

Resolution: Civil Procedure

BE IT RESOLVED by the House of Delegates of the Oklahoma Bar Association that the Association adopt, as part of its Legislative Program, proposed legislation creating new law to be codified as 12 O.S. § 140.1 relating to transfer of venue and amending 12 O.S. §§ 696.2, 696.3, 990A, 1083, 2004.1, 2005, 3234, and 3236 relating to judgments, perfection of appeals, dismissal of dormant actions, subpoenas, service of pleading and other papers, production of documents and requests for admissions. (Submitted by the OBA Civil Procedure Committee.)

Proposed new statute to be codified as 12 O.S. 2001 § 140.1 Procedure for transfer of venue.

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, a bill of the costs accrued, collect a new filing fee which will be due to the clerk of the court to which transfer is ordered, and shall forthwith transmit by certified mail the said files and transcript of said cause and the fee due to the clerk of the court to which transfer is ordered. Unless otherwise ordered by the court, the plaintiff shall be responsible for paying appropriate filing fees when the transfer is one to transfer a case brought in the wrong venue to a court having proper venue. In all other instances, the moving party shall be responsible for paying fees. The fees for the transfer must be paid within ten (10) days of the transfer order.

COMMENTS

This proposal is for the purpose of clarifying who is responsible for paying the new filing fees due when a case is transferred to the court in a different county. The Fourteenth Judicial District Court Rule CV 9 provides guidance for paying filing fees to the transferee court. This rule provides that such fees shall be paid by the plaintiff unless otherwise directed by the Court.

Payment by the plaintiff appears appropriate when the transfer is made to transfer a case brought in the wrong county to one in which venue is proper pursuant to *Pribram v. Fouts*, 1987 OK 29, 736 P.2d 513 and its progeny. However, if the venue is initially proper, and the transfer to another county is made under the intrastate doctrine of forum non conveniens pursuant to *Gulf Oil Co. v. Woodson*, 1972 OK 164, 505 P.2d 484 and its progeny, or when it is determined venue should be changed because a fair and impartial trial cannot be had in the county pursuant to 12 O.S. 2001 § 140, the party moving for the change of venue should pay the new filing fees due in the county where the case is transferred.

12 O.S. § 696.2 - Judgment, Decree or Appealable Order to be Written - Preparation of Written Documents - Filing - Mailing - Effect.

B. Except as provided below, a file-stamped copy of every judgment, decree, or appealable order shall be ~~mailed to~~ served upon all parties ~~who are not~~, 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 mailing service shall be done in the manner provided in Section 2005(B) of Title 12 of the Oklahoma Statutes 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 mailing service and certificate of service required by this subsection. If a party has failed to appear in the action, it will 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 mailing 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 mailing 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 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, Oct. 1, 1993.; Amended by Laws 1997, c. 102, § 2, eff. May 01,1997 (superseded document available).; Amended by Laws 1997, c. 239, § 4, eff. May 23,1997 (superseded document available).

§ 696.3 - Judgments, Decrees and Appealable Orders That are Filed Should Contain the Following.

D. A file-stamped copy of the judgment, decree, or appealable order shall be ~~mailed to~~ served upon all parties who are not, 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 01,1997 (superseded document available).

Committee Comments

The proposed amendments to Okla. Stat. tit. 12, §§ 696.2, 696.3 (2001) would require the giving of notice to all parties, including parties in default, when a judgment, decree or appealable order is filed. Notice would not be required at the time of taking default if the defaulting party has not made an appearance. Okla. Dist. Ct. R. 10. Requiring timely notice of the judgment to a defaulting party by ordinary mail to the party's last-known address would enable the party to move to vacate the judgment under Okla. Stat. tit. 12, § 1031.1 or appeal. Vacation of a default judgment may be appropriate for a variety of reasons, including that the party may not have been aware that the action was filed or a default judgment was being taken.

12 O.S. § 990A . Appeal to Supreme Court of Oklahoma - Filing of Petition - Rules - Procedure - Dismissal.

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 mailed to the appellant, and the court records do not reflect the mailing 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 mailed to 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. This section shall not apply to counter-designations of record filed by appellees.

3. A court reporter's signature shall not be required on the designation of record for those designated transcripts which have earlier been transcribed and deposited with the district court clerk.

Historical Data

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.; Amended by Laws 1997, c. 102, § 7, eff. May 01,1997 ([superseded document available](#)); Amended by Laws 2002, HB 1939, c. 468, § 6, emerg. eff. November 1, 2002 ([superseded document available](#)).

