

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
SENATE BILL NO. 1076

By: Smith of the Senate

and

Steidley of the House

COMMITTEE SUBSTITUTE

An Act relating to civil procedure; amending Section 20, Chapter 351, O.S.L. 1993, 12 O.S. 1991, Sections 990A, as amended by Section 18, Chapter 351, O.S.L. 1993, 1148.14, 1172.2, 1757, as amended by Section 2, Chapter 210, O.S.L. 1993, 1759 and 3226 (12 O.S. Supp. 1993, Sections 990.3, 990A and 1757), which relate to the time for enforcement of judgments, decrees or final orders, appeal to the Supreme Court, forcible entry and detainer actions, garnishment, transfer of small claims actions, and the Oklahoma Discovery Code; excluding certain proceedings from certain stays of execution; requiring designation of record to contain certain statements; allowing district court to provide by rule for assignment of certain forcible entry and detainer action to small claims division under certain circumstances; requiring garnishee to pay funds directly to plaintiff under certain circumstances; requiring movant file certain petition for transfer within certain time; authorizing sanctions under certain circumstances; requiring deposit of certain court costs before certain transfer; clarifying language; requiring certain procedures for filing discovery materials; prohibiting filing of certain information with court clerk; requiring withdrawal of certain material from court clerk; providing for protective orders for withdrawal of certain documents containing certain information; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY Section 20, Chapter 351, O.S.L. 1993 (12 O.S. Supp. 1993, Section 990.3), is amended to read as follows:

Section 990.3 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, ~~but the~~ proceedings under the small claims procedure act, writs of assistance in foreclosure, and other real property actions; provided, money judgments under decrees of foreclosure or deficiency judgment procedures shall be subject to the ten-day stay, 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 periods provided herein for a stay.

SECTION 2. AMENDATORY 12 O.S. 1991, Section 990A, as amended by Section 18, Chapter 351, O.S.L. 1993 (12 O.S. Supp. 1993, Section 990A), is amended to read as follows:

Section 990A. A. An appeal to the ~~Oklahoma~~ Oklahoma Supreme Court of Oklahoma, if taken, must be commenced by filing a petition in

error with the Clerk of the ~~Oklahoma~~ Supreme Court of Oklahoma within thirty (30) days from the date a judgment, decree, or appealable order prepared in conformance with Section ~~10~~ 696.3 of this ~~act~~ title is filed with the clerk of the trial court. Where such judgment, decree, or appealable order states the matter was taken under advisement, the petition in error, if filed, must be filed within thirty (30) days from the date of mailing of a file-stamped copy of such judgment, decree, or appealable order to the appealing party, as indicated on the Certificate of Mailing.

B. The filing of the petition in error may be accomplished either by delivery or ~~by sending it~~ by certified mail with return receipt requested 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 ~~court rules~~ rule, which ~~will~~ 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 ~~rules of that court but~~ rule and within a period of not more than six (6) months from the date of filing of the judgment, decree, or appealable order, unless the Supreme Court, for good cause shown, shall extend the time.

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 \_\_\_\_\_, 19\_\_\_\_, 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 3. AMENDATORY 12 O.S. 1991, Section 1148.14,  
is amended to read as follows:

Section 1148.14 An action for forcible entry and detainer brought pursuant to procedures prescribed otherwise in this title standing alone ~~and~~ 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 only 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 ~~the~~ 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.

SECTION 4. AMENDATORY 12 O.S. 1991, Section 1172.2, is amended to read as follows:

Section 1172.2 A. When a garnishment summons is issued in any action subsequent to judgment, the court clerk shall attach to the garnishment summons a notice of garnishment and exemptions required by subsection C of Section 1174 of ~~Title 12 of the Oklahoma Statutes~~ 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 his duty by mailing 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 affidavit of the garnishee required by Section 1178 of ~~Title 12 of the Oklahoma Statutes~~ this title should contain a statement indicating substantial compliance with this section. If an application claiming an exemption and requesting a hearing is not filed within ten (10) days from the answer date of the garnishee, the court or court clerk shall issue an order to the garnishee to pay money into the court ~~for disbursement to the plaintiff~~. In issuing the order to the garnishee to pay money into the court ~~for disbursement to the plaintiff~~, the court clerk shall not have the duty to determine whether or not the garnishee has complied with the mailing or hand-delivery requirement of this section or be held liable for complete or partial noncompliance with the notice delivery requirement by the garnishee or be held liable if the garnishee pays funds into the court prior to issuance of an order to pay. If the garnishee pays funds into the court prior to issuance of an order to pay, the plaintiff, creditor, or court clerk should hold the funds until such time as the order to pay would regularly issue. 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. If the defendant proves that any assets are exempt from garnishment, the court shall issue an order to the garnishee releasing such assets. If the court finds that the assets are not exempt, it shall issue an order to pay money into court for the funds found to be nonexempt. The court may direct such other orders to the plaintiff as are necessary to prevent subsequent garnishment of the exempt property.

B. When a garnishment summons is issued in any action subsequent to judgment, the garnishee is a financial institution, and the garnishment summons is not for the wages of an employee of the financial institution, the notice of garnishment and exemptions required by subsection C of Section 1174 of ~~Title 12 of the Oklahoma Statutes~~ this title and an application for the defendant to request a hearing shall also be prepared by the judgment creditor and issued from the office of the court clerk to the defendant in the manner provided for in paragraphs 1, 2 or 5 of subsection D of Section 1174 of ~~Title 12 of the Oklahoma Statutes~~ this title. The sending of the notice of garnishment and exemptions and the application for the defendant to request a hearing to the last-known address of the defendant in the manner provided for in paragraph 2 of subsection D of Section 1174 of ~~Title 12 of the Oklahoma Statutes~~ this title shall constitute compliance with this subsection, and no further act or service of notice under this subsection shall be necessary.

