff. Nov. 1, 1996; Laws 2005, c. 122, § 1, eff. Nov. 1, 2005; Laws 2012, c. 282, § 2, eff. Nov. 1, 2012; Laws 2017, c. 389, § 3, eff. Nov. 1, 2017.

§12-1760. Attachment or garnishment - Depositions - Interrogatories - New parties - Intervention.

No attachment or prejudgment garnishment shall issue in any suit under the small claims procedure. Proceedings to enforce or collect a judgment rendered by the trial court in a suit under the small claims procedure shall be in all respects as in other cases; provided, however, judgments, other than default judgments, for the payment of money may be enforced or collected as prescribed in Section 4 of this act. No depositions shall be taken or interrogatories or other discovery proceeding shall be used under the small claims procedure except in aid of execution. No new parties shall be brought into the action, and no party shall be allowed to intervene in the action.

Added by Laws 1968, c. 322, § 10, eff. Jan. 13, 1969. Amended by Laws 1970, c. 211, § 1; Laws 1971, c. 339, § 3, eff. Oct. 1, 1971; Laws 1988, c. 78, § 1, eff. Nov. 1, 1988.

§12-1761. Trial by court - Request for reporter or jury - Evidence - Informality - Mailing of judgment.

Actions under the small claims procedure shall be tried to the court without a jury, unless the amount of the claim, counterclaim, or setoff exceeds One Thousand Five Hundred Dollars ($1,500.00); provided, if either party wishes a reporter or if either party to an action in which the claim, counterclaim, or setoff exceeds One Thousand Five Hundred Dollars ($1,500.00) wishes a jury, he must notify the clerk of the court in writing at least two (2) working days before the date set for the defendant's appearance and must deposit Fifty Dollars ($50.00) with said notice with the clerk. The plaintiff and the defendant shall have the right to offer evidence in their behalf by witnesses appearing at such hearing, and the judge may call such witnesses and order the production of such documents as he may deem appropriate. The hearing and disposition of such actions shall be informal with the sole object of dispensing speedy justice between the parties.

The prevailing party shall mail a file-stamped copy of the judgment by first-class mail to all other parties who have entered an appearance in the action at their last-known addresses and file a certificate of mailing with the court clerk.

Added by Laws 1968, c. 322, § 11, eff. Jan. 13, 1969. Amended by Laws 1978, c. 212, § 2, eff. July 1, 1978; Laws 1989, c. 205, § 2, eff. Nov. 1, 1989; Laws 1991, c. 15, § 2, eff. July 1, 1991; Laws 1992, c. 357, § 2, eff. July 1, 1992; Laws 1997, c. 102, § 10, eff. May 1, 1997.

§12-1762. Payment of judgment.

If judgment be rendered against either party for the payment of money, said party shall pay the same immediately or pay the judgment in accordance with a judgment satisfaction plan arranged by the court.
Added by Laws 1968, c. 322, § 12, eff. Jan. 13, 1969. Amended by Laws 1988, c. 78, § 2, eff. Nov. 1, 1988.

§12-1763. Appeals.
Appeals may be taken from the judgment rendered under small claims procedure to the Supreme Court of the state in the same manner as appeals are taken in other civil actions.
Added by Laws 1968, c. 322, § 13, eff. Jan. 13, 1969.

§12-1764. Fees.
A fee of Forty-five Dollars ($45.00) shall be charged and collected for the filing of the affidavit for the commencement of any action for an amount of Five Thousand Dollars ($5,000.00) or less. Any action in excess of Five Thousand Dollars ($5,000.00) shall be subject to the filing fees provided in Title 28 of the Oklahoma Statutes for the same kind of action as filed in district court. For the filing of any counterclaim or setoff, fees shall be charged and collected pursuant to Section 152.1 of Title 28 of the Oklahoma Statutes. Except as otherwise provided in Section 1772 of this title, no other fee or charge shall be collected by any officer for any service rendered pursuant to the provisions of the Small Claims Procedure Act, or for the taking of affidavits for use in connection with any action tried pursuant to the provisions of the Small Claims Procedure Act. If the affidavit and order are served by the sheriff or a licensed private process server, the court clerk shall collect the usual fee for the sheriff, which shall be taxed as costs in the case. The fee paid to a licensed private process server, as approved by the court, shall be taxed as additional costs in the case. After judgment, the court clerk shall issue such process and shall be entitled to collect only such fees and charges as are allowed by law for like services in other actions. All fees collected as authorized by this section and Section 1772 of this title shall be deposited with other fees that are collected by the district court. Any statute providing for an award of attorney fees shall be applicable to the small claims division if the attorney makes an appearance in the case, whether before or after judgment or on hearing for disclosure of assets.
Added by Laws 1968, c. 322, § 14, eff. Jan. 13, 1969. Amended by Laws 1969, c. 285, § 1; Laws 1971, c. 339, § 4, eff. Oct. 1, 1971; Laws 1976, c. 15, § 1; Laws 1978, c. 212, § 3, eff. July 1, 1978; Laws 1981, c. 242, § 1, operative July 1, 1981; Laws 1982, c. 256, § 1, operative Oct. 1, 1982; Laws 1983, c. 273, § 2, operative July 1, 1983; Laws 1987, c. 181, § 9, eff. July 1, 1987; Laws 1988, c. 78, §

3, eff. Nov. 1, 1988; Laws 1988, c. 327, § 1, operative Aug. 1, 1988; Laws 1989, c. 205, § 3, eff. Nov. 1, 1989; Laws 1989, c. 353, § 12, emerg. eff. June 3, 1989; Laws 1997, c. 400, § 3, eff. July 1, 1997; Laws 2003, c. 440, § 2, eff. July 1, 2003; Laws 2004, c. 447, § 3, emerg. eff. June 4, 2004; Laws 2017, c. 389, § 4, eff. Nov. 1, 2017. NOTE: Laws 1989, c. 81, § 3 repealed by Laws 1989, c. 353, § 12, emerg. eff. June 3, 1989.

§12-1765. Costs.

The prevailing party in an action is entitled to costs of the action, including the costs of service of the order for the appearance of the defendant and the costs of enforcing any judgment rendered therein.
Added by Laws 1968, c. 322, § 15, eff. Jan. 13, 1969.

§12-1766. Citation - Codification.

This act shall be known as "The Small Claims Procedure Act," and shall be incorporated in Title 12, Oklahoma Statutes.
Added by Laws 1968, c. 322, § 16, eff. Jan. 13, 1969.

§12-1767. Repealed by Laws 1970, c. 107, § 1, emerg. eff. April 1, 1970.

§12-1768. Repealed by Laws 1970, c. 107, § 1, emerg. eff. April 1, 1970.

§12-1769. Repealed by Laws 1987, c. 92, § 1, emerg. eff. May 15, 1987.

§12-1770. Small claims judgment as lien - Release.

A. A judgment granted under the Small Claims Procedure Act, Section 1751 et seq. of Title 12 of the Oklahoma Statutes, shall become a lien on the real property of the judgment debtor within a county only from and after the time a Statement of Judgment has been filed in the office of the county clerk of that county. When requested, the court clerk shall prepare a Statement of Judgment for the judgment creditor on a form provided by the Administrative Office of the Courts which shall include instructions advising the judgment creditor to file the Statement of Judgment in the office of the county clerk.

B. The lien of any small claims judgment when satisfied by payment or otherwise discharged shall be released by the court clerk upon written application by the judgment debtor. The court clerk shall mail notice of the judgment debtor's application to the attorney for the judgment creditor or the judgment creditor, if there is no attorney, at the last-known address of the attorney or judgment creditor. If there is no response or objection from the judgment

creditor within ten (10) days after the notice is mailed, the judgment shall be released. No hearing shall be required unless requested by a party to the action. When requested, the court clerk shall prepare a Certificate of Release on a form provided by the Administrative Office of the Courts. The Certificate of Release shall include instructions advising the judgment debtor to file the Certificate of Release in the office of the county clerk. The lien of the judgment shall be released once the Certificate of Release is filed in the office of the county clerk.

C. The party filing the application for release shall pay all recording fees and other costs.

Added by Laws 1975, c. 15, § 1, eff. Oct. 1, 1975. Amended by Laws 1977, c. 216, § 1; Laws 1979, c. 83, § 1; Laws 1982, c. 136, § 1, eff. Oct. 1, 1982; Laws 1993, c. 351, § 28, eff. Oct. 1, 1993; Laws 1995, c. 338, § 17, eff. Nov. 1, 1995.

§12-1771. Repealed by Laws 1990, c. 251, § 20, eff. Jan. 1, 1991.

§12-1771.1. Repealed by Laws 1995, c. 193, § 6, eff. July 1, 1995.

§12-1772. Judgments for payment of money - Processing and collection.

Judgments for the payment of money shall be processed and collected as follows:

1. Incident to the entering of the judgment and while the parties are still under oath:
   a. the court may arrange a judgment satisfaction plan and enter a writ of execution, and
   b. the court may secure a listing and description of the judgment debtor's assets from the judgment debtor in case subsequent attachment of property becomes necessary to collect an unsatisfied judgment. Forms for an application and order to appear and answer as to assets and interrogatories to be answered by the debtor shall be supplied by the court clerk on forms promulgated by the Director of the Administrative Office of the Courts.
2. If the judgment debtor fails to satisfy the judgment in accordance with the judgment satisfaction plan, the judgment creditor shall attempt to contact the judgment debtor and collect the same.
3. If the judgment debtor still fails to satisfy the judgment, the judgment creditor may:
   a. require the debtor to appear and answer interrogatories regarding assets, or
   b. request the issuance of a writ of execution or a garnishment summons on forms provided by the court clerk.

4. Except as provided in this section, proceedings hereunder to collect the judgment shall be conducted pursuant to the provisions of this title.
Added by Laws 1988, c. 78, § 4, eff. Nov. 1, 1988. Amended by Laws 1989, c. 205, § 4, eff. Nov. 1, 1989; Laws 1993, c. 210, § 3.

§12-1773. Dismissal of action - Failure to file pleadings or serve process.

A. Any action under the Small Claims Procedure Act which is not at issue and in which no pleading has been filed or other action taken for one (1) year and in which no motion has been pending during any part of the year shall be dismissed without prejudice by the court on its own motion after notice to the parties or their attorneys of record; providing, the court may, upon written application and for good cause shown by order in writing, allow the action to remain on its docket.

B. If service of process under the Small Claims Procedure Act is not made upon a defendant within one hundred eighty (180) days after the filing of the affidavit, the action shall be deemed to have been dismissed without prejudice as to that defendant. The action shall not be deemed to have been dismissed where a summons was served on the defendant within one hundred eighty (180) days after the filing of the affidavit and a court later holds that the summons or its service was invalid. After a court quashes a summons or its service, a new summons may be served on the defendant within a time specified by the judge. If the new summons is not served within the specified time, the action shall be deemed to have been dismissed without prejudice as to that defendant. This subsection shall not apply with respect to a defendant who has been in a foreign country for one hundred eighty (180) days following the filing of the affidavit.
Added by Laws 1989, c. 195, § 1, eff. Nov. 1, 1989.

§12-1801. Purpose of act - Short title.

The Legislature is aware of the fact that many disputes arise between citizens of this state which are of small social or economic magnitude and can be both costly and time consuming if resolved through a formal judicial proceeding. Many times such disputes can be resolved in a fair and equitable manner through less formal proceedings. Such proceedings can also help alleviate the backlog of cases which burden the judicial system in this state. It is therefore the purpose of this act to provide to all citizens of this state convenient access to dispute resolution proceedings which are fair, effective, inexpensive, and expeditious.

Sections 1 through 6 of this act shall be known and may be cited as the "Dispute Resolution Act".
Added by Laws 1983, c. 78, § 1, operative July 1, 1983.

§12-1802. Definitions.

As used in the Dispute Resolution Act:

1. "Initiating party" means the party who first seeks mediation.

2. "Mediation" means the process of resolving a dispute with the assistance of a mediator outside of a formal court proceeding.

3. "Mediator" means any person certified pursuant to the provisions of the Dispute Resolution Act or the District Court Mediation Act to assist in the resolution of a dispute.

4. "Party" means an individual person, company, or governmental agency.

5. "Resolution" means the final determination of the dispute, arrived at by the parties upon their own initiative or by anyone authorized in writing to act in their behalf or with the help of a mediator.

6. "Responding party" means the party who is named by the initiating party as the other party in a dispute where mediation is sought.

Added by Laws 1983, c. 78, § 2, operative July 1, 1983. Amended by Laws 2000, c. 323, § 1, eff. Nov. 1, 2000.

§12-1803. Programs for mediation services - Rules and regulations.

A. Any county, municipality, accredited law school or agency of this state is hereby authorized to establish programs for the purpose of providing mediation services pursuant to the provisions of the Dispute Resolution Act, to be administered and supervised under the direction of the Administrative Director of the Courts. The Administrative Director shall promulgate rules and regulations, subject to the approval of the Supreme Court of the State of Oklahoma, to effectuate the purposes of the Dispute Resolution Act.

B. Mediation pursuant to the provisions of the Dispute Resolution Act shall be available to any party eligible according to the jurisdictional guidelines established by the Administrative Director. The company or governmental agency shall be represented in mediation by a person authorized in writing to act in behalf of such entity to the extent necessary to arrive at a resolution pursuant to the provisions of the Dispute Resolution Act.

C. Mediators participating in a program sponsored by a state agency are deemed an employee of that agency solely for the limited purpose of Section 20f of Title 74 of the Oklahoma Statutes.

D. Such rules and regulations shall include:

1. Qualifications to certify mediators to assure their competence and impartiality; and

2. Jurisdictional guidelines including types of disputes which may be subject to the Dispute Resolution Act; and

3. Standard procedures for mediation which shall be complied with in all mediation proceedings; and

4. A method by which a court may grant a continuance in contemplation of dismissal on the condition that the defendant in a criminal action or the plaintiff and defendant in a civil action participate in mediation and a resolution is reached by the parties; and

5. A form for a written agreement for participation in mediation; and

6. A form for a written record of the termination of mediation.

Added by Laws 1983, c. 78, § 3, operative July 1, 1983. Amended by Laws 1985, c. 260, § 1, eff. Nov. 1, 1985; Laws 1986, c. 231, § 3, emerg. eff. June 10, 1986.

§12-1803.1. Dispute Resolution Advisory Board.

There is hereby created a Dispute Resolution Advisory Board which shall consist of no more than fifteen (15) members appointed by the Supreme Court of the State of Oklahoma. The Advisory Board shall be composed of persons from state and local governments, business organizations, the academic community, the law enforcement field, the legal profession, the judiciary, the field of corrections which shall be represented by the Director of the Oklahoma Department of Corrections or his designee, retired citizen organizations, the district attorney profession, consumer organizations, social service agencies, and three (3) members at large. The term of office of each member shall be for one (1) year and end on June 30 of each year, but all members shall hold office until their successors are appointed and qualified. The Administrative Director of the Courts or his designee shall serve as a nonvoting, ex officio member of the Advisory Board.

The members of the Advisory Board shall receive no compensation for their services, but shall be entitled to any reimbursements to which they may otherwise be entitled from sources other than the Office of the Administrative Director of the Courts.

Added by Laws 1985, c. 260, § 2, eff. Nov. 1, 1985.

§12-1804. Written consent to dispute resolution proceedings.

A. Prior to commencement of any dispute resolution proceedings, the disputing parties shall enter into a written consent which specifies the method by which the parties shall attempt to resolve the issues in dispute.

B. The written consent shall be in a form prescribed by the Administrative Director of the Courts and shall include the following:

1. The rights and obligations of all parties pursuant to the provisions of the Dispute Resolution Act; and

2. The confidentiality of the proceedings.

C. If the parties agree to have the resolution reduced to written form, a copy shall be provided to the parties.

Added by Laws 1983, c. 78, § 4, operative July 1, 1983.

§12-1805. Confidentiality of proceedings - Disclosure - Civil liability - Waiver of privilege.

A. Any information received by a mediator or a person employed to assist a mediator, through files, reports, interviews, memoranda, case summaries, or notes and work products of the mediator, is privileged and confidential.

B. No part of the proceeding shall be considered a matter of public record.

C. No mediator, initiating party, or responding party in a mediation proceeding shall be subject to administrative or judicial process requiring disclosure of any matters discussed or shall disclose any information obtained during any part of the mediation proceedings.

D. Each mediation session shall be informal. No adjudication sanction or penalty may be made or imposed by the mediator or the program.

E. No mediator, employee, or agent of a mediator shall be held liable for civil damages for any statement or decision made in the process of mediating or settling a dispute unless the action of such person was a result of gross negligence with malicious purpose or in a manner exhibiting willful disregard of the rights, safety, or property of any party to the mediation.

F. If a party who has participated in mediation brings an action for damages against a mediator arising out of mediation, for purposes of that action the privilege provided for in subsection A of this section shall be deemed to be waived as to the party bringing the action.

Added by Laws 1983, c. 78, § 5, operative July 1, 1983.

§12-1806. Tolling statute of limitation.

During the period of the mediation, any applicable statute of limitation shall be tolled as to the participants. Such tolling shall commence on the date the parties agree in writing to participate in mediation and shall end on the date mediation is officially terminated by the mediator.

A defendant in a criminal action shall be deemed to have waived his right to a speedy trial during the period of time he is participating in a mediation proceeding.

Added by Laws 1983, c. 78, § 6, operative July 1, 1983.

§12-1807. Definitions.

As used in Sections 3 through 9 of this act:

1. "Administrator" means any county, municipality, or agency of this state that administers a community dispute resolution center pursuant to the provisions of this act.

2. "Center" means a community-based facility which provides dispute resolution services consisting of conciliation, mediation, arbitration, facilitation, or other forms and techniques of dispute resolution.

3. "Director" means the Administrative Director of the Courts.
Added by Laws 1985, c. 260, § 3, eff. Nov. 1, 1985.

§12-1808. Administration of programs.

A. Programs established pursuant to the provisions of Section 1803 of Title 12 of the Oklahoma Statutes shall be administered and supervised by the Director to ensure the stability and continuance of dispute resolution centers.

B. Every center shall be operated by an administrator and shall be established on the basis of community need as determined by the Director.

C. All centers shall be operated pursuant to a contract with the Director and shall comply with the provisions of the Dispute Resolution Act and the provisions of this act.
Added by Laws 1985, c. 260, § 4, eff. Nov. 1, 1985.

§12-1809. Collection and disposition of court costs and fees.

A. To establish and maintain an alternative dispute resolution system, court costs in the amount of Seven Dollars ($7.00) shall be taxed, collected, and paid as other court costs in all civil cases.

The fee of an initiating or responding party shall be waived by the center upon receipt of an affidavit in forma pauperis executed under oath by such party.

B. The court costs and fees provided for in subsection A of this section, once collected, shall be transferred by the court clerk to the Director who shall deposit them in the Dispute Resolution System Revolving Fund referenced in Section 2 of this act.
Added by Laws 1985, c. 260, § 5, eff. Nov. 1, 1985. Amended by Laws 1991, c. 286, § 13, emerg. eff. May 29, 1991; Laws 1994, c. 225, § 1, eff. July 1, 1994; Laws 2004, c. 443, § 1, eff. July 1, 2004; Laws 2016, c. 362, § 1, eff. July 1, 2016; Laws 2019, c. 354, § 1, eff. July 1, 2019.

§12-1809.1. Dispute Resolution System Revolving Fund.

There is hereby created in the State Treasury a revolving fund for the Supreme Court to be designated the "Dispute Resolution System Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies collected pursuant to Section 1809 of Title 12 of the Oklahoma Statutes. All monies accruing to the credit of the fund are hereby appropriated and shall be budgeted and expended by the Supreme Court as necessary to perform the duties imposed upon the Supreme Court to administer the Dispute Resolution Act by law.

Added by Laws 2019, c. 354, § 2, eff. July 1, 2019.

§12-1810. Allocation of funds.

A. Monies in the Dispute Resolution System Revolving Fund shall be allocated by the Director to eligible centers for dispute resolution programs authorized pursuant to the provisions of this act.

B. 1. The Director shall determine the eligibility of a center for funding on the basis of an application submitted by the center.

2. The application for funding shall state:

a. a description of the proposed community area of service;

b. the cost of the principal components of operation;

c. a description of available dispute resolution services and facilities within the defined geographic area;

d. a description of the applicant's proposed program, by category and purpose, including evidence of community support, the present availability of resources, and the applicant's administrative capacity;

e. a description of the efforts of cooperation between the applicant and the local human service and criminal justice agencies in dealing with program operations; and

f. such additional information as may be required by the Director.

C. The provisions of this section shall not be construed to prohibit dispute resolution centers in existence prior to the effective date of this act from submitting an application for funding as provided for in subsection B of this section.

D. A center shall not be eligible for funds for dispute resolution programs unless it complies with the provisions of the Dispute Resolution Act, the provisions of this act, and the rules and regulations promulgated by the Director.

E. Each center funded pursuant to the provisions of this section, annually, shall provide the Director with a written report containing statistical data regarding operational expenses, the number of referrals, the category or types of cases referred, the number of parties serviced, the number of disputes resolved, the nature of resolution, amount and types of awards, the rate of compliance, and such other data as may be required by the Director.
Added by Laws 1985, c. 260, § 6, eff. Nov. 1, 1985.

§12-1811. Disbursement of funds - Method of reimbursement.

Upon the approval of an application by the Director and at his direction, monies in the Dispute Resolution System Revolving Fund shall be disbursed to a center for operational costs of approved center programs. The method of reimbursement for dispute resolution

program costs shall be specified by the Director pursuant to rules and regulations.
Added by Laws 1985, c. 260, § 7, eff. Nov. 1, 1985.

§12-1812. Director - Powers and duties.

A. The Director shall have such power as is necessary to implement the provisions of this act.

B. The Director shall promulgate rules and regulations to effectuate the purposes of this act, which shall include provisions for periodic monitoring and evaluation of center programs.

C. The Director may have such additional personnel as is necessary to implement the provisions of this act.
Added by Laws 1985, c. 260, § 8, eff. Nov. 1, 1985.

§12-1813. Inspection, examination and audit of centers.

The State Auditor and Inspector, annually, shall inspect, examine, and audit the Dispute Resolution System Revolving Fund and the fiscal affairs of centers.
Added by Laws 1985, c. 260, § 9, eff. Nov. 1, 1985.

§12-1821. Short title.

This act shall be known and may be cited as the "District Court Mediation Act".
Added by Laws 1998, c. 321, § 1, eff. Nov. 1, 1998.

§12-1822. Construction with Dispute Resolution Act.

Nothing in this act shall be construed to replace or supersede any provision of the Dispute Resolution Act or the rules and procedures promulgated to implement and effectuate the Dispute Resolution Act.
Added by Laws 1998, c. 321, § 2, eff. Nov. 1, 1998.

§12-1823. Referral to mediation.

Any district court, by agreement of the parties, may refer any civil case, including any domestic relations case, or any portion thereof for mediation. A referral to mediation may be made at any time while a civil case is pending. The order of referral to mediation shall be entered on a standard form consistent with the form provided in subsection D of Section 5 of this act.
Added by Laws 1998, c. 321, § 3, eff. Nov. 1, 1998.

§12-1824. Provisions applying to court-ordered mediation.

The following provisions shall apply to any mediation ordered by a court pursuant to Section 3 of this act:

1. Mediation shall be a process in which an impartial person, the mediator, facilitates communication between disputing parties to promote understanding, reconciliation, and settlement. Participants

shall include the mediator, the parties, interested non-parties or their representatives, and all others present. The mediator may meet with participants together or individually;

2. The mediator shall be an advocate for settlement and use the mediation process to help the parties fully explore any potential areas of agreement. The mediator shall not serve as a judge and shall not have authority to render any decisions on any disputed issues or to force a settlement between the parties;

3. The parties shall be responsible for negotiating any resolution to a dispute. Parties shall participate in mediation in good faith, and put forth their best efforts with the intention to settle all issues if possible. If the parties are unable to settle all issues, they shall attempt to settle as many issues as possible;

4. No person with any financial or personal interest in the result of mediation may serve as a mediator. Prior to agreeing to mediate a dispute, the mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt meeting with the parties;

5. Mediation sessions shall be private. Persons other than the parties and interested non-parties and their representatives may attend only with the consent of the parties, interested non-parties, and the mediator;

6. Any communication relating to the subject matter of the dispute made during the mediation process by a participant or any other person present at the mediation shall be a confidential communication. No admission, representation, statement, or other confidential communication made in setting up or in conducting the mediation shall be admissible as evidence or subject to discovery, except that, no fact independently discoverable shall be nondiscoverable solely by virtue of having been disclosed in such confidential communication. There shall be no stenographic or electronic record, including audio or video, of the mediation process unless it is agreed upon by the parties, interested non-parties, and the mediator, and it is not otherwise prohibited by law. No participant in the mediation proceeding, including the mediator, shall be subpoenaed or otherwise compelled to disclose any matter disclosed in the process of setting up or conducting the mediation proceeding; and

7. No subpoena, summons, complaint, petition, citation, or other process of any kind may be served upon any person who is at or near the site of any mediation session and is there because of the mediation.

Added by Laws 1998, c. 321, § 4, eff. Nov. 1, 1998.

§12-1825. List of qualified mediators - Minimum requirements - Form of order of referral.

A. A district court may maintain a list of qualified mediators to assist the parties in selecting a mediator. In order to be placed on any such list, an individual shall meet the following minimum requirements:

1. Civil and commercial mediators shall:
   a. be certified pursuant to the Dispute Resolution Act, or
   b. (1) complete a minimum of twenty-four (24) hours of mediation training, which training has been approved by the Mandatory Continuing Legal Education Commission of the Oklahoma Bar Association,
      (2) observe a minimum of two (2) mediation proceedings, and
      (3) complete at least six (6) hours every other year of continuing professional education in the area of mediation, which education has been approved by the Mandatory Continuing Legal Education Commission of the Oklahoma Bar Association; and

2. Divorce and Family Mediators shall:
   a. be certified for family and divorce mediation pursuant to the Dispute Resolution Act, or
   b. (1) complete forty (40) hours of training in family and divorce mediation, which training has been approved by the Mandatory Continuing Legal Education Commission of the Oklahoma Bar Association,
      (2) conduct at least twelve (12) hours of mediation with three (3) separate families, and
      (3) complete at least six (6) hours every other year of professional education in the area of family mediation, or
   c. have been regularly engaged in the practice of family and divorce mediation for at least four (4) years.

B. Nothing in this act shall preclude the parties from agreeing:

1. To participate in any alternative dispute resolution process, including mediation, independent of this act or any related court order; or

2. To select a mediator not identified on any list of qualified mediators maintained by the district court.

C. Mediators who are not certified pursuant to the Dispute Resolution Act, upon request by the court, any party, or legal counsel, shall provide information demonstrating the mediator's compliance with the requirements of Section 4 of this act, and shall agree to adhere to the Model Standards of Conduct for Mediators approved by the Litigation and Dispute Resolution Sections of the American Bar Association, the American Arbitration Association, and the Society of Professionals in Dispute Resolution.

D. The following form shall be used to order mediation pursuant to this act:

IN THE DISTRICT COURT OF _____ COUNTY

STATE OF OKLAHOMA

Order of Referral To Mediation

This case is ordered to mediation pursuant to the District Court Mediation Act. Parties and legal counsel shall proceed in good faith to resolve this case. The parties shall select and contact a mediator or mediation program or service within five (5) business days to make appropriate arrangements for the mediation proceeding. Mediation shall be completed within _____ days from the date of this order.

Mediation shall be attended by persons with full settlement authority. Both parties shall participate in mediation; attorneys may participate as agreed by the parties and the mediator. Named parties shall be present except for a named party who has no interest in the outcome and no settlement authority. Each party who is represented by legal counsel shall be accompanied at mediation by an attorney who is fully familiar with the case. In addition, any interested non-party, including any insurance company or other entity that is contractually required to defend or to pay damages, shall be represented by a person with full settlement authority.

Added by Laws 1998, c. 321, § 5, eff. Nov. 1, 1998.

§12-1831. Short title - Purpose.

A. Sections 11 through 20 of this act shall be known as the "Choice in Mediation Act".

B. The Legislature has previously enacted measures designed to create programs for and encourage the use of mediation in resolving disputes involving citizens of this state. These measures provide guidelines and standards for qualifications of mediators and their use in resolving disputes. Over the years since the first of these measures was enacted, there has developed a significant number of trained and experienced mediators, some of whom work solely in volunteer programs under the Dispute Resolution Act and some of whom provide mediation services on a "for fee" basis, either solely or in addition to volunteer work. The power of the parties to a dispute to settle their own dispute with the help of a neutral person being the essence of mediation, there now exists a need to clarify the choice available to disputants to select a mediator.

Added by Laws 2002, c. 468, § 11, eff. Nov. 1, 2002.

§12-1832. Mediation as an alternative dispute resolution process or on an ad hoc basis.

Any county, municipality, accredited law school, school district, board, commission, department, or agency of this state or its

political subdivisions is hereby authorized to establish programs for the purpose of providing mediation as an alternative dispute resolution process or for referring disputes to mediation on an ad hoc basis. For the purposes of the Choice in Mediation Act, "mediation" means a process in which an impartial person, the mediator, facilitates communication between disputing parties to promote settlement of disputes, whether before or in the process of litigation or administrative proceedings.
Added by Laws 2002, c. 468, § 12, eff. Nov. 1, 2002.

§12-1833. Options to operating a mediation program or referring matters exclusively to mediators or programs qualified under the Dispute Resolution Act.

Nothing in the Choice in Mediation Act shall require any such county, municipality, accredited law school, school district, board, commission, department, or agency of this state or its political subdivisions to operate a mediation program under the auspices of the Dispute Resolution Act or to refer matters for mediation exclusively to mediators or programs qualified under the Dispute Resolution Act. Instead, any such entity may elect to do one or more of the following:

1. Utilize mediators certified under the Dispute Resolution Act or qualified under the District Court Mediation Act;

2. Specify required training in addition to that required for certification under the Dispute Resolution Act or qualification under the District Court Mediation Act in order to receive referrals or disputes for mediation;

3. Maintain a list of qualified mediators to whom it may refer disputes for mediation;

4. Contract with the Administrative Office of the Courts to provide training for a fee for mediators to whom it may refer disputes for mediation;

5. Refer disputes to a center under the Dispute Resolution Act to be mediated under the rules and procedures applicable to such center;

6. Elect to be treated as a center for all purposes under the Dispute Resolution Act and make appropriate application pursuant to the Dispute Resolution Act;

7. Contract with another public agency providing mediation services under the Choice in Mediation Act or with a private individual, company, or organization, whether for-profit or not-for-profit, to provide mediators or mediation training or both, so long as the contracting entity requires certification of mediators under the Dispute Resolution Act, or qualification of mediators under the District Court Mediation Act, if applicable; or

8. Utilize a mediator of the parties' choice.
Added by Laws 2002, c. 468, § 13, eff. Nov. 1, 2002.

§12-1834. Compensation to mediators.

Except in those instances in which a specific statute or rule prohibits compensation of mediators, the program authorized by Section 12 of this act may provide for appropriate compensation of the mediator.

Added by Laws 2002, c. 468, § 14, eff. Nov. 1, 2002.

§12-1835. Disclosure regarding the mediator.

Any program for mediation under the Choice in Mediation Act shall make provision for disclosure to the parties of the background, qualifications, experience, and actual or potential conflicts of interest of the mediator, sufficient to permit the parties to participate in the choice of a mediator for their dispute and to determine that the mediator selected is qualified and neutral.

Added by Laws 2002, c. 468, § 15, eff. Nov. 1, 2002.

§12-1836. Procedures – Confidentiality and impartiality.

Any program for mediation under the Choice in Mediation Act shall adopt appropriate procedures for the conduct of mediation under the program, to ensure confidentiality of proceedings and impartiality of the mediator and to encourage participation in good faith by the disputing parties. The program may comply with this provision by adopting the provisions in Section 1824 of Title 12 of the Oklahoma Statutes or by becoming a center under the Dispute Resolution Act and complying with the procedures of the Dispute Resolution Act.

Added by Laws 2002, c. 468, § 16, eff. Nov. 1, 2002.

§12-1837. Feedback on process or mediator – Due process prior to removal or decertification of mediator.

Any program for mediation under the Choice in Mediation Act shall make provision for a procedure whereby parties to a dispute or the administrator of the program may make complaints about the mediation process and/or the conduct of the mediator. Any such procedure shall include due process prior to removal of a mediator from a list of qualified mediators or "decertification" of a mediator.

Added by Laws 2002, c. 468, § 17, eff. Nov. 1, 2002.

§12-1838. Program certification – Intent of provision.

Any entity, including the Administrative Office of the Courts, "certifying" mediators for its program shall make clear in all communications regarding the "certification" that the mediator is "certified" for that program only. Any mediator certified under the Dispute Resolution Act or qualified under the District Court Mediation Act shall be considered "certified" for purposes of any federal programs that require the use of "certified mediators" or "certified programs". The intent of this provision is to avoid the

misconception that there is one certifying body for mediators in Oklahoma and to permit agencies to utilize available state and federal funds for operation of mediation programs and, where appropriate, for the compensation of mediators.
Added by Laws 2002, c. 468, § 18, eff. Nov. 1, 2002.

§12-1839. Authority of the courts – Court-ordered settlement conferences.

Nothing in the Choice in Mediation Act shall impair the authority of trial courts or appellate courts of this state to establish or continue in effect programs for mediation of disputes within their jurisdiction or for conducting court-ordered settlement conferences.
Added by Laws 2002, c. 468, § 19, eff. Nov. 1, 2002.

§12-1840. Parties – Selection and compensation of mediators.

Nothing in the Choice in Mediation Act shall limit the ability of parties to a dispute to select and, if appropriate, compensate a mediator of their choice, whether or not that mediator is certified under the Dispute Resolution Act or qualified under the District Court Mediation Act; nor shall anything in the Choice in Mediation Act prohibit any person from acting as a mediator of a dispute when so requested by the parties to the dispute.
Added by Laws 2002, c. 468, § 20, eff. Nov. 1, 2002.

§12-1851. Short title.

Sections 1 through 31 of this act shall be known and may be cited as the "Uniform Arbitration Act".
Added by Laws 2005, c. 364, § 1.

§12-1852. Definitions.

As used in the Uniform Arbitration Act:

1. "Arbitration organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator;

2. "Arbitrator" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate;

3. "Court" means any court of competent jurisdiction in this state;

4. "Knowledge" means actual knowledge;

5. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity; and

6. "Record" means any information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
Added by Laws 2005, c. 364, § 2.

§12-1853. Notice.

A. Except as otherwise provided in the Uniform Arbitration Act, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.

B. A person has notice if the person has knowledge of the notice or has received notice.

C. A person will be deemed to have received notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.
Added by Laws 2005, c. 364, § 3.

§12-1854. Date of applicability.

A. The Uniform Arbitration Act governs an agreement to arbitrate made on or after January 1, 2006.

B. The Uniform Arbitration Act governs an agreement to arbitrate made before January 1, 2006, if all the parties to the agreement or to the arbitration proceeding so agree in a record.

C. Beginning January 1, 2006, the Uniform Arbitration Act governs an agreement to arbitrate whenever made.
Added by Laws 2005, c. 364, § 4, emerg. eff. June 6, 2005.

§12-1855. Waivers.

A. Except as otherwise provided in subsections B, C and D of this section and subject to the public policy of this state as expressed in the Uniform Arbitration Act, including Section 1880 of this title, and in the laws of this state outside of this act, a party to an agreement to arbitrate or to an arbitration proceeding may waive, or the parties may vary the effect of, the requirements of the Uniform Arbitration Act to the extent permitted by law.

B. Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

1. Waive or agree to vary the effect of the requirements of subsection A of Section 1856, subsection A of Section 1857, Section 1859, subsection A or B of Section 1868, Section 1877 or Section 1879 of this title;

2. Agree to unreasonably restrict the right under Section 1860 of this title to notice of the initiation of an arbitration proceeding;

3. Agree to unreasonably restrict the right under Section 1863 of this title to disclosure of any facts by a neutral arbitrator; or

4. Waive the right under Section 1867 of this title of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under the Uniform Arbitration Act, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

C. A party to an agreement to arbitrate or to an arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of this section or subsection A or C of Section 1854, Section 1858, Section 1865, Section 1869, subsection D or E of Section 1871, Section 1873, 1874 or 1875, subsection A or B of Section 1876, or Section 1880 of this title.

D. The Uniform Arbitration Act shall not apply to collective bargaining agreements and contracts which reference insurance, except for those contracts between insurance companies.

Added by Laws 2005, c. 364, § 5. Amended by Laws 2008, c. 111, § 1, eff. Nov. 1, 2008.

§12-1856. Application.

A. Except as otherwise provided in Section 28 of this act, an application for judicial relief under the Uniform Arbitration Act must be made by application and motion to the court and heard in the manner provided by law or rule of court for making and hearing motions.

B. Unless a civil action involving the agreement to arbitrate is pending, notice of an initial application and motion to the court under the Uniform Arbitration Act must be served in the manner provided by law for the service of a summons in the filing of a civil action. Otherwise, notice of the motion must be given in the manner provided by law or rule of court for serving motions in pending cases.

Added by Laws 2005, c. 364, § 6.

