

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 3562

6 By: Lepak

7 COMMITTEE SUBSTITUTE

8 An Act relating to courts; amending 20 O.S. 2011,  
9 Sections 30.1, 30.2, 30.4, 30.5, 30.7, 30.15 and  
10 30.16, which relate to the Court of Civil Appeals;  
11 modifying name of court; modifying authority of the  
12 Oklahoma Court of Civil Appeals; requiring all civil  
13 appeals to be assigned to the Oklahoma Court of Civil  
14 Appeals; providing that cases shall be heard by a  
15 three-Judge panel; modifying number of divisions of  
16 the court; specifying counties in each division and  
17 location of each division; providing for assignment  
18 of appeals; authorizing a division to sit en banc  
19 subject to certain conditions; providing that filing  
20 of request for en banc review tolls time period for  
21 requesting certiorari; providing for Judges serving  
22 on effective date of act and specifying divisions  
23 they will serve; providing for appointment of  
24 additional judges; providing for selection of  
Presiding Judges and stating duties; requiring  
promulgation of rules; providing for submission of  
briefs and oral arguments; requiring establishment of  
a Court Calendar and specifying items to be included  
on the Court Calendar; requiring Calendar to be  
posted on the Court's website, free of charge;  
providing that proceeding shall be open to the public  
unless sealed pursuant to law; providing term  
limitations; providing term limits to not apply to  
service on other courts; repealing 20 O.S. 2011,  
Sections 30.11, 30.14, 30.18 and 30.19, which relate  
to the Court of Civil Appeals; and providing an  
effective date.

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

2 SECTION 1. AMENDATORY 20 O.S. 2011, Section 30.1, is  
3 amended to read as follows:

4 Section 30.1 A. There is hereby established an intermediate  
5 appellate court to be known as the Oklahoma Court of Civil Appeals  
6 ~~of the State of Oklahoma~~ which shall have the power to determine or  
7 otherwise dispose of any civil cases that are assigned to it by the  
8 Supreme Court. Its decisions, when final, shall ~~neither~~ not be  
9 appealable to the Supreme Court ~~nor be subject to reexamination by~~  
10 ~~another division of the Court of Civil Appeals or by the Judges of~~  
11 ~~that Court sitting en banc~~ except upon certiorari as provided in  
12 subsection B of this section.

13 B. The Oklahoma Court of Civil Appeals shall have jurisdiction  
14 to issue writs of habeas corpus, mandamus, quo warranto, certiorari,  
15 prohibition, or any other process when this may be necessary in any  
16 case ~~assigned to it by~~ properly before the ~~Supreme~~ Court. A  
17 decision of the Oklahoma Court of Civil Appeals may be reviewed by  
18 the Supreme Court if a majority of its Justices direct that a writ  
19 of certiorari be granted, ~~and the.~~ The Supreme Court ~~may, by order,~~  
20 shall not recall a case ~~from~~ assigned to the Oklahoma Court of Civil  
21 Appeals.

22 C. Beginning January 1, 2021, and continuing thereafter, the  
23 Supreme Court shall assign every appeal of a district court  
24 decision, except for criminal cases appealed to the Court of

1 Criminal Appeals as provided by law, to the Oklahoma Court of Civil  
2 Appeals. The Supreme Court shall not retain any appeal of a  
3 district court decision, and shall not have discretion in making  
4 assignments of appeals to the Oklahoma Court of Civil Appeals.  
5 Nothing contained in this section shall be construed to alter the  
6 original jurisdiction of the Supreme Court.

7 D. Upon assignment of an appeal to the Oklahoma Court of Civil  
8 Appeals, the case shall be heard by a three-Judge panel of the  
9 Oklahoma Court of Civil Appeals as provided by law.

10 SECTION 2. AMENDATORY 20 O.S. 2011, Section 30.2, is  
11 amended to read as follows:

12 Section 30.2 A. The Oklahoma Court of Civil Appeals shall,  
13 upon the members being elected and qualified, consist of four two  
14 permanent divisions. Two divisions which shall be known as the  
15 Oklahoma Court of Civil Appeals, Eastern Division and the Oklahoma  
16 Court of Civil Appeals, Western Division. The location and  
17 jurisdiction of each division shall be as follows:

18 1. The Eastern Division shall sit in Tulsa County and two  
19 divisions shall be assigned appeals of decisions of the district  
20 courts of the following counties: Adair, Atoka, Bryan, Carter,  
21 Cherokee, Choctaw, Coal, Craig, Creek, Delaware, Haskell, Hughes,  
22 Johnston, Latimer, LeFlore, Love, Marshall, Mayes, McCurtain,  
23 McIntosh, Murray, Muskogee, Nowata, Okfuskee, Okmulgee, Osage,  
24