C. In any case in which the garnishee is required by law or by order of the court to pay garnishment funds into court, the garnishee shall pay the funds directly to the plaintiff or creditor, or if otherwise ordered by the court upon good cause shown, to the court clerk. Any funds paid to the court clerk pursuant to a garnishment summons shall be paid to the garnishor within twenty-one (21) days from receipt by the court clerk, notwithstanding the various times set forth above unless otherwise directed by the court.

SECTION 5. AMENDATORY 12 O.S. 1991, Section 1757, as amended by Section 2, Chapter 210, O.S.L. 1993 (12 O.S. Supp. 1993, Section 1757), is amended to read as follows:

Section 1757. A. 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.

B. The motion 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. If the motion is granted, the defendant as movant shall present 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, and ~~thereafter the action shall proceed and be subject to the same costs as other civil actions and shall not proceed under the small claims procedure.~~

~~C. 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 movant shall file a petition that conforms to the standards for pleadings prescribed by the Oklahoma Pleading Code, Section 2001 et seq. of this title, in the civil division of the court within twenty (20) days of the filing of the order of transfer. If the action is not filed on the civil docket pursuant to the transfer order by the movant within twenty (20) days, it shall be reinstated upon the small claims docket upon motion of the small claims plaintiff for further proceedings in the action which, in the court's discretion, may include sanctions, 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.

C. 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. If the plaintiff ultimately prevails in the action so transferred by the defendant, a reasonable attorney's 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.

SECTION 6. AMENDATORY 12 O.S. 1991, Section 1759, is amended to read as follows:

Section 1759. If a claim, a counterclaim, or a setoff is filed for an amount in excess of Two Thousand Five Hundred Dollars (\$2,500.00), the action shall be transferred to another docket of the district court unless both parties agree in writing and file said agreement with the papers in the action that said 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 Two Thousand Five Hundred Dollars (\$2,500.00) may not be enforced for the part that exceeds Two Thousand Five Hundred Dollars (\$2,500.00). If the action is transferred to another docket of the district court, the person whose claim exceeded Two Thousand Five Hundred Dollars (\$2,500.00) 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 his claim shall be dismissed and the remaining claims, if any, shall proceed under the small claims procedure~~ as provided by Section 1757 of this title.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3226A of Title 12, unless there is created a duplication in numbering, reads as follows:

A. Discovery materials may only be filed under the conditions set forth in this section.

B. Requests for and responses to discovery, including depositions, interrogatories, and other materials containing either sworn or physical evidence, shall not be filed with the clerk unless ordered by the court or unless the party intends to introduce the information into evidence within thirty (30) days.

C. 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.

SECTION 8. AMENDATORY 12 O.S. 1991, Section 3226, is amended to read as follows:

Section 3226. A. DISCOVERY METHODS. Parties may obtain discovery 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; and requests for admission. Unless the court orders otherwise under this section, the frequency of use of these methods is not limited.

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. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having

knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

2. TRIAL PREPARATION: MATERIALS. Subject to the provisions of paragraph 3 of this subsection, discovery may be obtained of documents and tangible things otherwise discoverable under paragraph 1 of this subsection and prepared in anticipation of litigation or for trial by or for another party or by or for the representative of that other party, including his attorney, consultant, surety, indemnitor, only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable, without undue hardship, to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain, without the required showing provided for in this paragraph, a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. 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. For purposes of this paragraph, a statement previously made is:

- a. A written statement signed or otherwise adopted or approved by the person making it, or
- b. A stenographic, mechanical, electrical, or other recording, or a transcription thereof, which substantially recites an oral statement by the person making it and contemporaneously recorded.

3. 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.
  - (3) In lieu of taking the deposition of an expert witness the party may, through interrogatories, require the party who expects to call the expert witness to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.
- b. A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only upon motion, when the court may order discovery as provided in Section 3235 of this title or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to

obtain facts or opinions on the same subject by any other means.

c. 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 b of this paragraph.

(2) The court shall require that the party seeking discovery with respect to discovery obtained under subparagraph b 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.

C. PROTECTIVE ORDERS. 1. Upon motion by a party or by the person from whom discovery is sought, 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, embarrassment, oppression or undue burden or expense, including one or more of the following:

- ~~1.—That~~ a. that the discovery not be had~~†~~†
- ~~2.—That~~ b. that the discovery may be had only on specified terms and conditions, including a designation of the time or place~~†~~†
- ~~3.—That~~ c. that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery~~†~~†
- ~~4.—That~~ d. that certain matters not be inquired into, or that the scope of the discovery be conducted with no one present except persons designated by the court~~†~~†
- ~~5.—That~~ e. that a deposition after being sealed be opened only by order of the court~~†~~†

~~6.—That~~ f. that a trade secret or other confidential research, development or commercial information not be disclosed or be disclosed only in a designated way~~;~~; and

~~7.—That~~ g. 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;

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; and

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 court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, 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~~ the identity and location of persons having knowledge of discoverable matters, and
- b. ~~The~~ the identity of each person expected to be called as an expert witness at trial, the subject

matter on which he is expected to testify, and the substance of his testimony.

2. A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which he:

- a. ~~He~~ knows that the response was incorrect when made, or
- b. ~~He~~ knows that the response, which was correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

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 his attorneys of record in his 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 his address. The signature of the attorney or party constitutes a certification that he has read the request, response or objection, and that it is:

1. To the best of his 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's fee.

SECTION 9. This act shall become effective September 1, 1994.

44-2-9417 SD