§12-1857. Agreement.

A. An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

B. If necessary, a court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

C. An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

D. If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final

resolution of the issue by the court, unless the court otherwise orders.
Added by Laws 2005, c. 364, § 7.

§12-1858. Court order of arbitration.

A. On application and motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

1. If the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate; and

2. If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate. The court may also tax costs against the party opposing the motion if the court concludes the opposition was not brought in good faith.

B. On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate. The court may also tax costs against the party opposing the motion if the court concludes the opposition was not brought in good faith.

C. If the court finds that there is no enforceable agreement, it may not, pursuant to subsection A or B of this section, order the parties to arbitrate.

D. The court shall not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.

E. If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section must be made in that court. Otherwise, a motion under this section may be made in any court as provided in Section 28 of this act.

F. If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

G. If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.
Added by Laws 2005, c. 364, § 8.

§12-1859. Appointment of arbitrator.

A. Before an arbitrator is appointed and is authorized and able to act, the court, upon application and motion of a party to an

arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

B. After an arbitrator is appointed and is authorized and able to act:

1. The arbitrator may issue such further or revised orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

2. A party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

C. A party does not waive a right of arbitration by making an application and motion under subsection A or B of this section. Added by Laws 2005, c. 364, § 9.

§12-1860. Initiation.

A. A person initiates an arbitration proceeding by giving notice in a record to all the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice must describe:

1. The general nature of the controversy; and

2. The remedy and alleged damages sought.

B. Unless a person objects for lack or insufficiency of notice under subsection C of Section 16 of this act not later than the beginning of the arbitration hearing, the person by appearing at the hearing waives any objection to lack of or insufficiency of notice. Added by Laws 2005, c. 364, § 10.

§12-1861. Consolidation of separate proceedings.

A. Except as otherwise provided in subsection C of this section, upon application and motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

1. There are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;

2. The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

3. The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

4. Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

B. The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

C. The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

Added by Laws 2005, c. 364, § 11.

§12-1862. Agreement to method.

A. If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

B. An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party shall not serve as an arbitrator required by an agreement to be neutral.

Added by Laws 2005, c. 364, § 12.

§12-1863. Disclosure of facts.

A. Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including but not limited to:

1. A financial or personal interest in the outcome of the arbitration proceeding; and

2. An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness, or another arbitrator.

B. An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after

accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.

C. If an arbitrator discloses a fact required by subsection A or B of this section to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under paragraph 2 of subsection A of Section 24 of this act for vacating an award made by the arbitrator.

D. If the arbitrator did not disclose a fact as required by subsection A or B of this section, upon timely objection by a party, the court under paragraph 2 of subsection A of Section 24 of this act may vacate an award.

E. An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under paragraph 2 of subsection A of Section 24 of this act.

F. If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to an application and motion to vacate an award on that ground under paragraph 2 of subsection A of Section 24 of this act.
Added by Laws 2005, c. 364, § 13.

§12-1864. Multiple arbitrators.

If there is more than one arbitrator, the powers of an arbitrator must be exercised by a majority of the arbitrators, but all of them shall conduct the hearing under subsection C of Section 16 of this act.
Added by Laws 2005, c. 364, § 14.

§12-1865. Immunity of arbitrator.

A. An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.

B. The immunity afforded by this section supplements any immunity under other law.

C. The failure of an arbitrator to make a disclosure required by Section 13 of this act shall not cause any loss of immunity under this action.

D. In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify, and may not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of

this state acting in a judicial capacity. This subsection shall not apply:

1. To the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding; or

2. To a hearing on an application and motion to vacate an award under paragraph 1 or 2 of subsection A of Section 24 of this act if the movant establishes prima facie that a ground for vacating the award exists.

E. If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization, or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection D of this section, and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization, or representative reasonable attorney fees and other reasonable expenses of litigation.
Added by Laws 2005, c. 364, § 15.

§12-1866. Role of arbitrator.

A. An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality and weight of any evidence, as well as ask questions of any witnesses during the proceedings.

B. An arbitrator may decide a request for summary disposition of a claim or particular issue:

1. If all interested parties agree; or

2. Upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding and the other parties have a reasonable opportunity to respond.

C. If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five (5) days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party’s appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator’s own initiative, the arbitrator may adjourn the hearing

from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

D. At a hearing under subsection C of this section, a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

E. If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with Section 12 of this act to continue the proceeding and to resolve the controversy.

Added by Laws 2005, c. 364, § 16.

§12-1867. Legal representation.

A party to an arbitration proceeding may be represented by a lawyer.

Added by Laws 2005, c. 364, § 17.

§12-1868. Subpoena.

A. An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon application and motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action. A witness may be allowed to appear telephonically or by any other available means that allows contemporaneous cross-examination.

B. In order to make the proceedings fair, expeditious, and cost-effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

C. An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost-effective.

D. If an arbitrator permits discovery under subsection C of this section, the arbitrator may order a party to the arbitration

proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this state.

E. An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this state.

F. All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this state.

G. The court may enforce a subpoena or discovery-related order for the attendance of a witness within this state and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost-effective. A subpoena or discovery-related order issued by an arbitrator in another state must be served in the manner provided by law for service of subpoenas in a civil action in this state and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this state.

Added by Laws 2005, c. 364, § 18.

§12-1869. Preaward ruling.

If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under Section 20 of this act. A prevailing party may make an application and motion to the court for an expedited order to confirm the award under Section 23 of this act, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award under Section 24 or 25 of this act.

Added by Laws 2005, c. 364, § 19.

§12-1870. Record of award.

A. An arbitrator shall make a record of an award. The award may, or may not, contain the evidence and conclusion upon which the award was based unless the agreement of the parties specifies the type of award to be issued. The record shall be signed or otherwise authenticated by any arbitrator who concurs with the award. The

arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

B. An award shall be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree in a record to extend the time. The court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

Added by Laws 2005, c. 364, § 20, eff. Jan. 1, 2006. Amended by Laws 2009, c. 295, § 1, eff. Nov. 1, 2009.

§12-1871. Modification of award.

A. On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

1. Upon a ground stated in paragraph 1 or 3 of subsection A of Section 25 of this act;

2. Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

3. To clarify the award.

B. A motion under subsection A of this section must be made and notice given to all parties within twenty (20) days after the movant receives notice of the award.

C. A party to the arbitration proceeding must give notice of any objection to the motion within ten (10) days after receipt of the notice.

D. If a motion to the court is pending under Section 23, 24 or 25 of this act, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

1. Upon a ground stated in paragraph 1 or 3 of subsection A of Section 25 of this act;

2. Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

3. To clarify the award.

E. An award modified or corrected pursuant to this section is subject to the provisions of subsection A of Section 20 of this act and Sections 23, 24 and 25 of this act.

Added by Laws 2005, c. 364, § 21.

§12-1872. Amount of award.

A. An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing

justifies the award under the legal standards otherwise applicable to the claim.

B. An arbitrator may award reasonable attorney fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

C. As to all remedies other than those authorized by subsections A and B of this section, an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under Section 23 of this act or for vacating an award under Section 24 of this act.

D. An arbitrator's expenses and fees, together with other expenses, shall be paid as provided in the award.

E. If an arbitrator awards punitive damages or other exemplary relief under subsection A of this section, the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief.

Added by Laws 2005, c. 364, § 22.

§12-1873. Award confirmation.

After a party to an arbitration proceeding receives notice of an award, the party may make an application and motion to the court for an order confirming the award at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to Section 21 or 25 of this act or is vacated pursuant to Section 24 of this act.

Added by Laws 2005, c. 364, § 23.

§12-1874. Application to vacate an award.

A. Upon an application and motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

1. The award was procured by corruption, fraud, or other undue means;

2. There was:

   a. evident partiality by an arbitrator appointed as a neutral arbitrator,

   b. corruption by an arbitrator, or

   c. misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

3. An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing

contrary to Section 6 of this act, so as to prejudice substantially the rights of a party to the arbitration proceeding;

4. An arbitrator exceeded the arbitrator's powers;

5. There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under subsection C of Section 16 of this act not later than the beginning of the arbitration hearing; or

6. The arbitration was conducted without proper notice of the initiation of an arbitration as required in Section 10 of this act so as to prejudice substantially the rights of a party to the arbitration proceeding.

B. An application and motion under this section must be filed within ninety (90) days after the movant receives notice of the award pursuant to Section 20 of this act or within ninety (90) days after the movant receives notice of a modified or corrected award pursuant to Section 21 of this act, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion must be made within ninety (90) days after the ground is known or by the exercise of reasonable care would have been known by the movant.

C. If the court vacates an award on a ground other than that set forth in paragraph 5 of subsection A of this section, it may order a rehearing. If the award is vacated on a ground stated in paragraph 1 or 2 of subsection A of this section, the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in paragraph 3, 4 or 6 of subsection A of this subsection, the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in subsection B of Section 20 of this act for an award.

D. If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award is pending.

Added by Laws 2005, c. 364, § 24.

§12-1875. Motion to vacate or correct an award.

A. Upon application and motion made within ninety (90) days after movant receives notice of the award pursuant to Section 20 of this act or within ninety (90) days after the movant receives notice of a modified or corrected award pursuant to Section 21 of this act, the court shall modify or correct the award if:

1. There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

2. The arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

3. The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

B. If a motion made under subsection A of this section is granted, the court shall modify or correct and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.

C. A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.
Added by Laws 2005, c. 364, § 25.

§12-1876. Judgment in conformity.

A. Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity therewith. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

B. A court may allow reasonable costs of the motion and subsequent judicial proceedings.

C. On application of a prevailing party to a contested judicial proceeding under Section 23, 24, or 25, the court may add reasonable attorney fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.
Added by Laws 2005, c. 364, § 26.

§12-1877. Enforcement of agreement to arbitrate.

A. A court of this state having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

B. An agreement to arbitrate providing for arbitration in this state confers exclusive jurisdiction on the court to enter judgment on an award under the Uniform Arbitration Act.
Added by Laws 2005, c. 364, § 27.

§12-1878. Location of arbitration.

An application and motion pursuant to Section 6 of this act must be made in the court of the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the county in which it was held. Otherwise, the motion may be made in the court of any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this state, in the court of any county in this state. All subsequent motions must be made in the court hearing the initial motion unless the court otherwise directs.
Added by Laws 2005, c. 364, § 28.

§12-1879. Appeal.

A. An appeal may be taken from:

1. An order denying a motion to compel arbitration;

2. An order granting a motion to stay arbitration;

3. An order confirming or denying confirmation of an award;

4. An order modifying or correcting an award;

5. An order vacating an award without directing a rehearing; or

6. A final judgment entered pursuant to the Uniform Arbitration Act.

B. An appeal under this section shall be taken as from an order or a judgment in a civil action.

Added by Laws 2005, c. 364, § 29.

§12-1880. Considerations of conformity.

A. In applying and construing the Uniform Arbitration Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

B. In applying and construing the Uniform Arbitration Act, to the extent permitted by federal law, recognition shall be given to the following considerations as applicable:

1. Agreements to arbitrate are often included in standard forms prepared by one party and in a context where there is little or no ability to negotiate or change the terms of the agreement to arbitrate; and

2. In such cases, clauses providing for the location for arbitration, for the expenses of arbitration, denying the ability to consolidate arbitrations or to have arbitration for a class of persons involving substantially similar issues, and for other matters that may represent a serious disadvantage to the party or parties that did not prepare the form shall be closely reviewed for unconscionability based on unreasonable one-sidedness and understandable or unnoticeable language or lack of meaningful choice and for balance and fairness in accordance with reasonable standards of fair dealing.

Added by Laws 2005, c. 364, § 30.

§12-1881. Conformity with Electronic Signatures in Global and National Commerce Act.

The provisions of the Uniform Arbitration Act governing the legal effect, validity, and enforceability of electronic records or electronic signatures, and of contracts performed with the use of such records or signatures shall conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act.

Added by Laws 2005, c. 364, § 31.

§12-2001. Scope of the Oklahoma Pleading Code.

SCOPE OF THE OKLAHOMA PLEADING CODE

The Oklahoma Pleading Code governs the procedure in the district courts of Oklahoma in all suits of a civil nature whether cognizable as cases at law or in equity except where a statute specifies a different procedure. It shall be construed to secure the just, speedy, and inexpensive determination of every action. The provisions of Sections 1 through 2027 of this title may be cited as the "Oklahoma Pleading Code". Section captions are part of this act. Added by Laws 1984, c. 164, § 1, eff. Nov. 1, 1984. Amended by Laws 1985, c. 277, § 2, eff. Nov. 1, 1985.

§12-2002. One form of action.

ONE FORM OF ACTION

There shall be one form of action to be known as "civil action". Added by Laws 1984, c. 164, § 2, eff. Nov. 1, 1984.

§12-2003. Commencement of action.

COMMENCEMENT OF ACTION

A civil action is commenced by filing a petition with the court. Added by Laws 1984, c. 164, § 3, eff. Nov. 1, 1984.

§12-2003.1. Commencement of actions by inmates.

OMMENCEMENT OF ACTIONS BY INMATES

A. Petitions, motions, or other pleadings filed by an inmate as defined in paragraph 2 of subsection B of Section 566 of Title 57 of the Oklahoma Statutes appearing pro se shall be on forms approved by the district court and supplied without charge by the clerk of the district court upon request.

B. The following information shall be supplied by an inmate who is seeking relief in a civil action:

1. Plaintiff’s full name;
2. Place of plaintiff’s residence;
3. Name(s) of defendant(s);
4. Place(s) of defendant(s) employment;
5. Title and position of (each) defendant;
6. Whether the defendant(s) was (were) acting under color of state law at the time the claim alleged in the complaint arose;
7. Brief statement of the facts;
8. Grounds upon which plaintiff bases allegations that constitutional rights, privileges, or immunities have been violated, together with the facts which support each of these grounds;
9. A statement of prior judicial and administrative relief sought, copies of which shall be attached to the petition;
10. A statement of the relief requested; and
11. A complete list, supported by affidavit under penalty of perjury, of all lawsuits filed by the inmate as an inmate in the previous ten (10) years in state and federal courts and the disposition of each case.

C. In all cases in which the petitioner, movant, or plaintiff is an inmate of a penal institution and desires to proceed in forma pauperis, the proof of poverty required by the Oklahoma Statutes shall be submitted.

D. If the court determines that the filing is a noncomplying petition, motion, or other pleading filed by an inmate in a penal institution appearing pro se, the action may not proceed, and it shall be returned together with a copy of this statute and a statement of the reason or reasons for its return. If the court determines that the inmate-plaintiff knowingly and willfully failed to comply with all the requirements of this section, the court may dismiss the case with prejudice.

E. If the defendant claims either qualified or absolute immunity in its answer, the court may order the plaintiff to file a detailed reply to the answer pursuant to subsection A of Section 2007 of this title.

F. The Administrative Office of the Courts shall adopt forms to be used by inmates of penal institutions appearing pro se pursuant to this section.

Added by Laws 1995, c. 141, § 1, eff. Nov. 1, 1995. Amended by Laws 2002, c. 402, § 6, eff. July 1, 2002; Laws 2004, c. 168, § 4, emerg. eff. April 27, 2004.

§12-2003.2. Notification of noncompliance prior to construction-related suit – Correction of deficit.

COMMENCEMENT OF ACTION BASED ON CONSTRUCTION-RELATED ACCESSIBILITY CLAIM.

A. Prior to filing a civil action based on a construction-related accessibility claim that a facility does not conform with applicable law, codes and standards for facilities for the physically disabled, the plaintiff shall notify the defendant in writing of the plaintiff’s assertion that the facility does not comply with applicable law, codes and standards regulating construction of facilities to accommodate physically disabled individuals and the specific violations that the plaintiff asserts. The notice shall be sent by certified mail with return receipt requested at least one hundred twenty (120) days prior to the filing of a petition.

B. In any civil action based on a construction-related accessibility claim that a facility does not conform with applicable law, codes and standards for facilities for the physically disabled, the plaintiff shall attach to the petition:

1. A copy of the notice required by subsection A of this section; and

2. A copy of the certified mail return receipt signed by the defendant or person authorized to receive service of process for the defendant.

C. If a civil action based on a construction-related accessibility claim that a facility does not conform with applicable law, codes and standards for facilities for the physically disabled is filed without the documentation required by subsection B of this section or if the petition is filed less than one hundred twenty (120) days after the date the notice required by subsection A of this section is sent, the court shall, upon motion of the defendant, dismiss the action without prejudice to its refiling.

D. If the defendant corrects the alleged defect prior to the filing of the petition and the plaintiff files the petition, the court shall dismiss the action and award court costs and reasonable attorney fees to the defendant. In addition, the court shall impose sanctions if the action is determined to be frivolous pursuant to Section 2011 of Title 12 of the Oklahoma Statutes.

E. If the defendant has made a reasonable effort to correct the defect but has not completed the correction within one hundred twenty (120) days of notification as directed in subsection A of this section or prior to the filing of the petition, the court may, upon application of the defendant for good cause shown, grant the defendant a reasonable extension of time, based on the nature of construction needed to correct the deficiency. If the correction is completed within that period of time, the court shall dismiss the action.

Added by Laws 2010, c. 153, § 1, eff. Nov. 1, 2010.

§12-2003.3. Commencement of action based on website accessibility claim.

COMMENCEMENT OF ACTION BASED ON WEBSITE ACCESSIBILITY CLAIM

A. Prior to filing any civil action or a petition for injunctive relief based on a claim that an organization's website does not conform with applicable law, codes and standards for websites for the visually or hearing impaired, the plaintiff shall notify the defendant in writing of the plaintiff's assertion that its website does not comply with applicable law, codes and standards regulating the functionality of an organization's website to accommodate visually or hearing impaired individuals and the specific violations that the plaintiff asserts. The notice shall be sent by certified mail with return receipt requested at least one hundred twenty (120) days prior to the filing of a petition for injunctive relief.

B. In any civil action or action for injunctive relief based on a claim that an organization's website does not conform with applicable law, codes and standards for the visually or hearing impaired, the plaintiff shall attach to the petition:

1. A copy of the notice required by subsection A of this section; and

2. A copy of the certified mail return receipt signed by the defendant or person authorized to receive service of process for the defendant.

C. If a civil action or action for injunctive relief that is based on a claim that an organization's website does not conform with applicable law, codes and standards for the visually or hearing impaired is filed without the documentation required by subsection B of this section or if the petition is filed less than one hundred twenty (120) days after the date the notice required by subsection A of this section is sent, the court shall, upon motion of the defendant, dismiss the action without prejudice to its refiling.

D. If the defendant corrects the alleged website defect prior to the filing of the petition and the plaintiff files the petition, the court shall dismiss the action and award court costs and reasonable attorney fees to the defendant. In addition, the court shall impose sanctions if the action is determined to be frivolous pursuant to Section 2011 of Title 12 of the Oklahoma Statutes.

E. If the defendant has made a reasonable effort to correct the defect but has not completed the correction within one hundred twenty (120) days of notification as directed in subsection A of this section or prior to the filing of the petition, the court may, upon application of the defendant for good cause shown, grant the defendant a reasonable extension of time, based on the nature of the work needed on the website to correct the deficiency. If the correction is completed within that period of time, the court shall dismiss the action.

Added by Laws 2017, c. 92, § 1, eff. Nov. 1, 2017.

§12-2004. Process.

PROCESS

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.

B. SUMMONS: FORM.

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

2. A judgment by default shall not be different in kind from or exceed in amount that prayed for in either the demand for judgment or in cases not sounding in contract in a notice which has been given the party against whom default judgment is sought. Except as to a party against whom a judgment is entered by default, every final

judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his or her pleadings.

C. BY WHOM SERVED: PERSON TO BE SERVED.

1. SERVICE BY PERSONAL DELIVERY.

a. At the election of the plaintiff, process, other than a subpoena, shall be served by a sheriff or deputy sheriff, a person licensed to make service of process in civil cases, or a person specially appointed for that purpose. The court shall freely make special appointments to serve all process, other than a subpoena, under this paragraph.

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

c. Service shall be made as follows:

(1) upon an individual other than an infant who is less than fifteen (15) years of age or an incompetent person, by delivering a copy of the summons and of the petition personally or by leaving copies thereof at the person's dwelling house or usual place of abode with some person then residing therein who is fifteen (15) years of age or older or by delivering a copy of the summons and of the petition to an agent authorized by appointment or by law to receive service of process,

(2) upon an infant who is less than fifteen (15) years of age, by serving the summons and petition personally and upon either of the infant's parents or guardian, or if they cannot be found, then upon the person having the care or control of the

infant or with whom the infant lives; and upon an incompetent person by serving the summons and petition personally and upon the incompetent person's guardian,

(3) upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the petition to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant,

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

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

(6) upon an inmate incarcerated in an institution under the jurisdiction and control of the Department of Corrections, by delivering a copy of the summons and of the petition to the warden or superintendent or the designee of the warden or superintendent of the institution where the inmate is housed. It shall be the duty of the receiving warden or superintendent or a designee to promptly deliver the summons and petition to the inmate named therein. The warden or superintendent or his or her designee shall reject service of process for any inmate who is not actually present in said institution, and

(7) upon an inmate incarcerated in a county jail or detention center under the jurisdiction and control of the county sheriff or the jail trust of the county, by delivering a copy of the summons and of the petition to the jail or detention center administrator or the designee of such administrator of the jail or detention center

where the inmate is housed. It shall be the duty of the receiving jail or detention center administrator or designee to promptly deliver the summons and petition to the inmate named therein. The jail or detention center administrator or designee shall reject service of process for any inmate who is not actually present in the jail or detention center.

2. SERVICE BY MAIL.

a. At the election of the plaintiff, a summons and petition may be served by mail by the plaintiff's attorney, any person authorized to serve process pursuant to subparagraph a of paragraph 1 of this subsection, or by the court clerk upon a defendant of any class referred to in division (1), (3) or (5) of subparagraph c of paragraph 1 of this subsection. Service by mail shall be effective on the date of receipt or if refused, on the date of refusal of the summons and petition by the defendant.

b. Service by mail shall be accomplished by mailing a copy of the summons and petition by certified mail, return receipt requested and delivery restricted to the addressee. When there is more than one defendant, the summons and a copy of the petition or order shall be mailed in a separate envelope to each defendant. If the summons is to be served by mail by the court clerk, the court clerk shall enclose the summons and a copy of the petition or order of the court to be served in an envelope, prepared by the plaintiff, addressed to the defendant, or to the resident service agent if one has been appointed. The court clerk shall prepay the postage and mail the envelope to the defendant, or service agent, by certified mail, return receipt requested and delivery restricted to the addressee. The return receipt shall be prepared by the plaintiff. Service by mail to a garnishee shall be accomplished by mailing a copy of the summons and notice by certified mail, return receipt requested, and at the election of the judgment creditor by restricted delivery, to the addressee.

c. Service by mail shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing acceptance by the defendant or a returned envelope showing refusal of the process by the defendant. Acceptance or refusal of service by mail by a person who is fifteen (15) years of age or older who resides at the defendant's dwelling

house or usual place of abode shall constitute acceptance or refusal by the party addressed. In the case of an entity described in division (3) of subparagraph c of paragraph 1 of this subsection, acceptance or refusal by any officer or by any employee of the registered office or principal place of business who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. A return receipt signed at such registered office or principal place of business shall be presumed to have been signed by an employee authorized to receive certified mail. In the case of a state municipal corporation, or other governmental organization thereof subject to suit, acceptance or refusal by an employee of the office of the officials specified in division (5) of subparagraph c of paragraph 1 of this subsection who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. If delivery of the process is refused, upon the receipt of notice of such refusal and at least ten (10) days before applying for entry of default, the person elected by plaintiff pursuant to subparagraph a of this paragraph to serve the process shall mail to the defendant by first-class mail a copy of the summons and petition and a notice prepared by the plaintiff that despite such refusal the case will proceed and that judgment by default will be rendered against him unless he appears to defend the suit. Any default or judgment by default shall be set aside upon motion of the defendant in the manner prescribed in Section 1031.1 of this title, or upon petition of the defendant in the manner prescribed in Section 1033 of this title if the defendant demonstrates to the court that the return receipt was signed or delivery was refused by an unauthorized person. A petition shall be filed within one (1) year after the defendant has notice of the default or judgment by default but in no event more than two (2) years after the filing of the judgment.

3. SERVICE BY PUBLICATION.

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

b. Service of summons upon the unknown successors of a named defendant, a named decedent, or a dissolved partnership, corporation, or other association may be made by publication when it is stated in a petition, verified by the plaintiff or the plaintiff's attorney, or in a separate affidavit by the plaintiff or the plaintiff's attorney filed with the court, that the person who verified the petition or the affidavit does not know and with due diligence cannot ascertain the following:
   (1) whether a person named as defendant is living or dead, and, if dead, the names or whereabouts of the person's successors, if any,
   (2) the names or whereabouts of the unknown successors, if any, of a named decedent,
   (3) whether a partnership, corporation, or other association named as a defendant continues to have legal existence or not; or the names or whereabouts of its officers or successors,
   (4) whether any person designated in a record as a trustee continues to be the trustee; or the names or whereabouts of the successors of the trustee, or
   (5) the names or whereabouts of the owners or holders of special assessment or improvement bonds, or any other bonds, sewer warrants or tax bills.

c. Service pursuant to this paragraph shall be made by publication of a notice, signed by the court clerk, one (1) day a week for three (3) consecutive weeks in a newspaper authorized by law to publish legal notices which is published in the county where the petition is filed. If no newspaper authorized by law to publish legal notices is published in such county, the notice shall be published in some such newspaper of general circulation which is published in an adjoining county. All named parties and their unknown successors who may be served by publication may be included in one notice. The notice shall state the court in which the petition is filed and the names of the plaintiff and the parties served by publication, and shall designate the parties whose unknown successors are being served. The notice shall also state that the named defendants and their unknown successors have been sued and must answer the petition on or before a time to be stated (which shall not be less than forty-one (41) days from the date of the first publication), or judgment, the nature of which shall be stated, will be rendered accordingly.

If jurisdiction of the court is based on property, any real property subject to the jurisdiction of the court and any property or debts to be attached or garnished must be described in the notice.

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

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

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

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

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

e. Before entry of a default judgment or order against a party who has been served solely by publication under

this paragraph, the court shall conduct an inquiry to determine whether the plaintiff, or someone acting in behalf of the plaintiff, made a distinct and meaningful search of all reasonably available sources to ascertain the whereabouts of any named parties who have been served solely by publication under this paragraph. Before entry of a default judgment or order against the unknown successors of a named defendant, a named decedent, or a dissolved partnership, corporation or association, the court shall conduct an inquiry to ascertain whether the requirements described in subparagraph b of this paragraph have been satisfied.

f. A party against whom a default judgment or order has been rendered, without other service than by publication in a newspaper, may, at any time within three (3) years after the filing of the judgment or order, have the judgment or order set aside in the manner prescribed in Sections 1031.1 and 1033 of this title. Before the judgment or order is set aside, the applicant shall notify the adverse party of the intention to make an application and shall file a full answer to the petition, pay all costs if the court requires them to be paid, and satisfy the court by affidavit or other evidence that during the pendency of the action the applicant had no actual notice thereof in time to appear in court and make a defense. The title to any property which is the subject of and which passes to a purchaser in good faith by or in consequence of the judgment or order to be opened shall not be affected by any proceedings under this subparagraph. Nor shall proceedings under this subparagraph affect the title of any property sold before judgment under an attachment. The adverse party, on the hearing of an application to open a judgment or order as provided by this subparagraph, shall be allowed to present evidence to show that during the pendency of the action the applicant had notice thereof in time to appear in court and make a defense.

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

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

submitted to the jurisdiction of the courts of this state.

4. SERVICE ON THE SECRETARY OF STATE.

a. Service of process on a domestic or foreign corporation may be made by serving the Secretary of State as the corporation's agent, if:

(1) there is no registered agent for the corporation listed in the records of the Secretary of State, or

(2) neither the registered agent nor an officer of the corporation could be found at the registered office of the corporation, when service of process was attempted.

b. Before resorting to service on the Secretary of State the plaintiff must have attempted service either in person or by mail on the corporation at:

(1) the corporation's last-known address shown on the records of the Franchise Tax Division of the Oklahoma Tax Commission, if any is listed there, and

(2) the corporation's last-known address shown on the records of the Secretary of State, if any is listed there, and

(3) the corporation's last address known to the plaintiff.

If any of these addresses are the same, the plaintiff is not required to attempt service more than once at any address. The plaintiff shall furnish the Secretary of State with a certified copy of the return or returns showing the attempted service.

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

d. Within three (3) working days after receiving the summons and petition, the Secretary of State shall send notice by letter, certified mail, return receipt requested, directed to the corporation at its registered office or the last-known address found in the office of the Secretary of State, or if no address is found there, to the corporation's last-known address provided by the plaintiff. The notice shall enclose a copy of the summons and petition and any other papers served upon the Secretary of State. The corporation shall not be required to serve its answer until forty (40) days after service of the summons and petition on the Secretary of State.

e. Before entry of a default judgment or order against a corporation that has been served by serving the Secretary of State as its agent under this paragraph, the court shall determine whether the requirements of this paragraph have been satisfied. A default judgment or order against a corporation that has been served only by service on the Secretary of State may be set aside upon motion of the corporation in the manner prescribed in Section 1031.1 of this title, or upon petition of the corporation in the manner prescribed in Section 1033 of this title, if the corporation demonstrates to the court that it had no actual notice of the action in time to appear and make its defense. A petition shall be filed within one (1) year after the corporation has notice of the default judgment or order but in no event more than two (2) years after the filing of the default judgment or order.

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

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

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

6. SERVICE BY OTHER METHODS. If service cannot be made by personal delivery or by mail, a defendant of any class referred to in division (1) or (3) of subparagraph c of paragraph 1 of this subsection may be served as provided by court order in a manner which is reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard and upon filing an affidavit by the plaintiff or plaintiff's attorney that with due diligence service cannot otherwise be made upon the defendant.

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

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

E. SUMMONS: TERRITORIAL LIMITS OF EFFECTIVE SERVICE.

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

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

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

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

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

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

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

f. as directed by the court.

3. Proof of service outside this state may be made in the manner prescribed by subsection G of this section, the order pursuant to

which the service is made, or the law of the place in which the service is made for proof of service in an action in any of its courts of general jurisdiction.

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

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

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

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

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

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

G. RETURN.

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

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

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

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

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

I. SUMMONS: TIME LIMIT FOR SERVICE. If service of process is not made upon a defendant within one hundred eighty (180) days after the filing of the petition and the plaintiff has not shown good cause why such service was not made within that period, the action shall be deemed dismissed as to that defendant without prejudice. The action shall not be dismissed if a summons was served on the defendant within one hundred eighty (180) days after the filing of the petition and a court later holds that the summons or its service was invalid. After a court quashes a summons or its service, a new summons may be served on the defendant within a time specified by the judge. If the new summons is not served within the specified time, the action shall be deemed to have been dismissed without prejudice as to that defendant. This subsection shall not apply with respect to a defendant who has been outside of this state for one hundred eighty (180) days following the filing of the petition.

Added by Laws 1984, c. 164, § 4, eff. Nov. 1, 1984. Amended by Laws 1985, c. 277, § 3, eff. Nov. 1, 1985; Laws 1986, c. 206, § 2, operative July 1, 1986; Laws 1987, c. 123, § 2, eff. Nov. 1, 1987; Laws 1988, c. 181, § 1, eff. Nov. 1, 1988; Laws 1989, c. 208, § 1, eff. Nov. 1, 1989; Laws 1990, c. 248, § 8, emerg. eff. May 21, 1990; Laws 1991, c. 101, § 1, eff. Sept. 1, 1991; Laws 1996, c. 339, § 4, eff. Nov. 1, 1996; Laws 1999, c. 293, § 18, eff. Nov. 1, 1999; Laws 2002, c. 402, § 7, eff. July 1, 2002; Laws 2012, c. 101, § 2, eff. Jan. 1, 2013; Laws 2013, 1st Ex. Sess., c. 13, § 8; Laws 2013, 1st Ex. Sess., c. 13, § 9; Laws 2017, c. 305, § 1, eff. Nov. 1, 2017.

NOTE: Laws 2009, c. 228, § 11 was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013) and repealed by Laws 2013, 1st Ex. Sess., c. 13, § 7.

## §12-2004.1. Subpoena.

### SUBPOENA

A. SUBPOENA; FORM; ISSUANCE.

1. Every subpoena shall:

a. state the name of the court from which it is issued and the title of the action, and
b. command each person to whom it is directed to attend and give testimony or to produce and permit inspection, copying, testing or sampling of designated books, documents, electronically stored information or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified. A subpoena may specify the form or forms in which electronically stored information is to be produced.

2. A subpoena shall issue from the court where the action is pending, and it may be served at any place within the state.

a. Deposition in Action Pending Outside of This State.
If the action is pending outside of this state, the district court for the county in which the deposition is to be taken shall issue the subpoena and, upon application, any other order or process that may be appropriate in aid of discovery in that action. Proof of service of a notice to take deposition constitutes a sufficient authorization for the issuance of subpoenas for the persons named or described therein,

b. Subpoena for Production or Inspection in Action Pending Outside of This State.
If the action is pending outside of this state, the district court for the county in which the production or inspection is to be made shall issue a subpoena for production or inspection as provided in subparagraph b of paragraph 1 of subsection A of this section, if separate from a subpoena commanding the attendance of a person, and upon application, any other order or process that may be appropriate in aid of discovery in that action. Proof of service of a notice of request for production of documents without a deposition constitutes a sufficient authorization for the issuance of a subpoena for production or inspection, and

c. Judicial Assistance or Review Available.
Any person seeking an order or process in aid of discovery or any person aggrieved by the issuance or enforcement of a subpoena issued in aid of discovery for an action pending outside of this state may obtain judicial assistance or review upon the filing of a civil action and payment of required fees.

3. A witness shall be obligated upon service of a subpoena to attend a trial or hearing at any place within the state and to attend a deposition or produce or allow inspection of documents at a

location that is authorized by subsection B of Section 3230 of this title.

4. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service. As an officer of the court, an attorney authorized to practice law in this state may also issue and sign a subpoena on behalf of a court of this state.

5. Leave of court for issuance of a subpoena for the production of documentary evidence shall be required if the plaintiff seeks to serve a subpoena for the production of documentary evidence on any person who is not a party prior to the expiration of thirty (30) days after service of the summons and petition upon any defendant.

6. Notwithstanding any other provision of law, a court clerk of this state shall not be subject to a subpoena in matters relating to court records unless the court makes a specific finding that the appearance and testimony of the court clerk are both material and necessary because of a written objection to the introduction of the court records made by a party prior to trial.

B. 1. SERVICE. Service of a subpoena upon a person named therein shall be made by delivering or mailing a copy thereof to such person and, if the person's attendance is demanded, by tendering to that person the fees for one (1) day's attendance and the mileage allowed by law. Service of a subpoena may be accomplished by any person who is eighteen (18) years of age or older. A copy of any subpoena that commands production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by subsection B of Section 2005 of this title. If the subpoena commands production of documents and things or inspection of premises from a nonparty before trial but does not require attendance of a witness, the subpoena shall specify a date for the production or inspection that is at least seven (7) days after the date that the subpoena and copies of the subpoena are served on the witness and all parties, and the subpoena shall include the following language: "In order to allow objections to the production of documents and things to be filed, you should not produce them until the date specified in this subpoena, and if an objection is filed, until the court rules on the objection."

2. Service of a subpoena by mail may be accomplished by mailing a copy thereof by certified mail with return receipt requested and delivery restricted to the person named in the subpoena. The person serving the subpoena shall make proof of service thereof to the court promptly and, in any event, before the witness is required to testify at the hearing or trial. If service is made by a person other than a sheriff or deputy sheriff, such person shall make affidavit thereof. If service is by mail, the person serving the subpoena shall show in the proof of service the date and place of mailing and attach a copy

of the return receipt showing that the mailing was accepted. Failure to make proof of service does not affect the validity of the service, but service of a subpoena by mail shall not be effective if the mailing was not accepted by the person named in the subpoena. Costs of service shall be allowed whether service is made by the sheriff, the sheriff's deputy, or any other person. When the subpoena is issued on behalf of a state department, board, commission, or legislative committee, fees and mileage shall be paid to the witness at the conclusion of the testimony out of funds appropriated to the state department, board, commission, or legislative committee.

C. PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

1. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney, or both, in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney fee.