1 Ottawa, Pawnee, Pittsburg, Pontotoc, Pushmataha, Rogers, Seminole,  
2 Sequoyah, Tulsa, Wagoner, and Washington; and

3 2. The Western Division shall sit in Oklahoma County and shall  
4 be assigned appeals of decisions of the district courts of the  
5 following counties: Alfalfa, Beaver, Beckham, Blaine, Caddo,  
6 Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey,  
7 Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper,  
8 Jackson, Jefferson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major,  
9 McClain, Noble, Oklahoma, Payne, Pottawatomie, Roger Mills,  
10 Stephens, Texas, Tillman, Washita, Woods, and Woodward.

11 B. Each division shall consist of ~~three~~ nine Judges, ~~at~~ and  
12 shall hear appeals in randomly assigned and rotating three-Judge  
13 panels. At least two ~~of whom~~ Judges sitting on a panel shall concur  
14 in any decision, and ~~each~~ the division may sit en banc to review the  
15 decision of any panel. Petitions for en banc review shall be  
16 granted upon the concurrence of a majority of the Judges of the  
17 division then in office. The filing of a petition for en banc  
18 review shall toll the timeperiod for requesting certiorari from the  
19 Supreme Court.

20 C. All Judges of the Court of Civil Appeals serving on January  
21 1, 2021, shall serve the remainder of their terms. Beginning  
22 January 1, 2021, the Oklahoma Court of Civil Appeals shall be  
23 constituted as follows:

24

1        1. The Judges of Divisions 1 and 2 shall become Judges of the  
2 Western Division;

3        2. The Judges of Divisions 3 and 4 shall become Judges of the  
4 Eastern Division; and

5        3. Additional Judges shall be appointed as necessary to fill  
6 the remaining seats in each division.

7        D. Each division shall ~~select~~ elect a ~~presiding~~ Presiding Judge  
8 who shall be responsible for administrative matters of the division  
9 with the advice of the Judges of the division and shall act in that  
10 capacity without additional compensation. ~~The assignment of Judges~~  
11 ~~to the divisions shall be effected by the Supreme Court. Judges may~~  
12 ~~be transferred from one division to another.~~

13        SECTION 3.        AMENDATORY        20 O.S. 2011, Section 30.4, is  
14 amended to read as follows:

15        Section 30.4 A. The ~~Supreme~~ Oklahoma Court of Civil Appeals  
16 shall, ~~by rule, prescribe the~~ promulgate rules of procedure and  
17 practice in the Court of Civil Appeals, the procedure in bringing  
18 writs of certiorari to the Court of Civil Appeals, and the scope of  
19 review to be afforded on certiorari to that Court. Subject to law  
20 and the rules of the Supreme Court, the to the extent permitted by  
21 law.

22        B. The Oklahoma Court of Civil Appeals ~~may promulgate its own~~  
23 rules shall afford each party to a case the opportunity to timely  
24

1 submit a written merits brief and to present oral argument to the  
2 Court, unless one or both are waived by all parties to the appeal.

3 C. The Oklahoma Court of Civil Appeals shall establish a Court  
4 Calendar that includes any information that would assist litigants  
5 or increase transparency to the public, as determined by the Court  
6 in its rules. At a minimum, the Court Calendar shall include dates  
7 and times of oral argument and dates of conferences of the Court.  
8 The Court Calendar shall note the cases scheduled for oral argument  
9 and the matters to be discussed in conference. The Court Calendar  
10 shall be prominently featured on the Court's website and shall be  
11 publicly accessible without charge.

12 ~~B.~~ D. There shall be deposited with the Clerk of the Supreme  
13 Court as costs for the filing of a petition for certiorari to the  
14 Supreme Court One Hundred Dollars (\$100.00) of which no rebate or  
15 refund of any part thereof may be made; provided, the Supreme Court,  
16 by rule, may prescribe the procedure for affording access to the  
17 Supreme Court, on certiorari and without deposit of costs, to those  
18 indigent persons who are deemed by it entitled thereto.

