ENROLLED SENATE
BILL NO. 940

By: Anderson of the Senate

and

Grau of the House

An Act relating to service of process; amending 12 O.S. 2001, Section 990A, as amended by Section 6, Chapter 468, O.S.L. 2002, and Section 17, Chapter 228, O.S.L. 2009 (12 O.S. Supp. 2010, Sections 990A and 2056), which relate to appeal and summary judgment; modifying requirements for certain service; and providing an effective date.

SUBJECT: Service of process

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

SECTION 1. AMENDATORY 12 O.S. 2001, Section 990A, as amended by Section 6, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2010, Section 990A), is amended to read as follows:

Section 990A. 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~~ served upon the appellant, and the court records do not reflect the ~~mailing~~ 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 ~~mailed to~~ 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. This section shall not apply to counter-designations of record filed by appellees.

SECTION 2. AMENDATORY Section 17, Chapter 228, O.S.L. 2009 (12 O.S. Supp. 2010, Section 2056), is amended to read as follows:

Section 2056. 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. ~~SERVING THE MOTION AND~~ PROCEEDINGS. ~~The motion must be served at least ten (10) days before the day set for the hearing. An opposing party may serve opposing affidavits before the hearing day.~~ 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.

SECTION 3. This act shall become effective November 1, 2011.

Passed the Senate the 9th day of March, 2011.

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Presiding Officer of the Senate

Passed the House of Representatives the 28th day of March, 2011.

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Presiding Officer of the House
of Representatives