

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)  
CONFERENCE COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
SENATE BILL NO. 1076

By: Smith of the Senate

and

Steidley of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to civil procedure; amending 12 O.S. 1991, Sections 653, as amended by Section 8, Chapter 351, O.S.L. 1993, 698, as amended by Section 12, Chapter 351, O.S.L. 1993, Section 20, Chapter 351, O.S.L. 1993, 990A, as amended by Section 18, Chapter 351, O.S.L. 1993, 1031.1, as amended by Section 25, Chapter 351, O.S.L. 1993, 1148.14, 1172.2, 1757, as amended by Section 2, Chapter 210, O.S.L. 1993, 2004.1, as amended by Section 1, Chapter 351, O.S.L. 1993, 2011, 3226, 3227 and 3230 (12 O.S. Supp. 1993, Sections 653, 658, 990.3, 990A, 1031.1, 1757 and 2004.1), which relate to application for new trial, judgment notwithstanding verdict, time for enforcement of judgments, decrees or final orders, appeals to the Oklahoma Supreme Court, authorization to correct, open, modify or vacate judgments, forcible entry and detainer actions, garnishment, transfer of small claims actions, the Oklahoma Pleading Code and the Oklahoma Discovery Code; amending 19 O.S. 1991, Sections 138.4 and 138.6, which relate to the county indigent defender; amending 20 O.S. 1991, Section 1304, as last amended by Section 3, Chapter 227, O.S.L. 1993 (20 O.S. Supp. 1993, Section 1304), which relates to the court fund; amending 38 O.S. 1991, Section 28, which relates to qualifications and exemptions of jurors; modifying certain time limitations; providing for determination of immediate filings; 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; requiring deposit of certain court costs before certain transfer; modifying language; providing for issuance of subpoenas for actions pending outside this state; providing authorization for issuance of subpoenas; modifying requirements for signature of pleadings; providing for certain representations to the court; providing sanctions for violations; providing nature of sanctions; 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 exception for filing certain documents; setting standard for denial of certain motion; clarifying language; allowing appointment of assistant defender on certain basis; authorizing county indigent defender to determine certain salaries; limiting range of certain salaries; adding certain expense to list of certain allowable claims; requiring court to provide certain information relating to guardianships to certain court clerks; providing for donation of certain juror and witness fees to certain agencies for the prevention of child abuse; requiring placement of donation fees in certain fund; providing procedures for disbursement of funds; providing for appointment and membership of committee; adding exemption of jurors; prohibiting certain questions from being asked of the jurors; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 1991, Section 653, as amended by Section 8, Chapter 351, O.S.L. 1993 (12 O.S. Supp. 1993, Section 653), is amended to read as follows:

Section 653. A. Unless unavoidably prevented, an application for a new trial, if made, must be filed ~~within~~ not later than ten (10) days after the judgment, decree or appealable order prepared in conformance with Section ~~40~~ 696.3 of this ~~act~~ title has been filed, except:

1. In the case of newly discovered material evidence which the moving party could not, with reasonable diligence have discovered and produced at the trial; or

2. Impossibility of preparing a record for an appeal.

B. Where the judgment, decree or appealable order states the matter was taken under advisement, the motion for new trial, if made, must be filed within ten (10) days from the date of mailing of a file-stamped copy of the judgment, decree or appealable order to the moving party, as indicated on the Certificate of Mailing.

C. A motion for new trial filed after the announcement of the decision on all issues in the case but before the filing of the judgment or decree shall be deemed filed immediately after the filing of the judgment or decree.

