

1 STATE OF OKLAHOMA

2 1st Session of the 47th Legislature (1999)

3 COMMITTEE SUBSTITUTE
4 FOR
5 HOUSE BILL NO. 1507

By: Toure

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7 COMMITTEE SUBSTITUTE

8 An Act relating to civil procedure; amending 12 O.S.
9 1991, Section 3226, as last amended by Section 3,
10 Chapter 61, O.S.L. 1996 (12 O.S. Supp. 1998, Section
11 3226), which relates to the Oklahoma Discovery Code;
12 modifying reasons for issuance of certain protective
13 orders; and providing an effective date.

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

15 SECTION 1. AMENDATORY 12 O.S. 1991, Section 3226, as
16 last amended by Section 3, Chapter 61, O.S.L. 1996 (12 O.S. Supp.
17 1998, Section 3226), is amended to read as follows:

18 Section 3226. A. DISCOVERY METHODS. Parties may obtain
19 discovery by one or more of the following methods: Depositions upon
20 oral examination or written questions; written interrogatories;
21 production of documents or things or permission to enter upon land
22 or other property, for inspection and other purposes; physical and
23 mental examinations; and requests for admission. Unless the court
24 orders otherwise under this section, the frequency of use of these
25 methods is not limited.

26 B. DISCOVERY SCOPE AND LIMITS. Unless otherwise limited by
27 order of the court in accordance with the Oklahoma Discovery Code,
28 the scope of discovery is as follows:

29 1. IN GENERAL. Parties may obtain discovery regarding any
30 matter, not privileged, which is relevant to the subject matter
31 involved in the pending action, whether it relates to the claim or
32 defense of the party seeking discovery or to the claim or defense of

1 any other party, including the existence, description, nature,
2 custody, condition and location of any books, documents or other
3 tangible things and the identity and location of persons having
4 knowledge of any discoverable matter. It is not a ground for
5 objection that the information sought will be inadmissible at the
6 trial if the information sought appears reasonably calculated to
7 lead to the discovery of admissible evidence.

8 2. TRIAL PREPARATION: MATERIALS. Subject to the provisions of
9 paragraph 3 of this subsection, discovery may be obtained of
10 documents and tangible things otherwise discoverable under paragraph
11 1 of this subsection and prepared in anticipation of litigation or
12 for trial by or for another party or by or for the representative of
13 that other party, including his attorney, consultant, surety,
14 indemnitor, only upon a showing that the party seeking discovery has
15 substantial need of the materials in the preparation of his case and
16 that he is unable, without undue hardship, to obtain the substantial
17 equivalent of the materials by other means. In ordering discovery
18 of such materials when the required showing has been made, the court
19 shall protect against disclosure of the mental impressions,
20 conclusions, opinions or legal theories of an attorney or other
21 representative of a party concerning the litigation.

22 A party may obtain, without the required showing provided for in
23 this paragraph, a statement concerning the action or its subject
24 matter previously made by that party. Upon request, a person not a
25 party may obtain without the required showing a statement concerning
26 the action or its subject matter previously made by that person. If
27 the request is refused, the person may move for a court order. The
28 provisions of paragraph 4 of subsection A of Section 3237 of this
29 title apply to the award of expenses incurred in relation to the
30 motion. For purposes of this paragraph, a statement previously made
31 is:
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- 1 a. A written statement signed or otherwise adopted or
2 approved by the person making it, or
3 b. A stenographic, mechanical, electrical, or other
4 recording, or a transcription thereof, which
5 substantially recites an oral statement by the person
6 making it and contemporaneously recorded.

7 3. TRIAL PREPARATION: EXPERTS.

- 8 a. Discovery of facts known and opinions held by experts,
9 otherwise discoverable under the provisions of
10 paragraph 1 of this subsection and acquired or
11 developed in anticipation of litigation or for trial,
12 may be obtained only as follows:

13 (1) A party may, through interrogatories, require any
14 other party to identify each person whom that
15 other party expects to call as an expert witness
16 at trial and give the address at which that
17 expert witness may be located.

18 (2) After disclosure of the names and addresses of
19 the expert witnesses, the other party expects to
20 call as witnesses, the party, who has requested
21 disclosure, may depose any such expert witnesses
22 subject to scope of this section. Prior to
23 taking the deposition the party must give notice
24 as required in subsections A and C of Section
25 3230 of this title.

26 (3) In addition to taking the deposition of an expert
27 witness the party may, through interrogatories,
28 require the party who expects to call the expert
29 witness to state the subject matter on which the
30 expert is expected to testify, and to state the
31 substance of the facts and opinions to which the
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1 expert is expected to testify and a summary of
2 the grounds for each opinion.