2. a. A person commanded to produce and permit inspection, copying, testing or sampling of designated books, papers, documents, electronically stored information or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

b. Subject to paragraph 2 of subsection D of this section, a person commanded to produce and permit inspection, copying, testing or sampling or any party may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve written objection to inspection, copying, testing or sampling of any or all of the designated materials or of the premises, or to producing electronically stored information in the form or forms requested. An objection that all or a portion of the requested material will or should be withheld on a claim that it is privileged or subject to protection as trial preparation materials shall be made within this time period and in accordance with subsection D of this section. If the objection is made by the witness, the witness shall serve the objection on all parties; if objection is made by a party, the party shall serve the objection on the witness and all other parties. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test or sample the materials or inspect the premises except pursuant to an

order of the court by which the subpoena was issued. For failure to object in a timely fashion, the court may assess reasonable costs and attorney fees or take any other action it deems proper; however, a privilege or the protection for trial preparation materials shall not be waived solely for a failure to timely object under this section. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

3. a. On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:
   (1) fails to allow reasonable time for compliance,
   (2) requires a person to travel to a place beyond the limits allowed under paragraph 3 of subsection A of this section,
   (3) requires disclosure of privileged or other protected matter and no exception or waiver applies,
   (4) subjects a person to undue burden, or
   (5) requires production of books, papers, documents or tangible things that fall outside the scope of discovery permitted by Section 3226 of this title.

   b. If a subpoena:
   (1) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
   (2) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

   the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena. However, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

D. DUTIES IN RESPONDING TO SUBPOENA.

1. a. A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course

of business or shall organize and label them to correspond with the categories in the demand.

b. If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena shall produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

c. A person responding to a subpoena is not required to produce the same electronically stored information in more than one form.

d. A person responding to a subpoena is not required to provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. If such showing is made, the court may order discovery from such sources if the requesting party shows good cause, considering the limitations of subparagraph c of paragraph 2 of subsection B of Section 3226 of this title. The court may specify conditions for the discovery.

2. a. When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

b. If information is produced in response to a subpoena that is subject to a claim or privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for such claim. After being notified, a party shall promptly return, sequester, or destroy the specified information and any copies the party has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, such shall take reasonable steps to retrieve the information. The person who produced the information shall preserve the information until the claim is resolved. This mechanism is procedural only and does not alter the standards governing whether the information is privileged or subject to protection as

trial preparation material or whether such privilege or protection has been waived.

E. CONTEMPT.

Failure by any person without adequate excuse to obey a subpoena served upon him or her may be deemed a contempt of the court from which the subpoena issued.

Added by Laws 1985, c. 277, § 4, eff. Nov. 1, 1985. Amended by Laws 1993, c. 351, § 1, eff. Sept. 1, 1993; Laws 1994, c. 343, § 10, eff. Sept. 1, 1994; Laws 1996, c. 61, § 2, eff. Nov. 1, 1996; Laws 1998, c. 374, § 2, eff. Nov. 1, 1998; Laws 1999, c. 293, § 19, eff. Nov. 1, 1999; Laws 2000, c. 172, § 1, eff. Nov. 1, 2000; Laws 2002, c. 92, § 1, eff. Nov. 1, 2002; Laws 2002, c. 468, § 21, eff. Nov. 1, 2002; Laws 2007, c. 12, § 5, eff. Nov. 1, 2007; Laws 2010, c. 50, § 2, eff. Nov. 1, 2010.

## §12-2004.2. Notice of pendency of action.

NOTICE OF PENDENCY OF ACTION

A. Upon the filing of a petition, the action is pending so as to charge third persons with notice of its pendency. While an action is pending, no third person shall acquire an interest in the subject matter of the suit as against the prevailing party's title; except that:

1. As to actions in either state or federal court involving real property, such notice shall be effective from and after the time that a notice of pendency of action, identifying the case and the court in which it is pending and giving the legal description of the land affected by the action, is filed of record in the office of the county clerk of the county wherein the land is situated; and

2. Notice of the pendency of an action shall have no effect unless service of process is made upon the defendant or service by publication is commenced within one hundred twenty (120) days after the filing of the petition.

B. Except as to mechanics and materialman lien claimants, any interest in real property which is the subject matter of an action pending in any state or federal court, acquired or purported to be acquired subsequent to the filing of a notice of pendency of action as provided in subsection A of this section, or acquired or purported to be acquired prior to but filed or perfected after the filing of such notice of pendency of action, shall be void as against the prevailing party or parties to such action.

C. No person purporting to acquire or perfect an interest in real property in contravention of this section need be given notice of a sale upon execution or of hearing upon confirmation thereof.

Added by Laws 1985, c. 277, § 5, eff. Nov. 1, 1985. Amended by Laws 1987, c. 189, § 4, operative Nov. 1, 1987.

§12-2004.3. Alternate delivery methods for copy of process, papers - Deadlines - Not applicable to documents filed with clerk.

A. In lieu of mailing a copy of process or other papers by certified mail, return receipt requested and delivery restricted to the addressee as required or allowed by this title, a party or attorney may send the same by commercial courier service, overnight delivery service, or other reliable personal delivery service to the party addressed, in each instance evidenced by a written or electronic receipt signed by the addressee showing to whom delivered, date of delivery, address where delivered, and person or entity effecting delivery. Acceptance of service by a person who is fifteen (15) years of age or older who resides at the defendant's dwelling house or usual place of abode shall constitute acceptance by the party addressed. A return receipt signed at a dwelling house or usual place of abode shall be presumed to have been signed by a person who is fifteen (15) years of age or older who resides at that dwelling house or abode.

B. In lieu of mailing a copy of papers by ordinary mail as required or allowed by this title, a party or attorney may send same by commercial courier service, overnight delivery service, or other reliable personal delivery service to the party addressed.

C. When one of the methods described in this section is utilized, all deadlines based upon service shall be calculated in the same manner as if the service had been by mail.

D. This section shall not apply to the filing of any document with a court clerk. The filing of documents with a court clerk remains governed by the Oklahoma Statutes and court rules.

E. In case of an entity described in division (3) of subparagraph c of paragraph 1 of subsection C of Section 2004 of this title, acceptance by any officer or by any employee of the registered office or principal place of business who is authorized to or who regularly receives certified mail shall constitute acceptance by the party addressed. A return receipt signed at such registered office or principal place of business shall be presumed to have been signed by an employee authorized to receive certified mail.

Added by Laws 2007, c. 12, § 6, eff. Nov. 1, 2007. Amended by Laws 2012, c. 243, § 1, eff. Nov. 1, 2012.

§12-2005. Service and filing of pleadings and other papers.

SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

A. SERVICE: WHEN REQUIRED. Except as otherwise provided in this title, every order required by its terms to be served, every pleading subsequent to the original petition unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party or any other person unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand,

offer of judgment, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that:

1. Pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Section 2004 of this title; and

2. Service of judgments, decrees or appealable orders against them shall be made in accordance with subsection B of Section 696.2 of this title.

B. SERVICE: HOW MADE. Whenever pursuant to this act service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service directly upon the party is ordered by the court or final judgment has been rendered and the time for appeal has expired. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or the party or by mailing it or sending it by third-party commercial carrier for delivery within three (3) calendar days to the attorney or the party at the last-known address of the attorney or the party or by electronic means if the attorney or party consents in writing to receiving service in a particular case by electronic means and the attorney or party provides instructions for making the electronic service consented to by the attorney or party. The required written consent and electronic service instructions may be made in the entry of appearance filed by the attorney or the party pursuant to subsection A of Section 2005.2 of this title or may be made in another pleading filed by the attorney or party in the case. For purposes of this subsection, "electronic means" includes communications by facsimile or electronic mail through the internet, commonly known as e-mail. If no mailing address, physical address or electronic means address for the attorney or party is known, service is effected by leaving it with the clerk of the court. Delivery of a copy within this section means:

1. Handing it to the attorney or to the party; or

2. Leaving it at the office of the attorney or the party with the attorney's or party's clerk or other person in charge thereof; or

3. If there is no one in charge, leaving it in a conspicuous place therein; or

4. If the office is closed or the person to be served has no office, leaving it at his or her dwelling house or usual place of abode with some person residing therein who is fifteen (15) years of age or older.

Except for service of the summons and the original petition, service by mail is complete upon mailing, service by commercial carrier is complete upon delivery to the commercial carrier, and service by electronic means is complete upon transmission, unless the party making service is notified that the copy or paper served was not received by the party served. If the court clerk or a party is

required to serve a judgment or other paper by first-class mail, service in accordance with any method permitted by this section is sufficient to comply with such requirement.

C. SERVICE: NUMEROUS DEFENDANTS. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

D. FILING. All papers after the petition required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter, but the court may on motion of a party or on its own initiative order that depositions upon oral examination and interrogatories, requests for documents, requests for admission, and answers and responses thereto not be filed unless on order of the court or for use in the proceeding. All papers filed with the court shall include a statement setting forth the names of the persons served and the date, place, and method of service.

E. FILING WITH THE COURT DEFINED.

1. The filing of papers with the court as required by this act shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him or her, in which event he or she shall note thereon the filing date and forthwith transmit them to the office of the clerk.

2. A duplicate of any paper shall be acceptable for filing with the court and shall have the same force and effect as an original. For purposes of this section a duplicate is a copy produced on unglazed white or eggshell paper by mechanical, chemical or electronic means, or by other equivalent technique, which accurately reproduces the original. A duplicate that is acceptable for filing shall not be refused because any signatures thereon are duplicates. A carbon copy shall not be considered a duplicate for purposes of this section.

3. Papers may be filed by facsimile or other electronic transmission directly to the court or the court clerk as permitted by a rule of court. The Administrative Office of the Courts shall promulgate rules for the district court for the filing of papers transmitted by facsimile or other electronic transmission device. Rules for facsimile or other electronic transmission filing must have the approval of the Supreme Court.

4. The clerk shall not refuse to accept for filing any paper solely because it is not presented in proper form as required by these rules or any local rules or practices.

Added by Laws 1984, c. 164, § 5, eff. Nov. 1, 1984. Amended by Laws 1985, c. 277, § 6, eff. Nov. 1, 1985; Laws 1993, c. 351, § 2, eff. Sept. 1, 1993; Laws 1997, c. 239, § 5, eff. July 1, 1997; Laws 2007, c. 12, § 7, eff. Nov. 1, 2007; Laws 2010, c. 50, § 3, eff. Nov. 1, 2010.

§12-2005.1. Service of postjudgment motions in divorce actions.

SERVICE OF POSTJUDGMENT MOTIONS IN DIVORCE ACTIONS

All postjudgment motions pertaining to divorce proceedings shall be served in accordance with subsection C of Section 2004 of Title 12 of the Oklahoma Statutes.

Added by Laws 1986, c. 122, § 1, operative August 1, 1986.

§12-2005.2. Entry of appearance - Out-of-state counsel - Withdrawal - Address of record.

ENTRY OF APPEARANCE; OUT-OF-STATE COUNSEL; WITHDRAWAL; ADDRESS OF RECORD

A. ENTRY OF APPEARANCE. Every party to any civil proceeding in the district courts shall file an entry of appearance by counsel or personally as an unrepresented party when no other pleading or other paper in the case by that counsel or party has been filed, but no later than the first filing of any pleading or other paper in the case by that counsel or party. In the event a party changes, adds, or substitutes counsel, new counsel must immediately file an entry of appearance as set forth in this section. The entry of appearance shall include the name and signature of counsel or the unrepresented party, the name of the party represented by counsel, the mailing address, telephone and fax numbers, Oklahoma Bar Association number, and name of the law firm, if any. In the event that counsel or a party consents to receive service by electronic means in a particular case or civil proceeding pursuant to subsection B of Section 2005 of this title, counsel or a party may give notice of the required written consent within counsel’s or the party’s entry of appearance. Counsel or the party giving the required written consent shall provide the electronic means address or addresses to which service by electronic means will be accepted by the consenting counsel or party. Copies shall be served on all other parties of record. Filing an entry of appearance as required by this section does not waive any defenses enumerated in subsection B of Section 2012 of Title 12 of the Oklahoma Statutes.

B. COUNSEL NOT LICENSED IN OKLAHOMA. All motions of counsel not licensed to practice in Oklahoma shall comply with the requirements of Section 5 of Article 2 of the Rules Creating and Controlling the Oklahoma Bar Association in Appendix 1 of Title 5 of the Oklahoma

Statutes. The statement required by Section 5 of Article 2 of the Rules Creating and Controlling the Oklahoma Bar Association shall be in the form of an affidavit attached to the motion. The motion shall show that the requirements of Section 5 of Article 2 of the Rules Creating and Controlling the Oklahoma Bar Association are fulfilled. The required entry of appearance of the associate attorney shall be filed with the motion and affidavit.

C. WITHDRAWAL OF COUNSEL. A motion to withdraw may be filed at any time. All motions to withdraw shall be accompanied by a proposed order. No counsel may withdraw from a pending case without leave of the court. The counsel filing the motion shall serve a copy of the motion on the client and all attorneys of record. All motions to withdraw shall be signed by the party on whose behalf counsel has previously appeared or contain a certificate by counsel that:

1. The client has knowledge of counsel's intent to withdraw; or

2. Counsel has made a good faith effort to notify the client and the client cannot be located.

In civil actions, the court may grant a motion to withdraw where there is no successor counsel only if the withdrawing attorney clearly states in the body of the motion the name and address of the party. The order allowing withdrawal shall notify the unrepresented party that an entry of appearance must be filed either by the party pro se or by substitute counsel within thirty (30) days from the date of the order permitting the withdrawal and that a failure of the party to prosecute or defend the case may result in dismissal of the case without prejudice or a default judgment against the party. If no entry of appearance is filed within thirty (30) days from the date of the order permitting withdrawal, then the unrepresented party, other than a corporation, is deemed to be representing himself or herself and acting pro se. In all cases, counsel seeking to withdraw shall advise the court if the case is currently set for motion docket, pretrial conference, or trial.

D. ADDRESS OF RECORD. The address of record for any attorney or party appearing in a case pending in any district court shall be the last address provided to the court. The attorney or unrepresented party must, in all cases pending before the court involving the attorney or party, file with the court and serve upon all counsel and unrepresented parties a notice of a change of address. Any attorney or unrepresented party has the duty of maintaining a current address with the court. Service of notice to the address of record of counsel or an unrepresented party shall be considered valid service for all purposes, including dismissal of cases for failure to appear.

E. NOTICE OF CHANGE OF ADDRESS. All attorneys and unrepresented parties shall give immediate notice to the court of a change of address by filing notice with the court clerk. If the attorney or unrepresented party has provided written consent to receive service by electronic means pursuant to subsection A of this section, or in

another pleading, the attorney or party shall include a change of electronic mailing address as part of the notice required in this subsection. The notice of the change of address shall contain the same information required in the entry of appearance, shall be served on all parties, and a copy shall be provided to the assigned judge. If an attorney or an unrepresented party files an entry of appearance, the court will assume the correctness of the last address of record until a notice of change of address is received. Attorneys of record who change law firms shall notify the court clerk and the assigned judge of the status of representation of their clients, and shall immediately withdraw, when appropriate.
Added by Laws 2002, c. 468, § 22, eff. Nov. 1, 2002. Amended by Laws 2007, c. 12, § 8, eff. Nov. 1, 2007.

§12-2006. Time.

TIME

A. COMPUTATION. 1. In computing any period of time prescribed or allowed by this title, by the rules of any court of this state, or by order of a court of this state, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a legal holiday as defined by Section 82.1 of Title 25 of the Oklahoma Statutes or any other day when the office of the court clerk does not remain open for public business until the regularly scheduled closing time, in which event the period runs until the end of the next day which is not a legal holiday or a day when the office of the court clerk does not remain open for public business until the regularly scheduled closing time. Except for the times provided in Sections 765, 990.3, 1148.4, 1148.5, 1148.5A, and 1756 of this title, when the period of time prescribed or allowed is less than eleven (11) days, intermediate legal holidays and any other day when the office of the court clerk does not remain open for public business until the regularly scheduled closing time, shall be excluded from the computation.

2. For actions filed on or after November 1, 1999, and on or before June 30, 2000, any period of time prescribed or allowed by this title, by the rules of any court, by an order of a court, or by any applicable statute, shall be computed pursuant to the shortest time prescribed by the law in effect before November 1, 1999, the law in effect prior to the effective date of this act, or this act, unless the court finds that to do so would result in injustice.

B. ENLARGEMENT. When by this title or by a notice given thereunder by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion:

1. With or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or

2. Upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time set forth in this title for taking an appeal from a judgment, decree or appealable order, or for seeking a new trial, a judgment notwithstanding the verdict, or to correct, open, modify, vacate or reconsider a judgment, decree, or appealable order, except as provided in the sections governing such proceedings.

C. FOR MOTIONS - AFFIDAVITS. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof, shall be served not later than five (5) days before the time specified for the hearing, unless a different period is fixed by the Oklahoma Statutes, court rules, or by an order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion.

D. ADDITIONAL TIME AFTER SERVICE BY MAIL, THIRD-PARTY COMMERCIAL CARRIER OR ELECTRONIC MEANS. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, third-party commercial carrier or electronic means, three (3) days shall be added to the prescribed period; provided, however, when a summons and petition are served by mail, a defendant shall serve an answer within twenty (20) days or thirty-five (35) days if pursuant to subsection A of Section 2012 of this title, after the date of receipt or if refused, the date of refusal of the summons and petition by the defendant.

Added by Laws 1984, c. 164, § 6, eff. Nov. 1, 1984. Amended by Laws 1985, c. 277, § 7, eff. Nov. 1, 1985; Laws 1995, c. 253, § 4, eff. Nov. 1, 1995; Laws 1999, c. 293, § 20, eff. Nov. 1, 1999; Laws 2000, c. 260, § 1, emerg. eff. June 1, 2000; Laws 2001, c. 178, § 1, emerg. eff. May 2, 2001; Laws 2007, c. 12, § 9, eff. Nov. 1, 2007.

## §12-2007. Pleadings allowed - Form of motions.

### PLEADINGS ALLOWED; FORM OF MOTIONS

A. PLEADINGS. There shall be a petition and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim denominated as such; a third-party petition, if a person who was not an original party is summoned under the provisions of Section 14 of this act; and a third-party answer, if a third-party petition is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

B. MOTIONS AND OTHER PAPERS.

1. An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

2. The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by this act.

3. All motions shall be signed in accordance with Section 11 of this act.

C. DEMURRERS TO THE PLEADINGS, PLEAS, ETC., ABOLISHED. Demurrers to the pleadings, pleas, and exceptions for insufficiency of a pleading shall not be used.

Added by Laws 1984, c. 164, § 7, eff. Nov. 1, 1984.

§12-2008. General rules of pleading.

GENERAL RULES OF PLEADING

A. CLAIMS FOR RELIEF. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim or third-party claim, shall contain:

1. A short and plain statement of the claim showing that the pleader is entitled to relief; and

2. A demand for judgment for the relief to which he deems himself entitled. Every pleading demanding relief for damages in money in excess of the amount required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the United States Code shall, without demanding any specific amount of money, set forth only that the amount sought as damages is in excess of the amount required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the United States Code, except in actions sounding in contract. Every pleading demanding relief for damages in money in an amount that is required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the United States Code or less shall specify the amount of such damages sought to be recovered. Relief in the alternative or of several different types may be demanded.

B. DEFENSES; FORM OF DENIALS. A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this statement has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the

averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, he may do so by general denial subject to the obligations set forth in Section 2011 of this title.

C. AFFIRMATIVE DEFENSES. In pleading to a preceding pleading, a party shall set forth affirmatively:

1. Accord and satisfaction;
2. Arbitration and award;
3. Assumption of risk;
4. Contributory negligence;
5. Discharge in bankruptcy;
6. Duress;
7. Estoppel;
8. Failure of consideration;
9. Fraud;
10. Illegality;
11. Injury by fellow servant;
12. Laches;
13. License;
14. Payment;
15. Release;
16. Res judicata;
17. Statute of frauds;
18. Statute of limitations;
19. Waiver; and
20. Any other matter constituting an avoidance or affirmative defense.

When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

D. EFFECT OF FAILURE TO DENY. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

E. PLEADING TO BE CONCISE AND DIRECT; CONSISTENCY.

1. Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings or motions are required.

2. A party may set forth, and at trial rely on, two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the

alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or equitable grounds. All statements shall be made subject to the obligations set forth in Section 2011 of this title.

F. CONSTRUCTION OF PLEADINGS. All pleadings shall be so construed as to do substantial justice.

Added by Laws 1984, c. 164, § 8, eff. Nov. 1, 1984. Amended by Laws 1987, c. 78, § 2, eff. Nov. 1, 1987; Laws 2013, 1st Ex. Sess., c. 9, § 2, emerg. eff. Sept. 10, 2013; Laws 2013, 1st Ex. Sess., c. 9, § 3, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 12 was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013) and repealed by Laws 2013, 1st Ex. Sess., c. 9, § 1, emerg. eff. Sept. 10, 2013.

§12-2009. Pleading special matters.

PLEADING SPECIAL MATTERS

A. CAPACITY. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge, and he shall have the burden of proof on that issue.

B. FRAUD, MISTAKE, CONDITION OF THE MIND. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

C. CONDITIONS PRECEDENT. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

D. OFFICIAL DOCUMENT OR ACT. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

E. JUDGMENT. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

F. TIME AND PLACE. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

G. SPECIAL DAMAGE. When items of special damage are claimed, their nature shall be specifically stated. In actions where exemplary or punitive damages are sought, the petition shall not state a dollar amount for damages sought to be recovered but shall state whether the amount of damages sought to be recovered is in excess of or not in excess of the amount required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the United States Code.

H. MOTION TO CLARIFY DAMAGES. If the amount of damages sought to be recovered by the plaintiff is less than the amount required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the United States Code, the defendant may file, for purposes of establishing diversity jurisdiction only, a Motion to Clarify Damages prior to the pretrial order to require the plaintiff to show by a preponderance of the evidence that the amount of damages, if awarded, will not exceed the amount required for diversity. If the court finds that any damages awarded are more likely than not to exceed the amount of damages required for diversity jurisdiction, the plaintiff shall amend his or her pleadings in conformance with paragraph 2 of subsection A of Section 2008 of this title.

Added by Laws 1984, c. 164, § 9, eff. Nov. 1, 1984. Amended by Laws 1987, c. 78, § 3, eff. Nov. 1, 1987; Laws 2013, 1st Ex. Sess., c. 9, § 4, emerg. eff. Sept. 10, 2013; Laws 2013, 1st Ex. Sess., c. 9, § 5, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 13 was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013) and repealed by Laws 2013, 1st Ex. Sess., c. 9, § 1, emerg. eff. Sept. 10, 2013.

§12-2010. Form of pleadings.

FORM OF PLEADINGS

A. CAPTION; NAMES OF PARTIES. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in subsection A of Section 7 of this act. In the petition the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties. In a third-party petition the title of the action shall include the names of the parties to the third-party action; a counterclaim and a cross-claim shall include the names of the claimants and the parties against whom the claim is asserted; and a motion and petition in intervention shall include the names of the intervenors and the adverse parties. When a party is suing or being sued in a representative capacity, this should be stated in the title of the action.

B. PARAGRAPHS; SEPARATE STATEMENTS. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of

which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

C. ADOPTION BY REFERENCE; EXHIBITS. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

Added by Laws 1984, c. 164, § 10, eff. Nov. 1, 1984.

§12-2011. Signing of pleadings.

SIGNING OF PLEADINGS

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

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

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

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

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

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

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

1. HOW INITIATED.

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

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

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

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

b. Monetary sanctions shall not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the

claims made by or against the party which is, or whose attorneys are, to be sanctioned.

c. Monetary sanctions shall be awarded for any violations of paragraph 1 of subsection B of this section. The sanctions shall consist of an order directing payment of reasonable costs, including attorney fees, incurred by the movant with respect to the conduct for which the sanctions are imposed. In addition, the court may impose any other sanctions authorized by this paragraph.

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

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

E. DEFINITION. As used in this section, "frivolous" means the action or pleading was knowingly asserted in bad faith or without any rational argument based in law or facts to support the position of the litigant or to change existing law.

Added by Laws 1984, c. 164, § 11, eff. Nov. 1, 1984. Amended by Laws 1985, c. 277, § 8, eff. Nov. 1, 1985; Laws 1987, c. 78, § 4, eff. Nov. 1, 1987; Laws 1994, c. 343, § 11, eff. Sept. 1, 1994; Laws 2004, c. 368, § 10, eff. Nov. 1, 2004; Laws 2013, 1st Ex. Sess., c. 4, § 2, emerg. eff. Sept. 10, 2013; Laws 2013, 1st Ex. Sess., c. 4, § 3, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 14 was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013) and repealed by Laws 2013, 1st Ex. Sess., c. 4, § 1, emerg. eff. Sept. 10, 2013.

§12-2011.1. Finding of frivolous claim - Actions not arising out of contract - Award of costs and attorney fees.

In any action not arising out of contract, if requested the court shall, upon ruling on a motion to dismiss an action or a motion for summary judgment or subsequent to adjudication on the merits, determine whether a claim or defense asserted in the action by a nonprevailing party was frivolous. As used in this section, "frivolous" means the claim or defense was knowingly asserted in bad faith or without any rational argument based in law or facts to support the position of the litigant or to change existing law. Upon so finding, the court shall enter an order requiring such nonprevailing party to reimburse the prevailing party for reasonable costs, including attorney fees, incurred with respect to such claim or defense. In addition, the court may impose any sanction authorized by Section 2011 of this title.

Added by Laws 2004, c. 370, § 1, eff. Nov. 1, 2004. Amended by Laws 2007, c. 12, § 10, eff. Nov. 1, 2007; Laws 2013, 1st Ex. Sess., c. 4, § 4, emerg. eff. Sept. 10, 2013; Laws 2013, 1st Ex. Sess., c. 4, § 5, emerg. eff. Sept. 10, 2013.
NOTE: Laws 2009, c. 228, § 15 was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013) and repealed by Laws 2013, 1st Ex. Sess., c. 4, § 1, emerg. eff. Sept. 10, 2013.

§12-2012. Defenses and objections - When and how presented - By pleading or motion.

DEFENSES AND OBJECTIONS; WHEN AND HOW PRESENTED; BY PLEADING OR MOTION

A. WHEN PRESENTED. 1. Unless a different time is prescribed by law, a defendant shall serve an answer:

a. within twenty (20) days after the service of the summons and petition upon the defendant,

b. within twenty (20) days after the service of the summons and petition upon the defendant, or within the last day for answering if applicable; provided, a defendant may file a reservation of time which shall extend the time to respond twenty (20) days from the last date for answering. The filing of such a reservation of time waives defenses of paragraphs 2, 3, 4, 5, 6, and 9 of subsection B of this section.

2. A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within twenty (20) days after the service upon the party.

3. The plaintiff shall serve a reply to a counterclaim in the answer within twenty (20) days after service of the answer or, if a reply is ordered by the court, within twenty (20) days after service of the order, unless the order otherwise directs.

4. The party requesting a summons to be issued or filing a counter-claim or cross-claim may elect to have the answer served within thirty-five (35) days in lieu of the twenty (20) days set forth in this section.

5. The service of a motion permitted under this section or a motion for summary judgment alters these periods of time as follows: if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within twenty (20) days after notice of the court's action, unless a different time is fixed by order of the court.

B. HOW PRESENTED. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

1. Lack of jurisdiction over the subject matter;
2. Lack of jurisdiction over the person;
3. Improper venue;
4. Insufficiency of process;
5. Insufficiency of service of process;
6. Failure to state a claim upon which relief can be granted;
7. Failure to join a party under Section 2019 of this title;
8. Another action pending between the same parties for the same claim;
9. Lack of capacity of a party to be sued; and
10. Lack of capacity of a party to sue.

A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered 6 of this subsection to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and all parties shall be given reasonable opportunity to present all material made pertinent to the motion by the rules for summary judgment. A motion to dismiss for failure to state a claim upon which relief can be granted shall separately state each omission or defect in the petition, and a motion that does not specify such defects or omissions shall be denied without a hearing and the defendant shall answer within twenty (20) days after notice of the court's action.

C. PRELIMINARY HEARINGS. The defenses specifically enumerated in paragraphs 1 through 10 of subsection B of this section, whether made in a pleading or by motion, and the motion to strike mentioned in subsection D of this section shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial. If the court determines that venue is proper, the action shall not be dismissed for improper venue as a result of the jury's verdict or the subsequent ruling of the court on a demurrer to the evidence or a motion for a directed verdict.

D. MOTION TO STRIKE. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by this act, upon motion made by a party within twenty (20) days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense. If, on a motion to strike an insufficient defense, matters outside the pleadings are presented to

and not excluded by the court, the motion shall be treated as one for partial summary judgment and all parties shall be given reasonable opportunity to present all materials made pertinent to the motion by the rules for summary judgment.

E. CONSOLIDATION OF DEFENSES IN MOTION. A party who makes a motion under this section may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this section but omits therefrom any defense or objection then available to the party which this section permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in paragraph 2 of subsection F of this section on the grounds there stated. The court in its discretion may permit a party to amend a motion by stating additional defenses or objections if an amendment is sought at least five (5) days before the hearing on the motion.

F. WAIVER OR PRESERVATION OF CERTAIN DEFENSES.

1. A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process, failure to state a claim upon which relief can be granted, or lack of capacity of a party to be sued is waived:

a. if omitted from a motion that raises any of the defenses or objections which this section permits to be raised by motion, or

b. if it is not made by motion and it is not included in a responsive pleading or an amendment thereof permitted by subsection A of Section 2015 of this title to be made as a matter of course. A motion to strike an insufficient defense is waived if not raised as in subsection D of this section.

2. A defense of failure to join a party indispensable under Section 2019 of this title may be made in any pleading permitted or ordered under subsection A of Section 2007 of this title or at the trial on the merits. A defense of another action pending between the same parties for the same claim or a defense of lack of capacity of a party to sue may be made in any pleading permitted or ordered pursuant to the provisions of subsection A of Section 2007 of this title or at the pretrial conference.

3. Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

4. A waiver of the defense in paragraph 6 of subsection B of this section does not preclude a later contention that a party is not entitled to any relief as a matter of law, either by motion for summary judgment, or by demurrer or motion at or after trial.

G. FINAL DISMISSAL ON FAILURE TO AMEND. On granting a motion to dismiss a claim for relief, the court shall grant leave to amend if

the defect can be remedied and shall specify the time within which an amended pleading shall be filed. If the amended pleading is not filed within the time allowed, final judgment of dismissal with prejudice shall be entered on motion except in cases of excusable neglect. In such cases amendment shall be made by the party in default within a time specified by the court for filing an amended pleading. Within the time allowed by the court for filing an amended pleading, a plaintiff may voluntarily dismiss the action without prejudice.
Added by Laws 1984, c. 164, § 12, eff. Nov. 1, 1984. Amended by Laws 2000, c. 380, § 4, eff. Nov. 1, 2000; Laws 2002, c. 468, § 23, eff. Nov. 1, 2002; Laws 2004, c. 181, § 5, eff. Nov. 1, 2004.

§12-2013. Counterclaim and cross-claim.

COUNTERCLAIM AND CROSS-CLAIM

A. COMPULSORY COUNTERCLAIMS. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if:

1. At the time the action was commenced the claim was the subject of another pending action; or

2. The opposing party brought suit upon his claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim pursuant to this section.

B. PERMISSIVE COUNTERCLAIMS; CONTINGENT COUNTERCLAIMS.

1. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

2. A pleading may state as a counterclaim against an opposing party a contingent claim that the opposing party may be liable to the counterclaimant for all or part of a claim asserted in the action against the counterclaimant.

C. COUNTERCLAIM EXCEEDING OPPOSING CLAIMS; STATUTES OF LIMITATION. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party. Where a counterclaim and the claim of the opposing party arise out of the same transaction or occurrence, the counterclaim shall not be barred by a statute of limitation notwithstanding that it was barred at the time the petition was filed, and the counterclaimant shall not be precluded from recovering an affirmative judgment. Where a counterclaim and the claim of the opposing party:

1. Do not arise out of the same transaction or occurrence;

2. Both claims are for money judgments;

3. Both claims had accrued before either was barred by a statute of limitation; and

4. The counterclaim is barred by a statute of limitation at the time that it is asserted, whether in an answer or an amended answer, the counterclaim may be asserted only to reduce the opposing party's claim.

Where a counterclaim was barred by a statute of limitation before the claim of the opposing party arose, the barred counterclaim cannot be used for any purpose.

D. COUNTERCLAIMS AGAINST ASSIGNED CLAIMS. A party, other than a holder in due course, who acquires a claim by assignment or otherwise, takes the claim subject to any defenses or counterclaims that could have been asserted against the person from whom he acquired the claim, but the recovery on a counterclaim may be asserted only to reduce the recovery of the opposing party.

E. CLAIM MATURING OR ACQUIRED AFTER PLEADING. A claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the court, be presented as a counterclaim or a cross-claim by supplemental pleading.

F. OMITTED COUNTERCLAIM. When a pleader fails to set up an omitted counterclaim by amendment within twenty (20) days after service as authorized by subsection A of Section 2015 of this title, he may with leave of court or by written consent of the adverse party set up the counterclaim by amendment where the failure to assert it was due to oversight, inadvertence, excusable neglect, or where justice requires.

G. CROSS-CLAIMS. A pleading may state as a cross-claim any claim by one party against any party who is not an opposing party arising out of the transaction or occurrence that is the subject matter either of the original action or of a claim therein or relating to any property that is the subject matter of the original action. A cross-claim may assert a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

H. JOINDER OF ADDITIONAL PARTIES. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Sections 2019 and 2020 of this title.

I. SEPARATE TRIALS; SEPARATE JUDGMENTS. A court may order separate trials of a counterclaim or a cross-claim. A counterclaim or a cross-claim may proceed to trial and judgment thereon may be rendered even if the claim of the opposing party has been dismissed or otherwise disposed of.

Added by Laws 1984, c. 164, § 13, eff. Nov. 1, 1984. Amended by Laws 1986, c. 227, § 6, eff. Nov. 1, 1986; Laws 1988, c. 181, § 2, eff. Nov. 1, 1988.

§12-2014. Third-party practice.

THIRD-PARTY PRACTICE

A. WHEN DEFENDANT MAY BRING IN THIRD PARTY. At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and petition to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him or who is liable to him on a claim arising out of the transaction or occurrence that is the subject matter of a claim that is asserted against him. The third-party plaintiff need not obtain leave to make the service if he files the third-party petition not later than ten (10) days after he serves his original answer. Otherwise, he must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party petition, hereinafter called the third-party defendant, shall make his defenses to the third-party plaintiff's claim as provided in Section 12 of this act and his counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Section 13 of this act. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert his defenses as provided in Section 12 of this act and his counterclaims and cross-claims as provided in Section 13 of this act. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this section against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third-party defendant.

B. WHEN PLAINTIFF MAY BRING IN THIRD PARTY. When a counterclaim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances which pursuant to this section would entitle a defendant to do so.

Added by Laws 1984, c. 164, § 14, eff. Nov. 1, 1984.

§12-2015. Amended and supplemental pleadings.

AMENDED AND SUPPLEMENTAL PLEADINGS

A. AMENDMENTS. A party may amend his or her pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he or she may so amend it at any time within twenty (20) days after it is served. Amendments to add omitted counterclaims or to add or drop parties may be made as a matter of course within the time specified above. Otherwise a party may amend the pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall respond to an amended pleading within the time remaining for response to the original pleading or within twenty (20) days after the service of the amended pleading, whichever period may be longer, unless the court otherwise orders.

B. AMENDMENTS TO CONFORM TO THE EVIDENCE. When issues not raised by the pleadings or by the pretrial conference order, where the order has superseded the pleadings, are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings or the pretrial conference order. Such amendment as may be necessary to cause the pleadings or the pretrial conference order to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings or the pretrial conference order, the court may allow the pleadings or the pretrial conference order to be amended and shall do so freely when the presentation of the merits of the action will be served thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him or her in maintaining the action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

Where the pretrial conference order has superseded the pleadings, it is sufficient to amend the order and the pleadings shall not be amended.

C. RELATION BACK OF AMENDMENTS. An amendment of a pleading relates back to the date of the original pleading when:

1. Relation back is permitted by the law that provides the statute of limitations applicable to the action; or

2. The claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading; or

3. The amendment changes the party or the naming of the party against whom a claim is asserted if paragraph 2 of this subsection is satisfied and, within the period provided by subsection I of Section

2004 of this title for service of the summons and petition, the party to be brought in by amendment:

a. has received such notice of the institution of the action that he or she will not be prejudiced in maintaining a defense on the merits; and

b. knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him or her.

An amendment to add an omitted counterclaim does not relate back to the date of the original answer.

The delivery or mailing of process to the Attorney General of Oklahoma, or an agency or officer who would have been a proper defendant if named, satisfies the requirements of subparagraphs a and b of this paragraph with respect to the State of Oklahoma or any agency or officer thereof to be brought into the action as a defendant.

D. SUPPLEMENTAL PLEADINGS. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor. A supplemental pleading relates back to the date of the original pleading if it arises out of the conduct, transaction, or occurrence set forth in the original pleading.

Added by Laws 1984, c. 164, § 15, eff. Nov. 1, 1984. Amended by Laws 1993, c. 351, § 3, eff. Sept. 1, 1993; Laws 2018, c. 37, § 1, eff. Nov. 1, 2018.

## §12-2016. Pretrial procedure - Formulating issues.

### PRETRIAL PROCEDURE; FORMULATING ISSUES

In the absence of specific superseding legislation, the procedures for conducting pretrial conferences shall be governed by rules promulgated by the Supreme Court of Oklahoma.

Added by Laws 1984, c. 164, § 16, eff. Nov. 1, 1984.

## §12-2017. Parties plaintiff and defendant - Capacity.

### PARTIES PLAINTIFF AND DEFENDANT; CAPACITY

A. REAL PARTY IN INTEREST. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in

the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

B. CAPACITY TO SUE OR BE SUED. Except as otherwise provided by law, any person, corporation, partnership, or unincorporated association shall have capacity to sue or be sued in this state.