SECTION 2. AMENDATORY 12 O.S. 1991, Section 698, as amended by Section 12, Chapter 351, O.S.L. 1993 (12 O.S. Supp. 1993, Section 698), is amended to read as follows:

Section 698. When a motion for a directed verdict made at the close of all of the evidence should have been granted, the court shall, at the request of the moving party, grant judgment in the moving party's favor, although a verdict has been found against the moving party, but the court may order a new trial where it appears that the other party was prevented from proving a claim or defense by mistake, accident or surprise. The motion for judgment notwithstanding the verdict, if made, must be filed ~~within~~ not later than ten (10) days after the judgment, prepared in conformance with Section ~~10~~ 696.3 of this ~~act~~ title, is filed with the court clerk. A motion for judgment notwithstanding the verdict may be joined with a motion for a new trial. Where the judgment states the matter was taken under advisement, the motion for judgment notwithstanding the verdict, if made, must be filed within ten (10) days from the date of mailing of a file-stamped copy of the judgment to the moving party, as indicated on the Certificate of Mailing. A motion for judgment notwithstanding the verdict filed after the announcement of the verdict but before the filing of the judgment shall be deemed filed immediately after the filing of the judgment or decree.

SECTION 3. 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, 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 ten-day stay.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 990.5 of Title 12, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any other provision of this title, the execution of a judgment or final order of any judicial tribunal against any county, municipality, or other political subdivision of this state is automatically stayed without the execution of supersedeas bond until any appeal of such judgment or final order has finally been determined.

SECTION 5. 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 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~~ 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 \_\_\_\_\_, 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 6. AMENDATORY 12 O.S. 1991, Section 1031.1, as amended by Section 25, Chapter 351, O.S.L. 1993 (12 O.S. Supp. 1993, Section 1031.1), is amended to read as follows:

Section 1031.1 A. A court may correct, open, modify or vacate a judgment, decree or appealable order on its own initiative ~~within~~ not later than thirty (30) days after the judgment, decree or appealable order prepared in conformance with Section ~~10~~ 696.3 of this ~~act~~ title has been filed with the court clerk. Notice of the court's action shall be given as directed by the court to all affected parties.

B. On motion of a party made ~~within~~ not later than thirty (30) days after a judgment, decree or appealable order prepared in conformance with Section ~~10~~ 696.3 of this ~~act~~ title has been filed with the court clerk, the court may correct, open, modify or vacate the judgment, decree or appealable order. Where the judgment, decree or appealable order states the matter was taken under advisement, the motion to correct, open, modify, or vacate the judgment, decree or appealable order, if made, must be filed within thirty (30) days from the date of mailing of a file-stamped copy of the judgment, decree or appealable order to the moving party. The moving party shall give notice to all affected parties. A motion to correct, open, modify or vacate a judgment or decree filed after the announcement of the decision on all issues in the case but before the filing of the judgment or decree shall be deemed filed immediately after the filing of the judgment or decree.

SECTION 7. 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 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 8. 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 to the judgment creditor or into the court ~~for disbursement to the plaintiff~~. In issuing the order to the garnishee to pay money to the judgment creditor or 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 judgment 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, the garnishee shall pay the funds directly to the judgment creditor, unless otherwise ordered by the court upon good cause shown, to pay the funds directly 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 9. 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 within ten (10) days 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 If the transfer order is not filed by the movant within ten (10) days, it shall be reinstated upon the small claims docket upon motion of the small claims plaintiff, 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. 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 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 10. AMENDATORY 12 O.S. 1991, Section 2004.1, as amended by Section 1, Chapter 351, O.S.L. 1993 (12 O.S. Supp. 1993, Section 2004.1), is amended to read as follows:

Section 2004.1

SUBPOENA

A. SUBPOENA; FORM; ISSUANCE.

1. Every subpoena shall:

- a. be issued by the clerk under the seal of the court;
- b. state the name of the court and the title of the action; and
- c. 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. A subpoena shall issue from the clerk of the court where the action is pending, and it may be served at any place within the state. If the action is pending outside of Oklahoma, the clerk of the district court for the county in which the deposition is to be taken shall issue the subpoena. 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.

2. A witness shall be obligated upon service of a subpoena to attend a trial or hearing at any place within the state and to attend a deposition or produce or allow inspection of documents at a location that is authorized by subsection B of Section 3230 of this title.

3. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

B. 1. SERVICE. Service of a subpoena upon a person named therein shall be made by delivering or mailing a copy thereof to such person and, if the person's attendance is demanded, by tendering to him the fees for one (1) day's attendance and the

mileage allowed by law. Service of a subpoena may be accomplished by any person who is eighteen (18) years of age or older. Prior notice of any commanded production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by subsection B of Section 2005 of this title.

2. Service of a subpoena by mail may be accomplished by mailing a copy thereof by certified mail with return receipt requested and delivery restricted to the person named in the subpoena. The person serving the subpoena shall make proof of service thereof to the court promptly and, in any event, before the witness is required to testify at the hearing or trial. If service is made by a person other than a sheriff or deputy sheriff, such person shall make affidavit thereof. If service is by mail, the person serving the subpoena shall show in his proof of service the date and place of mailing and attach a copy of the return receipt showing that the mailing was accepted. Failure to make proof of service does not affect the validity of the service, but service of a subpoena by mail shall not be effective if the mailing was not accepted by the person named in the subpoena. Costs of service shall be allowed whether service is made by the sheriff, his deputy, or any other person. When the subpoena is issued on behalf of a state department, board, commission, or legislative committee, fees and mileage shall be paid to the witness at the conclusion of the testimony out of funds appropriated to the state department, board, commission, or legislative committee.

C. PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

1. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney, or both, in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

2. a. A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.
  - b. Subject to paragraph 2 of subsection D of this section, a person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.
3. a. On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:
    - (1) fails to allow reasonable time for compliance;
    - or
    - (2) requires a person to travel to a place beyond the limits allowed under paragraph 2 of subsection A of this section; or

- (3) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
- (4) subjects a person to undue burden; or
- (5) requires production of books, papers, documents or tangible things that fall outside the scope of discovery permitted by Section 3226 of this title.

b. If a subpoena:

- (1) requires disclosure of a trade secret or other confidential research, development, or commercial information; or
- (2) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena. However, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

D. DUTIES IN RESPONDING TO SUBPOENA.

1. A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

2. When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents,

communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

E. CONTEMPT. Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court from which the subpoena issued.

SECTION 11. AMENDATORY 12 O.S. 1991, Section 2011, is amended to read as follows:

Section 2011.

SIGNING OF PLEADINGS.

A. SIGNATURE. Every pleading, written motion, and other paper ~~of a party represented by an attorney~~ shall be signed by at least one attorney of record in his individual name, whose ~~address and~~ Oklahoma Bar Association identification number shall be stated, or, if the party is not represented by an attorney, shall be signed by the party. ~~A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address.~~ Each paper shall state the address of the signer and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. ~~The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished.~~ ~~The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.~~ ~~If a pleading, motion, or other~~ An unsigned paper is not signed, it shall be stricken unless it is signed promptly after the omission of the signature is corrected promptly after being called to the attention of the pleader or ~~movant attorney or party.~~ ~~If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or~~

~~upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.~~

B. REPRESENTATIONS TO COURT. By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

1. It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

2. The claims, defenses and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

3. The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

4. The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

C. SANCTIONS. If, after notice and a reasonable opportunity to respond, the court determines that subsection B of this section has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subsection B of this section or are responsible for the violation.

1. HOW INITIATED.

a. By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct

alleged to violate subsection B of this section. It shall be served as provided in Section 2005 of this title, but shall not be filed with or presented to the court unless, within twenty-one (21) days after service of the motion or such other period as the court may prescribe, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorneys fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

- b. On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subsection B of this section and directing an attorney, law firm, or party to show cause why it has not violated subsection B of this section with respect thereto.

2. NATURE OF SANCTIONS; LIMITATIONS. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs a and b of this paragraph, the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys fees and other expenses incurred as a direct result of the violation.

- a. Monetary sanctions shall not be awarded against a represented party for a violation of paragraph 2 of subsection B of this section.
- b. Monetary sanctions shall not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or

settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

3. ORDER. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this section and explain the basis for the sanction imposed.

D. INAPPLICABILITY TO DISCOVERY. This section does not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Sections 3226 through 3237 of this title.

