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Oklahoma Civil Procedure Forms and Practice

Publication 82216

Release 23

March 2022

HIGHLIGHTS

OKLAHOMA CIVIL PROCEDURE 2021

The following summarize the most significant changes in Oklahoma procedure arising from new or revised statutes, court rules, ECF Manuals, or decisional law.

- 12 O.S. § 2004(I) was amended to provide for mandatory dismissal on motion of a defendant who the plaintiff, without good cause, has not served within the prescribed period of 180 days after the action is commenced, and on the court's own motion if service is not made within 200 days. If the action is dismissed the one-year savings period of 12 O.S. § 100 applies, but computing when it begins to run can become difficult, especially if there is an appeal. See § 1.230 and § 2.100.
- Oklahoma has adopted the Uniform Interstate Depositions and Discovery Act, which streamlines procedures for discovery in Oklahoma for use in another state's forum. 12 O.S. §§ 3250, et seq. As for interstate discovery for use in an Oklahoma forum, a litigant must rely on the other state's laws in combination with 12 O.S. § 3228(B) (as to depositions). See § 8.100.
- For purposes of a statute allowing attorney fees to a "prevailing party," a party must prevail on the merits of the case and not merely achieve some procedural

victory. The Oklahoma Supreme Court reaffirmed this rule in *Comanche Nation of Oklahoma v. Coffey*, 2020 OK 90, 480 P.3d 271, while limiting a troublesome 1997 contrary holding from *Professional Credit Collections, Inc. v. Smith*, 1997 OK 19, 8–10, 933 P.2d 307, 310. See § 10.90[1].

- An attorney fee award in a class action may be computed under either the lode-star method or the “percentage of fund method” depending on circumstances, but must in any event be a reasonable fee. See § 10.90[1].
- The Oklahoma Supreme Court amended Sup.Ct. Rule 1.21 (designating certain instruments which will *not* constitute an appealable order) to supplement 12 O.S. § 696.2(D). See § 13.30[2].
- Tulsa County amended its local Rule CV 8 to provide that attorneys must include their bar association number, name, address, phone number, and direct e-mail address on all pleadings, decrees, orders and journal entries approved as to form by counsel. See § 1.10[1].
- The Northern District of Oklahoma has adopted a new category of “General Rules,” designated “LGnR” (and also now formats references to its rules a little differently).
- The Northern District has adopted a substantially truncated CM/ECF Administrative Guide, leaving the details of ECF procedures to online instructions and local rules. See § 1.100[2].
- The Northern District requires a motion to seal, accompanied by a redacted version and unredacted version of a document proposed to be sealed. LCvR 5.2-2(b). In the caption of any document sought be sealed the document must be marked in all caps, “SEALED.” LCvR 5-2-2(c). See § 1.80[2][b].
- In the Northern District, if at the time a case is removed a motion was pending in state court, and the movant wants a decision on the motion, the movant must refile the motion and attach any responses and replies. LCvR 81-2(b). See § 15.20[9].
- The Western District of Oklahoma has adopted amendments to its local rules which, among other things, clarifies the filing date of electronically-filed and conventionally filed cases; requires proof of service of process by the server’s affidavit within 14 days of service; requires filings

- under seal to include the words “FILED UNDER SEAL” in or above the caption; and deletes the requirement of a certificate of service (leaving that topic to its ECF Manual which does not require a certificate of service for documents served by ECF). See § 1.100[2] and § 2.10.
- The Western District of Oklahoma has revised its ECF Manual, effective May 2021. See § 1.100[2].
 - For new actions, the Western District now requires payment of the filing fee for a new action within 3 business days of filing the initiating documents; the Eastern District requires payment of the filing fee within 7 days of the filing of the initiating documents; the Northern District requires payment of the filing fee as part of the on-line ECF filing process. All three districts make provision for submission of an in forma pauperis affidavit. See § 1.100[2].
 - Fed.R.App. P. 3(c) has been significantly amended to further liberalize the conditions for determining the timely commencement and scope of an appeal from a judgment or appealable order. See Ch. 14, Part II.
 - The Tenth Circuit issued its new 10th Edition of its ECF Manual and its new 11th Edition of its Practitioners Guide, both effective January 1, 2021.
 - The Tenth Circuit has adopted extensive COVID-19 procedures that significantly impact Tenth Circuit practitioners, both as to access to the courthouse by unvaccinated persons and the wearing of masks while in the courthouse. General Order No. 95-01, filed August 12, 2021. See Ch. 14, Part I.
 - Tenth Circuit certifications that privacy redactions have been made and an ECF submission has been scanned for viruses are now part of the electronic filing process and are not included in the content of the filed ECF document itself. See Ch. 14, Part IV and § 14.120.
 - The Tenth Circuit has adopted special procedures to govern what it denominates highly sensitive documents (“HSD”s). Tenth Circuit Order No. 95-1 (January 21, 2021). Order No. 95-1 describes HSDs as “sealed documents filed conventionally outside of CM/ECF as a means of preventing unauthorized electronic access.” See Ch. 14, Part VI.

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