STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2036 By: Steidley

AS INTRODUCED

An Act relating to the Oklahoma Discovery Code; amending 12 O.S. 1991, Sections 3230 and 3233, which relate to depositions and interrogatories; clarifying language; and providing an effective date.

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

SECTION 1. 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~~ pursuant to 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. 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 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~~ paragraph 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.

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 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 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 officer shall securely seal the 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 2. AMENDATORY 12 O.S. 1991, Section 3233, is amended to read as follows:

Section 3233. A. AVAILABILITY; PROCEDURES FOR USE. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to that party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action or upon any other party with the summons and petition or after service of the summons and petition on that party.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The number of interrogatories to a party shall not exceed thirty in number. Interrogatories inquiring as to the names and locations of witnesses, or the existence, location and custodian of documents or physical evidence shall be construed as one interrogatory. All other interrogatories, including subdivisions of one numbered interrogatory, shall be construed as separate interrogatories. No further interrogatories ~~will~~ shall be served unless authorized by the court. If counsel for a party believes that more than thirty interrogatories are necessary, he shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a

reasonable number of additional interrogatories. Counsel are expected to comply with this requirement in good faith. In the event a written stipulation cannot be agreed upon, the party seeking to submit such additional interrogatories shall file a motion with the court (1) showing that counsel have conferred in good faith but sincere attempts to resolve the issue have been unavailing, (2) showing reasons establishing good cause for their use, and (3) setting forth the proposed additional interrogatories. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within thirty (30) days after the service of the interrogatories, except that a defendant may serve answers or objections to interrogatories within forty-five (45) days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under subsection A of Section 3237 of this title with respect to any objection to or other failure to answer an interrogatory.

B. SCOPE; USE AT TRIAL. Interrogatories may relate to any matters which can be inquired into under subsection B of Section 3226 of this title, and the answers may be used to the extent permitted by the Oklahoma Evidence Code as set forth in Sections 2101 et seq. of this title.

An interrogatory otherwise proper is not necessarily objectionable because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact. The court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

C. OPTION TO PRODUCE BUSINESS RECORDS. Where the answer to an interrogatory may be derived or ascertained from the business

records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries thereof. A specification shall be in sufficient detail to permit the party submitting the interrogatory to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

SECTION 3. This act shall become effective September 1, 1994.

44-2-8333 SD