SECTION 12. 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:

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 13. 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 14. AMENDATORY 12 O.S. 1991, Section 3227, is amended to read as follows:

Section 3227. A. BEFORE ACTION.

1. PETITION. A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in any court may file a verified petition in the district court in the county of the residence of any expected adverse party for such perpetuation of testimony. The petition shall be entitled in the name of the petitioner and shall show:

- a. That the petitioner or his personal representative, heirs, beneficiaries, successors or assigns may be a party to an action cognizable in a court but is presently unable to bring it or cause it to be brought.
- b. The subject matter of the expected action and his interest therein, and a copy, attached to the petition, of any written instrument the validity or construction of which may be called in question or which is connected with the subject matter of the requested deposition.
- c. The facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it.
- d. The names or, if the names are unknown, a description of the persons he expects will be adverse parties and their addresses so far as known.
- e. The names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each.

The petition shall request an order authorizing the petitioner to take the depositions of the persons named in the petition to be examined for the purpose of perpetuating their testimony.

2. NOTICE AND SERVICE. The petitioner shall thereafter serve a notice upon each person named or described in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least twenty (20) days before the date of hearing, the notice shall be served either within or without the state in the manner provided for personal service of summons. If such service cannot, with due diligence, be made upon any expected adverse party named or described in the petition, the court may enter such order as is just for service by publication or otherwise, and shall appoint, for persons not served by personal service, an attorney who shall represent them and, if they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the court shall appoint a guardian ad litem for any such minor or incompetent not legally represented.

3. ORDER AND EXAMINATION. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall enter an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and how the depositions shall be taken. The depositions may then be taken in accordance with the Oklahoma Discovery Code, Section 3224 et seq. of this title. The court may enter orders of the character provided for by Sections 3234 and 3235 of this title. For the purpose of applying the Oklahoma Discovery Code to depositions for perpetuating testimony, each reference to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

4. USE OF DEPOSITION. If a deposition to perpetuate testimony is taken under the Oklahoma Discovery Code, it may be used in any action involving the same subject matter subsequently

brought in a court of this state, in accordance with the provisions of subsection A of Section 3232 of this title.

B. PENDING APPEAL. If an appeal has been taken from a judgment of a district court or before the taking of an appeal if the time therefor has not expired, the district court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the district court. In such case, the party who desires to perpetuate the testimony may make a motion in the district court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the district court. The motion shall show:

1. The names and addresses of persons to be examined and the substance of the testimony which he expects to elicit from each;

2. The reasons for perpetuating the testimony.

If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may enter an order allowing the depositions to be taken and may make orders of the character provided for by Sections 3234 and 3235 of this title, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in the Oklahoma Discovery Code for depositions taken in actions pending in the district court.

C. PERPETUATION BY ACTION. The procedures prescribed in this section do not limit the power of a court to entertain an action to perpetuate testimony.

D. FILING OF DEPOSITION. Depositions taken under this section shall not be filed with the court in which the petition is filed or the motion is made except on order of the court or unless they are attached to a motion, response thereto, or are needed for use in a trial or hearing.

E. COSTS. The party taking any deposition under this section shall pay the costs thereof unless otherwise ordered by the court.

F. DEPOSITIONS TAKEN IN OTHER JURISDICTIONS ADMISSIBLE. A deposition taken under procedures of another jurisdiction, which

are similar to those in this section, is admissible in this state to the same extent as a deposition taken under this section.

SECTION 15. AMENDATORY 12 O.S. 1991, Section 3230, is amended to read as follows:

Section 3230. A. WHEN DEPOSITIONS MAY BE TAKEN.

1. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, shall be obtained only if the plaintiff seeks to take a deposition prior to the expiration of thirty (30) days after service of the summons and petition upon any defendant provided that leave is not required:

- a. If a defendant has served a notice of taking deposition or otherwise sought discovery; or
- b. If special notice is given as provided in paragraph 2 of subsection B of this section.