C. INFANTS OR INCOMPETENT PERSONS. Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative he may sue by his next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.

D. ASSIGNMENT AND SUBROGATION OF CLAIMS. The assignment of claims not arising out of contract is prohibited. However, nothing in this section shall be construed to affect the law in this state as relates to the transfer of claims through subrogation.

Added by Laws 1984, c. 164, § 17, eff. Nov. 1, 1984.

§12-2018. Joinder of claims and remedies.

JOINDER OF CLAIMS AND REMEDIES

A. JOINDER OF CLAIMS. A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal or equitable, as he has against an opposing party.

B. JOINDER OF REMEDIES; FRAUDULENT CONVEYANCES. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to him, without first having obtained a judgment establishing the claim for money.

C. CONSOLIDATION. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

D. SEPARATE TRIALS. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to

expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury.
Added by Laws 1984, c. 164, § 18, eff. Nov. 1, 1984.

§12-2019. Joinder of persons needed for just adjudication.

JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

A. PERSONS TO BE JOINED IF FEASIBLE. A person who is subject to service of process shall be joined as a party in the action if:

1. In his absence complete relief cannot be accorded among those already parties; or

2. He claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may:

a. as a practical matter, impair or impede his ability to protect that interest, or

b. leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant or, in a proper case, an involuntary plaintiff.

B. DETERMINATION BY COURT WHENEVER JOINDER NOT FEASIBLE. If a person as described in paragraphs 1 and 2 of subsection A of this section cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include:

1. To what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties;

2. The extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided;

3. Whether a judgment rendered in the person's absence will be adequate; and

4. Whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

C. PLEADING REASONS FOR NONJOINDER. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in paragraphs 1 and 2 of subsection A of this section who are not joined and the reasons why they are not joined.

D. EXCEPTION OF CLASS ACTIONS. This section is subject to the provisions of Section 23 of this act.
Added by Laws 1984, c. 164, § 19, eff. Nov. 1, 1984.

§12-2020. Permissive joinder of parties.

PERMISSIVE JOINDER OF PARTIES

A. PERMISSIVE JOINDER.

1. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative:

a. in respect of or arising out of the same transaction or occurrence, or

b. if the claims arise out of a series of transactions or occurrences and any question of law or fact common to all these persons will arise in the action, or

c. if the claims are connected with the subject matter of the action.

2. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative:

a. any right to relief in respect of or arising out of the same transaction or occurrence, or

b. if the claims arise out of a series of transactions or occurrences and any question of law or fact common to all defendants will arise in the action, or

c. if the claims are connected with the subject matter of the action.

3. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

B. ACTIONS INVOLVING PROPERTY. In actions to quiet title or actions to enforce mortgages or other liens, persons who assert an interest in the property that is the subject of the action may be joined although their interest does not arise from the same transaction or occurrence. The court may order separate trials to prevent delay or prejudice.

C. SEPARATE TRIALS. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice. In determining whether to allow joinder under this section or to order separate trials, the court shall consider if in the interest of justice such action provides a fair and convenient forum for all parties.
Added by Laws 1984, c. 164, § 20, eff. Nov. 1, 1984. Amended by Laws 2004, c. 368, § 11, eff. Nov. 1, 2004.

§12-2021. Misjoinder and nonjoinder of parties.

MISJOINDER AND NONJOINDER OF PARTIES

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately. In determining whether to add or drop parties under this section, the court shall consider if in the interest of justice such action provides a fair and convenient forum for all parties.

Added by Laws 1984, c. 164, § 21, eff. Nov. 1, 1984. Amended by Laws 2004, c. 368, § 12, eff. Nov. 1, 2004.

§12-2022. Interpleader.

INTERPLEADER

A. Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this section supplement and do not in any way limit the joinder of parties permitted in Section 20 of this act.

B. The provisions of this section shall be applicable to actions brought against a sheriff or other officer for the recovery of personal property taken by him under execution or for the proceeds of such property so taken and sold by him; and the defendant in any such action shall be entitled to the benefit of this section against the party in whose favor the execution issued.

C. The court may make an order for the safekeeping of the subject of the action or for its payment or delivery into the court or to such person as the court may direct, and the court may order the person who is seeking relief by way of interpleader to give a bond, payable to the clerk of the court, in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance with the future order or judgment of the court with respect to the subject matter of the controversy. Where the party seeking relief by way of interpleader claims no interest in the subject of the action and the subject of the action has been deposited with the court or with a person designated by the court, the court should discharge him from the action and from liability as

to the claims of the other parties to the action with costs and, in the discretion of the court, a reasonable attorney fee.

D. In cases of interpleader, costs may be adjudged for or against any party, except as provided in subsection C of this section.

Added by Laws 1984, c. 164, § 22, eff. Nov. 1, 1984.

§12-2023. Class actions.

CLASS ACTIONS

A. PREREQUISITES TO A CLASS ACTION. One or more members of a class may sue or be sued as representative parties on behalf of all only if:

1. The class is so numerous that joinder of all members is impracticable;

2. There are questions of law or fact common to the class;

3. The claims or defenses of the representative parties are typical of the claims or defenses of the class; and

4. The representative parties will fairly and adequately protect the interests of the class.

B. CLASS ACTIONS MAINTAINABLE. An action may be maintained as a class action if the prerequisites of subsection A of this section are satisfied, if the petition in the class action contains factual allegations sufficient to demonstrate a plausible claim for relief and:

1. The prosecution of separate actions by or against individual members of the class would create a risk of:

   a. inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

   b. adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

2. The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

3. The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

   a. the interest of members of the class in individually controlling the prosecution or defense of separate actions,

b. the extent and nature of any litigation concerning the controversy already commenced by or against members of the class,
c. the desirability or undesirability of concentrating the litigation of the claims in the particular forum, and
d. the difficulties likely to be encountered in the management of a class action.

C. DETERMINATION BY ORDER WHETHER CLASS ACTION TO BE MAINTAINED; NOTICE; JUDGMENT; ACTIONS CONDUCTED PARTIALLY AS CLASS ACTIONS.

1. As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order entered on or after November 1, 2011, that certifies a class action shall define the class and the class claims, issues or defenses, and shall appoint class counsel under subsection F of this section. An order under this subsection may be conditional, and may be altered or amended before the decision on the merits.

2. The order described in paragraph 1 of this subsection shall be subject to a de novo standard of review by any appellate court reviewing the order. While the appeal of the order on class certification is pending, the trial court shall retain sufficient jurisdiction over the case to consider and implement a settlement of the action should one be reached between the parties and discovery as to the class claims shall be stayed pending resolution of the appeal.

3. For any class certified under paragraph 1 or 2 of subsection B of this section, the court may direct appropriate notice to the class.

4. In any class action maintained under paragraph 3 of subsection B of this section, the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall clearly and concisely state in plain, easily understood language:

a. the nature of the action,
b. the definition of the class certified,
c. the class claims, issues or defenses,
d. that a class member may enter an appearance through an attorney if the member so desires,
e. that the court will exclude the member from the class if the member so requests by a specified date,
f. that the judgment, whether favorable or not, will include all members who do not request exclusion, and
g. that any member who does not request exclusion may, if the member desires, enter an appearance through counsel.

Members to whom individual notice is not directed shall be given notice in such manner as the court shall direct, which may include

publishing notice in newspapers, magazines, trade journals or other publications, posting it in appropriate places, and taking other steps that are reasonably calculated to bring the notice to the attention of such members, provided that the cost of giving such notice shall be reasonable in view of the amounts that may be recovered by the class members who are being notified. Members to whom individual notice was not directed may request exclusion from the class at any time before the issue of liability is determined, and commencing an individual action before the issue of liability is determined shall be the equivalent of requesting exclusion from the class.

5. The judgment in an action maintained as a class action under paragraph 1 or 2 of subsection B of this section, whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under paragraph 3 of subsection B of this section, whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in paragraph 4 of this subsection was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

6. When appropriate:

a. an action may be brought or maintained as a class action with respect to particular issues, or

b. a class may be divided into subclasses and each subclass treated as a class.

The provisions of this section shall then be construed and applied accordingly.

D. ORDERS IN CONDUCT OF ACTIONS. In the conduct of actions to which this section applies, the court may make appropriate orders:

1. Determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

2. Requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

3. For actions filed after November 1, 2011, class membership shall be limited, unless otherwise agreed to by the defendant, only to individuals or entities who are:

a. residents of this state, or

b. nonresidents of this state who:

(1) own an interest in property located in this state where the property is relevant to the class action, or

(2) have a significant portion of the nonresident's cause of action arising from conduct occurring within the state;

4. Requiring, for the sole purpose of class notice upon certification of a class, that parties to the action provide such names and addresses of potential members of the class as they possess, subject to an appropriate protective order;

5. Imposing conditions on the representative parties or on intervenors;

6. Requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; and

7. Dealing with similar procedural matters.

The orders may be combined with an order under Section 2016 of this title and may be altered or amended as may be desirable from time to time.

E. DISMISSAL OR COMPROMISE. The claims, issues or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval. For motions filed after November 1, 2011, the following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

1. The court shall direct notice in a reasonable manner to all class members who would be bound by the proposal;

2. If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable and adequate;

3. The parties seeking approval shall file a statement identifying any agreement made in connection with the proposal;

4. If the class action was previously certified under paragraph 3 of subsection B of this section, the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so; and

5. Any class member may object to the proposal if it requires court approval under this subsection.

F. CLASS COUNSEL. 1. Unless a statute provides otherwise, a court that certifies a class shall appoint class counsel. In appointing class counsel after November 1, 2011, the court:

a. shall consider:

(1) the work counsel has done in identifying or investigating potential claims in the action,

(2) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action,

(3) counsel's knowledge of the applicable law, and
(4) the resources that counsel will commit to representing the class,

b. may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class,

c. may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney fees or nontaxable costs,

d. may include in the appointing order provisions about the award of attorney fees or nontaxable costs, and

e. may make further orders in connection with the appointment.

2. When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under paragraphs 1 and 4 of this subsection. If more than one adequate applicant seeks appointment, the court shall appoint the applicant best able to represent the interests of the class.

3. The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.

4. Class counsel shall fairly and adequately represent the interests of the class.

G. ATTORNEY FEES AND NONTAXABLE COSTS. 1. In a certified class action, the court may award reasonable attorney fees and nontaxable costs that are authorized by law or by the parties' agreement.

2. A claim for an award shall be made by motion, subject to the provisions of this subsection, at a time set by the court. Notice of the motion shall be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

3. A class member, or a party from whom payment is sought, may object to the motion.

4. In considering a motion for attorney fees filed after the effective date of this act:

a. the court shall conduct an evidentiary hearing to determine a fair and reasonable fee for class counsel,

b. the court shall act in a fiduciary capacity on behalf of the class in making such determination,

c. the court may appoint an attorney to represent the class upon the request by any members of the class in a hearing on the issue of the amount of attorney fees or the court may refer the matter to a referee pursuant to Section 613 et seq. of this title,

d. if the court appoints an attorney to represent the class for the fee hearing pursuant to subparagraph c of this paragraph or refers the matter to a referee, the

attorney or referee shall be independent of the attorney or attorneys seeking attorney fees in the class action, and said independent attorney or referee shall be awarded reasonable fees by the court on an hourly basis out of the proceeds awarded to the class,

e. in arriving at a fair and reasonable fee for class counsel, the court shall consider the following factors:
   (1) time and labor required,
   (2) the novelty and difficulty of the questions presented by the litigation,
   (3) the skill required to perform the legal service properly,
   (4) the preclusion of other employment by the attorney due to acceptance of the case,
   (5) the customary fee,
   (6) whether the fee is fixed or contingent,
   (7) time limitations imposed by the client or the circumstances,
   (8) the amount in controversy and the results obtained,
   (9) the experience, reputation and ability of the attorney,
   (10) whether or not the case is an undesirable case,
   (11) the nature and length of the professional relationship with the client,
   (12) awards in similar causes, and
   (13) the risk of recovery in the litigation, and

f. if any portion of the benefits recovered for the class in an action maintained pursuant to paragraph 3 of subsection B of this section are in the form of coupons, discounts on future goods or services or other similar types of noncash common benefits, the attorney fees awarded in the class action shall be in cash and noncash amounts in the same proportion as the recovery for the class.

Added by Laws 1984, c. 164, § 23, eff. Nov. 1, 1984. Amended by Laws 2011, c. 223, § 1, eff. Nov. 1, 2011; Laws 2013, 1st Ex. Sess., c. 10, § 4, emerg. eff. Sept. 10, 2013; Laws 2013, 1st Ex. Sess., c. 10, § 5, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 16 was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013) and repealed by Laws 2013, 1st Ex. Sess., c. 10, § 1, emerg. eff. Sept. 10, 2013.

§12-2023.1. Derivative actions by shareholders.

DERIVATIVE ACTIONS BY SHAREHOLDERS

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the petition shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law. The petition shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.
Added by Laws 1984, c. 164, § 24, eff. Nov. 1, 1984.

§12-2023.2. Actions relating to unincorporated associations.

ACTIONS RELATING TO UNINCORPORATED ASSOCIATIONS

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in subsection D of Section 23 of this act, and the procedure for dismissal or compromise of the action shall correspond with that provided in subsection E of Section 23 of this act.
Added by Laws 1984, c. 164, § 25, eff. Nov. 1, 1984.

§12-2024. Intervention

INTERVENTION

A. INTERVENTION OF RIGHT. Upon timely application anyone shall be permitted to intervene in an action:

1. When a statute confers an unconditional right to intervene; or

2. When the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest; provided, there shall be a rebuttable presumption that disposition of a petition requesting the appointment of a guardian for an incapacitated or partially incapacitated person will impair or

impede the ability to protect property or other rights of the persons required to receive notice of the appointment pursuant to Section 3-110 of Title 30 of the Oklahoma Statutes.

B. PERMISSIVE INTERVENTION. Upon timely application anyone may be permitted to intervene in an action:

1. When a statute confers a conditional right to intervene; or

2. When an applicant's claim or defense and the main action have a question of law or fact in common.

When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

C. PROCEDURE. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Section 2005 of this title. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. If the motion to intervene is granted, the plaintiff or defendant, or both, may respond to the pleading of the intervenor within twenty (20) days after the date that the motion was granted unless the court prescribes a shorter time.

D. INTERVENTION BY STATE OF OKLAHOMA.

1. In any action, suit, or proceeding to which the State of Oklahoma or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of this state affecting the public interest is drawn into question, the court shall certify such fact to the Attorney General, and shall permit the State of Oklahoma to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State of Oklahoma shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

2. Upon receipt of notice pursuant to paragraph 1 of this subsection or other actual notice that the constitutionality of any statute of this state affecting the public interest is drawn into question, the Attorney General shall immediately deliver a copy of the proceeding to the Speaker of the House of Representatives and the President Pro Tempore of the Senate who may intervene on behalf of their respective house of the Legislature and who shall be entitled to be heard. Intervention by the Speaker of the House of Representatives or President Pro Tempore of the Senate shall not constitute waiver of legislative immunity.

Added by Laws 1984, c. 164, § 26, eff. Nov. 1, 1984. Amended by Laws 2003, c. 142, § 1; Laws 2016, c. 320, § 1, eff. Nov. 1, 2016.

§12-2025. Substitution of parties.

SUBSTITUTION OF PARTIES

A. DEATH.

1. If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Section 2005 of this title and upon persons not parties in the manner provided in Section 2004 of this title for the service of a summons. During the pendency of an action any party or any attorney who was an attorney of record for the deceased party immediately preceding death may file with the court a statement of the death of another party conforming substantially to Form 22 of Section 2027 of this title along with proof of death and serve the statement of death and proof of death on all other parties in the manner provided in Section 2005 of this title. Unless the motion for substitution is made within ninety (90) days of service of the statement of death, the action shall be dismissed without prejudice as to the deceased party.

2. In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. A statement of death conforming substantially to Form 22 of Section 2027 of this title along with proof of death shall be filed with the court by any party and served on all other parties, and the action shall proceed in favor of or against the surviving parties.

B. INCOMPETENCY. If a party becomes incompetent, the court upon motion served as provided in subsection A of this section may allow the action to be continued by or against the representative of the incompetent party.

C. TRANSFER OF INTEREST. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subsection A of this section.

D. PUBLIC OFFICERS; DEATH OR SEPARATION FROM OFFICE.

1. When a public officer is a party to an action in the official capacity of the public officer and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the successor of the public officer is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the

substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

2. When a public officer sues or is sued in the official capacity of the public officer, the public officer may be described as a party by the official title of the public officer rather than by name; but the court may require the name of the public officer to be added.

Added by Laws 1984, c. 164, § 27, eff. Nov. 1, 1984. Amended by Laws 2009, c. 251, § 1, eff. Nov. 1, 2009.

§12-2025.1. Assignment by parent to child of right to recover for injury to child.

The parent or parents having the right to recover damages for an injury to a minor child may assign to said child their right to recover said damages, and where the parent or parents of a minor child bring an action as guardian or guardian ad litem or next friend on behalf of said child and ask for a judgment for him for damages to which said parent or parents are entitled, said parent or parents will be deemed to have assigned to the minor child their right to recover such damages. Any damages recovered pursuant to this section shall be disposed of in the same manner as provided by Section 83 of Title 12 of the Oklahoma Statutes.

Added by Laws 1977, c. 138, § 1, eff. Oct. 1, 1977. Transferred from § 244 of Title 12. Renumbered from § 17.1 of Title 10 by Laws 2009, c. 233, § 201, emerg. eff. May 21, 2009.

§12-2026. Forms.

FORMS

The forms contained in Section 29 of this act, the Appendix of Forms, are sufficient under the Oklahoma Pleading Code and are intended to indicate the simplicity and brevity of statement which the Oklahoma Pleading Code contemplates.

Added by Laws 1984, c. 164, § 28, eff. Nov. 1, 1984.

§12-2027. Appendix of forms.

APPENDIX OF FORMS

Form 1.

SUMMONS

IN THE DISTRICT COURT

OF _____ COUNTY, STATE OF OKLAHOMA

A.B., Plaintiff )
v. ) No. _____
C.D., Defendant )

Summons

To the above-named Defendant:

You have been sued by the above-named plaintiff, and you are directed to file a written answer to the attached petition in the court at the above address within twenty (20) days after service of this summons upon you, exclusive of the day of service. Within the same time, a copy of your answer must be delivered or mailed to the attorney for the plaintiff.

Unless you answer the petition within the time stated, judgment will be rendered against you with costs of the action.

_____, Court Clerk

by_____, Deputy Court Clerk

(Seal)

Attorney(s) for Plaintiff(s):

Name _____

Address _____

_____

Telephone Number _____

This summons was served on _____

(date of service)

_____

(Signature of person serving summons)

YOU MAY SEEK THE ADVICE OF AN ATTORNEY ON ANY MATTER CONNECTED WITH THIS SUIT OR YOUR ANSWER. SUCH ATTORNEY SHOULD BE CONSULTED IMMEDIATELY SO THAT AN ANSWER MAY BE FILED WITHIN THE TIME LIMIT STATED IN THE SUMMONS.

Form 2.

PETITION ON A PROMISSORY NOTE

1. Defendant on or about June 1, 19__, executed and delivered to plaintiff a promissory note (in the following words and figures: (here set out the note verbatim)); (a copy of which is hereto annexed as Exhibit A); (whereby defendant promised to pay to plaintiff or order on June 1, 19__, the sum of _____ dollars with interest thereon at the rate of ____ percent per annum).

2. Defendant owes to plaintiff the amount of said note and interest.

Wherefore plaintiff demands judgment against defendant for the sum of _____ dollars, interest, and costs including reasonable attorney fees.

Signed: _____

Attorney for Plaintiff

Address: _____

Form 3.

PETITION ON AN ACCOUNT

Defendant owes plaintiff _____ dollars according to the account hereto annexed as Exhibit A.

Wherefore (etc. as in Form 2.)

Form 4.

PETITION FOR GOODS SOLD AND DELIVERED

Defendant owes plaintiff _____ dollars for goods sold and delivered by plaintiff to defendant between June 1, 19__, and December 1, 19__.

Wherefore (etc. as in Form 2.)

Form 5.

PETITION FOR MONEY LENT

Defendant owes plaintiff _____ dollars for money lent by plaintiff to defendant on June 1, 19__.

Wherefore (etc. as in Form 2.)

Form 6.

PETITION FOR MONEY PAID BY MISTAKE

Defendant owes plaintiff _____ dollars for money paid by plaintiff to defendant by mistake on June 1, 19__, under the following circumstances: (here state the circumstances with particularity--see subsection B of Section 2009 of this title)

Wherefore plaintiff demands judgment against defendant for the sum of _____ dollars, interest, and costs.

Form 7.

PETITION FOR MONEY HAD AND RECEIVED

Defendant owes plaintiff _____ dollars for money had and received from one G.H. on June 1, 19__, to be paid by defendant to plaintiff.

Wherefore (etc. as in Form 6.)

Form 8.

PETITION FOR NEGLIGENCE

1. On June 1, 19__, on a public roadway called Utica Avenue in Tulsa, Oklahoma, defendant negligently drove a motor vehicle against plaintiff who was then crossing said roadway.

2. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars, interest, and costs.

Form 9.

PETITION FOR NEGLIGENCE WHERE PLAINTIFF IS UNABLE TO DETERMINE DEFINITELY WHETHER THE PERSON RESPONSIBLE IS C.D. OR E.F. OR WHETHER BOTH ARE RESPONSIBLE AND WHERE HIS EVIDENCE MAY JUSTIFY A FINDING OF WILLFULNESS OR OF RECKLESSNESS OR OF NEGLIGENCE AND A PRAYER FOR PUNITIVE DAMAGES

A.B., Plaintiff )
v. ) No._____
C.D. and E.F., Defendants)

Petition

1. On June 1, 19__, on a public roadway called Utica Avenue in Tulsa, Oklahoma, defendant C.D. or defendant E.F., or both defendants C.D. and E.F. willfully or recklessly or negligently drove or caused to be driven a motor vehicle against plaintiff who was then crossing said roadway.

2. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization.

Wherefore plaintiff demands judgment against C.D. or against E.F. or against both for actual and punitive damages in the sum of _____ dollars, interest, and costs.

Form 10.

PETITION FOR CONVERSION

On or about December 1, 19__, defendant converted to his own use ten bonds of the _____ Company (here insert brief identification as by number and issue) of the value of _____ dollars, the property of plaintiff.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars, interest and costs.

Form 11.

PETITION FOR SPECIFIC PERFORMANCE
OF CONTRACT TO CONVEY LAND

1. On or about December 1, 19__, plaintiff and defendant entered into an agreement in writing, a copy of which is hereto annexed as Exhibit A.

2. In accord with the provisions of said agreement plaintiff tendered to defendant the purchase price and requested a conveyance of the land, but defendant refused to accept the tender and refused to make the conveyance.

3. Plaintiff now offers to pay the purchase price.

Wherefore plaintiff demands:

(1) that defendant be required specifically to perform said agreement;

(2) damages in the sum of One Thousand Dollars ($1,000.00); and

(3) that if specific performance is not granted plaintiff have judgment against defendant in the sum of _____ dollars.

Form 12.

PETITION ON CLAIM FOR DEBT AND TO SET ASIDE
FRAUDULENT CONVEYANCE UNDER SUBSECTION B
OF SECTION 2018 OF THIS TITLE

A.B., Plaintiff )
v. ) No._____
C.D. and E.F., Defendants)

Petition

1. Defendant C.D. on or about _____ executed and delivered to plaintiff a promissory note (in the following words and

figures: (here set out the note verbatim)); (a copy of which is hereto annexed as Exhibit A); (whereby defendant C.D. promised to pay to plaintiff or order on _____ the sum of Five Thousand Dollars ($5,000.00) with interest thereon at the rate of __% per annum).

2. Defendant C.D. owes to plaintiff the amount of said note and interest.

3. Defendant C.D. on or about _____ conveyed all his property, real and personal (or specify and describe) to defendant E.F. for the purpose of defrauding plaintiff and hindering and delaying the collection of the indebtedness evidenced by the note above referred to.

Wherefore plaintiff demands:

(1) That plaintiff have judgment against defendant C.D. for _____ dollars and interest;

(2) That the aforesaid conveyance to defendant E.F. be declared void and the judgment herein be declared a lien on said property; and

(3) That plaintiff have judgment against the defendants for costs, including reasonable attorney fees.

Form 13.

PETITION FOR NEGLIGENCE UNDER FEDERAL EMPLOYERS' LIABILITY ACT

1. During all the times herein mentioned defendant owned and operated in interstate commerce a railroad which passed through a tunnel located at _____ and known as Tunnel No. _____.

2. On or about June 1, 19__, defendant was repairing and enlarging the tunnel in order to protect interstate trains, passengers and freight from injury and in order to make the tunnel more conveniently usable for interstate commerce.

3. In the course of thus repairing and enlarging the tunnel on said day defendant employed plaintiff as one of its workmen, and negligently put plaintiff to work in a portion of the tunnel which defendant had left unprotected and unsupported.

4. By reason of defendant's negligence in thus putting plaintiff to work in that portion of the tunnel, plaintiff was, while so working pursuant to defendant's orders, struck and crushed by a rock, which fell from the unsupported portion of the tunnel, and was (here describe plaintiff's injuries).

5. Prior to these injuries, plaintiff was a strong, able-bodied man (or woman), capable of earning and actually earning _____ dollars per day. By these injuries he (or she) has been made incapable of any gainful activity, has suffered great physical and mental pain, and has incurred expense for medicine, medical attendance, and hospitalization.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars and costs.

Form 14.

MOTION TO DISMISS, PRESENTING DEFENSES OF FAILURE

TO STATE A CLAIM, OF LACK OF SERVICE OF PROCESS
AND OF IMPROPER VENUE UNDER SUBSECTION B
OF SECTION 2012 OF THIS TITLE

The defendant moves the court as follows:

1. To dismiss the action because the petition fails to state a claim against defendant upon which relief can be granted, because plaintiff's claim is barred by the statute of limitations in Section 95 of Title 12 of the Oklahoma Statutes.

2. To dismiss the action or, in lieu thereof, to quash the return of service of summons on the grounds:

(a) That the defendant is a corporation organized under the laws of Delaware and was not and is not subject to service of process within the State of Oklahoma, and

(b) That the defendant has not been properly served with process in this action, all of which more clearly appears in the affidavits of M.N. and X.Y., hereto annexed as Exhibit A and Exhibit B respectively.

3. To dismiss the action on the ground that it is in the wrong county, because this is an action for damages to land located in Cherokee County, and under Section 131 of Title 12 of the Oklahoma Statutes, this action must be brought in Cherokee County, all of which more clearly appears in the affidavits of K.L. and V.W., hereto annexed as Exhibits C and D respectively.

Signed: _____
Attorney for Defendant
Address: _____

Notice of Motion

To: _____
Attorney for Plaintiff

Please take notice, that the undersigned will bring the above motion on for hearing before this Court at Room _____, Tulsa County Courthouse, City of Tulsa on the _____ day of _____, 19__, at 10:00 o'clock a.m. of that day or as soon thereafter as counsel can be heard.

Signed: _____
Attorney for Defendant
Address: _____

Form 15.

ANSWER PRESENTING DEFENSES UNDER SUBSECTION B
OF SECTION 2012 OF THIS TITLE

First Defense

The petition fails to state a claim against defendant upon which relief can be granted, because plaintiff is suing on a contract for the sale of goods for a price of more than Five Hundred Dollars ($500.00), which is not enforceable under Section 2-201 of Title 12A of the Oklahoma Statutes.

Second Defense

If defendant is indebted to plaintiffs for the goods mentioned in the petition, he is indebted to them jointly with G.H., G.H. is alive; is a citizen of the State of Oklahoma and a resident of this state, is subject to the jurisdiction of this court, as to both service of process and venue; can be made a party without depriving this court of jurisdiction of the present parties, and has not been made a party.

Third Defense

Defendant admits the allegation contained in paragraphs 1 and 4 of the petition; alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the petition; and denies each and every other allegation contained in the petition.

Fourth Defense

The right of action set forth in the petition did not accrue within five (5) years next before the commencement of this action.

Counterclaim

(Here set forth any claim as a counterclaim in the manner in which a claim is pleaded in a petition.)

Cross-claim Against Defendant M.N.

(Here set forth the claim constituting a cross-claim against defendant M.N. in the manner in which a claim is pleaded in a petition.)

Form 16.

ANSWER TO PETITION SET FORTH IN FORM 7, WITH COUNTERCLAIM FOR INTERPLEADER

Defense

Defendant denies the allegations stated in paragraph 2 of the petition to the extent set forth in the counterclaim herein.

Counterclaim for Interpleader

1. Defendant received the sum of _____ dollars as a deposit from E.F. and defendant claims no interest in the money.

2. Plaintiff has demanded the payment of such deposit to him by virtue of an assignment of it which he claims to have received from E.F.

3. E.F. has notified the defendant that he claims such deposit, that the purported assignment is not valid, and that he holds the defendant responsible for the deposit.

Wherefore defendant demands:

(1) That the court order E.F. to be made a party defendant to respond to the petition and to this counterclaim.

(2) That the court order the plaintiff and E.F. to interplead their respective claims.

(3) That the court adjudge whether the plaintiff or E.F. is entitled to the sum of money.

(4) That the court order the defendant to deposit the money claimed by the plaintiff and E.F. with the clerk of the court and

discharge the defendant from the action and from all liability in the premises.

(5) That the court award to the defendant its costs and attorney's fees.

Form 17.

SUMMONS AND PETITION AGAINST THIRD-PARTY DEFENDANT

IN THE DISTRICT COURT OF

_____ COUNTY, STATE OF OKLAHOMA

A.B., Plaintiff )
v. )
C.D., Defendant and ) No. _____
Third-Party Plaintiff)
v. )
E.F., Third-Party )
Defendant )

Summons

To the above-named Third-Party Defendant:

You have been sued by the above-named defendant and third-party plaintiff, and you are directed to file a written answer to the attached third-party petition in the court at the above address within twenty (20) days after the service of this summons upon you, exclusive of the day of service. Within the same time, a copy of your answer must be delivered or mailed to the attorney for the third-party plaintiff and to the attorney for the original plaintiff.

Unless you answer the third-party petition within the time stated, judgment will be rendered against you with costs of the action.

_____, Court Clerk

by_____, Deputy Court Clerk

(Seal)

Attorney(s) for Original Plaintiff(s):

Name _____

Address _____

_____

Telephone Number _____

Attorney(s) for Third-Party Plaintiff(s):

Name _____

Address _____

_____

Telephone Number _____

This summons was served on _____ (date of service)

_____

(Signature of person serving summons)

YOU MAY SEEK THE ADVICE OF AN ATTORNEY ON ANY MATTER CONNECTED WITH THIS SUIT OR YOUR ANSWER. SUCH ATTORNEY SHOULD BE CONSULTED IMMEDIATELY SO THAT AN ANSWER MAY BE FILED WITHIN THE TIME LIMIT STATED IN THE SUMMONS.

IN THE DISTRICT COURT OF _____ COUNTY,
STATE OF OKLAHOMA

A.B., Plaintiff )
v. )
C.D., Defendant and ) No. _____
Third-Party Plaintiff)
v. )
E.F., Third-Party )
Defendant )

Third-Party Petition

1. Plaintiff A.B. has filed against defendant C.D. a petition, a copy of which is hereto attached as "Exhibit A".

2. (Here state the grounds upon which C.D. is entitled to recover from E.F. all or part of what A.B. may recover from C.D. The statement should be framed as in an original petition.)

Wherefore C.D. demands judgment against third-party defendant E.F. for all sums that may be adjudged against defendant C.D. in favor of plaintiff A.B.

Signed: _____
Attorney for C.D.,
Third-Party Plaintiff
Address: _____

Form 18.

MOTION TO BRING IN THIRD-PARTY DEFENDANT

Defendant moves for leave, as third-party plaintiff, to cause to be served upon E.F. a summons and third-party petition, copies of which are hereto attached as "Exhibit X".

Signed: _____
Attorney for Defendant C.D.
Address:_____

Notice of Motion

(Contents the same as in Form 14. The notice should be addressed to all parties to the action.)

Exhibit X

(Contents the same as in Form 17)

Form 19.

NOTICE OF MOTION AND MOTION FOR LEAVE TO INTERVENE AS PLAINTIFF

IN THE DISTRICT COURT OF ____ COUNTY, STATE OF OKLAHOMA

A.B., Plaintiff, )
v. )
C.D., Defendant, ) No. _____
E.F., Applicant for)
intervention )

Notice of Motion and Motion

TO: ____ (Plaintiff) and _____ (Defendant) and to _____ and ____, their respective attorneys

Please be advised that in Room _____, Tulsa County Courthouse, _____ (address), on _____, 19___, or as soon thereafter as counsel can be heard, _____ (proposed intervenor) will move for leave to intervene as plaintiff in the above-styled action on the ground that he has a claim against the above-named defendant that involves questions of law and fact in common with those that are involved in the original action, and that his intervention to assert the claim will not unduly delay or prejudice the adjudication of the rights of the original parties. The claim of _____ (proposed intervenor) is set out in his attached proposed petition in intervention.

The motion will be based on this notice, (the attached affidavit of _____), and on all the pleadings and records heretofore filed in this action.

Signed: _____
Attorney for E.F.
Applicant for Intervention
Address: _____

(Attach Affidavit, if any)

Form 20.

MOTION TO INTERVENE AS A DEFENDANT UNDER SECTION 2024 OF THIS TITLE

(Based upon the petition, Form 8)

IN THE DISTRICT COURT OF _____ COUNTY,
STATE OF OKLAHOMA

A.B., Plaintiff )
v. )
C.D., Defendant ) No. _____
E.F., Applicant for intervention )

Motion to Intervene as a Defendant

E.F. moves for leave to intervene as a defendant in this action, in order to assert the defenses set forth in his proposed answer, of which a copy is hereto attached, on the ground that he is the employer of defendant C.D., who was operating a motor vehicle in the course of his employment at the time of the accident alleged in the petition, and as such has a defense to plaintiff's claim presenting both questions of law and of fact which are common to the main action.

Signed:_____
Attorney for E.F.,
Applicant for Intervention
Address: _____

Notice of Motion

(Contents the same as in Form 14)

IN THE DISTRICT COURT OF _____ COUNTY, STATE OF OKLAHOMA

A.B., Plaintiff )
v. )

C.D., Defendant ) No. _____
E.F., Intervenor)

Intervenor's Answer

First Defense

Intervenor denies the allegations stated in paragraphs 1 and 2 of the petition insofar as they assert the negligence of defendant.

Second Defense

Plaintiff was not injured as a result of the negligence of defendant, since plaintiff was crossing the public street against a red stoplight and defendant had the right of way.

Signed: _____
Attorney for E.F.,
Intervenor

Address: _____

Form 21.

ALLEGATION OF REASON FOR OMITTING PARTY

When it is necessary, under subsection C of Section 2019 of this title, for the pleader to set forth in his pleading the names of persons who ought to be made parties, but who are not so made, there should be an allegation such as the one set out below:

John Doe, named in this petition, is not made a party to this action (because he is not subject to the jurisdiction of this court); (because he cannot be made a party to this action without depriving this court of jurisdiction).

Form 22.

SUGGESTION OF DEATH UPON THE RECORD UNDER PARAGRAPH 1 OF SUBSECTION A OF SECTION 2025 OF THIS TITLE

A.B. (describe as a party, or as executor, administrator, or other representative or successor of C.D., the deceased party) suggests upon the record, pursuant to paragraph 1 of subsection A of Section 2025 of this title, the death of C.D. (describe as party) during the pendency of this action.

Added by Laws 1984, c. 164, § 29, eff. Nov. 1, 1984. Amended by Laws 1985, c. 277, § 9, eff. Nov. 1, 1985.

§12-2056. Motions for summary judgment.

A. BY A CLAIMING PARTY. A party claiming relief may move, with or without supporting affidavits, for summary judgment on all or part of the claim. The motion may be filed at any time after twenty (20) days have passed from commencement of the action or the opposing party serves a motion for summary judgment.

B. BY A DEFENDING PARTY. A party against whom relief is sought may move at any time, with or without supporting affidavits, for summary judgment on all or part of the claim.

C. PROCEEDINGS. The judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any

affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.

D. CASE NOT FULLY ADJUDICATED ON THE MOTION. If summary judgment is not rendered on the whole action, the court should, to the extent practicable, determine what material facts are not genuinely at issue. The court should so determine by examining the pleadings and evidence before it and by interrogating the attorneys. It should then issue an order specifying what facts, including items of damages or other relief, are not genuinely at issue. The facts so specified must be treated as established in the action. An interlocutory summary judgment may be rendered on liability alone, even if there is a genuine issue on the amount of damages.

E. AFFIDAVITS AND FURTHER TESTIMONY. A supporting or opposing affidavit must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated. If a paper or part of a paper is referred to in an affidavit, a sworn or certified copy must be attached to or served with the affidavit. The court may permit an affidavit to be supplemented or opposed by depositions, answers to interrogatories, or additional affidavits. When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must, by affidavits or as otherwise provided in this rule, set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment should, if appropriate, be entered against that party.

