

ENGROSSED HOUSE
BILL NO. 2749

By: Coleman of the House
and
Stipe of the Senate

An Act relating to shorthand and court reporters;
amending 12 O.S. 1991, Sections 3228, as last
amended by Section 5, Chapter 253, O.S.L. 1995 and
3230, as amended by Section 15, Chapter 343, O.S.L.
1994 (12 O.S. Supp. 1995, Sections 3228 and 3230),
which relate to depositions; modifying who may take
depositions; authorizing the party desiring to take
the deposition to have the deposition taken by
person authorized by law to take depositions; and
providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 1991, Section 3228, as
last amended by Section 5, Chapter 253, O.S.L. 1995 (12 O.S. Supp.
1995, Section 3228), is amended to read as follows:

Section 3228. A. DEPOSITIONS TAKEN WITHIN OKLAHOMA. Within
this state, depositions shall be taken before an officer authorized
to administer oaths by the laws of the place where the examination
is held, or before a person appointed by the court in which the
action is pending. A person so appointed has power to administer
oaths and take testimony.

The term officer as used in Sections 3230 through 3232 of this title includes a person appointed by the court or designated by the parties under Section 3229 of this title; except that on and after January 1, 1990, depositions taken within this state shall only be taken by an officer who is either a certified shorthand reporter (CSR) or a licensed shorthand reporter (LSR); provided however, ~~on~~ and after the effective date of this act beginning March 10, 1992, any person who was taking depositions by the steno-mask method of reporting within this state prior to January 1, 1990, and beginning November 1, 1996, any person who was taking depositions by the multichannel method of reporting within this state prior to January 1, 1990, may continue to take depositions within this state if the person provides to the State Board of Examiners of Official Shorthand Reporters or successor entity of the Board a certification, signed by a judge of the district court and by an attorney licensed to practice law in this state, declaring that the person has taken depositions that were admitted into evidence in any court of this state. The certification shall be submitted within thirty (30) days of the effective date ~~of this act~~ provided for in this subsection for the method to be used to the State Board of Examiners of Official Shorthand Reporters or successor entity of the Board who shall issue said person a certificate as an acting court reporter permitting the person to take depositions or other sworn statements, subpoena witnesses for depositions, issue affidavits in respect to the regular duties of the person, and administer oaths and affirmations with authority equal to that of a notary public.

B. DEPOSITIONS TAKEN OUTSIDE OF OKLAHOMA. Depositions may be taken outside of Oklahoma:

1. On notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of this state; or

2. Before a person commissioned by the court, and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take testimony; or

3. Pursuant to a letter rogatory.

A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within this state.

C. DISQUALIFICATIONS FOR INTEREST. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

SECTION 2. AMENDATORY 12 O.S. 1991, Section 3230, as amended by Section 15, Chapter 343, O.S.L. 1994 (12 O.S. Supp. 1995, 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 party desiring to take the deposition may have the testimony at a deposition taken by the stenographic, multichannel or steno-mask method of recording, provided the reporter is authorized to take depositions pursuant to Section 3228 of this title. In addition, 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 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 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 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.

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 any stenographic deposition in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)".

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 3. This act shall become effective November 1, 1996.

Passed the House of Representatives the 29th day of February, 1996.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1996.

President of the Senate