The attendance of witnesses may be compelled by subpoena. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

2. Unless otherwise agreed, a deposition upon oral examination may be taken only between the hours of 8:00 a.m. and 5:00 p.m. on a day other than a Saturday or Sunday and on a date other than a holiday designated in Section 82.1 of Title 25 of the Oklahoma Statutes.

B. PLACE WHERE WITNESS OR PARTY IS REQUIRED TO ATTEND TAKING OF DEPOSITIONS.

1. A witness shall be obligated to attend to give his deposition only in the county of his residence, a county adjoining the county of his residence or the county where he is located when the subpoena is served upon him.

2. A party, in addition to the places where a witness may be deposed, may be deposed in the county where the action is pending or the county where he is located when the notice is served upon him.

C. NOTICE OF EXAMINATION; GENERAL REQUIREMENTS; SPECIAL NOTICE; NONSTENOGRAPHIC RECORDING; PRODUCTION OF DOCUMENTS AND THINGS; DEPOSITION OF ORGANIZATION; DEPOSITION BY TELEPHONE.

1. A party desiring to take the deposition of any person upon oral examination shall give notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and shall state the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. The notice shall be served in order to allow the adverse party sufficient time, by the usual route of travel, to attend, and three (3) days for preparation, exclusive of the day of service of the notice.

If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced, as set forth in the subpoena, shall be attached to or included in the notice.

2. Leave of court is not required for the taking of a deposition by plaintiff if the notice states that the person to be examined is about to leave the state and will be unavailable for examination, unless his deposition is taken before expiration of the thirty-day period, and sets forth facts to support the statement. The attorney for the plaintiff shall sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information and belief the statement and supporting facts are true. For a willful violation of this section, an attorney may be subject to appropriate disciplinary action and sanctions under Section 3237 of this title.

If a party shows that when he was served with notice under this paragraph he was unable, through the exercise of diligence, to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.

3. The court may for cause shown enlarge or shorten the time for taking the deposition and for notice of taking the deposition.

4. The parties may stipulate in writing or the court may upon motion order that the testimony at a deposition be recorded by

other than stenographic means. Unless good cause is shown to the contrary, such motions shall be freely granted. The stipulation or order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the deposition is recorded by other than stenographic means, the party taking the deposition shall upon request by any party or the witness furnish a copy of the deposition to the witness. The party taking the deposition may furnish either a stenographic copy of the deposition or a copy of the deposition as recorded by other than stenographic means.

Any objections under subsection D of this section, any changes made by the witness, the signature of the witness identifying the deposition as his own or the statement of the officer that is required if the witness does not sign, as provided in subsection F of this section, and the certification of the officer required by subsection G of this section shall be set forth in a writing to accompany a deposition recorded by nonstenographic means.

5. The notice to a party deponent may be accompanied by a request made in compliance with Section 3234 of this title for the production of documents and tangible things at the taking of the deposition. The procedure of Section 3234 of this title shall apply to the request.

6. A party may in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. Such designation of persons to testify and the subject of the testimony shall be delivered to the other party or parties prior to or at the commencement of the taking of the deposition of the organization. A subpoena shall advise a nonparty organization of

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its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization.

This paragraph does not preclude taking a deposition by any other procedure authorized in the Oklahoma Discovery Code.

7. The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone. For the purposes of this section, subsection A of Section 3228, and paragraphs 1 of subsections A and B of Section 3237 of this title, a deposition taken by telephone is taken in the county and state and at the place where the deponent is to answer questions propounded to him.

D. EXAMINATION AND CROSS-EXAMINATION; RECORD OF EXAMINATION; OATH; OBJECTIONS. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of Section 2101 et seq. of this title. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with paragraph 4 of subsection C of this section. If requested by one of the parties, the testimony shall be transcribed at the expense of the party.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections.

In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the depositions and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

E. MOTION TO TERMINATE OR LIMIT EXAMINATION. At any time during the taking of the deposition, on motion of a party or of  
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the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass or oppress the deponent or party, the court in which the action is pending or the court in the county where the deposition is being taken may order the officer conducting the examination to cease taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in subsection C of Section 3226 of this title. If the order entered terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for the order provided for in this section. 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.