F. WHEN AFFIDAVITS ARE UNAVAILABLE. If a party opposing the motion shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition, the court may deny the motion, order a continuance to enable affidavits to be obtained, depositions to be taken, or other discovery to be undertaken or issue any other just order.

G. AFFIDAVITS SUBMITTED IN BAD FAITH. If satisfied that an affidavit under this rule is submitted in bad faith or solely for delay, the court must order the submitting party to pay the other party the reasonable expenses, including attorney fees, it incurred as a result. An offending party or attorney may also be held in contempt.

Added by Laws 2009, c. 228, § 17, eff. Nov. 1, 2009. Amended by Laws 2011, c. 13, § 2, eff. Nov. 1, 2011.

§12-2101. Short title.

This act shall be known and may be cited as the Oklahoma Evidence Code.

Added by Laws 1978, c. 285, § 101, eff. Oct. 1, 1978.

§12-2102. Legislative purpose.

This Code shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.
Added by Laws 1978, c. 285, § 102, eff. Oct. 1, 1978.

§12-2103. Scope of rules.

A. Except as otherwise provided in subsection B of this section, this Code shall apply in both criminal and civil proceedings, conducted by or under the supervision of a court, in which evidence is produced.

B. The rules set forth in this Code, other than those applicable to a valid claim of privilege, do not apply in the following situations:

1. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the judge under subsection A of Section 2105 of this title; and

2. Proceedings for extradition or rendition; sentencing or granting or revoking probation; advancement of deferred judgment; issuance of warrants for arrest, criminal summonses and search warrants; proceedings with respect to release on bail or otherwise; and juvenile emergency show-cause hearings.

Added by Laws 1978, c. 285, § 103, eff. Oct. 1, 1978. Amended by Laws 1986, c. 240, § 1, eff. Nov. 1, 1986; Laws 2002, c. 468, § 24, eff. Nov. 1, 2002.

§12-2104. Rulings on evidence.

A. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of a party is affected, and:

1. If the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

2. If the ruling is one excluding evidence, the substance of the evidence was made known to the judge by offer or was apparent from the context within which questions were asked.

B. The court may add any statement which shows the character of the evidence, the form in which it was offered, the objection made and the ruling thereon. It may direct the making of an offer in question and answer form.

C. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being presented to the jury by any means, including making statements or offers of proof or asking questions within the hearing of the jury.

D. Nothing in this section precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.
Added by Laws 1978, c. 285, § 104, eff. Oct. 1, 1978.

§12-2105. Preliminary questions.

A. Preliminary questions concerning the qualifications of a person to be a witness, the existence of a privilege or the admissibility of evidence shall be determined by the court, subject to the provisions of subsections B and C of this section.

B. A person claiming a privilege must prove that the conditions prerequisite to the existence of the privilege are more probably true than not. A person claiming an exception to a privilege must prove that the conditions prerequisite to the applicability of the exception are more probably true than not. If there is a factual basis to support a good faith belief that a review of the allegedly privileged material is necessary, the court, in making its determination, may review the material outside the presence of any other person.

C. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the judge shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

D. Hearings on the admissibility of confessions shall be conducted in all cases out of the hearing of the jury. Hearings on other preliminary matters shall also be conducted out of the hearing of the jury when the interests of justice require or when requested by an accused who is a witness.

E. The accused does not subject himself to cross-examination on other issues in the case by testifying upon a preliminary matter.

F. This section does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.
Added by Laws 1978, c. 285, § 105, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 25, eff. Nov. 1, 2002.

§12-2106. Limited admissibility.

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court shall upon request restrict the evidence to its proper scope and instruct the jury accordingly.
Added by Laws 1978, c. 285, § 106, eff. Oct. 1, 1978.

§12-2107. Remainder of record.

When a record or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other record that should in fairness be considered contemporaneously with it.

Added by Laws 1978, c. 285, § 107, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 26, eff. Nov. 1, 2002.

§12-2201. Judicial notice of law.

A. Judicial notice shall be taken by the court of the common law, constitutions and public statutes in force in every state, territory and jurisdiction of the United States.

B. Judicial notice may be taken by the court of:

1. Private acts and resolutions of the Congress of the United States and of the Legislature of this state, and duly enacted ordinances and duly published regulations of governmental subdivisions or agencies of this state or the United States; and

2. The laws of foreign countries.

C. The determination by judicial notice of the applicability and the tenor of any matter of common law, constitutional law or of any statute, private act, resolution, ordinance or regulation shall be a matter for the judge and not for the jury.

Added by Laws 1978, c. 285, § 201, eff. Oct. 1, 1978.

§12-2202. Judicial notice of adjudicative facts.

A. This section governs only judicial notice of adjudicative facts.

B. A judicially noticed adjudicative fact shall not be subject to reasonable dispute in that it is either:

1. Generally known within the territorial jurisdiction of the trial court; or

2. Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

C. A court may take judicial notice, whether requested or not.

D. A court shall take judicial notice if requested by a party and supplied with the necessary information.

E. In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

Added by Laws 1978, c. 285, § 202, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 27, eff. Nov. 1, 2002.

§12-2203. Determining propriety of taking judicial notice.

A. In determining the propriety of taking judicial notice of a matter:

1. The court may consult and use any source of pertinent information, whether or not furnished by a party; and

2. No exclusionary rule except a valid claim of privilege shall apply.

B. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the scope

of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

C. Judicial notice may be taken at any stage of the proceeding.
Added by Laws 1978, c. 285, § 203, eff. Oct. 1, 1978.

§12-2301. Definitions.

As used in this Code:

1. A "presumption" means a rule of procedure that when a basic fact exists the existence of another fact must be assumed, whether or not the basic fact has any probative value of the existence of the assumed fact;

2. "Basic fact" means the fact or group of facts giving rise to a presumption;

3. "Presumed fact" means the fact which must be assumed; and

4. "Inconsistent presumptions" means the presumed fact of one presumption is inconsistent with the presumed fact of another presumption.
Added by Laws 1978, c. 285, § 301, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 28, eff. Nov. 1, 2002.

§12-2302. Establishment of basic fact.

The basic fact of a presumption may be established in an action by the pleadings, or by stipulation of the parties, or by judicial notice, or by evidence.
Added by Laws 1978, c. 285, § 302, eff. Oct. 1, 1978.

§12-2303. Effect of presumptions in civil cases.

Except when otherwise provided by law, when the basic fact of a presumption has been established as provided in Section 302 of this Code:

1. If the basic fact has any probative value of the existence of the presumed fact, the presumed fact shall be assumed to exist and the burden of persuading the trier of fact of the nonexistence of the presumed fact rests on the party against whom the presumption operates; or

2. If the basic fact does not have any probative value of the existence of the presumed fact, the presumed fact is disregarded when the party against whom the presumption operates introduces evidence which would support a finding of the nonexistence of the presumed fact and the existence of the fact otherwise presumed is then determined from the evidence in the same manner as if no presumption had been operable in the case.
Added by Laws 1978, c. 285, § 303, eff. Oct. 1, 1978.

§12-2304. Presumptions in criminal cases.

A. Except as otherwise provided by act of the Legislature, this statute governs presumptions against an accused, in a criminal case,

recognized at common law or created by statute, including statutory provisions that certain facts are prima facie evidence of other facts or of guilt.

B. The court shall not direct the jury to find a presumed fact against an accused. If a presumed fact establishes guilt, is an element of the offense, or negates a defense, the court may submit the question of guilt or of the existence of the presumed fact to the jury, if a reasonable juror considering the evidence as a whole, including the evidence of the basic facts, could find guilt or the presumed fact beyond a reasonable doubt. If the presumed fact has a lesser effect, its existence may be submitted to the jury if the basic facts are supported by substantial evidence, or are otherwise established, unless the evidence as a whole negates the existence of the presumed fact.

C. Whenever the existence of a presumed fact against the accused establishes guilt or is an element of the offense or negatives a defense and is submitted to the jury, the judge shall give an instruction explaining that the jury may regard the basic facts as sufficient evidence of the presumed fact but is not required to do so. Where the presumed fact establishes guilt, is an element of the offense or negatives a defense, the judge also shall instruct the jury that its existence, on all the evidence, must be proved beyond a reasonable doubt.

Added by Laws 1978, c. 285, § 304, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 29, eff. Nov. 1, 2002.

§12-2305. Inconsistent presumptions.

If two conflicting presumptions arise the court shall apply the presumption which is founded on the weightier considerations of policy and logic. If there is no such preponderance both presumptions shall be disregarded.

Added by Laws 1978, c. 285, § 305, eff. Oct. 1, 1978.

§12-2401. Definition of "relevant evidence".

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Added by Laws 1978, c. 285, § 401, eff. Oct. 1, 1978.

§12-2402. Relevant evidence generally admissible - Irrelevant evidence inadmissible.

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of Oklahoma, by statute or by this Code. Evidence which is not relevant is not admissible.

Added by Laws 1978, c. 285, § 402, eff. Oct. 1, 1978.

§12-2403. Exclusion of relevant evidence on grounds of prejudice, confusion or cumulative nature of evidence.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, undue delay, needless presentation of cumulative evidence, or unfair and harmful surprise. However, in a prosecution for any criminal homicide, an appropriate photograph of the victim while alive shall be admissible evidence when offered by the district attorney to show the general appearance and condition of the victim while alive.

Added by Laws 1978, c. 285, § 403, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 30, eff. Nov. 1, 2002; Laws 2003, c. 3, § 15, emerg. eff. March 19, 2003.

NOTE: Laws 2002, c. 128, § 1 repealed by Laws 2003, c. 3, § 16, emerg. eff. March 19, 2003.

§12-2404. Character evidence not admissible to prove conduct - Exceptions - Other crimes.

A. Evidence of a person's character or a trait of his character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

1. Evidence of a pertinent trait of character offered by an accused or by the prosecution to rebut the same;

2. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor; or

3. Evidence of the character of a witness, as provided in Sections 2607, 2608 and 2609 of this Code.

B. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

Added by Laws 1978, c. 285, § 404, eff. Oct. 1, 1978. Amended by Laws 1991, c. 62, § 1, eff. Sept. 1, 1991.

§12-2405. Methods of proving character.

A. Where evidence of a person's character or trait of character is admissible, proof may be by testimony as to reputation or by testimony in the form of opinion. Inquiry is allowable on cross-examination into relevant specific instances of conduct.

B. In cases in which a person's character or a trait of character is an essential element of a charge, claim or defense, proof may be made of specific instances of his conduct.

Added by Laws 1978, c. 285, § 405, eff. Oct. 1, 1978.

§12-2406. Habit - Routine practice.

Evidence of a person's habit or of an organization's routine practice, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

Added by Laws 1978, c. 285, § 406, eff. Oct. 1, 1978.

§12-2407. Subsequent remedial measures.

When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove negligence, culpable conduct, a defect in a product or its design or a need for a warning or instruction. However, a court may admit such evidence for another purpose, such as impeachment or, if disputed, proving ownership, control, or feasibility of precautionary measures.

Added by Laws 1978, c. 285, § 407, eff. Oct. 1, 1978. Amended by Laws 1991, c. 62, § 2, eff. Sept. 1, 1991; Laws 2012, c. 99, § 1, eff. July 1, 2012.

§12-2408. Compromise and offers to compromise.

Evidence of:

1. Furnishing, offering or promising to furnish; or
2. Accepting, offering or promising to accept,

a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount is not admissible to prove liability for the claim, invalidity of the claim or the amount of the claim.

Evidence of conduct or statements made in compromise negotiations is not admissible. This section does not require the exclusion of discoverable evidence merely because it is revealed in the course of compromise negotiations. This section does not require exclusion of evidence when it is offered for another purpose, including proof of bias or prejudice of a witness, negativing a contention of undue delay, or proof of an effort to obstruct a criminal investigation or prosecution.

Added by Laws 1978, c. 285, § 408, eff. Oct. 1, 1978.

§12-2409. Payment of medical and similar expenses.

Evidence of furnishing, offering or promising to pay medical, hospital or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

Added by Laws 1978, c. 285, § 409, eff. Oct. 1, 1978.

§12-2410. Pleas and plea discussions - Admissibility of evidence.

A. Except as otherwise provided in this section evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

1. A plea of guilty which was later withdrawn;

2. A plea of nolo contendere;

3. Any statement made in the course of any proceedings under state procedure regarding either of the foregoing pleas; or

4. Any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty which is later withdrawn.

B. However, such a statement is admissible in:

1. Any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement, as a matter of justice, should be considered contemporaneously with it; or

2. A criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

Added by Laws 1978, c. 285, § 410, eff. Oct. 1, 1978. Amended by Laws 1991, c. 62, § 3, eff. Sept. 1, 1991.

§12-2411. Liability insurance.

Evidence of the existence of liability insurance is not admissible upon the issue of negligence or wrongful action. This section does not require the exclusion of evidence of liability insurance where the question of possession of liability insurance is itself an element of the action, or when offered for another purpose, including proof of agency, ownership, control, bias or prejudice of a witness.

Added by Laws 1978, c. 285, § 411, eff. Oct. 1, 1978.

§12-2412. Sexual offense against another person - Evidence of other sexual behavior inadmissible - Exceptions.

A. In a criminal case in which a person is accused of a sexual offense against another person, the following is not admissible:

1. Evidence of reputation or opinion regarding other sexual behavior of a victim or the sexual offense alleged.

2. Evidence of specific instances of sexual behavior of an alleged victim with persons other than the accused offered on the issue of whether the alleged victim consented to the sexual behavior with respect to the sexual offense alleged.

B. The provisions of subsection A of this section do not require the exclusion of evidence of:

1. Specific instances of sexual behavior if offered for a purpose other than the issue of consent, including proof of the source of semen, pregnancy, disease or injury;

2. False allegations of sexual offenses; or

3. Similar sexual acts in the presence of the accused with persons other than the accused which occurs at the time of the event giving rise to the sexual offense alleged.

C. 1. If the defendant intends to offer evidence described in subsection B of this section, the defendant shall file a written motion to offer such evidence accompanied by an offer of proof not later than fifteen (15) days before the date on which the trial in which such evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties by counsel for the defendant and on the alleged victim by the district attorney.

2. If the court determines that the motion and offer of proof described in paragraph 1 of this subsection contains evidence described in subsection B of this section, the court may order an in-camera hearing to determine whether the proffered evidence is admissible under subsection B of this section.

Added by Laws 1975, c. 19, § 1. Renumbered from Section 750 of Title 22 by Laws 1992, c. 168, § 1, eff. Sept. 1, 1992. Amended by Laws 1993, c. 197, § 1, eff. Sept. 1, 1993.

§12-2413. Sexual assault offense - Commission of other offenses admissible - Definition.

A. In a criminal case in which the defendant is accused of an offense of sexual assault, evidence of the defendant's commission of another offense or offenses of sexual assault is admissible, and may be considered for its bearing on any matter to which it is relevant.

B. In a case in which the state intends to offer evidence under this rule, the attorney for the state shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen (15) days before the scheduled date of trial or at such later time as the court may allow for good cause.

C. This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

D. For purposes of this rule, "offense of sexual assault" means a crime under federal law or the laws of this state that involve:

1. Any conduct proscribed by Sections 1111 through 1125 of Title 21 of the Oklahoma Statutes;

2. Contact, without consent, between any part of the defendant's body or an object and the genitals or anus of another person;

3. Contact, without consent, between the genitals or anus of the defendant and any part of another person's body;

4. Deriving sexual pleasure or gratification from the infliction of death, bodily injury, emotional distress, or physical pain on another person; or

5. An attempt or conspiracy to engage in conduct described in paragraphs 1 through 4 of this subsection.

Added by Laws 2007, c. 76, § 1, emerg. eff. April 30, 2007.

§12-2414. Child molestation offense - Commission of other offenses admissible - Definitions.

A. In a criminal case in which the defendant is accused of an offense of child molestation, evidence of the defendant's commission of another offense or offenses of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant.

B. In a case in which the state intends to offer evidence under this rule, the attorney for the state shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen (15) days before the scheduled date of trial or at such later time as the court may allow for good cause.

C. This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

D. For purposes of this rule, "child" means a person below the age of sixteen (16), and "offense of child molestation" means a crime under federal law or the laws of this state that involve:

1. Any conduct proscribed by Sections 1111 through 1125 of Title 21 of the Oklahoma Statutes, that was committed in relation to a child;

2. Contact between any part of the defendant's body or an object and the genitals or anus of a child;

3. Contact between the genitals or anus of the defendant and any part of the body of a child;

4. Deriving sexual pleasure or gratification from the infliction of death, bodily injury, emotional distress, or physical pain on a child; or

5. An attempt or conspiracy to engage in conduct described in paragraphs 1 through 4 of this subsection.

Added by Laws 2007, c. 76, § 2, emerg. eff. April 30, 2007. Amended by Laws 2008, c. 347, § 1, eff. Nov. 1, 2008.

§12-2501. Privileges recognized only as provided.

Except as otherwise provided by constitution, statute or rules promulgated by the Supreme Court no person has a privilege to:

1. Refuse to be a witness;
2. Refuse to disclose any matter;
3. Refuse to produce any object or record; or
4. Prevent another from being a witness or disclosing any matter or producing any object or record.

Added by Laws 1978, c. 285, § 501, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 31, eff. Nov. 1, 2002.

§12-2502. Attorney-client privilege.

A. As used in this section:

1. An "attorney" is a person authorized, or reasonably believed by the client to be authorized, to engage in the practice of law in any state or nation;

2. A "client" is a person, public officer, or corporation, association, or other organization or entity, either public or private, who consults an attorney with a view towards obtaining legal services or is rendered professional legal services by an attorney;

3. A "representative of an attorney" is one employed by the attorney to assist the attorney in the rendition of professional legal services;

4. A "representative of the client" is:

a. one having authority to obtain professional legal services, or to act on advice rendered pursuant thereto, on behalf of the client, or

b. any other person who, for the purpose of effectuating legal representation for the client, makes or receives a confidential communication while acting in the scope of employment for the client; and

5. A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

B. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

1. Between the client or a representative of the client and the client's attorney or a representative of the attorney;

2. Between the attorney and a representative of the attorney;

3. By the client or a representative of the client or the client's attorney or a representative of the attorney to an attorney or a representative of an attorney representing another party in a pending action and concerning a matter of common interest therein;

4. Between representatives of the client or between the client and a representative of the client; or

5. Among attorneys and their representatives representing the same client.

C. The privilege may be claimed by the client, the client's guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the attorney or the attorney's representative at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.

D. There is no privilege under this section:

1. If the services of the attorney were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;

2. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction;

3. As to a communication relevant to an issue of breach of duty by the attorney to the client or by the client to the attorney;

4. As to a communication necessary for an attorney to defend in a legal proceeding an accusation that the attorney assisted the client in criminal or fraudulent conduct;

5. As to a communication relevant to an issue concerning an attested document to which the attorney is an attesting witness;

6. As to a communication relevant to a matter of common interest between or among two or more clients if the communication was made by any of them to an attorney retained or consulted in common, when offered in an action between or among any of the clients; or

7. As to a communication between a public officer or agency and its attorney unless the communication concerns a pending investigation, claim or action and the court determines that disclosure will seriously impair the ability of the public officer or agency to process the claim or conduct a pending investigation, litigation or proceeding in the public interest.

E. A disclosure of a communication or information covered by the attorney-client privilege or the work-product doctrine does not operate as a waiver if:

1. The disclosure was inadvertent;

2. The holder of the privilege took reasonable steps to prevent disclosure; and

3. The holder of the privilege took reasonable steps to rectify the error including, but not limited to, information falling within the scope of paragraph 4 of subsection B of Section 3226 of this title, if applicable.

F. Disclosure of a communication or information meeting the requirements of an attorney-client privilege as set forth in this section or the work-product doctrine to a governmental office, agency

or political subdivision in the exercise of its regulatory, investigative, or enforcement authority does not operate as a waiver of the privilege or protection in favor of nongovernmental persons or entities. Disclosure of such information does not waive the privilege or protection of undisclosed communications on the same subject unless:

1. The waiver is intentional;

2. The disclosed and undisclosed communications or information concern the same subject matter; and

3. Due to principles of fairness, the disclosed and undisclosed communications or information should be considered together.

Added by Laws 1978, c. 285, § 502, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 32, eff. Nov. 1, 2002; Laws 2009, c. 251, § 2, eff. Nov. 1, 2009; Laws 2013, c. 316, § 1, eff. Nov. 1, 2013.

§12-2502.1. Communications between accountant and client.

A. As used in this section:

1. "Accountant" means a certified public accountant (CPA) or a public accountant;

2. "Client" means any person, public officer, corporation, association, or other organization or entity, either public or private, who consults an accountant for the purpose of obtaining accounting services; and

3. A communication between an accountant and a client of the accountant is "confidential" if not intended to be disclosed to third persons other than:

a. those to whom disclosure is in furtherance of the rendition of accounting services to the client, and

b. those reasonably necessary for the transmission of the communication.

B. A client has a privilege to refuse to disclose, and to prevent any other person or entity from disclosing, the contents of confidential communications with an accountant when the other person or entity learned of the communication because the communications were made in the rendition of accounting services to the client. This privilege includes other confidential information obtained by the accountant from the client for the purpose of rendering accounting advice.

C. The privilege provided for in this section may be claimed by the client, the guardian or conservator of the client, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the accountant at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.

D. There is no accountant-client privilege under this section:

1. When the services of the accountant were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or should have known was a crime including, but not limited to, fraud;

2. When a communication is relevant to an issue of breach of duty by the accountant to the client of the accountant or by the client to the accountant; or

3. When a communication is relevant to a matter of common interest between two or more clients, if the communication was made by any of the clients to an accountant retained or consulted in common when offered in a civil action between clients.

E. A disclosure of a communication or information covered by the accountant-client privilege or the work-product doctrine does not operate as a waiver if:

1. The disclosure was inadvertent;

2. The holder of the privilege took reasonable steps to prevent disclosure; and

3. The holder of the privilege took reasonable steps to rectify the error including, but not limited to, information falling within the scope of paragraph 4 of subsection B of Section 3226 of Title 12 of the Oklahoma Statutes, if applicable.

F. Disclosure of a communication or information covered by the accountant-client privilege or the work-product doctrine to a governmental office, agency or political subdivision in the exercise of its regulatory, investigative, or enforcement authority does not operate as a waiver of the privilege or protection in favor of nongovernmental persons or entities. Disclosure of such information does not waive the privilege or protection of undisclosed communications on the same subject unless:

1. The waiver is intentional;

2. The disclosed and undisclosed communications or information concern the same subject matter; and

3. Due to principles of fairness, the disclosed and undisclosed communications or information should be considered together.

Added by Laws 2009, c. 251, § 3, eff. Nov. 1, 2009.

§12-2503. Physician and Psychotherapist-Patient Privilege.

A. As used in this section:

1. A "patient" is a person who consults or is examined or interviewed by a physician or psychotherapist;

2. A "physician" is a person authorized to practice medicine in any state or nation, or reasonably believed by the patient to be so authorized;

3. A "psychotherapist" is:

a. a person authorized to practice medicine in any state or nation, or reasonably believed by the patient to be so authorized, while engaged in the diagnosis or

treatment of a mental or emotional condition, including alcohol or drug addiction, or

b. a person licensed or certified as a psychologist under the laws of any state or nation, or reasonably believed by the patient to be so licensed or certified, while similarly engaged; and

4. A communication is "confidential" if not intended to be disclosed to third persons, except persons present to further the interest of the patient in the consultation, examination or interview, persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist, including members of the patient's family.

B. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of the patient's physical, mental or emotional condition, including alcohol or drug addiction, among the patient, the patient's physician or psychotherapist, and persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist, including members of the patient's family.

C. The privilege may be claimed by the patient, the patient's guardian or conservator or the personal representative of a deceased patient. The person who was the physician or psychotherapist at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the patient.

D. The following shall be exceptions to a claim of privilege:

1. There is no privilege under this section for communications relevant to an issue in proceedings to hospitalize the patient for mental illness, if the psychotherapist in the course of diagnosis or treatment has determined that the patient is in need of hospitalization;

2. Communications made in the course of a court-ordered examination of the physical, mental or emotional condition of a patient, whether a party or a witness, are not privileged under this section when they relate to the particular purpose for which the examination is ordered unless the court orders otherwise;

3. The privilege under this Code as to a communication relevant to the physical, mental or emotional condition of the patient in any proceeding in which the patient relies upon that condition as an element of the patient's claim or defense or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense is qualified to the extent that an adverse party in the proceeding may obtain relevant information regarding the condition by statutory discovery;

4. When the patient is an inmate in the custody of the Department of Corrections or a private prison or facility under

contract with the Department of Corrections, and the release of the information is necessary:

a. to prevent or lessen a serious and imminent threat to the health or safety of any person, or

b. for law enforcement authorities to identify or apprehend an individual where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody; or

5. The testimonial privilege created pursuant to this section does not make communications confidential where state and federal privacy law would otherwise permit disclosure.

Added by Laws 1978, c. 285, § 503, eff. Oct. 1, 1978. Amended by Laws 1980, c. 113, § 1, eff. Oct. 1, 1980; Laws 2002, c. 468, § 33, eff. Nov. 1, 2002; Laws 2003, c.390, § 10, eff. July 1, 2003; Laws 2004, c. 168, § 5, emerg. eff. April 27, 2004; Laws 2009, c. 241, § 1, eff. Nov. 1, 2009.

§12-2503.1. Interpreter for the Deaf or Hard-of-Hearing Privilege.

A. As used in this section:

1. An "interpreter" is a qualified legal interpreter for the deaf or hard-of-hearing, as defined by Section 2408 of Title 63 of the Oklahoma Statutes;

2. A "deaf or hard-of-hearing person" is a person whose sense of hearing is nonfunctional for the ordinary purposes of life; and

3. A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

B. A person has a privilege to refuse to disclose and to prevent an interpreter from disclosing such person's confidential communication made while such interpreter is acting in the capacity as an interpreter for persons who are deaf or hard-of-hearing.

C. The privilege may be claimed by the interpreter, by the deaf or hard-of-hearing person, by the guardian or conservator of the deaf or hard-of-hearing person, or by the personal representative of the deaf or hard-of-hearing person if the deaf or hard-of-hearing person is deceased.

D. An interpreter who is employed to interpret, transliterate or relay a conversation between a person who can hear and a deaf or hard-of-hearing person is a conduit for the conversation and may not disclose or be compelled to disclose, through reporting or testimony or by subpoena, the contents of a confidential communication.

E. There is no privilege pursuant to this section for communications:

1. If the services of the interpreter were sought or obtained to enable or aid anyone to commit or plan to commit what the deaf or hard-of-hearing person knew, or reasonably should have known, to be a

crime or fraud or physical injury to the deaf or hard-of-hearing person or another individual;

2. In which the deaf or hard-of-hearing person has expressed an intent to engage in conduct likely to result in imminent death or serious bodily injury to the deaf or hard-of-hearing person or another individual;

3. Relevant to an issue in a proceeding challenging the competency of the interpreter;

4. Relevant to a breach of duty by the interpreter; or

5. That are subject to a duty to disclose under statutory law. Added by Laws 1993, c. 297, § 1, emerg. eff. June 7, 1993. Amended by Laws 2002, c. 468, § 37, eff. Nov. 1, 2002. Renumbered from § 2506.1 of this title by Laws 2002, c. 468, § 78, eff. Nov. 1, 2002. Amended by Laws 2005, c. 395, § 10, eff. Nov. 1, 2005.

§12-2504. Husband-wife privilege.

A. A communication is confidential for purposes of this section if it is made privately by any person to the person's spouse and is not intended for disclosure to any other person.

B. An accused in a criminal proceeding has a privilege to prevent the spouse of the accused from testifying as to any confidential communication between the accused and the spouse.

C. The privilege may be claimed by the accused or by the spouse on behalf of the accused. The authority of the spouse to do so is presumed.

D. There is no privilege under this section in a proceeding in which one spouse is charged with a crime against the person or property of:

1. The other;

2. A child of either;

3. A person residing in the household of either; or

4. A third person when the crime is committed in the course of committing a crime against any other person named in this section. Added by Laws 1978, c. 285, § 504, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 34, eff. Nov. 1, 2002.

§12-2505. Religious privilege.

A. As used in this section:

1. A "cleric" is a minister, priest, rabbi, accredited Christian Science practitioner or other similar functionary of a religious organization, or any individual reasonably believed to be a cleric by the person consulting the cleric; and

2. A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

B. A person has a privilege to refuse to disclose and to prevent another from disclosing his confidential communication made to a clergyman acting in his professional capacity.

C. The privilege may be claimed by the person, by the person's guardian or conservator, or by the person's personal representative if the person is deceased. The cleric is presumed to have authority to claim the privilege but only on behalf of the communicant. Added by Laws 1978, c. 285, § 505, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 35, eff. Nov. 1, 2002.

§12-2506. Journalist's privilege.

A. As used in this section:

1. "State proceeding" includes any proceeding or investigation before or by any judicial, legislative, executive or administrative body in this state;

2. "Medium of communication" includes any newspaper, magazine, other periodical, book, pamphlet, news service, wire service, news or feature syndicate, broadcast station or network, cable television system, or record;

3. "Information" includes any written, oral or pictorial news or other record;

4. "Published information" means any information disseminated to the public by the person from whom disclosure is sought;

5. "Unpublished information" includes information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated, and includes, but is not limited to, all notes, outtakes, photographs, tapes or other data of whatever sort not itself disseminated to the public through a medium of communication, whether or not published information based upon or related to such material has been disseminated;

6. "Processing" includes compiling, storing and editing of information; and

7. "Journalist" means any person who is a reporter, photographer, editor, commentator, journalist, correspondent, announcer, or other individual regularly engaged in obtaining, writing, reviewing, editing, or otherwise preparing news for any newspaper, periodical, press association, newspaper syndicate, wire service, radio or television station, or other news service. Any individual employed by any such news service in the performance of any of the above-mentioned activities shall be deemed to be regularly engaged in such activities. However, journalist shall not include any governmental entity or individual employed thereby engaged in official governmental information activities.

B. No journalist shall be required to disclose in a state proceeding either:

1. The source of any published or unpublished information obtained in the gathering, receiving or processing of information for any medium of communication to the public; or

2. Any unpublished information obtained or prepared in gathering, receiving or processing of information for any medium of communication to the public; unless the court finds that the party seeking the information or identity has established by clear and convincing evidence that such information or identity is relevant to a significant issue in the action and could not with due diligence be obtained by alternate means.

This subsection does not apply with respect to the content or source of allegedly defamatory information, in a civil action for defamation wherein the defendant asserts a defense based on the content or source of such information.

Added by Laws 1978, c. 285, § 506, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 36, eff. Nov. 1, 2002.

§12-2506.1. Renumbered as § 2503.1 of this title by Laws 2002, c. 468, § 78, eff. Nov. 1, 2002.

§12-2506.2. Peer support counseling confidentiality.

A. For purposes of this section:

1. "Emergency services provider" means any public employer that employs persons to provide firefighting services;

2. "Emergency services personnel" means any employee of an emergency services provider who is engaged in providing firefighting services;

3. "Employee assistance program" means a program established by a law enforcement agency or emergency services provider to provide counseling or support services to employees of the law enforcement agency or emergency services provider;

4. "Law enforcement agency" means any county sheriff, municipal police department, the Oklahoma Highway Patrol, and any state or local public body that employs public safety personnel;

5. "Public safety personnel" means a sheriff, deputy sheriff, municipal police officer, state police officer, parole and probation officer, corrections employee, certified reserve officer, telecommunicator, or emergency medical dispatcher; and

6. "Peer support counseling sessions" means critical incident stress management sessions for public safety or emergency services personnel who have been involved in emotionally traumatic incidents by reason of their employment.

B. Any communication made by a participant or counselor in a peer support counseling session conducted by a law enforcement agency or by an emergency services provider for public safety personnel or emergency services personnel, and any oral or written information conveyed in the peer support counseling session, is confidential and

may not be disclosed by any person participating in the peer support counseling session.

C. Any communication relating to a peer support counseling session made confidential under subsection B of this section that is made between counselors, between counselors and the supervisors or staff of an employee assistance program, or between the supervisors or staff of an employee assistance program, is confidential and may not be disclosed.

D. The provisions of this section apply only to peer support counseling sessions conducted by an employee or other person who:

1. Has been designated by a law enforcement agency or emergency services provider, or by an employee assistance program, to act as a counselor; and

2. Has received training in counseling and in providing emotional and moral support to public safety personnel or emergency services personnel who have been involved in emotionally traumatic incidents by reason of their employment.

E. The provisions of this section apply to all oral communications, notes, records and reports arising out of a peer support counseling session. Any notes, records or reports arising out of a peer support counseling session are not public records for the purposes of Sections 24A.1 through 24A.29 of Title 51 of the Oklahoma Statutes.

F. Any communication made by a participant or counselor in a peer support counseling session subject to this section, and any oral or written information conveyed in a peer support counseling session subject to this section, is not admissible in any judicial proceeding, administrative proceeding, arbitration proceeding, or other adjudicatory proceeding. Communications and information made confidential under this section shall not be disclosed by the participants in any judicial proceeding, administrative proceeding, arbitration proceeding, or other adjudicatory proceeding. The limitations on disclosure imposed by this subsection include disclosure during any discovery conducted as part of an adjudicatory proceeding.

G. Nothing in this section limits the discovery or introduction in evidence of knowledge acquired by any public safety personnel or emergency services personnel from observation made during the course of employment, or material or information acquired during the course of employment, that is otherwise subject to discovery or introduction in evidence.

H. This section does not apply to:

1. Any threat of suicide or homicide made by a participant in a peer support counseling session, or any information conveyed in a peer support counseling session relating to a threat of suicide or homicide;

2. Any information relating to abuse of children or of the elderly, or other information that is required to be reported by law;

3. Any admission of criminal conduct; or

4. Any admission of a plan to commit a crime.

I. This section shall not prohibit any communications between counselors who conduct peer support counseling sessions, or any communications between counselors and the supervisors or staff of an employee assistance program.

Added by Laws 2008, c. 135, § 1, eff. Nov. 1, 2008.

§12-2507. Political vote.

A. Every person has a privilege to refuse to disclose the tenor of the person's vote at a political election conducted by secret ballot.

B. This privilege does not apply if the court finds that the vote was cast illegally.

Added by Laws 1978, c. 285, § 507, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 38, eff. Nov. 1, 2002.

§12-2508. Trade secrets.

A person has a privilege, which may be claimed by the person, the person's agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by the person, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. If disclosure is directed, the court shall take such protective measures as the interest of the holder of the privilege, of the parties and of justice require.

Added by Laws 1978, c. 285, § 508, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 39, eff. Nov. 1, 2002.

§12-2509. Secrets of state and other official information - Governmental privileges.

A. If the law of the United States creates a governmental privilege that the courts of this state must recognize under the Constitution of the United States, the privilege may be claimed as provided by the law of the United States.

B. No other governmental privilege is recognized except as created by the Constitution or statutes of this state.

C. If a claim of governmental privilege is sustained and it appears that a party is thereby deprived of material evidence, the court shall make any further orders the interests of justice require, including striking the testimony of a witness, declaring a mistrial, finding upon an issue as to which the evidence is relevant or dismissing the action.

Added by Laws 1978, c. 285, § 509, eff. Oct. 1, 1978.

§12-2510. Identity of informer.

A. The United States, state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting the investigation.

B. The privilege under this section may be claimed by an appropriate representative of the public entity to which the information was furnished.

C. The following shall be exceptions to the privilege granted in this section:

1. No privilege exists if the identity of the informer or the informer’s interest in the subject matter of the informer’s communication has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informer's own action, or if the informer appears as a witness for the government.

2. If the informant is also a material witness to the criminal conduct with which the defendant is charged, or was a participant in said criminal conduct conjointly with the defendant, or is shown to be able to give testimony relevant to a material issue in the case.

3. If information from an informer is relied upon to establish the legality of the means by which evidence was obtained and the court or the defendant is not satisfied that the information was received from an informer reasonably believed to be reliable or credible, the court or defendant may require the identity of the informer to be disclosed. The court shall, on request of the government, direct that the disclosure be made in chambers. All counsel and parties concerned with the issue of legality shall be permitted to be present at every stage of a proceeding under this subsection except a disclosure in chambers if the court determines that no counsel or party shall be permitted to be present. If disclosure of the identity of the informer is made in chambers, the record thereof shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the government.
Added by Laws 1978, c. 285, § 510, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 40, eff. Nov. 1, 2002.

§12-2510.1. Crime stoppers organizations – Privileged communications – Orders for production of records.

A. As used in this section:

1. “Crime stoppers organization” means a private, nonprofit organization that is certified by the Oklahoma Crime Stoppers Association, accepts and expends donations for rewards to persons who report to the organization information concerning criminal activity and that forwards the information to the appropriate law enforcement agency;

2. "Privileged communication" means a statement by any person who wishes to remain anonymous to a certified crime stoppers organization for the purpose of reporting alleged criminal activity; and

3. "Certified" means crime stopper organizations that annually meet the certification standards for crime stoppers programs established by the Oklahoma Crime Stoppers Association to the extent those standards do not conflict with state statutes. The term "court" refers to all municipal and district courts within this state.