19 SECTION 4. AMENDATORY 20 O.S. 2011, Section 30.5, is  
20 amended to read as follows:

21 Section 30.5 The Oklahoma Court of Civil Appeals shall effect  
22 disposition of cases ~~assigned to~~ before it by a written opinion  
23 prepared in such form as the Supreme Court prescribes. ~~No opinion~~  
24 ~~of the~~ The Oklahoma Court of Civil Appeals shall ~~be binding or cited~~

1 ~~as precedent unless it shall have been approved by the majority of~~  
2 ~~the justices of the Supreme Court for publication in the official~~  
3 ~~reporter. The Supreme Court shall direct which opinion or decision,~~  
4 ~~if any, of the Court of Civil Appeals shall be published in the~~  
5 ~~unofficial reporter. Opinions of the Court of Civil Appeals which~~  
6 ~~apply settled precedent and do not settle new questions of law shall~~  
7 ~~not be released for publication in the official reporter establish~~  
8 ~~rules and procedures governing the publishing of opinions in~~  
9 ~~official and unofficial reporters, consistent with the procedures of~~  
10 ~~the Supreme Court for its publication determinations.~~

11 SECTION 5. AMENDATORY 20 O.S. 2011, Section 30.7, is  
12 amended to read as follows:

13 Section 30.7 ~~The Oklahoma County divisions of the Court of~~  
14 ~~Appeals shall be quartered in Oklahoma City. Suitable quarters and~~  
15 maintenance for the ~~Tulsa division~~ divisions of the Oklahoma Court  
16 of Civil Appeals shall be provided for by the State of Oklahoma,  
17 under the supervision of the Administrative Director of the Courts.  
18 Proceedings of the Oklahoma Court of Civil Appeals shall be open to  
19 the public unless sealed by law.

20 SECTION 6. AMENDATORY 20 O.S. 2011, Section 30.15, is  
21 amended to read as follows:

22 Section 30.15 ~~Two Judges shall be appointed or elected to the~~  
23 ~~Court of Civil Appeals from each of the six congressional districts~~  
24 ~~of the State of Oklahoma.~~

1       A. Each Judge of the Oklahoma Court of Civil Appeals shall  
2 have, prior to election or appointment, a minimum of four (4) years'  
3 experience as a licensed practicing attorney, or as a judge of a  
4 court of record, or both, within the State of Oklahoma; shall be a  
5 qualified elector of the ~~respective district~~ State of Oklahoma; and  
6 shall have such additional qualifications as may be prescribed by  
7 statute. Judges of the Oklahoma Court of Civil Appeals ~~shall~~ may  
8 continue to be licensed attorneys while in office.

9       B. The terms of office of the Judges of the Oklahoma Court of  
10 Civil Appeals shall be six (6) years and shall begin on the second  
11 Monday of January following their election. Those appointed ~~or~~  
12 ~~elected~~ to fill vacancies shall assume office immediately upon  
13 qualifying for the office.

14       C. Beginning January 1, 2021, no Judge of the Oklahoma Court of  
15 Civil Appeals shall serve more than three (3) terms. Any Judge  
16 serving on the Oklahoma Court of Civil Appeals on January 1, 2021,  
17 shall be eligible to finish the remainder of his or her term and no  
18 more than two terms thereafter. This subsection shall not be  
19 construed to limit judicial service on other courts after a Judge  
20 has completed service on the Oklahoma Court of Civil Appeals.

21       SECTION 7.       AMENDATORY       20 O.S. 2011, Section 30.16, is  
22 amended to read as follows:

23       Section 30.16 At the General Election next before a term  
24 expires, any Judge of the Oklahoma Court of Civil Appeals may seek



1 retention in office by filing with the Secretary of State, not less  
2 than sixty (60) days before the date of the election, a declaration  
3 of candidacy to succeed himself or herself. At the election, there  
4 shall be submitted to the qualified electors of the state, on a  
5 separate ballot, without party designation, this question:

6 "Shall (Here insert name of Judge) of the Oklahoma Court of  
7 Civil Appeals be retained in Office?"

- 8  YES
- 9  NO

10 The question shall be decided by a majority of those voting thereon.  
11 If the decision is "yes" the Judge shall be retained in office for  
12 the next ensuing six-year term. If the decision is "no", or if no  
13 declaration of candidacy is filed, the office shall be vacant upon  
14 expiration of the term then being served, and the former Judge shall  
15 not be eligible for appointment to succeed himself or herself.

16 Retention in office may be sought for successive terms ~~without limit~~  
17 ~~as to number, except for retirement as may be provided by the~~  
18 ~~Legislature for a maximum retirement age,~~ subject to the term  
19 limitations contained in Section 30.15 of this title.

20 SECTION 8. REPEALER 20 O.S. 2011, Sections 30.11, 30.14,  
21 30.18 and 30.19, are hereby repealed.

22 SECTION 9. This act shall become effective January 1, 2021.

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