F. SUBMISSION TO WITNESS; CHANGES; SIGNING. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance in the deposition which the witness desires to make shall be entered at the conclusion of the deposition by the officer with a statement of the reasons given by the witness for making them. The original testimony shall be retained in the deposition. If a correction is determined to be an error of the officer or person acting under his direction in recording or transcribing the deposition, the correction shall be made in the body of the deposition. The original language of the deposition shall be entered at the conclusion of the deposition stating the nature of the correction made by the person recording or transcribing the deposition.

The deposition shall then be signed by the witness, unless waived either by stipulation of the parties or because the witness is ill, cannot be found or refuses to sign. If the deposition is not signed by the witness within thirty (30) days of its submission to him, the officer shall sign it and state on the record the reason for the absence of the signature of the witness.

The deposition may then be used as fully as though signed unless, on a motion to suppress under paragraph 4 of subsection C of Section 3232 of this title, the court holds that the reason given for the refusal to sign requires rejection of the deposition in whole or in part.

G. CERTIFICATION AND FILING BY OFFICER; EXHIBITS; COPIES; NOTICE OF FILING.

1. The officer shall certify on ~~the~~ any stenographic deposition:

- a. the qualification of the officer to administer oaths, including his certificate number,
- b. that the witness was duly sworn by him,
- c. that the deposition is a true record of the testimony given by the witness, and
- d. that the officer is not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, and is not financially interested in the action.

~~Unless otherwise ordered by the court, the~~ Except on order of the court or unless a deposition is attached to a motion response thereto, or is needed for use in a trial or hearing, depositions shall not be filed with the court clerk. The officer shall securely seal ~~the~~ any stenographic deposition in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)" ~~and shall promptly file it with the court in which the action is pending or send it by registered or certified mail to the clerk thereof for filing.~~

Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to the deposition and may be inspected and copied by any party. If the person producing the materials desires to retain them he may:

- a. Offer copies to be marked for identification and annexed to the deposition and to serve as originals if he affords to all parties fair opportunity to

verify the copies by comparison with the originals,  
or

- b. Offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

2. Each party who takes the deposition of a witness or of another party shall bear all expenses thereof, including the cost of transcription, and shall furnish upon request to the adverse party or parties, free of charge, at least one copy of the transcribed deposition.

3. The party taking the deposition shall give prompt notice of its filing to all other parties.

H. FAILURE TO ATTEND OR TO SERVE SUBPOENA; EXPENSES.

1. If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

2. If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

I. WITNESS FEES.

1. The attendance and travel fees for a witness shall be paid as provided in Sections 391 and 400 of this title.

2. A party deponent must attend the taking of a deposition without the payment or tender of attendance or travel fees.

J. TAXING OF COSTS OF DEPOSITIONS. The cost of transcription of a deposition, as verified by the statement of the certified court reporter, the fees of the sheriff for serving the notice to take depositions and fees of witnesses shall each constitute an item of costs to be taxed in the case in the manner provided by law. The court may upon motion of a party retax the costs if the court finds the deposition was unauthorized by statute or unnecessary for protection of the interest of the party taking the deposition.

SECTION 16. AMENDATORY 19 O.S. 1991, Section 138.4, is amended to read as follows:

Section 138.4 In counties subject to the provisions of this act, Section 138.1 et seq. of title, wherein the district judges have determined, in accordance with Section 138.3 of this title that:

~~(a)~~ the protection of the unfortunate and poverty-stricken defendants subject to criminal action in such county require the employment of a county indigent defender on a full-time basis, such person so appointed shall not engage in any practice of law except in the performance of his duties as county indigent defender, and shall receive a salary commensurate with the salary received by the district attorney in said district, payable monthly, from the court fund of such county, provided such salaries shall not apply to counties of less than two hundred thousand (200,000) population; provided that ~~such judges after determining that~~ if additional assistance is required by the county indigent defender to properly fulfill the duties of his office he may authorize the employment of and appoint assistant defenders on a full-time or part-time basis, which assistants shall be under the same restrictions as to the practice of law as the county indigent defender of such county, and each shall receive a salary commensurate with the range of salaries of assistant district attorneys in their districts, payable monthly,

out of the court fund of the county as determined and fixed by such judges the county indigent defender;