B. Evidence of a privileged communication between a person submitting a report of a criminal act to a certified crime stoppers organization and the person who accepts the report on behalf of the organization is not admissible in a court or an administrative proceeding.

C. Records of a certified crime stoppers organization concerning a privileged communication of criminal activity may not be compelled to be produced before a court or other tribunal except upon the motion of a criminal defendant to the court in which the offense is being tried that the records or report contains evidence that is exculpatory to the defendant in the trial of that offense.

D. Upon the motion of a defendant under subsection C of this section, the court may issue an order for production of the records or report. The court shall conduct an in camera inspection of materials produced under the order to determine whether the records or report contain evidence that is exculpatory to the defendant.

E. If the court determines that the records or report produced contain evidence that is exculpatory to the defendant, the court shall present the evidence to the defendant in a form that does not disclose the identity of the person who was the source of the evidence, unless the state or federal constitution requires the disclosure of the identity of that person.

F. The court shall return to the certified crime stoppers organization the records or report that are produced under this section but not disclosed to the defendant. The certified crime stoppers organization shall store the records or report until the conclusion of the criminal trial and the expiration of the time for all direct appeals in the case.

Added by Laws 2002, c. 323, § 1, eff. Nov. 1, 2002. Amended by Laws 2010, c. 37, § 1, eff. Nov. 1, 2010.

§12-2511. Waiver of privilege by voluntary disclosure.

A person upon whom this Code confers a privilege against disclosure waives the privilege if the person or the person's predecessor voluntarily discloses or consents to disclosure of any significant part of the privileged matter. This section does not apply if the disclosure itself is privileged.

Added by Laws 1978, c. 285, § 511, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 41, eff. Nov. 1, 2002.

§12-2512. Privileged matter disclosed under compulsion or without opportunity to claim privilege.

A claim of privilege is not defeated by a disclosure which was:

1. Compelled erroneously; or

2. Made without opportunity to claim the privilege.

Added by Laws 1978, c. 285, § 512, eff. Oct. 1, 1978.

§12-2513. Comment upon or inference from claim of privilege - Instruction.

A. A claim of privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel. No inference may be drawn therefrom.

B. In jury cases, proceedings shall be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the jury.

C. Upon request, any party against whom the jury might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom.

Added by Laws 1978, c. 285, § 513, eff. Oct. 1, 1978.

§12-2601. General rule of competency.

Every person is competent to be a witness except as otherwise provided in this Code.

Added by Laws 1978, c. 285, § 601, eff. Oct. 1, 1978.

§12-2602. Personal knowledge.

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule is subject to the provisions of Section 2703 of this title.

Added by Laws 1978, c. 285, § 602, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 42, eff. Nov. 1, 2002.

§12-2603. Oath or affirmation.

Every witness shall be required to declare before testifying that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness's conscience and impress the witness's mind with the duty to do so.

Added by Laws 1978, c. 285, § 603, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 43, eff. Nov. 1, 2002.

§12-2604. Interpreters.

An interpreter is subject to the provisions of this Code relating to qualification as an expert and the administration of an oath or affirmation to make a true and complete rendition of all communications made during the interpretive process to the best of the interpreter's knowledge and belief.
Added by Laws 1978, c. 285, § 604, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 44, eff. Nov. 1, 2002.

§12-2605. Competency of judge as witness.
The judge presiding at the trial shall not testify in that trial as a witness. No objection need be made in order to preserve the error.
Added by Laws 1978, c. 285, § 605, eff. Oct. 1, 1978.

§12-2606. Competency of juror as witness.
A. A member of the jury shall not testify as a witness before that jury in the trial of the case in which the juror is sitting. If the juror is called to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.
B. Upon an inquiry into the validity of a verdict or indictment, a juror shall not testify as to any matter or statement occurring during the course of the jury's deliberations or as to the effect of anything upon the juror's mind or another juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes during deliberations. A juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. An affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying shall not be received for these purposes.
Added by Laws 1978, c. 285, § 606, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 45, eff. Nov. 1, 2002.

§12-2607. Who may impeach.
The credibility of a witness may be attacked by any party, including the party calling the witness.
Added by Laws 1978, c. 285, § 607, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 46, eff. Nov. 1, 2002.

§12-2608. Evidence of character and conduct of witness.
A. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, subject to these limitations:
1. The evidence may refer only to character for truthfulness or untruthfulness; and

2. Evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked.

B. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness's credibility, other than conviction of crime as provided in Section 2609 of this title, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness if they:

1. Concern the witness's character for truthfulness or untruthfulness;

2. Concern the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

C. The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness's privilege against self-incrimination when examined with respect to matters which relate only to credibility.

Added by Laws 1978, c. 285, § 608, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 47, eff. Nov. 1, 2002.

§12-2609. Impeachment by evidence of conviction of crime.

A. For the purpose of attacking the credibility of a witness:

1. Evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Section 2403 of this title, if the crime was punishable by death or imprisonment in excess of one (1) year pursuant to the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

2. Evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

B. Evidence of a conviction under this section is not admissible if a period of more than ten (10) years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is later, to the date of the witness's testimony, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, if the witness is a defendant currently charged with a sexual offense involving a child, testifying at a criminal proceeding regarding the current charge of the defendant and has a prior conviction for a sexual offense involving a child, the conviction of the prior sexual offense involving a child is admissible for the purpose of impeachment of the defendant regardless

of the age of the prior conviction. Evidence of a conviction more than ten (10) years old, as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence or unless, during the ten-year period, the witness has been convicted of a subsequent crime which is a misdemeanor involving moral turpitude or a felony.

C. Evidence of a conviction is not admissible under this Code if:

1. The conviction has been the subject of a pardon, annulment, certificate of rehabilitation or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which was punishable by death or imprisonment in excess of one (1) year; or

2. The conviction has been the subject of a pardon, annulment or other equivalent procedure based on a finding of innocence.

D. Evidence of juvenile adjudications is not admissible under this Code. The court in a criminal case may, however, allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

E. The pendency of an appeal from the conviction does not render evidence of that conviction inadmissible. Evidence of the pendency of an appeal is admissible.

Added by Laws 1978, c. 285, § 609, eff. Oct. 1, 1978. Amended by Laws 1991, c. 62, § 4, eff. Sept. 1, 1991; Laws 2000, c. 245, § 1, eff. Nov. 1, 2000; Laws 2002, c. 468, § 48, eff. Nov. 1, 2002; Laws 2004, c. 275, § 1, eff. July 1, 2004.

§12-2610. Religious beliefs or opinions.

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness's credibility is impaired or enhanced.

Added by Laws 1978, c. 285, § 610, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 49, eff. Nov. 1, 2002.

§12-2611. Mode and order of interrogation and presentation.

A. Subject to subsection B of this section, the court shall exercise control over the manner and order of interrogating witnesses and presenting evidence so as to:

1. Make the interrogation and presentation effective for the ascertainment of the truth;

2. Avoid needless consumption of time; and

3. Protect witnesses from harassment or undue embarrassment.

B. Any party to a civil action or proceeding may compel any adverse party or person, or any agent, servant or employee of such party or person, for whose benefit such action or proceeding is instituted, prosecuted or defended, to testify as a witness, at the trial, or by deposition, in the same manner and subject to the same rules as other witnesses, provided that any such adverse party, or the adverse party's agent, servant or employee called as a witness by the opposing party shall be deemed a hostile witness and may be cross-examined by the party calling the witness to the same extent as any opposition witness.

C. Cross-examination shall be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may permit inquiry into additional matters as if on direct examination.

D. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness's testimony. Leading questions should ordinarily be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, leading questions may be used on direct examination.
Added by Laws 1978, c. 285, § 611, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 50, eff. Nov. 1, 2002.

§12-2611.1. Repealed by Laws 1993, c. 197, § 4, eff. Sept. 1, 1993.

§12-2611.2. Minor or incapacitated witnesses - Closing of testimony to public - Taking testimony outside courtroom - Meeting in chambers with judge and attorneys - Presence of support person or therapeutic dog.

A. It is the intent of the Legislature in enacting this section to provide the court with discretion to employ unusual court procedures to protect the rights of incapacitated persons, while ensuring the rights of a criminal defendant and the integrity of the judicial process.

B. As used in this section:

1. "Support person" means a parent, other relative or a next friend chosen by the witness to accompany the witness to court proceedings;

2. "Incapacitated witness" means any witness in a criminal proceeding that is a person who is defined as an incapacitated person or vulnerable adult as such terms are defined by the provisions of Section 10-103 of Title 43A of the Oklahoma Statutes; and

3. "Witness" means incapacitated witness.

C. The court, upon motion of counsel, shall conduct a hearing to determine whether the testimony of a witness shall be closed to the public. In making the decision, the court shall consider:

1. The nature and seriousness of the issues in the proceeding;

2. The age of the witness;

3. The relationship, if any, of the witness to the defendant;

4. The extent to which the size of the community would preclude the anonymity of the witness;

5. The likelihood of public disgrace of the witness;

6. Whether there is an overriding public interest in having the testimony of the witness presented in open court;

7. The substantial risk that the identity of the witness would be disclosed to the public during the proceeding;

8. The substantial probability that the disclosure of the identity of the witness would cause serious harm to the witness;

9. Whether the witness has disclosed information concerning the case to the public in a manner which would preclude anonymity of the witness; and

10. Other factors the court may deem necessary to protect the interests of justice.

D. If the court determines that the testimony of the witness is to be closed to the public, the court shall in its order accordingly and set forth the persons who can be present during the taking of testimony of the witness, which shall include:

1. The parties to the proceeding and their counsel;

2. Any officer having custody of the witness;

3. Court personnel as may be necessary to conduct the hearing and maintain order, including but not limited to the judge, the court clerk, the bailiff, and the court reporter;

4. Jury members, if appropriate; and

5. The witness and a support person for the witness.

E. The testimony of the witness may be taken in the courtroom, in chambers, or in some other comfortable place. If the testimony of a witness is to be taken in a courtroom, the witness and support person shall be assembled in the court chambers prior to the taking of the testimony to meet for a reasonable period of time with the judge, and counsel for the parties. At this meeting court procedures shall be explained to the witness and counsel shall be given an opportunity to establish a rapport with the witness to facilitate taking the testimony of the witness at a later time. The facts involved in the proceeding shall not be discussed with the witness during this meeting.

F. A witness shall have the right to be accompanied by a support person while giving testimony in the proceeding, but the support person shall not discuss the testimony of the witness with any other witnesses or attempt to prompt or influence the testimony of the witness in any way. In lieu of a support person, a witness shall be afforded the opportunity to have a certified therapeutic dog accompanied by the handler of the certified therapeutic dog pursuant to the provisions set forth in Section 1 of this act.

Added by Laws 1996, c. 202, § 1, eff. Nov. 1, 1996. Renumbered from § 2803.2 of this title by Laws 1999, c. 108, § 1, eff. Nov. 1, 1999. Amended by Laws 2000, c. 340, § 21, eff. July 1, 2000; Laws 2002, c. 468, § 51, eff. Nov. 1, 2002; Laws 2003, c. 405, § 10, eff. Nov. 1, 2003; Laws 2014, c. 81, § 2, eff. Nov. 1, 2014.

§12-2611.3. Short title.

Sections 1 through 9 of this act shall be known and may be cited as the "Uniform Child Witness Testimony by Alternative Methods Act". Added by Laws 2003, c. 405, § 1, eff. Nov. 1, 2003.

§12-2611.4. Definitions.

As used in the Uniform Child Witness Testimony by Alternative Methods Act:

1. "Alternative method" means a method by which a child witness testifies which does not include all of the following:
   a. having the child testify in person in an open forum,
   b. having the child testify in the presence and full view of the finder of fact and presiding officer, and
   c. allowing all of the parties to be present, to participate, and to view and be viewed by the child;

2. "Child witness" means an individual under thirteen (13) years of age who has been or will be called to testify in a proceeding;

3. "Criminal proceeding" means a deposition, conditional examination ordered pursuant to Section 765 of Title 22 of the Oklahoma Statutes, trial or hearing before a court in a prosecution of a person charged with violating a criminal law of this state, a juvenile certified to stand trial as an adult pursuant to Section 2-2-403 of Title 10A of the Oklahoma Statutes, a juvenile prosecuted as an adult pursuant to Section 2-5-101 of Title 10A of the Oklahoma Statutes, or a youthful offender prosecuted pursuant to the Youthful Offender Act; and

4. "Noncriminal proceeding" means a deposition, trial or hearing before a court or an administrative agency of this state having judicial or quasi-judicial powers, other than a criminal proceeding. Added by Laws 2003, c. 405, § 2, eff. Nov. 1, 2003. Amended by Laws 2004, c. 445, § 1, emerg. eff. June 4, 2004; Laws 2009, c. 234, § 112, emerg. eff. May 21, 2009.

§12-2611.5. Testimony to which act applies – Other procedures not precluded.

The Uniform Child Witness Testimony by Alternative Methods Act applies to the testimony of a child witness in a criminal or noncriminal proceeding. However, the Uniform Child Witness Testimony by Alternative Methods Act does not preclude, in a noncriminal proceeding, any other procedure permitted by law for a child witness

to testify in a proceeding conducted pursuant to the Oklahoma Children's Code or the Oklahoma Juvenile Code.
Added by Laws 2003, c. 405, § 3, eff. Nov. 1, 2003.

§12-2611.6. Hearing – Determination of whether to use alternative method testimony.

A. The judge or presiding officer in a criminal or noncriminal proceeding may order a hearing to determine whether to allow a child witness to testify by an alternative method. The judge or presiding officer, for good cause shown, shall order the hearing upon motion of a party, a child witness, or an individual determined by the judge or presiding officer to have sufficient standing to act on behalf of the child.

B. A hearing to determine whether to allow a child witness to testify by an alternative method shall be conducted on the record after reasonable notice to all parties, any nonparty movant, and any other person the presiding officer specifies. The presence of the child is not required at the hearing unless ordered by the judge or presiding officer. In conducting the hearing, the judge or presiding officer shall not be bound by rules of evidence except the rules of privilege.
Added by Laws 2003, c. 405, § 4, eff. Nov. 1, 2003.

§12-2611.7. Situations where alternative method testimony permitted.

A. In a criminal proceeding, the judge or presiding officer may allow a child witness to testify by an alternative method only in the following situations:

1. The child may testify otherwise than in an open forum in the presence and full view of the finder of fact if the judge or presiding officer finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child's ability to communicate with the finder of fact if required to testify in the open forum; and

2. The child may testify other than face-to-face with the defendant if the judge or presiding officer finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child's ability to communicate with the finder of fact if required to be confronted face-to-face by the defendant.

B. In a criminal proceeding, the child may have an advocate appointed by the court to monitor the potential for emotional trauma. The advocate shall be a registered professional social worker, psychologist, or psychiatrist.

C. In a noncriminal proceeding, the judge or presiding officer may allow a child witness to testify by an alternative method if the judge or presiding officer finds by a preponderance of the evidence that allowing the child to testify by an alternative method is

necessary to serve the best interests of the child or enable the child to communicate with the finder of fact. In making the finding, the judge or presiding officer shall consider:

1. The nature of the proceeding;

2. The age and maturity of the child;

3. The relationship of the child to the parties in the proceeding;

4. The nature and degree of emotional trauma that the child may suffer in testifying; and

5. Any other relevant factor.

Added by Laws 2003, c. 405, § 5, eff. Nov. 1, 2003. Amended by Laws 2008, c. 111, § 2, eff. Nov. 1, 2008.

§12-2611.8. Determination of whether to allow child witness to testify by an alternative method.

If the judge or presiding officer determines that a standard under Section 5 of this act has been met, the judge or presiding officer shall determine whether to allow a child witness to testify by an alternative method and in doing so shall consider:

1. Alternative methods reasonably available;

2. Available means for protecting the interests of or reducing emotional trauma to the child without resort to an alternative method;

3. The nature of the case;

4. The relative rights of the parties;

5. The importance of the proposed testimony of the child;

6. The nature and degree of emotional trauma that the child may suffer if an alternative method is not used; and

7. Any other relevant factor.

Added by Laws 2003, c. 405, § 6, eff. Nov. 1, 2003.

§12-2611.9. Order – Required contents.

A. An order allowing or disallowing a child witness to testify by an alternative method shall state the findings of fact and conclusions of law that support the determination of the judge or presiding officer.

B. An order allowing a child witness to testify by an alternative method shall:

1. State the method by which the child is to testify;

2. List any individual or category of individuals allowed to be in, or required to be excluded from, the presence of the child during the testimony;

3. State any special conditions necessary to facilitate a party’s right to examine or cross-examine the child;

4. State any condition or limitation upon the participation of individuals present during the testimony of the child; and

5. State any other condition necessary for taking or presenting the testimony.

C. The alternative method ordered by the judge or presiding officer shall not be more restrictive of the rights of the parties than is necessary under the circumstance to serve the purposes of the order.

Added by Laws 2003, c. 405, § 7, eff. Nov. 1, 2003.

§12-2611.10. Opportunity for examination and cross-examination.

An alternative method ordered by the judge or presiding officer shall permit a full and fair opportunity for examination or cross-examination of the child witness by each party.

Added by Laws 2003, c. 405, § 8, eff. Nov. 1, 2003.

§12-2611.11. Construction and application of act.

In applying and construing the Uniform Child Witness Testimony by Alternative Methods Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Added by Laws 2003, c. 405, § 9, eff. Nov. 1, 2003.

§12-2611.12. Support person or therapeutic dog.

A. It is the intent of the Oklahoma Legislature in enacting this section to recognize the special circumstances and needs of a child witness during criminal court proceedings, and to protect the child witness from any unnecessary emotional discomfort or anguish.

B. In any criminal proceeding, a child witness shall have the right to be accompanied by a support person while giving testimony in the proceeding, but the support person shall not discuss the testimony of the child witness with any other witnesses or attempt to prompt or influence the testimony of the child witness.

C. The child witness shall be afforded the opportunity, if available, to have a certified therapeutic dog accompanied by the handler of the certified therapeutic dog in lieu of a support person.

D. As used in this section:

1. "Certified therapeutic dog" means a dog which has received the requisite training or certification from the American Kennel Club, Therapy Dogs Incorporated, or an equivalent organization to perform the duties associated with therapy dogs in places such as hospitals, nursing homes, and other facilities where the emotional benefits of therapy dogs are recognized. Prior to the use of a certified therapeutic dog the court shall conduct a hearing to verify:

a. the credentials of the certified therapeutic dog,

b. the certified therapeutic dog is appropriately insured, and

c. a relationship has been established between the child witness and the certified therapeutic dog in anticipation of testimony;

2. "Child witness" means an individual younger than thirteen (13) years of age who has been or will be called to testify in a criminal proceeding; and

3. "Support person" means a parent, other relative or a next friend chosen by the witness to accompany the witness to criminal proceedings.

Added by Laws 2014, c. 81, § 1, eff. Nov. 1, 2014.

§12-2612. Writing used to refresh memory.

If a witness uses a record or object to refresh the witness's memory either while testifying or before testifying, the court shall allow an adverse party to have the record or object produced at the hearing, to inspect it, to cross-examine the witness thereon and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed by an opposing party that the record or object contains matters not related to the subject matter of the testimony, the court shall examine the record or object in chambers, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a record or object is not produced, made available for inspection, or delivered pursuant to order, the court shall make any order justice requires, but in criminal cases if the prosecution elects not to comply, the order shall be an order striking the testimony or declaring a mistrial.

Added by Laws 1978, c. 285, § 612, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 52, eff. Nov. 1, 2002.

§12-2613. Prior statements of witnesses.

A. In examining a witness concerning a prior statement made by the witness whether in a record or not, the statement need not be shown nor its contents disclosed to the witness at that time but on request the same shall be shown or disclosed to opposing counsel just prior to the cross-examination of the witness.

B. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon. This provision does not apply to admissions of a party opponent as defined in paragraph 2 of subsection B of Section 2801 of this title.

Added by Laws 1978, c. 285, § 613, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 53, eff. Nov. 1, 2002.

§12-2614. Calling and interrogation of witnesses by court.

A. The court may, on its own motion or at the suggestion of a party, call witnesses, provided that all parties shall have the right of cross-examination of those witnesses.

B. The court may interrogate any witness whether called by itself or by a party.

C. Objections to the calling or interrogating of witnesses by the court may be made at the time or at the next available opportunity when the jury is not present.

Added by Laws 1978, c. 285, § 614, eff. Oct. 1, 1978.

§12-2615. Exclusion of witnesses.

At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses. The court may make the order of its own motion. This rule does not authorize exclusion of:

1. A party who is a natural person;

2. An officer or employee of a party which is not a natural person designated as its representative by its attorney;

3. A person whose presence is shown by a party to be essential to the presentation of the party's cause;

4. A parent, other relative, or next friend of a child twelve (12) years of age or under who is called to testify when the court deems it to be in the best interests of the child and the interests of justice; or

5. The victim of an alleged criminal offense or a representative, parent or other relative of said victim, in any criminal prosecution, upon the motion of the state to bar such exclusion, unless the court finds such exclusion to be in the interest of justice.

Added by Laws 1978, c. 285, § 615, eff. Oct. 1, 1978. Amended by Laws 1988, c. 109, § 1, eff. Nov. 1, 1988; Laws 1991, c. 62, § 5, eff. Sept. 1, 1991; Laws 1993, c. 197, § 2, eff. Sept. 1, 1993.

§12-2701. Opinion testimony by lay witnesses.

If the witness is not testifying as an expert, the witness’s testimony in the form of opinions or inferences is limited to those opinions or inferences which are:

1. Rationally based on the perception of the witness;

2. Helpful to a clear understanding of his testimony or the determination of a fact in issue; and

3. Not based on scientific, technical or other specialized knowledge within the scope of Section 2702 of this title.

Added by Laws 1978, c. 285, § 701, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 54, eff. Nov. 1, 2002.

§12-2702. Testimony by experts.

If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify in the form of an opinion or otherwise, if:

1. The testimony is based upon sufficient facts or data;

2. The testimony is the product of reliable principles and methods; and

3. The witness has applied the principles and methods reliably to the facts of the case.

Added by Laws 1978, c. 285, § 702, eff. Oct. 1, 1978. Amended by Laws 2013, 1st Ex.Sess., c. 15, § 2; Laws 2013, 1st Ex.Sess., c. 15, § 3.

NOTE: Laws 2009, c. 228, § 18 was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013) and repealed by Laws 2013, 1st Ex.Sess., c. 15, § 1.

§12-2703. Bases of opinion testimony by experts.

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.

Added by Laws 1978, c. 285, § 703, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 55, eff. Nov. 1, 2002; Laws 2013, 1st Ex.Sess., c. 15, § 5; Laws 2013, 1st Ex.Sess., c. 15, § 6.

NOTE: Laws 2009, c. 228, § 19 was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013) and repealed by Laws 2013, 1st Ex.Sess., c. 15, § 4.

§12-2704. Opinion on ultimate issue.

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

Added by Laws 1978, c. 285, § 704, eff. Oct. 1, 1978.

§12-2705. Disclosure of facts or data underlying expert opinion.

An expert may testify in terms of opinion or inference and give reasons therefor without previous disclosure of the underlying facts

or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.
Added by Laws 1978, c. 285, § 705, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 56, eff. Nov. 1, 2002.

§12-2801. Definitions.

A. For purposes of this Code:

1. A "statement" means:

a. an oral assertion,

b. an assertion in a record, or

c. nonverbal conduct of a person, if it is intended by a person as an assertion;

2. A "declarant" means a person who makes a statement; and

3. "Hearsay" means a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

B. A statement is not hearsay if:

1. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:

a. inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing or other proceeding, or in a deposition, or

b. consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive and was made before the supposed fabrication, influence, or motive arose, or

c. one of identification of a person made after perceiving the person; or

2. The statement is offered against a party and is:

a. the party's own statement, in either an individual or a representative capacity, or

b. a statement of which the party has manifested an adoption or belief in its truth, or

c. a statement by a person authorized by the party to make a statement concerning the subject, or

d. a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or

e. a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

Added by Laws 1978, c. 285, § 801, eff. Oct. 1, 1978. Amended by Laws 1991, c. 62, § 6, eff. Sept. 1, 1991; Laws 2002, c. 468, § 57, eff. Nov. 1, 2002.

§12-2802. Hearsay rule.

Hearsay is not admissible except as otherwise provided by an act of the Legislature.

Added by Laws 1978, c. 285, § 802, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 58, eff. Nov. 1, 2002.

§12-2803. Hearsay exceptions - Availability of declarant immaterial.

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

1. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter;

2. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition;

3. A statement of the declarant's then existing state of mind, emotion, sensation or physical condition, such as intent, plan, motive, design, mental feeling, pain and bodily health, but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification or terms of declarant's will;

4. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain or sensations, if reasonably pertinent to diagnosis or treatment;

5. A record concerning a matter about which a witness once had knowledge but now has insufficient recollection to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness’s memory and to reflect that knowledge correctly. The record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party;

6. A record of acts, events, conditions, opinions or diagnosis, made at or near the time by or from information transmitted by a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the record, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with paragraph 11 or 12 of Section 2902 of this title, or with a statute providing for certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation and calling of every kind, whether or not conducted for profit. A public record inadmissible under paragraph 8 of this section is inadmissible under this exception;

7. Evidence that a matter is not included in records kept in accordance with the provisions of paragraph 6 of this section, to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a record was regularly made and preserved, or by certification that complies with paragraph 11 or 12 of Section 2902 of this title, or with a statute providing for certification, unless the sources of information or other circumstances indicate lack of trustworthiness;

8. To the extent not otherwise provided in this paragraph, a record of a public office or agency setting forth its regularly conducted and regularly recorded activities or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual finding resulting from an investigation made pursuant to authority granted by law. The following are not within this exception to the hearsay rule:

a. investigative reports by police and other law enforcement personnel,
b. investigative reports prepared by or for a government, a public office or agency when offered by it in a case in which it is a party,
c. factual findings offered by the government in criminal cases,
d. factual findings resulting from special investigation of a particular complaint, case or incident, or
e. any matter as to which the sources of information or other circumstances indicate lack of trustworthiness;

9. Records of births, fetal deaths, deaths or marriages, if the report thereof was made to a public office pursuant to statutory requirements;

10. To prove the absence of a record or the nonoccurrence or nonexistence of a matter of which a record was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Section 2903 of this title, or testimony, that diligent search failed to disclose the record or entry;

11. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage or other similar facts of personal or family history contained in a regularly kept record of a religious organization;

12. Statements of fact contained in a certified record that the maker performed a marriage or other ceremony or administered a sacrament, made by a cleric, public official or other person authorized by the rules or practices of a religious organization or by law to perform the act certified and purporting to have been issued at the time of the act or within a reasonable time thereafter;

13. Statements of fact concerning personal or family history including those contained in family Bibles, genealogy, charts,

engravings on rings, inscriptions on family portraits, engravings on urns, crypts or tombstones, or the like;

14. A public record purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed and delivered;

15. A statement contained in a record purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the record unless dealings with the property since the record was made have been inconsistent with the truth of the statement or the purport of the record;

16. Statements in a record in existence twenty (20) years or more, the authenticity of which is established;

17. Market quotations, tabulations, lists, directories or other published or publicly recorded compilations generally used and relied upon by the public or by persons in particular occupations;

18. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the witness in direct examination, statements contained in published treatises, periodicals or pamphlets on a subject of history, medicine or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits;

19. Reputation among members of an individual’s family by blood, adoption or marriage, or among the individual’s associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption or marriage, ancestry or other similar fact of the individual’s personal or family history;

20. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community and reputation as to events of general history important to the community or state or nation in which located;

21. Reputation of a person's character among the person’s associates or in the community;

22. Evidence of a final judgment, but not upon a plea of nolo contendere, adjudging a person guilty of a crime punishable by death or imprisonment in excess of one (1) year, to prove any fact essential to sustain the judgment, but not including, when offered by the state in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility;

23. Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the matter would be provable by evidence of reputation; or

24. A verified or declared written medical report signed by a physician, provided:

a. the report is used in an action not arising out of contract in which the claim of the plaintiff is not in excess of Twenty-five Thousand Dollars ($25,000.00),

b. the report contains a history of the plaintiff, the complaints of the plaintiff, the physician's findings on examination, and any diagnostic tests, description and cause of the injury, and the nature and extent of any permanent impairment. All opinions expressed in the report must be based upon a reasonable degree of medical probability, and

c. the medical report must be verified or contain a written declaration, made under the penalty of perjury, that the report is true.

Added by Laws 1978, c. 285, § 803, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 59, eff. Nov. 1, 2002; Laws 2004, c. 519, § 2, eff. Nov. 1, 2004.

§12-2803.1. Statements of children not having attained 13 years or incapacitated persons describing acts of physical abuse or sexual contact - Admissibility in criminal and juvenile proceedings.

A. A statement made by a child who has not attained thirteen (13) years of age, a child thirteen (13) years of age or older who has a disability or a person who is an incapacitated person as such term is defined by the provisions of Section 10-103 of Title 43A of the Oklahoma Statutes, which describes any act of physical abuse against the child or incapacitated person or any act of sexual contact performed with or on the child or incapacitated person by another, is admissible in criminal and juvenile proceedings in the courts in this state if:

1. The court finds, in a hearing conducted outside the presence of the jury, that the time, content and totality of circumstances surrounding the taking of the statement provide sufficient indicia of reliability so as to render it inherently trustworthy. In determining such trustworthiness, the court may consider, among other things, the following factors: the spontaneity and consistent repetition of the statement, the mental state of the declarant, whether the terminology used is unexpected of a child of similar age or of an incapacitated person, and whether a lack of motive to fabricate exists; and

2. The child or incapacitated person either:

a. testifies or is available to testify at the proceedings in open court or through an alternative method pursuant to the provisions of the Uniform Child Witness Testimony by Alternative Methods Act or Section 2611.2 of this title, or

b. is unavailable as defined in Section 2804 of this title as a witness. When the child or incapacitated person is unavailable, such statement may be admitted only if there is corroborative evidence of the act.

B. A statement may not be admitted under this section unless the proponent of the statement makes known to the adverse party an intention to offer the statement and the particulars of the statement at least ten (10) days in advance of the proceedings to provide the adverse party with an opportunity to prepare to answer the statement.

C. As used in this section, "disability" means a physical or mental impairment which substantially limits one or more of the major life activities of the child or the child is regarded as having such an impairment by a competent medical professional.

Added by Laws 1984, c. 8, § 1, emerg. eff. March 12, 1984. Amended by Laws 1986, c. 87, § 1, operative July 1, 1986; Laws 1990, c. 224, § 8, eff. Sept. 1, 1990; Laws 1992, c. 301, § 2, eff. Sept. 1, 1992; Laws 1993, c. 197, § 3, eff. Sept. 1, 1993; Laws 1998, c. 24, § 1, emerg. eff. April 1, 1998; Laws 2000, c. 340, § 22, eff. July 1, 2000; Laws 2004, c. 445, § 2, emerg. eff. June 4, 2004; Laws 2013, c. 42, § 1, eff. Nov. 1, 2013.

§12-2803.2. Renumbered as § 2611.2 of this title by Laws 1999, c. 108, § 1, eff. Nov. 1, 1999.

§12-2804. Hearsay exception - Declarant unavailable.

A. "Unavailability as a witness", as used in this section, includes the situation in which the declarant:

1. Is exempt by ruling of the court on the ground of privilege from testifying concerning the subject matter or of the declarant's statement;

2. Persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so;

3. Testifies to a lack of memory of the subject matter of the declarant's statement;

4. Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

5. Is absent from the hearing and the proponent of the declarant's statement has been unable to procure the declarant's attendance or, in the case of a hearsay exception under paragraphs 2, 3 or 4 of subsection B of this section, the declarant's attendance or testimony, by process or other reasonable means.

A declarant is not unavailable as a witness if the declarant's exemption, refusal, claim of lack of memory, inability or absence is due to an act by the proponent of the declarant's statement for the purpose of preventing the witness from attending or testifying.

B. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

1. Testimony given as a witness at another hearing of the same or another proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered or, in a civil action or proceeding, a predecessor in interest had an opportunity and similar motive to develop the testimony by direct, cross or redirect examination;

2. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be the declarant's impending death;

3. A statement which was at the time of its making contrary to the declarant's pecuniary or proprietary interest, or which tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, and which a reasonable person in the declarant's position would not have made unless the declarant believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement. A statement or confession offered against the accused in a criminal case, made by a codefendant or other individual implicating both the codefendant or other individual and the accused, is not within this exception;

4. A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, ancestry, relationship to another person or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or statement concerning the foregoing matters or death of another person, if the declarant was related to that person by blood, adoption or marriage or was so intimately associated with the person's family as to be likely to have accurate information concerning the matter declared; and

5. A statement offered against a party that wrongfully caused or acquiesced in wrongfully causing the declarant's unavailability as a witness, and did so intending that result.

Added by Laws 1978, c. 285, § 804, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 60, eff. Nov. 1, 2002; Laws 2014, c. 106, § 1, eff. Nov. 1, 2014.

§12-2804.1. Hearsay exception – Exceptional circumstances.

A. In exceptional circumstances a statement not covered by Section 2803, 2804, 2805, or 2806 of this title but possessing equivalent, though not identical, circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule if the court determines that:

1. The statement is offered as evidence of a fact of consequence;

2. The statement is more probative on the point for which it is offered than any other evidence that the proponent can procure through reasonable efforts; and

3. The general purposes of this Code and the interests of justice will best be served by admission of the statement into evidence.

B. The court shall state on the record the circumstances that support its determination of the admissibility of the statement offered pursuant to subsection A of this section.

C. A statement is not admissible under this exception unless its proponent gives to all parties reasonable notice in advance of trial, or during trial if the court excuses pretrial notice for good cause shown, of the substance of the statement and the identity of the declarant.

Added by Laws 2002, c. 468, § 61, eff. Nov. 1, 2002.

§12-2805. Hearsay within hearsay.

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in this Code.

Added by Laws 1978, c. 285, § 805, eff. Oct. 1, 1978.

§12-2806. Attacking and supporting credibility of declarant.

When a hearsay statement, or a statement defined in subparagraph b, c, d or e of paragraph 2 of subsection B of Section 2801 of this title, has been admitted in evidence, the credibility of the declarant may be attacked and, if attacked, may be supported by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

Added by Laws 1978, c. 285, § 806, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 62, eff. Nov. 1, 2002.

§12-2901. Requirement of authentication or identification.

A. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims it to be.

B. The following are illustrative examples of authentication or identification conforming with the requirements of this Code:

1. Testimony that a matter is what it is claimed to be;

2. Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation;

3. Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated;

4. Appearance, content, substance, internal patterns or other distinctive characteristics taken in conjunction with circumstances;

5. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker;

6. Telephone conversations by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business if:

a. in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or

b. in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone;

7. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement or data compilation, in any form, is from the public office where items of this nature are kept;

8. Evidence that a document or data compilation, in any form:

a. is in such condition as to create no suspicion concerning its authenticity,

b. was in a place where it, if authentic, would likely be, and

c. has been in existence twenty (20) years or more at the time it is offered;

9. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result; or

10. Any method of authentication or identification provided by statute or by rules prescribed by the Supreme Court pursuant to statutory authority.

Added by Laws 1978, c. 285, § 901, eff. Oct. 1, 1978.

§12-2902. Self-authentication.

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

1. A document bearing a seal purporting to be that of the United States or of any state, district, commonwealth, territory or insular possession thereof, including the Panama Canal Zone, or the trust territory of the Pacific Islands, or of a political subdivision,

department, office or agency thereof, and a signature purporting to be an attestation or execution;

2. A document purporting to bear the signature in his official capacity of an officer or employee of any entity included in paragraph 1 of this section, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine;

3. A document purporting to be executed or attested in his official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position:

a. of the executing or attesting person, or

b. of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness or signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification;

4. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph 1, 2 or 3 of this section or complying with any statute or by rules prescribed by the Supreme Court pursuant to statutory authority;

5. Books, pamphlets or other publications purporting to be issued by public authority;

6. Printed materials purporting to be newspapers or periodicals;

7. Inscriptions, signs, tags or labels purporting to have been affixed in the course of business and indicating ownership, control or origin;

8. Records accompanied by a certificate of acknowledgment under the hand and the seal of a notary public or other officer authorized by law to take acknowledgments;

9. Commercial paper, signatures thereon, and related records to the extent provided by general commercial law;

10. Any signature, record or other matter declared by act of the Legislature to be presumptively or prima facie genuine or authentic;

11. The original or a duplicate of a domestic record of acts, events, conditions, opinions, or diagnoses if:

a. the document is accompanied by a written declaration under oath of the custodian of the record, or other qualified individual that the record was made, at or near the time of the occurrence of the matters set forth by or from information transmitted by a person having knowledge of those matters; was kept in the course of the regularly conducted business activity; and was made pursuant to the regularly conducted activity,

b. the party intending to offer the record in evidence gives notice of that intention to all adverse parties and makes the record available for inspection sufficiently in advance of its offer to provide the adverse parties with a fair opportunity to challenge the record, and

c. notice is given to the proponent, sufficiently in advance of the offer to provide the proponent with a fair opportunity to meet the objection or obtain the testimony of a foundation witness, raising a genuine question as to the trustworthiness or authenticity of the record; and

12. The original or a duplicate of a record from a foreign country of acts, events, conditions, opinions, or diagnoses if:

a. the document is accompanied by a written declaration under oath of the custodian of the record, or other qualified individual that the record was made, at or near the time of the occurrence of the matters set forth by or from information transmitted by a person having knowledge of those matters; was kept in the course of a regularly conducted business activity; and was made pursuant to the regularly conducted activity,

b. the party intending to offer the record in evidence gives notice of that intention to all adverse parties and makes the record available for inspection sufficiently in advance of its offer to provide the adverse parties with a fair opportunity to challenge the record, and

c. notice is given to the proponent, sufficiently in advance of the offer to provide the proponent with a fair opportunity to meet the objection or obtain the testimony of a foundation witness, raising a genuine question as to the trustworthiness or authenticity of the record.