3 b. A party may discover facts known or opinions held by
4 an expert who has been retained or specially employed
5 by another party in anticipation of litigation or
6 preparation for trial and who is not expected to be
7 called as a witness at trial, only upon motion, when
8 the court may order discovery as provided in Section
9 3235 of this title or upon a showing of exceptional
10 circumstances under which it is impracticable for the
11 party seeking discovery to obtain facts or opinions on
12 the same subject by any other means.

13 c. Unless manifest injustice would result:

14 (1) The court shall require that the party seeking
15 discovery pay the expert a reasonable fee for
16 time spent in responding to discovery under
17 division (2) of subparagraph a of this paragraph
18 and subparagraph b of this paragraph.

19 (2) The court shall require that the party seeking
20 discovery with respect to discovery obtained
21 under subparagraph b of this paragraph, pay the
22 other party a fair portion of the fees and
23 expenses reasonably incurred by the latter party
24 in obtaining facts and opinions from the expert.

25 4. CLAIMS OF PRIVILEGE OR PROTECTION OF TRIAL PREPARATION

26 MATERIALS. When a party withholds information otherwise
27 discoverable under the Oklahoma Discovery Code by claiming that it
28 is privileged or subject to protection as trial preparation
29 material, the party shall make the claim expressly and shall
30 describe the nature of the documents, communications, or things not
31 produced or disclosed in a manner that, without revealing
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1 information itself privileged or protected, will enable other
2 parties to assess the applicability of the privilege or protection.

3 C. PROTECTIVE ORDERS. 1. Upon motion by a party or by the
4 person from whom discovery is sought, accompanied by a certification
5 that the movant has in good faith conferred or attempted to confer,
6 either in person or by telephone, with other affected parties in an
7 effort to resolve the dispute without court action, and for good
8 cause shown, the court in which the action is pending or on matters
9 relating to a deposition, the district court in the county where the
10 deposition is to be taken may enter any order which justice requires
11 to protect a party or person from annoyance, embarrassment,
12 oppression or undue burden or expense, including one or more of the
13 following:

- 14 a. that the discovery not be had,
- 15 b. that the discovery may be had only on specified terms
16 and conditions, including a designation of the time or
17 place,
- 18 c. that the discovery may be had only by a method of
19 discovery other than that selected by the party
20 seeking discovery,
- 21 d. that certain matters not be inquired into, or that the
22 scope of the disclosure or discovery be limited to
23 certain relevant matters,
- 24 e. that discovery be conducted with no one present except
25 persons designated by the court,
- 26 ~~e.~~ f. that a deposition after being sealed be opened
27 only by order of the court,
- 28 ~~f.~~ g. that a trade secret or other confidential
29 research, development or commercial information
30 not be disclosed or be disclosed only in a
31 designated way, and
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1 ~~g.~~ h. that the parties simultaneously file specified
2 documents or information enclosed in sealed
3 envelopes to be opened as directed by the court~~7.~~

4 2. If the motion for a protective order is denied in whole or
5 in part, the court may, on such terms and conditions as are just,
6 order that any party or person provide or permit discovery. The
7 provisions of paragraph 4 of subsection A of Section 3237 of this
8 title apply to the award of expenses incurred in relation to the
9 motion. Any protective order of the court which has the effect of
10 removing any material obtained by discovery from the public record
11 shall contain the following:

- 12 a. a statement that the court has determined it is
13 necessary in the interests of justice to remove the
14 material from the public record,
- 15 b. specific identification of the material which is to be
16 removed or withdrawn from the public record, or which
17 is to be filed but not placed in the public record,
18 and
- 19 c. a requirement that any party obtaining a protective
20 order place the protected material in a sealed manila
21 envelope clearly marked with the caption and case
22 number and is clearly marked with the word
23 "CONFIDENTIAL", and stating the date the order was
24 entered and the name of the judge entering the order;

25 3. No protective order entered after the filing and
26 microfilming of documents of any kind shall be construed to require
27 the microfilm record of such filing to be amended in any fashion;

28 4. The party or counsel which has received the protective order
29 shall be responsible for promptly presenting the order to
30 appropriate court clerk personnel for appropriate action;

1 5. All documents produced or testimony given under a protective
2 order shall be retained in the office of counsel until required by
3 the court to be filed in the case;

4 6. Counsel for the respective parties shall be responsible for
5 informing witnesses, as necessary, of the contents of the protective
6 order; and

7 7. When a case is filed in which a party intends to seek a
8 protective order removing material from the public record, the
9 plaintiff(s) and defendant(s) shall be initially designated on the
10 petition under pseudonym such as "John or Jane Doe", or "Roe", and
11 the petition shall clearly indicate that the party designations are
12 fictitious. The party seeking confidentiality or other order
13 removing the case, in whole or in part, from the public record,
14 shall immediately present application to the court, seeking
15 instructions for the conduct of the case, including confidentiality
16 of the records.