12 O.S. Section 1083 - Actions ~~Not at Issue~~ and in which No Pleadings Filed for 1 year - Dismissed.

Any action ~~which is not at issue and~~ 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.

Laws 1965, c. 299, § 5.

Committee Comments

Section 1083 provides for the mandatory dismissal of an action after notice to the parties if no action has been taken in the case for one year, but it authorizes the trial court to allow the action to remain upon its docket upon a showing of good cause. As originally enacted, section 1083 contained a limitation that the case be not at issue in order for it to apply. The Oklahoma Supreme Court held in *Boston v. Buchanan*, 2003 OK 114, ¶ 7, ___ P.2d ___, that a case was “at issue when issues are made up, or when the defendant has failed to plead within the time allowed by law or by an order of the court.” As a result of the “not at issue” limitation, a dismissal could never occur under this statute. *Id.* ¶ 2 (Boudreau, J., dissenting to the denial of rehearing). The amendment removes the limitation so that actions in which no action has been taken for more than a year must be dismissed, unless the trial court for good cause shown allows them to remain on the docket.

12 O.S. §2004.1 – 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 and copying of designated books, documents 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.

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 ~~by the clerk of~~ subpoenas for the persons named or described therein; ~~provided, any person aggrieved by the issuance or enforcement of the subpoena may obtain judicial review upon the filing of a civil action and payment of the required fees.~~

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 (A)(1)(b) above 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.

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 the required fees.

COMMENTS

This amendment is proposed to facilitate the use of subpoenas for production and inspection separate from depositions for actions pending outside the state. The proposed procedure would be generally parallel to the procedures pertaining to the issuance of

subpoenas for depositions for actions pending outside the state. The provision is similar to the last sentence of Rule 45 (a)(2), Fed. Rules Civ. Proc. that provides: “If separate from a subpoena commanding the attendance of a person, a subpoena for production or inspection shall issue from the court for the district in which the production or inspection is to be made.”

The term “by the clerk” is stricken because most subpoenas are now issued by attorneys. The procedures would still apply if a subpoena is issued by a clerk.

12 O.S. §2005 - Service and Filing of Pleadings and Other Papers.

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 upon the party himself 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 him or by mailing it to him at his last-known address or, if no address is known, 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 his office with his 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 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. Whenever 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 the requirement.

COMMENT: This amendment pertains to 12 O.S. §§ 653, 696.2, 696.3, 696.4, 698, 990A, 990.2, 993, 1031.1 and any other section that requires “mailing” as a method of service.

12 O.S. §3234. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes.

A. SCOPE. Any party may serve on any other party a request:

1. To produce and permit the party making the request, or someone acting on his behalf, to inspect and copy any designated documents including, but not limited to, writings, drawings, graphs, charts, photographs, motion picture films, phonograph records, tape and video recordings, records and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form, or to inspect and copy, test or sample any tangible things which constitute or contain matters within the scope of subsection B of Section 3226 of this title and which are in the possession, custody or control of the party upon whom the request is served. In any case involving a claim for personal injury or death, the number of requests under this section, including subdivisions of one numbered request, shall not exceed thirty (30) in number. No further requests will be served unless authorized by the Court. If counsel for a party believes that more than thirty (30) requests are necessary, counsel shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional requests. Counsel are expected to comply with this requirement in good faith. In the event a written stipulation cannot be agreed upon, the parties seeking to submit such additional requests shall file a motion with the court which provides the following: (1) that counsel have conferred in good faith but sincere attempts to resolve the issue have been unavailing, (2) reasons establishing good cause for their use, and (3) setting forth the proposed additional requests; or

2. To permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing or sampling the property or any designated object or operation thereon, within the scope of subsection B of Section 3226 of this title.

12 O.S. §3236 - Requests for Admission.

~~€.~~ 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 request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with the summons and petition or after service of the summons and petition upon that party. ~~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, he 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.~~

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 his attorney, but unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of forty-five (45) days after service of the summons and petition upon him.

If objection is made, the reasons therefore 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 answer or deny only a part of the matter of which an admission is requested, he 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 he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him 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 may, subject to the provisions of subsection D of Section [3237](#) of this title, deny the matter or set forth reasons why he 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 in maintaining his 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 by him for any other purpose nor may it be used against him in any other proceeding.

Historical Data

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 by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989.

COMMITTEE COMMENT

The proposed changes are to facilitate the use of Requests for Admission for identification and authenticity of documents.