Added by Laws 1978, c. 285, § 902, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 63, eff. Nov. 1, 2002.

§12-2903. Subscribing witness' testimony unnecessary.

The testimony of a subscribing witness is not necessary to authenticate a record unless required by the laws of the jurisdiction governing the validity of the record.

Added by Laws 1978, c. 285, § 903, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 64, eff. Nov. 1, 2002.

§12-3001. Definitions.

For purposes of this Code:

1. "Writings" and "recordings" means letters, words, or numbers, or their equivalent, inscribed on a tangible medium or stored in an electronic or other machine and retrievable in perceivable form by handwriting, typewriting, printing, photostating, photographing, mechanical or electronic recording, or other technique;

2. "Photographs" mean a form of a record which consists of still photographs, stored images, x-ray films, video tapes, or motion pictures;

3. An "original" of a writing, recording, or other record means the writing, recording, or other record itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original", when applied to a photograph, includes the negative or any print therefrom. The term "original" includes a print out or other perceivable output of a record of data or images stored in a computer or similar device if shown to reflect the data or images accurately;

4. A "duplicate" means a counterpart in the form of a record produced by the same impression as the original, from the same matrix, by means of photography, including enlargements and miniatures, or by mechanical or electronic rerecording, by chemical reproduction, or by another equivalent technique that accurately reproduce the original;

5. "Image" means a form of a record which consists of a digitized copy or image of information; and

6. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Added by Laws 1978, c. 285, § 1001, eff. Oct. 1, 1978. Amended by Laws 1992, c. 222, § 1; Laws 1995, c. 135, § 1, eff. Nov. 1, 1995; Laws 2002, c. 468, § 65, eff. Nov. 1, 2002.

§12-3002. Requirement of original.

To prove the content of a record, recording or photograph, the original record, recording or photograph is required except as otherwise provided in this Code or by other statutes.

Added by Laws 1978, c. 285, § 1002, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 66, eff. Nov. 1, 2002.

§12-3003. Admissibility of duplicates.

A duplicate is admissible to the same extent as an original under this rule or as may otherwise be provided by statute unless:

1. A genuine question is raised as to the authenticity of the original; or

2. In the circumstances it would be unfair to admit the duplicate in lieu of the original.

Added by Laws 1978, c. 285, § 1003, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 67, eff. Nov. 1, 2002.

§12-3004. Admissibility of other evidence of contents.

The original is not required, and a duplicate or other evidence of the contents of a record is admissible if:

1. All originals are lost or have been destroyed unless the proponent lost or destroyed them in bad faith;

2. No original can be obtained by any available judicial process or procedure;

3. At a time when an original was under the control of the party against whom offered, the party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearings and the party does not produce the original at the hearing; or

4. The record is not closely related to a controlling issue.

Added by Laws 1978, c. 285, § 1004, eff. Oct. 1, 1978. Amended by Laws 1995, c. 135, § 2, eff. Nov. 1, 1995; Laws 2002, c. 468, § 68, eff. Nov. 1, 2002.

§12-3005. Public records.

The contents of an official record or of a private record authorized to be recorded or filed in the public records and actually recorded or filed, if otherwise admissible, may be proved by a copy in perceivable form, certified as correct in accordance with Section 2902 of this title or testified to be correct by a witness who has compared it with the original. If a copy which complies with this section cannot be obtained by the exercise of reasonable diligence, other evidence of the contents may be admitted.

Added by Laws 1978, c. 285, § 1005, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 69, eff. Nov. 1, 2002.

§12-3006. Summaries.

The contents of voluminous writings, recordings or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The judge may order that they be produced in court.

Added by Laws 1978, c. 285, § 1006, eff. Oct. 1, 1978.

§12-3007. Testimony or written admission of party.

Contents of a record may be proved by the testimony or deposition of the party against whom offered or by that party's written admission without accounting for the nonproduction of the original.

Added by Laws 1978, c. 285, § 1007, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 70, eff. Nov. 1, 2002.

§12-3008. Functions of judge and jury.

When the admissibility of other evidence of contents of a record depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of Section 2104 of this title. However, when an issue is raised questioning:

1. Whether the asserted record ever existed;

2. Whether another record produced at the trial is the original; or

3. Whether other evidence of contents correctly reflects the contents;

the issue is for the trier of fact to determine.

Added by Laws 1978, c. 285, § 1008, eff. Oct. 1, 1978. Amended by Laws 2002, c. 468, § 71, eff. Nov. 1, 2002.

§12-3009. Medical bills - Identification.

Upon the trial of any civil case involving injury, disease or disability, the patient, a member of the patient's family or any other person responsible for the care of the patient, shall be a competent witness to identify doctor bills, hospital bills, ambulance service bills, drug bills and similar bills for expenses incurred in the treatment of the patient upon a showing by the witness that such bills were received from a licensed practicing physician, hospital, ambulance service, pharmacy, drug store, or supplier of therapeutic or orthopedic devices, and that such expenses were incurred in connection with the treatment of the injury, disease or disability involved in the subject of litigation at trial. Such items of evidence need not be identified by the person who submits the bill,

and it shall not be necessary for an expert witness to testify that the charges were reasonable and necessary.
Added by Laws 1979, c. 37, § 1, eff. Oct. 1, 1979. Amended by Laws 2002, c. 468, § 72, eff. Nov. 1, 2002.

§12-3009.1. Personal injury suits – Medical bills - Evidence.

A. Upon the trial of any civil action arising from personal injury, the actual amounts paid for any services in the treatment of the injured party, including doctor bills, hospital bills, ambulance service bills, drug and other prescription bills, and similar bills shall be the amounts admissible at trial, not the amounts billed for such expenses incurred in the treatment of the party. If, in addition to evidence of payment, a party submits a signed statement acknowledged by the medical provider or an authorized representative or sworn testimony that the provider will accept the amount paid as full payment of the obligations, the statement or testimony shall be admitted into evidence. The statement or testimony shall be part of the record as an exhibit but need not be shown to the jury. If a medical provider has filed a lien in the case for an amount in excess of the amount paid, then the bills in excess of the amount paid, but not more than the amount of the lien, shall be admissible.

B. If no payment has been made, the Medicare reimbursement rates in effect when the personal injury occurred, not the amounts billed, shall be admissible if, in addition to evidence of nonpayment, a party submits a signed statement acknowledged by the medical provider or an authorized representative or sworn testimony that the provider will accept payment at the Medicare reimbursement rate less cost of recovery as provided in Medicare regulations as full payment of the obligation. The statement or testimony shall be admitted into evidence and shall be part of the record as an exhibit but need not be shown to the jury. If a medical provider has filed a lien in the case for an amount in excess of the Medicare rate, then the bills in excess of the amount of the Medicare rate, but not more than the amount of the lien, shall be admissible.

C. If no bills have been paid, or no statement acknowledged by the medical provider or sworn testimony as provided in subsections A and B of this section is provided to the opposing party and listed as an exhibit by the final pretrial hearing, then the amount billed shall be admissible at trial subject to the limitations regarding any lien filed in the case.

D. This section shall apply to civil actions arising from personal injury filed on or after November 1, 2015.
Added by Laws 2011, c. 198, § 1, eff. Nov. 1, 2011. Amended by Laws 2015, c. 337, § 1, eff. Nov. 1, 2015.

§12-3010. Repealed by Laws 1982, c. 198, § 16.

§12-3011. Admissible evidence - Exercise of free speech or display of religious beliefs.

Evidence requested for admission as substantive evidence of assemblage in the exercise of free speech or display of religious beliefs that is not connected to the direct conduct of planning, conspiring, or committing an act of violence as prescribed by law is not admissible.

Added by Laws 2010, c. 451, § 1, eff. Nov. 1, 2010.

§12-3101. Repealed by Laws 2002, c. 468, § 80, eff. Nov. 1, 2002.

§12-3102. Repealed by Laws 2002, c. 468, § 80, eff. Nov. 1, 2002.

§12-3103. Repealed by Laws 2002, c. 468, § 80, eff. Nov. 1, 2002.

§12-3201. Renumbered as § 3224 of this title by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989.

§12-3202. Renumbered as § 3225 of this title by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989.

§12-3203. Renumbered as § 3226 of this title by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989.

§12-3204. Renumbered as § 3227 of this title by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989.

§12-3205. Renumbered as § 3228 of this title by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989.

§12-3206. Renumbered as § 3229 of this title by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989.

§12-3207. Renumbered as § 3230 of this title by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989.

§12-3208. Renumbered as § 3231 of this title by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989.

§12-3209. Renumbered as § 3232 of this title by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989.

§12-3210. Renumbered as § 3233 of this title by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989.

§12-3211. Renumbered as § 3234 of this title by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989.

§12-3212. Renumbered as § 3235 of this title by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989.

§12-3213. Renumbered as § 3236 of this title by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989.

§12-3214. Renumbered as § 3237 of this title by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989.

§12-3215. Repealed by Laws 1984, c. 164, § 32, eff. Nov. 1, 1984.

§12-3224. Short title and scope of Code.

Sections 3224 through 3237 of this title shall be known and may be cited as the Oklahoma Discovery Code. The Oklahoma Discovery Code shall govern the procedure for discovery in all suits of a civil nature in all courts in this state.

Added by Laws 1982, c. 198, § 1. Amended by Laws 1989, c. 129, § 1, eff. Nov. 1, 1989. Renumbered from § 3201 of this title by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989.

§12-3225. Construction.

The Discovery Code shall be construed, administered and employed by courts and parties to secure the just, speedy and inexpensive determination of every action.

Added by Laws 1982, c. 198, § 2. Renumbered from § 3202 of this title by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989. Amended by Laws 2017, c. 378, § 2, eff. Nov. 1, 2017.

§12-3225.1. Discovery master.

A. Appointment.

1. Scope. Unless a statute provides otherwise, on motion by a party or on its own motion, upon hearing unless waived, a court may in its discretion appoint a discovery master to:

a. perform duties related to discovery, consented to by the parties, or

b. address pretrial and posttrial discovery matters to facilitate effective and timely resolution.

2. Required Findings. An order appointing a discovery master under subparagraph b of paragraph 1 of subsection A of this section shall contain the following findings by the court:

a. the appointment and referral are necessary in the administration of justice due to the nature, complexity or volume of the materials involved, or for other exceptional circumstances,

b. the likely benefit of the appointment of a discovery master outweighs its burden or expense, considering the

needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, the importance of the referred issues in resolving the matter or proceeding in which the appointment is made, and

c. the appointment will not improperly burden the rights of the parties to access the courts.

3. Possible Expense or Delay. In appointing a discovery master, the court shall consider the fairness of imposing the likely expenses on the parties and shall protect against unreasonable expense or delay.

B. Disqualification.

1. In General. A discovery master shall not have a relationship to the parties, attorneys, action, or court that would require disqualification of a judge, unless the parties, with the court's approval, consent to the appointment after the discovery master discloses any potential grounds for disqualification.

2. Disclosure. The discovery master shall disclose any possible conflicts within fourteen (14) days of appointment.

3. Motions to Disqualify. A motion to disqualify a discovery master shall be made within fourteen (14) days of the discovery master's disclosure of the conflict. The discovery master shall rule originally on any motion to disqualify.

4. Review by Assigned Judge. Any interested party who deems himself or herself aggrieved by the refusal of a discovery master to grant a motion to disqualify may present his or her motion to the judge assigned to the case by filing in the case within five (5) days from the date of the refusal a written request for rehearing. A copy of the request shall be mailed or delivered to the judge assigned to the case, to the adverse party and to the discovery master.

5. Review by Presiding Judge. Any interested party who deems himself or herself aggrieved by the refusal of the judge assigned to the case to grant a motion to disqualify the discovery master may present his or her motion to the presiding judge of the county in which the case is pending. A copy of the request shall be mailed or delivered to the presiding judge, to the adverse party, to the judge assigned to the case, and to the discovery master.

6. Review by Supreme Court. If the hearing before the presiding judge results in an order adverse to the movant, the movant shall be granted not more than five (5) days to institute a proceeding in the Supreme Court for a writ of mandamus. The Supreme Court shall not entertain an original proceeding to disqualify a discovery master unless it is shown that the relief sought was previously denied by the discovery master, the judge assigned to the case, and the presiding judge, in accordance with this section. An order favorable to the moving party may not be reviewed by appeal or other method.

C. Order Appointing a Discovery Master.

1. Notice. Before appointing a discovery master, the court shall give the parties notice and an opportunity to be heard unless waived. Any party may suggest candidates for appointment.

2. Contents. The appointing order shall direct the discovery master to proceed with all reasonable diligence and shall state:

a. the discovery master's duties, including any investigation or enforcement duties, and any limits on the discovery master's authority under subparagraph c of this paragraph,

b. the circumstances, if any, in which the discovery master may communicate ex parte with a party,

c. any limitations on the discovery master's communications with the court,

d. the nature of the materials to be preserved and filed as the record of the discovery master's activities,

e. the time limits, method of filing the record, other procedures, and standards for reviewing the discovery master's orders, findings, and recommendations, and

f. the basis, terms, and procedure for fixing the discovery master's compensation under subsection G of this section.

The court shall have the discretion to direct the discovery master to circulate a proposed appointing order to the parties and provide a time period for the parties to comment prior to the order's entry.

3. Amending. The order may be amended at any time after notice to the parties and an opportunity to be heard.

4. Oath. Before the appointing order shall take effect, the discovery master shall execute and file an oath that he or she will faithfully execute the duties imposed by the order of appointment and any amendments thereto.

D. Discovery Master's Authority.

1. In General. Unless the appointing order directs otherwise, a discovery master may:

a. regulate all proceedings and respond to all discovery motions of the parties within the scope of appointment, including resolving all discovery disputes between the parties,

b. call discovery conferences under Rule 5 of the Rules for District Courts, at the request of a party or on the discovery master's own motion,

c. set procedures for the timing and orderly presentation of discovery disputes for resolution,

d. take all appropriate measures to perform the assigned duties fairly and efficiently, and

e. if conducting an evidentiary hearing, exercise the appointing court's power to take and record evidence,

including compelling appearance of witnesses or production of documents in connection with these duties.

2. Sanctions. The discovery master may recommend any sanction provided by Sections 2004.1, 3226.1 or 3237 of Title 12 of the Oklahoma Statutes.

E. Discovery Master's Orders, Reports, and Recommendations. A discovery master who issues an order, report or recommendation shall file it and promptly serve a copy on each party. The clerk shall enter the order, report or recommendation on the docket.

F. Action on the Discovery Master's Order, Report or Recommendations.

1. Time to Object or Move to Adopt or Modify. A party may file objections to or a motion to adopt or modify the discovery master's order, report or recommendations no later than fourteen (14) days after a copy is filed, unless this section or the court sets a different time. If no objection or motion to adopt or modify is filed, the district court may approve the discovery master's order, report or recommendations without further notice or hearing.

2. Action Generally. Upon the filing of objections to or a motion to adopt or modify the discovery master's order, report or recommendations within the time permitted, any party may respond within fifteen (15) days after the objections or motions are filed. If objections and motions are decided by the court without a hearing, the court shall notify the parties of its ruling by mail. In acting on a discovery master's order, report or recommendations, the court may receive evidence and may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the discovery master with instructions.

3. Reviewing Factual Findings. The court shall decide de novo all objections to findings of fact made or recommended by a discovery master, unless the parties, with the court's approval, stipulate that:

a. the findings will be reviewed for clear error, or

b. the findings of a discovery master appointed under paragraph 1 of subsection A of this section will be final.

4. Reviewing Legal Conclusions. The court shall decide de novo all objections to conclusions of law made or recommended by a discovery master.

5. Reviewing Procedural Matters. Unless the appointing order establishes a different standard of review, the court may set aside a discovery master's ruling on a procedural matter only for an abuse of discretion.

G. Compensation.

1. Fixing Compensation. Before or after judgment, the court shall fix the discovery master's compensation on the basis and terms

stated in the appointing order, but the court may set a new basis and terms after giving notice and an opportunity to be heard.

2. Payment. The compensation shall be paid either:

a. by a party or parties, or

b. from a fund that is the subject of the specific action or proceeding, or other subject matter of the specific action or proceeding, to the extent such fund or subject matter is within the court's control and within the court's in rem jurisdiction. The compensation shall not be paid from the court fund.

3. Allocating Payment. The court shall allocate payment after considering the nature and amount of the controversy, the parties' means, and the extent to which any party is more responsible than other parties for the reference to a discovery master. An interim allocation may be amended to reflect a decision on the merits.

H. Other Statutes. A referee or master appointed under the authority of another statute or provision is subject to this section only when the order referring a matter to the referee or master states that the reference is made under this section. Nothing in this section shall be construed to replace or supersede any other statute or provision authorizing the appointment of a referee or master.

I. A discovery master appointed pursuant to this section acting in such capacity shall be immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.

Added by Laws 2015, c. 309, § 1, eff. Nov. 1, 2015.

§12-3226. General provisions governing discovery.

A. DISCOVERY METHODS; INITIAL DISCLOSURES.

1. DISCOVERY METHODS. Parties may obtain discovery regarding any matter that is relevant to any party's claim or defense by one or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; requests for admission; authorizations for release of records; and otherwise by court order upon showing of good cause. Except as provided in this section or unless the court orders otherwise under this section, the frequency of use of these methods is not limited.

2. INITIAL DISCLOSURES.

a. Except in categories of proceedings specified in subparagraph b of this paragraph, or to the extent otherwise stipulated or directed by order, a party, without awaiting a discovery request, shall provide to other parties a computation of any category of damages claimed by the disclosing party, making available for

inspection and copying the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered. Subject to subsection B of this section, in any action in which physical or mental injury is claimed, the party making the claim shall provide to the other parties a release or authorization allowing the parties to obtain relevant medical records and bills, and, when relevant, a release or authorization for employment and scholastic records.

b. The following categories of proceedings are exempt from initial disclosure under subparagraph a of this paragraph:
   (1) an action for review of an administrative record,
   (2) a petition for habeas corpus or other proceeding to challenge a criminal conviction or sentence,
   (3) an action brought without counsel by a person in custody of the United States, a state, or a state subdivision,
   (4) an action to enforce or quash an administrative summons or subpoena,
   (5) an action by the United States to recover benefit payments,
   (6) an action by the United States to collect on a student loan guaranteed by the United States,
   (7) a proceeding ancillary to proceedings in other courts, and
   (8) an action to enforce an arbitration award.

c. Disclosures required under this paragraph shall be made at or within sixty (60) days after service unless a different time is set by stipulation or court order, or unless a party objects that initial disclosures are not appropriate in the circumstances of the action and states the objection in a motion filed with the court. In ruling on the objection, the court shall determine what disclosures, if any, are to be made and set the time for disclosure. A party shall make its initial disclosures based on the information then readily available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

B. DISCOVERY SCOPE AND LIMITS. Unless otherwise limited by order of the court in accordance with the Oklahoma Discovery Code, the scope of discovery is as follows:

1. IN GENERAL.
   a. Parties may obtain discovery regarding any matter, not privileged, which is relevant to any party's claim or defense, reasonably calculated to lead to the discovery of admissible evidence and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.
   b. A party shall produce upon request pursuant to Section 3234 of this title, any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this section, an application for insurance shall not be treated as a part of an insurance agreement.
2. LIMITATIONS ON FREQUENCY AND EXTENT.
   a. By order, the court may alter the limits on the length of depositions under Section 3230 of this title, on the number of interrogatories under Section 3233 of this title, on the number of requests to produce under Section 3234 of this title, or on the number of requests for admission under Section 3236 of this title.
   b. A party is not required to provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may order discovery from such sources if the requesting party shows good cause, considering the limitations of subparagraph c of this paragraph. The court may specify conditions for the discovery.
   c. On motion or on its own, the court shall limit the frequency or extent of discovery otherwise allowed if it determines that:

(1) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive,
(2) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action, or
(3) the proposed discovery is outside the scope permitted by subparagraph a of paragraph 1 of this subsection.

d. If an officer, director or managing agent of a corporation or a government official is served with notice of a deposition or subpoena regarding a matter about which he or she has no knowledge, he or she may submit at a reasonable time prior to the date of the deposition an affidavit to the noticing party so stating and identifying a person within the corporation or government entity who has knowledge of the subject matter involved in the pending action. Notwithstanding such affidavit, the noticing party may proceed with the deposition, subject to the noticed witness's right to seek a protective order.

3. TRIAL PREPARATION: MATERIALS.

a. Unless as provided by paragraph 4 of this subsection, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative, including the other party's attorney, consultant, surety, indemnitor, insurer or agent. Subject to paragraph 4 of this subsection, such materials may be discovered if:
(1) they are otherwise discoverable under paragraph 1 of this subsection, and
(2) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

b. If the court orders discovery of such materials, the court shall protect against disclosure of the mental impressions, conclusions, opinions or legal theories of a party's attorney or other representative concerning the litigation.

c. A party or other person may, upon request and without the required showing, obtain the person's own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and the provisions of paragraph 4 of subsection

A of Section 3237 of this title apply to the award of expenses. A previous statement is either:

(1) a written statement that the person has signed or otherwise adopted or approved, or

(2) a contemporaneous stenographic, mechanical, electrical, or other recording, or a transcription thereof, which recites substantially verbatim the person's oral statement.

4. TRIAL PREPARATION: EXPERTS.

a. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of paragraph 1 of this subsection and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(1) a party may, through interrogatories, require any other party to identify each person whom that other party expects to call as an expert witness at trial and give the address at which that expert witness may be located,

(2) after disclosure of the names and addresses of the expert witnesses, the other party expects to call as witnesses, the party, who has requested disclosure, may depose any such expert witnesses subject to scope of this section. Prior to taking the deposition the party must give notice as required in subsections A and C of Section 3230 of this title, and

(3) in addition to taking the depositions of expert witnesses the party may, through interrogatories, require the party who expects to call the expert witnesses to state the subject matter on which each expert witness is expected to testify; the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion; the qualifications of each expert witness, including a list of all publications authored by the expert witness within the preceding ten (10) years; the compensation to be paid to the expert witness for the testimony and preparation for the testimony; and a listing of any other cases in which the expert witness has testified as an expert at trial or by deposition within the preceding four (4) years. An interrogatory seeking the information specified above shall be treated as a single interrogatory for purposes of the limitation on the number of interrogatories in Section 3233 of this title.

b. The protection provided by paragraph 3 of this subsection extends to communications between the party's attorney and any expert witness retained or specially employed to provide expert testimony in the case or whose duties as the party's employee regularly involve giving expert testimony, except to the extent that the communications:
(1) relate to compensation for the expert's study or testimony,
(2) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed, or
(3) identify assumptions that the party's attorney provided and that the expert relied upon in forming the opinions to be expressed.

c. A party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial, except as provided in Section 3235 of this title or upon a showing of exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

d. Unless manifest injustice would result:
(1) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under division (2) of subparagraph a of this paragraph and subparagraph c of this paragraph, and
(2) the court shall require that the party seeking discovery with respect to discovery obtained under subparagraph c of this paragraph, pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

5. CLAIMS OF PRIVILEGE OR PROTECTION OF TRIAL PREPARATION MATERIALS.

a. When a party withholds information otherwise discoverable under the Oklahoma Discovery Code by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable

other parties to assess the applicability of the privilege or protection.

b. If information produced in discovery is subject to a claim of privilege or of protection as trial preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party shall promptly return, sequester, or destroy the specified information and any copies the party has; shall not use or disclose the information until the claim is resolved; shall take reasonable steps to retrieve the information if the party has disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party shall preserve the information until the claim is resolved. This mechanism is procedural only and does not alter the standards governing whether the information is privileged or subject to protection as trial preparation material or whether such privilege or protection has been waived.

C. PROTECTIVE ORDERS.

1. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer, either in person or by telephone, with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or on matters relating to a deposition, the district court in the county where the deposition is to be taken may enter any order which justice requires to protect a party or person from annoyance, harassment, embarrassment, oppression or undue delay, burden or expense, including one or more of the following:

a. that the discovery not be had,

b. that the discovery may be had only on specified terms and conditions, including a designation of the time, place or the allocation of expenses,

c. that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery,

d. that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters,

e. that discovery be conducted with no one present except persons designated by the court,

f. that a deposition after being sealed be opened only by order of the court,

g. that a trade secret or other confidential research, development or commercial information not be disclosed or be disclosed only in a designated way, and

h. that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

2. If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of paragraph 4 of subsection A of Section 3237 of this title apply to the award of expenses incurred in relation to the motion. Any protective order of the court which has the effect of removing any material obtained by discovery from the public record shall contain the following:

a. a statement that the court has determined it is necessary in the interests of justice to remove the material from the public record,

b. specific identification of the material which is to be removed or withdrawn from the public record, or which is to be filed but not placed in the public record, and

c. a requirement that any party obtaining a protective order place the protected material in a sealed manila envelope clearly marked with the caption and case number and is clearly marked with the word "CONFIDENTIAL", and stating the date the order was entered and the name of the judge entering the order. This requirement may also be satisfied by requiring the party to file the documents pursuant to the procedure for electronically filing sealed or confidential documents approved for electronic filing in the courts of this state.

3. No protective order entered after the filing and microfilming of documents of any kind shall be construed to require the microfilm record of such filing to be amended in any fashion.

4. The party or counsel which has received the protective order shall be responsible for promptly presenting the order to appropriate court clerk personnel for appropriate action.

5. All documents produced or testimony given under a protective order shall be retained in the office of counsel until required by the court to be filed in the case.

6. Counsel for the respective parties shall be responsible for informing witnesses, as necessary, of the contents of the protective order.

7. When a case is filed in which a party intends to seek a protective order removing material from the public record, the plaintiff(s) and defendant(s) shall be initially designated on the petition under pseudonym such as "John or Jane Doe", or "Roe", and

the petition shall clearly indicate that the party designations are fictitious. The party seeking confidentiality or other order removing the case, in whole or in part, from the public record, shall immediately present application to the court, seeking instructions for the conduct of the case, including confidentiality of the records.

D. SEQUENCE AND TIMING OF DISCOVERY. Unless the parties stipulate or the court orders otherwise for the convenience of parties and witnesses and in the interests of justice, methods of discovery may be used in any sequence. The fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay discovery by any other party.

E. SUPPLEMENTATION OF RESPONSES. A party who has responded to a request for discovery with a response that was complete when it was made is under no duty to supplement the response to include information thereafter acquired, except as follows:

1. A party is under a duty seasonably to supplement the response with respect to any question directly addressed to:

a. the identity and location of persons having knowledge of discoverable matters, and

b. the identity of each person expected to be called as an expert witness at trial, the subject matter on which the person is expected to testify, and the substance of the testimony of the person;

2. A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party obtains information upon the basis of which:

a. (1) the party knows that the response was incorrect in some material respect when made, or

(2) the party knows that the response, which was correct when made, is no longer true in some material respect, and

b. the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; and

3. A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

F. DISCOVERY CONFERENCE. At any time after commencement of an action, the court may direct the attorneys for the parties to appear for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

1. A statement of the issues as they then appear;

2. A proposed plan and schedule of discovery;

3. Any limitations proposed to be placed on discovery;

4. Any other proposed orders with respect to discovery; and

5. A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion.

Each party and his attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than ten (10) days after service of the motion.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. In preparing the plan for discovery the court shall protect the parties from excessive or abusive use of discovery. An order shall be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference.

G. SIGNING OF DISCOVERY REQUESTS, RESPONSES AND OBJECTIONS. Every request for discovery, response or objection thereto made by a party represented by an attorney shall be signed by at least one of the party's attorneys of record in the party's individual name whose address shall be stated. A party who is not represented by an attorney shall sign the request, response or objection and state the party's address. The signature of the attorney or party constitutes a certification that the party has read the request, response or objection, and that it is:

1. To the best of the party's knowledge, information and belief formed after a reasonable inquiry consistent with the Oklahoma Discovery Code and warranted by existing law or a good faith argument for the extension, modification or reversal of existing law;

2. Interposed in good faith and not primarily to cause delay or for any other improper purpose; and

3. Not unreasonable or unduly burdensome or expensive, given the nature and complexity of the case, the discovery already had in the case, the amount in controversy, and other values at stake in the litigation. If a request, response or objection is not signed, it shall be deemed ineffective.

If a certification is made in violation of the provisions of this subsection, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response or objection is made, or both, an appropriate sanction, which may include an order to pay to the amount

of the reasonable expenses occasioned thereby, including a reasonable attorney fee.
Added by Laws 1982, c. 198, § 3. Amended by Laws 1989, c. 129, § 2, eff. Nov. 1, 1989. Renumbered from § 3203 of this title by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989. Amended by Laws 1994, c. 343, § 13, eff. Sept. 1, 1994; Laws 1996, c. 61, § 3, eff. Nov. 1, 1996; Laws 1999, c. 293, § 21, eff. Nov. 1, 1999; Laws 2002, c. 468, § 73, eff. Nov. 1, 2002; Laws 2004, c. 519, § 3, eff. Nov. 1, 2004; Laws 2009, c. 228, § 20, eff. Nov. 1, 2009; Laws 2010, c. 50, § 4, eff. Nov. 1, 2010; Laws 2012, c. 9, § 1, eff. Nov. 1, 2012; Laws 2012, c. 278, § 2, eff. Nov. 1, 2012; Laws 2014, c. 192, § 1, eff. Nov. 1, 2014; Laws 2017, c. 378, § 3, eff. Nov. 1, 2017.
NOTE: Laws 2004, c. 368, § 13 repealed by Laws 2005, c. 1, § 8, emerg. eff. March 15, 2005.

§12-3226.1. Abusive discovery.

A. ABUSIVE DISCOVERY. In addition to the protective orders that a court may issue pursuant to paragraph 1 of subsection C of Section 3226 of Title 12 of the Oklahoma Statutes, a protective order may be issued by the court authorizing or denying discovery in the court in which the action is pending. A protective order may also be authorized on matters relating to a deposition. The order may be issued upon a motion by a party or the person from whom discovery is sought. The motion shall be accompanied by a certification that the movant has in good faith conferred or attempted to confer, either in person or by telephone, with other affected parties in an effort to resolve the dispute without court action. Upon receipt by the court of the motion and certification, the court may enter the protective order authorizing or denying the discovery upon a finding that justice requires a party or person be protected from annoyance, harassment, embarrassment, oppression or undue delay, burden, or expense.

B. AWARD OF EXPENSES OF MOTION. If the motion is granted, the court may, after opportunity for hearing, require the party or person whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court may, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.
Added by Laws 2004, c. 368, § 14, eff. Nov. 1, 2004.

§12-3226A. Withdrawal of certain discovery items.

Not less than thirty (30) days nor more than sixty (60) days after the filing of a judgment, decree, or final appealable order if no appeal is taken, or within thirty (30) days after issuance of the mandate by the appellate court if appealed, the party or counsel shall withdraw, upon proper receipt to the court clerk, any previously filed discovery items which were not introduced into evidence which were not included in the record on appeal or which are not needed for decision of the case on remand, if any.
Added by Laws 1994, c. 343, § 12, eff. Sept. 1, 1994.

§12-3227. Depositions before action or pending appeal.

A. BEFORE ACTION.

1. PETITION. A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in any court may file a verified petition in the district court in the county of the residence of any expected adverse party for such perpetuation of testimony. The petition shall be entitled in the name of the petitioner and shall show:

a. That the petitioner or his personal representative, heirs, beneficiaries, successors or assigns may be a party to an action cognizable in a court but is presently unable to bring it or cause it to be brought.

b. The subject matter of the expected action and his interest therein, and a copy, attached to the petition, of any written instrument the validity or construction of which may be called in question or which is connected with the subject matter of the requested deposition.

c. The facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it.

d. The names or, if the names are unknown, a description of the persons he expects will be adverse parties and their addresses so far as known.

e. The names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each.

The petition shall request an order authorizing the petitioner to take the depositions of the persons named in the petition to be examined for the purpose of perpetuating their testimony.

2. NOTICE AND SERVICE. The petitioner shall thereafter serve a notice upon each person named or described in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least twenty (20) days before the date of hearing, the notice shall be served either within or without the state in the manner provided for personal service of summons. If such service cannot, with due diligence, be made upon any expected adverse party named or described in the petition, the court may enter such order as is just for service by publication or otherwise, and shall appoint, for persons not served by personal service, an attorney who shall represent them and, if they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the court shall appoint a guardian ad litem for any such minor or incompetent not legally represented.

3. ORDER AND EXAMINATION. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall enter an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and how the depositions shall be taken. The depositions may then be taken in accordance with the Oklahoma Discovery Code, Section 3224 et seq. of this title. The court may enter orders of the character provided for by Sections 3234 and 3235 of this title. For the purpose of applying the Oklahoma Discovery Code to depositions for perpetuating testimony, each reference to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

4. USE OF DEPOSITION. If a deposition to perpetuate testimony is taken under the Oklahoma Discovery Code, it may be used in any action involving the same subject matter subsequently brought in a court of this state, in accordance with the provisions of subsection A of Section 3232 of this title.

B. PENDING APPEAL. If an appeal has been taken from a judgment of a district court or before the taking of an appeal if the time therefor has not expired, the district court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the district court. In such case, the party who desires to perpetuate the testimony may make a motion in the district court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the district court. The motion shall show:

1. The names and addresses of persons to be examined and the substance of the testimony which he expects to elicit from each;

2. The reasons for perpetuating the testimony.

If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may enter an order allowing the depositions to be taken and may make orders of the character provided for by Sections 3234 and 3235 of this title, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in the Oklahoma Discovery Code for depositions taken in actions pending in the district court.

C. PERPETUATION BY ACTION. The procedures prescribed in this section do not limit the power of a court to entertain an action to perpetuate testimony.

D. FILING OF DEPOSITION. Depositions taken under this section shall not be filed with the court in which the petition is filed or the motion is made except on order of the court or unless they are attached to a motion, response thereto, or are needed for use in a trial or hearing.

E. COSTS. The attorney taking any deposition under this section shall pay the costs thereof unless otherwise ordered by the court.

F. DEPOSITIONS TAKEN IN OTHER JURISDICTIONS ADMISSIBLE. A deposition taken under procedures of another jurisdiction, which are similar to those in this section, is admissible in this state to the same extent as a deposition taken under this section.

Added by Laws 1982, c. 198, § 4. Amended by Laws 1989, c. 129, § 3, eff. Nov. 1, 1989. Renumbered from § 3204 of this title by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989. Amended by Laws 1994, c. 343, § 14, eff. Sept. 1, 1994; Laws 2004, c. 293, § 1, eff. Nov. 1, 2004.

§12-3228. Persons before whom depositions may be taken.

A. DEPOSITIONS TAKEN WITHIN OKLAHOMA. Within this state, depositions shall be taken before an officer authorized to administer oaths by the laws of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony.

The term officer as used in Sections 3230 through 3232 of this title includes a person appointed by the court or designated by the parties under Section 3229 of this title; except that on and after January 1, 1990, depositions taken within this state shall only be taken by an officer who is either a certified shorthand reporter (CSR) or a licensed shorthand reporter (LSR); provided however, on and after the effective date of this act, any person who was taking depositions by the steno-mask method of reporting within this state prior to January 1, 1990, may continue to take depositions within this state if the person provides to the State Board of Examiners of Official Shorthand Reporters or successor entity of the Board a certification, signed by a judge of the district court and by an attorney licensed to practice law in this state, declaring that the

person has taken depositions that were admitted into evidence in any court of this state. The certification shall be submitted within thirty (30) days of the effective date of this act to the State Board of Examiners of Official Shorthand Reporters or successor entity of the Board who shall issue said person a certificate as an acting court reporter permitting the person to take depositions or other sworn statements, subpoena witnesses for depositions, issue affidavits in respect to the regular duties of the person, and administer oaths and affirmations with authority equal to that of a notary public.

B. DEPOSITIONS TAKEN OUTSIDE OF OKLAHOMA. Depositions may be taken outside of Oklahoma:

1. On notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of this state; or

2. Before a person commissioned by the court, and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take testimony; or

3. Pursuant to a letter rogatory.

A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within this state.

C. DISQUALIFICATIONS FOR INTEREST. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

Added by Laws 1982, c. 198, § 5. Amended by Laws 1986, c. 299, § 6, operative July 1, 1986; Laws 1989, c. 129, § 4, eff. Nov. 1, 1989. Renumbered from § 3205 of this title by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989. Amended by Laws 1992, c. 1, § 6, emerg. eff. March 10, 1992; Laws 1995, c. 253, § 5, eff. Nov. 1, 1995.