17 D. SEQUENCE AND TIMING OF DISCOVERY. Unless the court upon
18 motion, for the convenience of parties and witnesses and in the
19 interests of justice, orders otherwise, methods of discovery may be
20 used in any sequence. The fact that a party is conducting
21 discovery, whether by deposition or otherwise, shall not operate to
22 delay discovery by any other party.

23 E. SUPPLEMENTATION OF RESPONSES. A party who has responded to
24 a request for discovery with a response that was complete when it
25 was made is under no duty to supplement the response to include
26 information thereafter acquired, except as follows:

27 1. A party is under a duty seasonably to supplement the
28 response with respect to any question directly addressed to:

29 a. the identity and location of persons having knowledge
30 of discoverable matters, and

31 b. the identity of each person expected to be called as
32 an expert witness at trial, the subject matter on

1 which he is expected to testify, and the substance of
2 his testimony.

3 2. A party is under a duty seasonably to amend a prior response
4 to an interrogatory, request for production, or request for
5 admission if the party obtains information upon the basis of which:

6 a. (i) the party knows that the response was incorrect
7 in some material respect when made, or

8 (ii) the party knows that the response, which was
9 correct when made, is no longer true in some
10 material respect; and

11 b. the additional or corrective information has not
12 otherwise been made known to the other parties during
13 the discovery process or in writing.

14 3. A duty to supplement responses may be imposed by order of
15 the court, agreement of the parties, or at any time prior to trial
16 through new requests for supplementation of prior responses.

17 F. DISCOVERY CONFERENCE. At any time after commencement of an
18 action, the court may direct the attorneys for the parties to appear
19 for a conference on the subject of discovery. The court shall do so
20 upon motion by the attorney for any party if the motion includes:

21 1. A statement of the issues as they then appear;

22 2. A proposed plan and schedule of discovery;

23 3. Any limitations proposed to be placed on discovery;

24 4. Any other proposed orders with respect to discovery; and

25 5. A statement showing that the attorney making the motion has
26 made a reasonable effort to reach agreement with opposing attorneys
27 on the matters set forth in the motion.

28 Each party and his attorney are under a duty to participate in
29 good faith in the framing of a discovery plan if a plan is proposed
30 by the attorney for any party. Notice of the motion shall be served
31 on all parties. Objections or additions to matters set forth in the
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1 motion shall be served not later than ten (10) days after service of
2 the motion.

3 Following the discovery conference, the court shall enter an
4 order tentatively identifying the issues for discovery purposes,
5 establishing a plan and schedule for discovery, setting limitations
6 on discovery, if any; and determining such other matters, including
7 the allocation of expenses, as are necessary for the proper
8 management of discovery in the action. In preparing the plan for
9 discovery the court shall protect the parties from excessive or
10 abusive use of discovery. An order shall be altered or amended
11 whenever justice so requires.

12 Subject to the right of a party who properly moves for a
13 discovery conference to prompt convening of the conference, the
14 court may combine the discovery conference with a pretrial
15 conference.

16 G. SIGNING OF DISCOVERY REQUESTS, RESPONSES AND OBJECTIONS.

17 Every request for discovery, response or objection thereto made by a
18 party represented by an attorney shall be signed by at least one of
19 his attorneys of record in his individual name whose address shall
20 be stated. A party who is not represented by an attorney shall sign
21 the request, response or objection and state his address. The
22 signature of the attorney or party constitutes a certification that
23 he has read the request, response or objection, and that it is:

24 1. To the best of his knowledge, information and belief formed
25 after a reasonable inquiry consistent with the Oklahoma Discovery
26 Code and warranted by existing law or a good faith argument for the
27 extension, modification or reversal of existing law;

28 2. Interposed in good faith and not primarily to cause delay or
29 for any other improper purpose; and

30 3. Not unreasonable or unduly burdensome or expensive, given
31 the nature and complexity of the case, the discovery already had in
32 the case, the amount in controversy, and other values at stake in

1 the litigation. If a request, response or objection is not signed,
2 it shall be deemed ineffective.

3 If a certification is made in violation of the provisions of
4 this subsection, the court, upon motion or upon its own initiative,
5 shall impose upon the person who made the certification, the party
6 on whose behalf the request, response or objection is made, or both,
7 an appropriate sanction, which may include an order to pay to the
8 amount of the reasonable expenses occasioned thereby, including a
9 reasonable attorney's fee.

10 SECTION 2. This act shall become effective November 1, 1999.

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