~~(b) conditions do not require the employment of a county indigent defender on a full-time basis, or that the protection of the unfortunate and poverty-stricken defendants subject to criminal action in such county may be adequately provided by the employment of one part-time county indigent defender, or one part-time county indigent defender and one or more part-time assistant county indigent defenders, the persons so appointed may engage in any practice of law which does not conflict with the duties of the office of county indigent defender; and the salary of such county indigent defender or assistant county indigent defenders shall be paid out of the court fund of the county in an amount as determined and fixed by the district judges and approved by the county commissioners of such county, but in any event shall not exceed Seven Thousand Two Hundred Dollars (\$7,200.00) per annum, payable monthly.~~

SECTION 17. AMENDATORY 19 O.S. 1991, Section 138.6, is amended to read as follows:

Section 138.6 ~~The district judges of a county subject~~ Pursuant to the provisions of this act, the county indigent defender may authorize the employment of one or more secretaries and one or more investigators ~~for the office of county indigent defender~~ and shall determine and fix the salary to be paid; provided, that such salaries shall be commensurate with ~~those~~ the range of salaries paid by the district attorneys' offices in their districts, ~~as may be fixed by such judges,~~ payable monthly, from the court fund of such county.

SECTION 18. AMENDATORY 20 O.S. 1991, Section 1304, as last amended by Section 3, Chapter 227, O.S.L. 1993 (20 O.S. Supp. 1993, Section 1304), is amended to read as follows:

Section 1304. A. Claims against the court fund shall include only such expenses as may be lawfully incurred for the operation of the court in the county. Payment of the expenses may be made after the claim therefor is approved by the district judge who is a member of the governing board of the court fund and either the

local court clerk or the local associate district judge who is a member of said governing board. No expenditures falling into any category listed in paragraphs 2, 5 and 6 of subsection B of this section, may be made without prior written approval of the Chief Justice of the Supreme Court. The Supreme Court may provide by rule the manner in which expenditures in the restricted categories shall be submitted for approval. When allowing the expenditures in paragraphs 5 and 6 of subsection B of this section, the Chief Justice shall direct that resort first be had to the surplus funds in the court fund in the county involved.

B. The term "expenses" shall include the following items and none others:

1. Principal and interest on bonds issued prior to January 1, 1968, Title 19 of the Oklahoma Statutes, Sections 771 through 778;

2. Compensation of bailiffs and part-time help;

3. Juror fees and mileage, as well as overnight accommodation and food expense for jurors kept together as set out in Title 28 of the Oklahoma Statutes, Section 81 et seq.;

4. Witness fees and mileage for witnesses subpoenaed by the defense as set out in Section 81 et seq. of Title 28 of the Oklahoma Statutes, except expert witnesses for county indigent defenders shall be paid a reasonable fee for their services;

5. Office supplies, books for records, postage and printing;

6. Furniture, fixtures and equipment;

7. Renovating, remodeling and maintenance of courtrooms, judge's chambers, clerk's offices and other areas primarily used for judicial functions;

8. Judicial robes;

9. Attorney's fees for indigents in the trial court and on appeal;

10. Compensation or reimbursement for services provided in connection with an adult guardianship proceeding as provided by Section 4-403 of Title 30 of the Oklahoma Statutes. Compensation from the court fund for attorneys appointed pursuant to the Oklahoma Guardianship Act, Section 1-102 et seq. of Title 30 of the Oklahoma Statutes, shall be substantially the same as for

attorneys appointed in juvenile proceedings pursuant to Title 10 of the Oklahoma Statutes. The compensation, if any, for guardians ad litem appointed pursuant to the Oklahoma Guardianship Act shall not exceed One Hundred Dollars (\$100.00);