§12-3229. Stipulations regarding discovery procedure.

Unless the court orders otherwise, the parties may by written stipulation:

1. Provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions; and

2. Modify other procedures governing or limitations placed upon discovery, except that stipulations extending the time provided in Sections 3226, 3233, 3234 and 3236 of this title for responses to discovery may, if they would interfere with any time set for completion of discovery, be made only with the approval of the court. A person designated by the stipulation has the power by virtue of his designation to administer any necessary oath.
Added by Laws 1982, c. 198, § 6. Amended by Laws 1989, c. 129, § 5, eff. Nov. 1, 1989. Renumbered from § 3206 of this title by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989. Amended by Laws 1996, c. 61, § 4, eff. Nov. 1, 1996.

§12-3230. Depositions upon oral examination.

A. WHEN DEPOSITIONS MAY BE TAKEN; WHEN LEAVE REQUIRED.

1. A party may take the testimony of any person, including a party, by deposition upon oral examination without leave of court except as provided in paragraph 2 of this subsection. The attendance of witnesses may be compelled by subpoena as provided in Section 2004.1 of this title.

2. a. A party shall obtain leave of court, if the person to be examined is confined in prison, or if, without the written stipulation of the parties:
   (1) the person to be examined already has been deposed in the case, or
   (2) a party seeks to take a deposition prior to the expiration of thirty (30) days after service of the summons and petition upon any defendant unless the notice contains a certification, with supporting facts, that the person to be examined is expected to leave this state and will be unavailable for examination in this state unless deposed before that time.

   b. A request for leave of court shall include a statement that the requesting party has in good faith conferred or attempted to confer either in person or by telephone with the opposing parties to obtain a written stipulation.

3. Unless otherwise agreed by the parties or ordered by the court, a deposition upon oral examination shall not last more than six (6) hours and shall be taken only between the hours of 8:00 a.m. and 5:00 p.m. on a day other than a Saturday or Sunday and on a date other than a holiday designated in Section 82.1 of Title 25 of the Oklahoma Statutes. The court may grant an extension of these time limits if the court finds that the witness or counsel has been obstructive or uncooperative or if the court finds it to be in the interest of justice.

B. PLACE WHERE WITNESS OR PARTY IS REQUIRED TO ATTEND TAKING OF DEPOSITIONS.

1. A witness shall be obligated to attend to give a deposition only in the county of his or her residence, a county adjoining the county of his or her residence or the county where he or she is located when the subpoena is served.

2. A party, in addition to the places where a witness may be deposed, may be deposed in the county where the action is pending or the county where he or she is located when the notice is served.

C. NOTICE OF EXAMINATION; GENERAL REQUIREMENTS; SPECIAL NOTICE; NONSTENOGRAPHIC RECORDING; PRODUCTION OF DOCUMENTS AND THINGS; DEPOSITION OF ORGANIZATION; DEPOSITION BY TELEPHONE.

1. A party desiring to take the deposition of any person upon oral examination shall give notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and shall state the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. The notice shall be served in order to allow the adverse party sufficient time, by the usual route of travel, to attend, and three (3) days for preparation, exclusive of the day of service of the notice.

If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced, as set forth in the subpoena, shall be attached to or included in the notice.

2. The court may for cause shown enlarge or shorten the time for taking the deposition and for notice of taking the deposition.

3. a. The parties may stipulate in writing or the court may upon motion order that the testimony at a deposition be recorded by other than stenographic means. Unless good cause is shown to the contrary, such motions shall be freely granted. The stipulation or order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the deposition is recorded by other than stenographic means, the party taking the deposition shall upon request by any party or the witness furnish a copy of the deposition to the witness. The party taking the deposition may furnish either a stenographic copy of the deposition or a copy of the deposition as recorded by other than stenographic means.

b. Any recording of testimony other than by stenographic means shall begin with an on-the-record statement that

shall include: the recording officer's name and business address; the date, time and place of the deposition; the deponent's name; and the identity of all persons present at the deposition. The recording shall also include the administration of the oath or affirmation to the deponent. The appearance or demeanor of the deponent and attorneys shall not be distorted through recording techniques.

c. Any objections under subsection D of this section, any changes made by the witness, the signature of the witness identifying the deposition as his or her own or the statement of the officer that is required if the witness does not sign, as provided in subsection F of this section, and the certification of the officer required by subsection G of this section shall be set forth in a writing to accompany a deposition recorded by nonstenographic means.

d. Any party may designate in a notice of deposition, or in a counter-notice of deposition, another method for recording the testimony in addition to stenographic means. The party designating another method of recording shall bear the expense of the additional record unless the court orders otherwise.

4. The notice to a party deponent may be accompanied by a request made in compliance with Section 3234 of this title for the production of documents and tangible things at the taking of the deposition. The procedure of Section 3234 of this title shall apply to the request.

5. A party may in the notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which that person will testify. Such designation of persons to testify and the subject of the testimony shall be delivered to the other party or parties prior to or at the commencement of the taking of the deposition of the organization. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization.

This paragraph does not preclude taking a deposition by any other procedure authorized in the Oklahoma Discovery Code.

6. The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone or other remote electronic means. For the purposes of this section, subsection A of

Section 3228, and paragraphs 1 of subsections A and B of Section 3237 of this title, a deposition taken by such means is taken in the county and state and at the place where the deponent is to answer questions.

D. EXAMINATION AND CROSS-EXAMINATION; RECORD OF EXAMINATION; OATH; OBJECTIONS. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of Section 2101 et seq. of this title except Section 2104. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under his or her direction and in his or her presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other method authorized by paragraph 3 of subsection C of this section.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any party, or to any other aspect of the proceedings shall be noted by the officer upon the record of the deposition; however, the examination shall proceed, with the testimony being taken subject to the objections.

In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the depositions and that party shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

E. MOTION TO TERMINATE OR LIMIT EXAMINATION.

1. Any objection to evidence during a deposition shall be stated concisely and in a nonargumentative and nonsuggestive manner. A party may instruct a deponent not to answer only when necessary to preserve a privilege or work product protection, to enforce a limitation on evidence directed by the court, to present a motion under paragraph 2 of this subsection, or to move for a protective order under subsection C of Section 3226 of this title. If the court finds a person has engaged in conduct which has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney fees incurred by any parties as a result thereof.

2. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass or oppress the deponent or party, the court in which the action is pending or the court in the county where the deposition is being taken may order the officer conducting the examination to cease taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in subsection C of Section 3226 of this title. If the order entered terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or

deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for the order provided for in this section. The provisions of paragraph 4 of subsection A of Section 3237 of this title apply to the award of expenses incurred in relation to the motion.

F. REVIEW BY WITNESS; CHANGES; SIGNING. The deponent shall have the opportunity to review the transcript of the deposition unless such examination and reading are waived by the deponent and by the parties. After being notified by the officer that the transcript is available, the deponent shall have thirty (30) days in which to review it and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by paragraph 1 of subsection G of this section whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

G. CERTIFICATION AND FILING BY OFFICER; EXHIBITS; COPIES; NOTICE OF FILING.

1. The officer shall certify on any stenographic deposition:
    a. the qualification of the officer to administer oaths, including the officer's certificate number,
    b. that the witness was duly sworn by the officer,
    c. that the deposition is a true record of the testimony given by the witness, and
    d. that the officer is not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of the attorney or counsel, and is not financially interested in the action.

Except on order of the court or unless a deposition is attached to a motion response thereto, is needed for use in a trial or hearing, or the parties stipulate otherwise, depositions shall not be filed with the court clerk. The officer shall securely seal any stenographic deposition in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and send it to the attorney who arranged for the deposition, who shall store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to the deposition and may be inspected and copied by any party. If the person producing the materials desires to retain them he may:

a. Offer copies to be marked for identification and annexed to the deposition and to serve as originals if he affords to all parties fair opportunity to verify the copies by comparison with the originals, or

b. Offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

2. Each attorney who takes the deposition of a witness or of a party shall bear all expenses thereof, including the cost of transcription, and shall furnish upon request to the adverse party or parties, free of charge, one copy of the transcribed deposition. If the party taking the deposition recorded it on videotape or by other nonstenographic means, that party shall also furnish upon request to the adverse party or parties, free of charge, one copy of the videotape or other recording of the deposition.

H. FAILURE TO ATTEND OR TO SERVE SUBPOENA; EXPENSES.

1. If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to the other party the reasonable expenses incurred by the attending party and his or her attorney in attending, including reasonable attorney fees.

2. If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because he or she expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and his or her attorney in attending, including reasonable attorney fees.

I. WITNESS FEES.

1. The attendance and travel fees for a witness shall be paid as provided in Section 400 of this title.

2. A party deponent must attend the taking of a deposition without the payment or tender of attendance or travel fees.

J. TAXING OF COSTS OF DEPOSITIONS. The cost of transcription of a deposition, as verified by the statement of the certified court reporter, the fees of the sheriff for serving the notice to take depositions and fees of witnesses shall each constitute an item of costs to be taxed in the case in the manner provided by law. The court may upon motion of a party retax the costs if the court finds the deposition was unauthorized by statute or unnecessary for protection of the interest of the party taking the deposition. Added by Laws 1982, c. 198, § 7. Amended by Laws 1986, c. 227, § 7, eff. Nov. 1, 1986; Laws 1986, c. 299, § 7, operative July 1, 1986; Laws 1989, c. 129, § 6, eff. Nov. 1, 1989. Renumbered from Title 12, § 3207 by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989. Amended by

Laws 1994, c. 343, § 15, eff. Sept. 1, 1994; Laws 1996, c. 61, § 5, eff. Nov. 1, 1996; Laws 1999, c. 293, § 22, eff. Nov. 1, 1999; Laws 2002, c. 468, § 74, eff. Nov. 1, 2002; Laws 2005, c. 66, § 1, eff. Nov. 1, 2005; Laws 2010, c. 50, § 5, eff. Nov. 1, 2010.

§12-3231. Depositions upon written questions.

A. SERVING QUESTIONS; NOTICE. After commencement of the action, any party to the action may take the testimony of any person, including an opposing party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of a subpoena. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating:

1. The name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs; and

2. The name or descriptive title and address of the officer before whom the deposition is to be taken.

A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of paragraph 6 of subsection C of Section 3230 of this title.

Within thirty (30) days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within ten (10) days after being served with cross questions, a party may serve redirect questions upon all other parties. Within ten (10) days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

B. OFFICER TO TAKE RESPONSES AND PREPARE RECORD. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice. The officer shall proceed promptly, in the manner provided by subsections D, F and G of Section 3230 of this title, to take the testimony of the witness in response to the questions and to prepare, certify and file or mail the deposition as provided in subsection G of Section 3230 of this title, attaching thereto the copy of the notice and the questions received by him.

C. NOTICE OF FILING. When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

D. COSTS OF TRANSCRIPTION OF DEPOSITION. Cost of the transcription, fees of the sheriff and witness fees shall be taxed as provided in subsection J of Section 3230 of this title.

Added by Laws 1982, c. 198, § 8. Amended by Laws 1989, c. 129, § 7, eff. Nov. 1, 1989. Renumbered from § 3208 of this title by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989.

§12-3232. Use of depositions in court proceedings.

A. USE OF DEPOSITIONS. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the Oklahoma Evidence Code applied as though the witness were then present and testifying, may be used against any party who was present or who was represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

1. Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness, or for any other purpose permitted by the Oklahoma Evidence Code;

2. The deposition of a party or of anyone who at the time of taking the deposition was an officer, director or managing agent, or a person designated under paragraph 6 of subsection C of Section 3230 or subsection A of Section 3231 of this title to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used for any purpose;

3. The deposition of a witness, whether or not a party may be used for any purpose if the court finds:

a. That the witness is dead, or

b. That the witness does not reside in the county where the action or proceeding is pending or is sent for trial by a change of venue or the witness is absent therefrom, unless it appears that the absence of the witness was procured by the party offering the deposition, or

c. That the witness is unable to attend or testify because of age, illness, infirmity or imprisonment, or

d. That the party offering the deposition has been unable to procure the attendance of the witness by subpoena, or

e. That the witness is an expert witness, who for purposes of this section is a person educated in a special art or profession or a person possessing special or peculiar knowledge acquired from practical experience, or

f. Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

Nothing in this paragraph shall be construed to limit the authority of the appropriate office to issue a subpoena to compel an expert witness to appear in the same manner as any other witness;

4. If only part of a deposition is offered in evidence by a party, an adverse party may require the introduction of any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Section 1081, 1082, 1083 or 2025 of this title does not affect the right to use depositions previously taken. When an action has been brought in this state or in any court of the United States or of any other state and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

A deposition previously taken may also be used as permitted by the Oklahoma Evidence Code.

B. OBJECTIONS TO ADMISSIBILITY. Subject to the provisions of subsection B of Section 3228 of this title and paragraph 3 of subsection D of this section, objection may be made, at the trial or hearing, to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

C. FORM OF PRESENTATION. Except as otherwise directed by the court, a party offering deposition testimony pursuant to this section may offer it in stenographic or nonstenographic form, but, if in nonstenographic form, the party shall also provide the court with a transcript of the portions so offered.

D. EFFECT OF ERRORS AND IRREGULARITIES IN DEPOSITIONS.

1. AS TO NOTICE. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

2. AS TO DISQUALIFICATION OF OFFICER. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

3. AS TO TAKING OF DEPOSITION.

a. Objections to the competency of a witness or to the competency, relevancy or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

b. Errors and irregularities occurring in the manner of the oral examination in the taking of the deposition, in the form of the questions or answers, in the oath or

affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

c. Objections to the form of written questions submitted under Section 3231 of this title are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions or within five (5) days after service of the last questions authorized.

4. AS TO COMPLETION AND RETURN OF DEPOSITION. Errors and irregularities:

a. in the manner in which the testimony is transcribed or recorded, or

b. in the manner in which the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Sections 3230 and 3231 of this title

are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

Added by Laws 1982, c. 198, § 9. Amended by Laws 1989, c. 129, § 8, eff. Nov. 1, 1989. Renumbered from § 3209 of this title by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989. Amended by Laws 1996, c. 61, § 6, eff. Nov. 1, 1996; Laws 2004, c. 181, § 6, eff. Nov. 1, 2004.

§12-3233. Interrogatories to parties.

A. AVAILABILITY; PROCEDURES FOR USE. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to that party.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable. When answering each interrogatory, the party shall restate the interrogatory, then provide the answer. The number of interrogatories to a party shall not exceed thirty in number. Interrogatories inquiring as to the names and locations of witnesses, or the existence, location and custodian of documents or physical evidence shall be construed as one interrogatory. All other interrogatories, including subdivisions of one numbered interrogatory, shall be construed as separate interrogatories. No further interrogatories will be served unless authorized by the

court. If counsel for a party believes that more than thirty interrogatories are necessary, counsel shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional interrogatories. Counsel are expected to comply with this requirement in good faith. In the event a written stipulation cannot be agreed upon, the party seeking to submit such additional interrogatories shall file a motion with the court (1) showing that counsel have conferred in good faith but sincere attempts to resolve the issue have been unavailing, (2) showing reasons establishing good cause for their use, and (3) setting forth the proposed additional interrogatories. The answers are to be signed by the person making them, and the objections signed by the attorney making them. Interrogatories may, without leave of court, be served upon any party after the filing of a petition. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within thirty (30) days after the service of the interrogatories. The 30-day response period shall not commence until an answer to the petition is filed. However, upon leave of court or otherwise agreed to in writing by the parties subject to Section 3229 of this title, answers to interrogatories may be required prior to the filing of an answer to the petition. All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown. The party submitting the interrogatories may move for an order under subsection A of Section 3237 of this title with respect to any objection to or other failure to answer an interrogatory.

B. SCOPE; USE AT TRIAL. Interrogatories may relate to any matters which can be inquired into under subsection B of Section 3226 of this title, and the answers may be used to the extent permitted by the Oklahoma Evidence Code as set forth in Sections 2101 et seq. of this title.

An interrogatory otherwise proper is not necessarily objectionable because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact. The court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

C. OPTION TO PRODUCE BUSINESS RECORDS. Where the answer to an interrogatory may be derived or ascertained from the business records, including electronically stored information, of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient

answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries thereof. A specification shall be in sufficient detail to permit the party submitting the interrogatory to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.
Added by Laws 1982, c. 198, § 10. Amended by Laws 1983, c. 142, § 1, eff. Nov. 1, 1983; Laws 1989, c. 129, § 9, eff. Nov. 1, 1989. Renumbered from § 3210 of this title by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989. Amended by Laws 1996, c. 61, § 7, eff. Nov. 1, 1996; Laws 2010, c. 50, § 6, eff. Nov. 1, 2010; Laws 2015, c. 309, § 2, eff. Nov. 1, 2015; Laws 2017, c. 389, § 5, eff. Nov. 1, 2017; Laws 2018, c. 313, § 1, eff. Jan. 1, 2019.

§12-3234. Production of documents and things and entry upon land for inspection and other purposes.

A. IN GENERAL. A party may serve on any other party a request within the scope of Section 3226 of this title:

1. To produce and permit the requesting party or its representative to inspect, copy, test or sample the following items in the possession, custody or control of the responding party:

a. any designated documents or electronically stored information - including writings, drawings, graphs, charts, photographs, sound recordings, images and other data or data compilations – stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form, or

b. any designated tangible things; or

2. To permit entry onto designated land or other property possessed or controlled by the responding party so that the requesting party may inspect, measure, survey, photograph, test or sample the property or any designated object or operation on it.

B. PROCEDURE. 1. The request:

a. shall describe with reasonable particularity each item or category of items to be inspected,

b. shall specify a reasonable time, place and manner for the inspection and for performing the related acts, and

c. may specify the form or forms in which electronically stored information is to be produced.

2. a. The request may be served, without leave of court, upon any party after the filing of a petition. The party to whom the request is directed shall respond in writing within thirty (30) days after being served. The thirty-day response period shall not commence until an

answer to the petition is filed. However, upon leave of court or otherwise agreed to in writing by the parties subject to Section 3229 of this title, the response to the request may be required prior to the filing of an answer to the petition.

b. For each item or category, the response shall either state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons. The responding party may state that it will produce copies of documents or of electronically stored information instead of permitting inspection. The production shall be completed no later than the time for inspection specified in the request, or another reasonable time specified in the response.

c. An objection shall state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request shall specify the part and permit inspection of the rest.

d. The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form, or if no form was specified in the request, the party shall state the form or forms it intends to use.

e. Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:

(1) a party shall produce documents as they are kept in the usual course of business or shall organize and label them to correspond to the categories in the request,

(2) if a request does not specify a form for producing electronically stored information, a party shall produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms, and

(3) a party need not produce the same electronically stored information in more than one form.

C. NONPARTIES. A nonparty may be compelled to produce documents and tangible things or to permit an inspection as provided in Section 2004.1 of this title.

Added by Laws 1982, c. 198, § 11. Amended by Laws 1989, c. 129, § 10, eff. Nov. 1, 1989. Renumbered from § 3211 of this title by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989. Amended by Laws 1993, c. 351, § 4, eff. Sept. 1, 1993; Laws 2008, c. 394, § 1, eff. Nov. 1, 2008; Laws 2010, c. 50, § 7, eff. Nov. 1, 2010; Laws 2017, c. 378, § 4, eff. Nov. 1, 2017; Laws 2018, c. 313, § 2, eff. Jan. 1, 2019.

NOTE: Laws 2017, c. 389, § 6 repealed by Laws 2018, c. 313, § 4, eff. Jan. 1, 2019.

§12-3235. Physical and mental examination of persons.

A. SCOPE WHEN ELEMENT OF CLAIM OR DEFENSE. When the physical, including the blood group, or mental condition of a party or of a person in custody or under the legal control of a party, is in controversy in any proceeding in which the person relies upon that condition as an element of his claim or defense, an adverse party may take a physical or mental examination of such person.

B. PROCEDURE WHEN ELEMENT OF CLAIM OR DEFENSE. The party desiring to take the physical or mental examination of another party or of a person in custody or control of another party within the scope of subsection A of this section shall serve his request upon the person to be examined and all other parties. The request shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made.

No request shall be served until thirty (30) days after service of summons and petition upon the defendant. The request shall set a time for the examination not less than five (5) days after service of the notice.

If the party or person in custody or control of the party who is to be examined objects to the physical or mental examination then he shall file a motion objecting to the examination and setting out the reasons why his mental or physical condition is not in controversy or such person may apply for a protective order under the provisions of subsection C of Section 3226 of this title. The burden of proof is upon the person objecting to the examination or requesting a protective order. The court may set the conditions for examination or refuse to permit such examination if the mental or physical condition is not in controversy. If the party or the person in custody or control of the party refuses to obey the court order to submit to a physical or mental examination the court may impose those sanctions provided for in paragraph 4 of subsection A and paragraph 2 of subsection B of Section 3237 of this title.

If the motion is granted to prohibit the examination, the court may impose those sanctions provided for in paragraph 4 of subsection A of Section 3237 of this title upon the party requesting the examination.

C. ORDER FOR EXAMINATION. When the physical, including the blood group, or mental condition of a party, or a person in the custody or under the legal control of a party, is in controversy but does not meet the conditions set forth in subsection A of this section, the court in which the action is pending may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for such examination the agent, employee or person in his custody or legal control. The order may be

made only on motion for good cause shown and upon notice to the person to be examined and to all parties. The order shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made.

D. REPRESENTATIVE MAY BE PRESENT. A representative of the person to be examined may be present at the examination.

E. REPORT OF EXAMINER.

1. If requested by the party or the person examined under this section, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examiner setting out his findings, including results of all tests made, diagnoses and conclusions, together with the like reports of all earlier examinations of the same condition. After delivery, the party causing the examination shall be entitled upon request to receive from the party or person against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that he is unable to obtain it. The court on motion may enter an order against a party requiring delivery of a report on such terms as are just. If an examiner fails or refuses to make a report the court may exclude his testimony if offered at the trial.

2. If the physician or psychotherapist-patient privilege has not already been waived as provided in the Oklahoma Evidence Code requesting and obtaining a report of the examination made or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same physical or mental condition.

3. This subsection applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subsection does not preclude discovery of a report of an examiner or the taking of a deposition of the examiner in accordance with the provisions of any other section of the Oklahoma Discovery Code. Added by Laws 1982, c. 198, § 12. Amended by Laws 1989, c. 129, § 11, eff. Nov. 1, 1989. Renumbered from § 3212 of this title by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989. Amended by Laws 1993, c. 351, § 5, eff. Sept. 1, 1993.

§12-3236. Requests for admission.

A. REQUEST FOR ADMISSION. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Section 3226 of this title set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request.

Copies of documents shall be served with the request for admission unless they have been or are otherwise furnished or made available for inspection and copying. The number of requests for admissions for each party is limited to thirty. No further requests for admission will be served unless authorized by the court. If counsel for a party believes that more than thirty requests for admissions are necessary, counsel shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional requests for admissions. Counsel are expected to comply with this requirement in good faith. In the event a written stipulation cannot be agreed upon, the party seeking to submit such additional requests for admissions shall file a motion with the court (1) showing that counsel have conferred in good faith but sincere attempts to resolve the issue have been unavailing, (2) showing reasons establishing good cause for their use, and (3) setting forth the proposed additional requests.

The request may, without leave of court, be served upon any party after the filing of a petition. Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty (30) days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney. The thirty-day response period shall not commence until an answer to the petition is filed. However, upon leave of court or otherwise agreed to in writing by the parties subject to Section 3229 of this title, the response to the request may be required prior to the filing of an answer to the petition.

If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his or her answer or deny only a part of the matter of which an admission is requested, he or she shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that he or she has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable him or her to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he or she may, subject to the provisions of subsection D of Section 3237 of this title, deny the matter or set forth reasons why he or she cannot admit or deny it.

The party who has requested the admission may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this section, it may order either that the matter is admitted or that an amended answer be served.

The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of paragraph 4 of subsection A of Section 3237 of this title apply to the award of expenses incurred in relation to the motion.

B. EFFECT OF ADMISSION. Any matter admitted under this section is conclusively established unless the court on motion permits withdrawal or amendment of the admission. The court may permit withdrawal or amendment of an admission when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him or her in maintaining his or her action or defense on the merits.

C. SCOPE OF ADMISSIONS. Any admission made by a party under this section is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against him or her in any other proceeding.

Added by Laws 1982, c. 198, § 13. Amended by Laws 1983, c. 142, § 2, eff. Nov. 1, 1983; Laws 1989, c. 129, § 12, eff. Nov. 1, 1989. Renumbered from § 3213 of this title by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989; Laws 2017, c. 389, § 7, eff. Nov. 1, 2017; Laws 2018, c. 313, § 3, eff. Jan. 1, 2019.

§12-3237. Failure to make or cooperate in discovery - Sanctions - Exception.

A. MOTION FOR ORDER COMPELLING DISCOVERY. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

1. APPROPRIATE COURT. An application for an order to a party may be made to the court in which the action is pending, or, on matters, relating to a deposition, to the district court in the county where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the district court in the county where the deposition is being taken or to the court in which the action is pending.

2. MOTION. If a deponent fails to answer a question propounded or submitted under Section 3230 or 3231 of this title, or a corporation or other entity fails to make a designation under paragraph 6 of subsection C of Section 3230 or subsection A of Section 3231 of this title, or a party fails to answer an interrogatory submitted under Section 3233 of this title, or if a

party, in response to a request for inspection and copying submitted under Section 3234 of this title, fails to produce documents or respond that the inspection or copying will be permitted as requested or fails to permit the inspection or copying as requested, or if a party or witness objects to the inspection or copying of any materials designated in a subpoena issued pursuant to subsection A of Section 2004.1 of this title, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection and copying in accordance with the request or subpoena. The motion must include a statement that the movant has in good faith conferred or attempted to confer either in person or by telephone with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

When a claim of privilege or other protection from discovery is made in response to any request or subpoena for documents, and the court, in its discretion, determines that a privilege log is necessary in order to determine the validity of the claim, the court shall order the party claiming the privilege to prepare and serve a privilege log upon the terms and conditions deemed appropriate by the court. The privilege log shall be served upon all other parties. Unless otherwise ordered by the court, the privilege log shall include, as to each document for which a claim of privilege or other protection from discovery has been made, the following:

a. the author or authors,
b. the recipient or recipients,
c. its origination date,
d. its length,
e. the nature of the document or its intended purpose, and
f. the basis for the objection.

The court may conduct an in camera review of the documents for which the privilege or other protection from discovery is claimed. If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to subsection C of Section 3226 of this title.

3. EVASIVE OR INCOMPLETE ANSWER. For purposes of this subsection, an evasive or incomplete answer is to be treated as a failure to answer.

4. AWARD OF EXPENSES OF MOTION. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees, unless the court finds that the opposition

to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

B. FAILURE TO COMPLY WITH ORDER.

1. SANCTIONS BY COURT IN COUNTY WHERE DEPOSITION IS TAKEN. If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the county in which the deposition is being taken, the failure may be considered a contempt of that court.

2. SANCTION BY COURT IN WHICH ACTION IS PENDING. If a party or an officer, director or managing agent of a party or a person designated under paragraph 6 of subsection C of Section 3230 or subsection A of Section 3231 of this title to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subsection A of this section or Section 3235 of this title, or if a party fails to obey an order entered under subsection F of Section 3226 of this title, the court in which the action is pending may make such orders in regard to the failure as are just. Such orders may include the following:

a. an order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order,

b. an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence,

c. an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceedings or any part thereof, or rendering a judgment by default against the disobedient party,

d. in lieu of or in addition to the orders provided for in subparagraphs a through c of this paragraph, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination,

e. where a party has failed to comply with an order under subsection A of Section 3235 of this title requiring him to produce another for examination, such orders as are listed in subparagraphs a, b and c of this paragraph, unless the party failing to comply shows that he is unable to produce such person for examination,

f. if a person, not a party, fails to obey an order entered under subsection C of Section 3234 of this title, the court may treat the failure to obey the order as contempt of court.

In lieu of or in addition to the orders provided for in this paragraph, the court shall require the party failing to obey the order or the attorney advising the party or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

C. EXPENSES ON EXAMINATION OF PROPERTY. The reasonable expense of making the property available under Section 3234 of this title shall be paid by the requesting party, and at the time of the taxing of costs in the case, the court may tax such expenses as costs, or it may apportion such expenses between the parties, or it may provide that they are an expense of the requesting party.

D. EXPENSES ON FAILURE TO ADMIT. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Section 3236 of this title, and if the party requesting the admission thereafter proves the genuineness of the document or the truth of the matter, the party may apply to the court for an order requiring the other party to pay him or her the reasonable expenses incurred in making that proof, including reasonable attorney fees. The court shall make the order unless it finds that:

1. The request was held objectionable pursuant to subsection C of Section 3236 of this title; or

2. The admission sought was of no substantial importance; or

3. The party failing to admit had reasonable ground to believe that he or she might prevail on the matter; or

4. There was other good reason for the failure to admit.

E. FAILURE OF PARTY TO ATTEND AT OWN DEPOSITION OR SERVE ANSWER TO INTERROGATORIES OR RESPOND TO REQUEST FOR INSPECTION. If a party or an officer, director or managing agent of a party or a person designated under paragraph 6 of subsection C of Section 3230 or subsection A of Section 3231 of this title to testify on behalf of a party fails:

1. To appear before the officer who is to take the deposition, after being served with a proper notice; or

2. To serve answers or objections to interrogatories submitted under Section 3233 of this title, after proper service of the interrogatories; or

3. To serve a written response to a request for inspection submitted under Section 3234 of this title, after proper service of the request,

the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subparagraphs a, b and c of paragraph 2 of subsection B of this section. In lieu of or in addition to any order, the court shall require the party failing to act or the attorney advising him or her or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act as described in this subsection may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by subsection C of Section 3226 of this title.

F. FAILURE TO PARTICIPATE IN THE FRAMING OF A DISCOVERY PLAN. If a party or a party's attorney fails to participate in good faith in the framing of a discovery plan by agreement as is required by subsection F of Section 3226 of this title, the court may, after opportunity for hearing, require such party or his or her attorney to pay to any other party the reasonable expenses, including attorney fees, caused by the failure.

G. ELECTRONICALLY STORED INFORMATION. Absent exceptional circumstances, a court may not impose sanctions on a party for failure to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

Added by Laws 1982, c. 198, § 14. Amended by Laws 1989, c. 129, § 13, eff. Nov. 1, 1989. Renumbered from § 3214 of Title 12 by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989. Amended by Laws 1996, c. 61, § 8, eff. Nov. 1, 1996; Laws 2002, c. 468, § 75, eff. Nov. 1, 2002; Laws 2010, c. 50, § 8, eff. Nov. 1, 2010; Laws 2017, c. 378, § 5, eff. Nov. 1, 2017.

§12-3238. Short title.

This act shall be known and may be cited as the "Structured Settlement Protection Act of 2001".

Added by Laws 2001, c. 70, § 1, eff. Nov. 1, 2001.

§12-3239. Definitions.

As used in the Structured Settlement Protection Act of 2001:

1. "Annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement;

2. “Dependents” include a payee’s spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including alimony;

3. “Discounted present value” means the present value of future payments determined by discounting the payments to the present using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service;

4. “Gross advance amount” means the sum payable to the payee or for the payee’s account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from the consideration;

5. “Independent professional advice” means advice of an attorney, certified public accountant, actuary or other licensed professional adviser;

6. “Interested parties” means, with respect to any structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee’s death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under the structured settlement;

7. “Net advance amount” means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under paragraph 5 of Section 3 of this act;

8. “Payee” means an individual who is receiving tax-free payments under a structured settlement and proposes to make a transfer of the payment rights;

9. “Periodic payments” includes both recurring payments and scheduled future lump sum payments;

10. “Qualified assignment agreement” means an agreement providing for a qualified assignment within the meaning of section 130 of the United States Internal Revenue Code, United States Code Title 26, as amended from time to time;

11. “Responsible administrative authority” means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by the structured settlement;

12. “Settled claim” means the original tort claim or workers’ compensation claim resolved by a structured settlement;

13. “Structured settlement” means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers’ compensation claim;

14. “Structured settlement agreement” means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement;

15. "Structured settlement obligor" means, with respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement;

16. "Structured settlement payment rights" means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, where:

a. the payee is domiciled in, or the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in this state,

b. the structured settlement agreement was approved by a court or responsible administrative authority in this state, or

c. the structured settlement agreement is expressly governed by the laws of this state;

17. "Terms of the structured settlement" include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement and any order or other approval of any court or responsible administrative authority or other government authority that authorized or approved such structured settlement;

18. "Transfer" means any sale, assignment, pledge, hypothecation or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration; provided that the term "transfer" does not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to redirect the structured settlement payments to the insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce the blanket security interest against structured settlement payment rights;

19. "Transfer agreement" means the agreement providing for a transfer of structured settlement payment rights;

20. "Transfer expenses" means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including, without limitation, court filing fees, finders' fees, commissions, and other payments to a broker or other intermediary; "transfer expenses" do not include preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer; and

21. "Transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer;

Added by Laws 2001, c. 70, § 2, eff. Nov. 1, 2001.

§12-3240. Disclosure statement.

Not less than three (3) days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than fourteen (14) point, to include the following:

1. The amounts and due dates of the structured settlement payments to be transferred;

2. The aggregate amount of the payments;

3. The discounted present value of the payments to be transferred, which shall be identified as the "calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities", and the amount of the applicable federal rate used in calculating such discounted present value;

4. The gross advance amount;

5. An itemized listing of all applicable transfer expenses, other than attorneys' fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of any such fees and disbursements;

6. The net advance amount;

7. The amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee; and

8. A statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee.

Added by Laws 2001, c. 70, § 3, eff. Nov. 1, 2001.

§12-3241. Judicial or administrative approval of transfer of payment - Required findings.

No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order or order of a responsible administrative authority based on express findings by such court or responsible administrative authority that:

1. The transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents;

2. The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received the advice or knowingly waived the advice in writing; and

3. The transfer does not contravene any applicable statute or the order of any court or other government authority.

Added by Laws 2001, c. 70, § 4, eff. Nov. 1, 2001.

§12-3242. Discharge and release from liability.

Following a transfer of structured settlement payment rights under the Structured Settlement Protection Act of 2001:

1. The structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments;

2. The transferee shall be liable to the structured settlement obligor and the annuity issuer:

   a. if the transfer contravenes the terms of the structured settlement, for any taxes incurred by such parties as a consequence of the transfer, and

   b. for any other liabilities or costs, including reasonable costs and attorneys' fees, arising from compliance by the parties with the order of the court or responsible administrative authority or arising as a consequence of the transferee's failure to comply with this act;

3. Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two or more transferees or assignees; and

4. Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of the Structured Settlement Protection Act of 2001.

Added by Laws 2001 c. 70, § 5, eff. Nov. 1, 2001.

§12-3243. Application for approval of transfer of payment rights.

A. An application under the Structured Settlement Protection Act for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought in the county in which the payee resides, in the county in which the structured settlement obligor or the annuity issuer maintains its principal place of business, or in any court or before any responsible administrative authority which approved the structured settlement agreement.

B. Not less than twenty (20) days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under Section 4 of this act, the transferee shall file with the court or responsible administrative authority and serve on all interested parties a notice of the proposed transfer and the application for its authorization, including with such notice:

1. A copy of the transferee's application;

2. A copy of the transfer agreement;

3. A copy of the disclosure statement required under Section 3 of this act;

4. A listing of each of the payee's dependents, together with each dependent's age;

5. Notification that any interested party is entitled to support, oppose or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and

6. Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed, which shall be not less than fifteen (15) days after service of the transferee's notice, in order to be considered by the court or responsible administrative authority.

Added by Laws 2001, c. 70, § 6, eff. Nov. 1, 2001.

§12-3244. Waiver of provisions – Disputes - Life-contingent payments - Liability.

A. The provisions of the Structured Settlement Protection Act of 2001 may not be waived by any payee.

B. Any transfer agreement entered into on or after the effective date of this act by a payee who resides in this state shall provide that disputes under such transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of this state. No such transfer agreement shall authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

C. No transfer of structured settlement payment rights shall extend to any payments that are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for

1. Periodically confirming the payee's survival; and

2. Giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

D. No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of such transfer to satisfy the conditions of this act.

E. Nothing contained in this act shall be construed to authorize any transfer of structured settlement payment rights in contravention of any law or to imply that any transfer under a transfer agreement entered into prior to the effective date of this act is valid or invalid.

F. Compliance with the requirements set forth in Section 3 of this act and fulfillment of the conditions set forth in Section 4 of

this act shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, noncompliance with such requirements or failure to fulfill such conditions.
Added by Laws 2001, c. 70, § 7, eff. Nov. 1, 2001.

§12-3245. Application of act.

This act shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after the thirtieth day after the date of enactment of this act; provided that nothing contained herein shall imply that any transfer under a transfer agreement reached prior to such date is either effective or ineffective.
Added by Laws 2001, c. 70, § 8, eff. Nov. 1, 2001.