11. Transcripts ordered by the court;

12. Necessary telephone expenses, gas, water and electrical utilities for the part of the county courthouse occupied by the court;

13. The cost of publication notice in juvenile proceedings as provided in Section 1105 of Title 10 of the Oklahoma Statutes and in termination of parental rights proceedings brought by the state as provided in Section 1131 of Title 10 of the Oklahoma Statutes;

14. Interpreter fees; ~~and~~

15. Necessary travel expenses of the office of county indigent defender approved by the court fund governing board; and

16. Any other expenses now or hereafter expressly authorized by statute.

C. No county courthouse building commission shall be created after March 1, 1968, and no disbursements shall be permitted from any court fund under the provisions of Title 19 of the Oklahoma Statutes, Sections 771 through 778, except by county courthouse commissions created prior to March 1, 1968, provided, nothing in Section 1301 et seq. of this title shall prevent the construction of additional courtrooms within existing courthouse facilities, from funds other than the court fund.

D. Items of equipment, furniture, fixtures, printing or supplies that are available in the quantities desired from a contract vendor's list for order or purchase by the court fund through the facilities of the Central Purchasing Office of the State of Oklahoma may not be purchased by any court fund at prices higher than those approved by the Central Purchasing Office.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3003 of Title 20, unless there is created a duplication in numbering, reads as follows:

A. The clerk of the district court shall notify the secretary of the county election board of the name of each person who is the subject of an order by the district court restricting, limiting, suspending, or otherwise altering their right to vote.

B. The clerk of the district court shall notify the secretary of the county election board of the name of each person whose right to vote has been reinstated or otherwise modified.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 86.1 of Title 28, unless there is created a duplication in numbering, reads as follows:

The clerk of the district court of each county of this state may provide forms for jurors and witnesses individually to voluntarily designate any fees due to them to be donated to an agency or agencies established for the prevention of child abuse. All designated fees shall be placed by the district court clerk into a special account within the county treasury. The board of county commissioners shall make disbursement from the account as recommended by a committee which shall consist of five (5) members as follows:

1. One member shall be the district court clerk or a designee;

2. One member shall be the Presiding Judge of the Juvenile Bureau or the judge of the district court who has juvenile docket responsibility or a designee;

3. One member shall be a community volunteer with expertise in child abuse appointed by the board of county commissioners;

4. One member shall be the district attorney or a designee;  
and

5. One member shall be the chair of the board of county commissioners or a designee.

SECTION 21. AMENDATORY 38 O.S. 1991, Section 28, is amended to read as follows:

Section 28. A. All citizens of the United States, residing in this state, having the qualifications of electors of this state, who are of sound mind and discretion and of good moral

character are competent jurors to serve on all grand and petit juries within their counties; provided, that persons over seventy (70) years of age and persons who have served as a grand or petit juror during the last three (3) immediately preceding calendar years shall not be compelled to serve as jurors in this state and the court may excuse or discharge any juror drawn and summoned as a grand or petit juror if jury service would result in substantial hardship to the prospective juror.

B. Persons who are not qualified to serve as jurors are:

1. Justices of the Supreme Court or the Court of Appeals;
2. Judges of the Court of Criminal Appeals or the district court;
3. Sheriffs or deputy sheriffs;
4. Jailers or law enforcement officers, state or federal, having custody of prisoners;
5. Licensed attorneys engaged in the practice of law;
6. Persons who have been convicted of any felony or served a term of imprisonment in any penitentiary, state or federal, for the commission of a felony; provided, any such citizen convicted, who has been fully restored to his civil rights, shall be eligible to serve as a juror; and
7. Legislators during session of the Legislature or involved in state business.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 36 of Title 38, unless there is created a duplication in numbering, reads as follows:

Persons serving as jurors during a trial shall not be asked or required to give their complete residence address or telephone number in the presence of the defendant.

SECTION 23. This act shall become effective September 1, 1994.

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