

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1940

By: Toure

COMMITTEE SUBSTITUTE

An Act relating to civil procedure; amending 12 O.S. 2001, Section 1101.1, which relates to offers of judgment; permitting offer of judgment to exclude certain costs and fees; modifying circumstances for which defendant is entitled to recover certain costs and fees; modifying circumstances for which plaintiff is entitled to recover certain costs and fees; providing procedure for comparing judgment to offer of judgment; amending 12 O.S. 2001, Sections 1751 and 1753, which relate to small claims procedure; clarifying language; correcting statutory references; creating the Choice in Mediation Act; providing short title; stating purpose; authorizing certain entities to establish mediation programs; defining term; granting entities certain options; providing for compensation of the mediator; requiring certain disclosure regarding the mediator; requiring adoption of appropriate procedures; requiring procedure for complaints; requiring entities to clarify meaning of certification; providing that the Choice in Mediation Act does not impair the authority of the courts; providing the Choice in Mediation Act does not limit the ability of parties to select and compensate a mediator of their choice; amending 12 O.S. 2001, Sections 2103, 2105, 2107, 2202, 2301, 2304, 2403, 2501, 2502, 2503, 2504, 2505, 2506, 2506.1, 2507, 2508, 2510, 2511, 2602, 2603, 2604, 2606, 2607, 2608, 2609, 2610, 2611, 2611.2, 2612, 2613, 2701, 2703, 2705, 2801, 2802, 2803, 2804, 2806, 2902, 2903, 3001, 3002, 3003, 3004, 3005, 3007, 3008 and 3009, which relate to the Oklahoma Evidence Code; clarifying scope of Code; providing for determination of privilege; expanding scope of documentation that is admissible and clarifying references to such records; clarifying and updating language of the Code; making language gender-neutral; modifying procedure for presumptions in criminal cases; modifying exclusion of relevant evidence; modifying exceptions for certain privileges; expanding governmental privilege to refuse to disclose identity; modifying role of interpreter; clarifying time period for inadmissible convictions; expanding scope of proceedings for which procedures for taking testimony of child witnesses is applicable; modifying age of child witnesses; correcting statutory cites; expanding scope of opinion testimony; modifying disclosure requirement for experts; modifying definition relating to hearsay; modifying scope of hearsay rule; modifying exceptions from hearsay; establishing a residual

exception; expanding items subject to self-authentication; modifying and expanding definitions relating to documentation; updating terminology relating to records; amending 12 O.S. 2001, Section 3226, which relates to discovery; providing that certain documents are not protected from disclosure; amending 47 O.S. 2001, Section 11-403, which relates to vehicle right-of-way at intersections; providing for right-of-way at uncontrolled T intersections; defining term; repealing 12 O.S. 2001, Sections 3101, 3102 and 3103, which relate to codification, repealers and the effective date for the Oklahoma Evidence Code; providing for codification; providing for recodification; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 2001, Section 1101.1, is amended to read as follows:

Section 1101.1 A. Actions for personal injury, wrongful death, and certain specified actions.

1. Subject to the provisions of paragraph 5 of this subsection, after a civil action is brought for the recovery of money as the result of a claim for personal injury, wrongful death, or pursuant to Chapter 21 of Title 25 or Section 5 of Title 85 of the Oklahoma Statutes, any defendant may file with the court, at any time more than ten (10) days prior to trial, an offer of judgment for a sum certain to any plaintiff with respect to the action or any claim or claims asserted in the action. An offer of judgment shall be deemed to include any costs or attorneys fees otherwise recoverable unless it expressly provides otherwise. If an offer of judgment is filed, each plaintiff to whom an offer of judgment is made shall, within ten (10) days, file:

- a. a written acceptance or rejection of such offer, or
- b. a counteroffer of judgment, as described in paragraph 2 of this subsection.

If the plaintiff fails to file a timely response, the offer of judgment shall be deemed rejected. The fact an offer of judgment is

made but not accepted or is deemed rejected does not preclude subsequent timely offers of judgment.

2. In the event a defendant files an offer of judgment, the plaintiff may, within ten (10) days, file with the court a counteroffer of judgment directed to each defendant who has filed an offer of judgment. If a counteroffer of judgment is filed, each defendant to whom the counteroffer of judgment is made shall, within ten (10) days, file a written acceptance or rejection of the counteroffer of judgment. If a defendant fails to file a timely response, the counteroffer of judgment shall be deemed rejected. The fact a counteroffer of judgment is made but not accepted or deemed rejected does not preclude subsequent counteroffers of judgment if subsequent offers of judgment are made.

3. In the event the plaintiff rejects the offer(s) of judgment and the judgment awarded the plaintiff, ~~exclusive of any costs or attorneys fees otherwise recoverable,~~ is less than the final offer of judgment, then the defendant filing the offer of judgment shall be entitled to recover reasonable litigation costs and reasonable attorneys fees incurred by that defendant from the date of filing of the final offer of judgment until the date of the verdict. Such costs and fees may be offset from the judgment entered against the offering defendant; provided, however, that prior to any such offset, the plaintiff's attorney may:

- a. exercise any attorneys lien claimed in an amount not to exceed twenty-five percent (25%) of the judgment, and
- b. recover the plaintiff's reasonable litigation costs, not to exceed an additional fifteen percent (15%) of the judgment or Five Thousand Dollars (\$5,000.00), whichever is greater.

4. In the event a defendant rejects the counteroffer(s) of judgment and the judgment awarded to the plaintiff is greater than

the final counteroffer of judgment, the plaintiff shall be entitled to recover reasonable litigation costs and reasonable attorneys fees incurred by the plaintiff from the date of filing of the final counteroffer of judgment until the date of the verdict. Such costs and fees may be added to the judgment entered in favor of the plaintiff.

5. The provisions of this subsection shall apply only where the plaintiff demands in a pleading or in trial proceedings more than One Hundred Thousand Dollars (\$100,000.00), or where the defendant makes an offer of judgment more than One Hundred Thousand Dollars (\$100,000.00). Any offer of judgment may precede the demand.

B. Other actions.

1. After a civil action is brought for the recovery of money or property in an action other than for personal injury, wrongful death or pursuant to Chapter 21 of Title 25 or Section 5 of Title 85 of the Oklahoma Statutes, any defendant may file with the court, at any time more than ten (10) days prior to trial, an offer of judgment for a sum certain to any plaintiff with respect to the action or any claim or claims asserted in the action. An offer of judgment shall ~~not~~ be deemed to include any costs and attorneys fees otherwise recoverable unless it expressly provides otherwise. If an offer of judgment is filed, the plaintiff or plaintiffs to whom the offer of judgment is made shall, within ten (10) days, file:

- a. a written acceptance or rejection of the offer, or
- b. a counteroffer of judgment, as described in paragraph 2 of this subsection.

If a plaintiff fails to file a timely response, the offer of judgment shall be deemed rejected. The fact an offer of judgment is made but not accepted or is deemed rejected does not preclude subsequent timely offers of judgment.

2. In the event a defendant files an offer of judgment, the plaintiff may, within ten (10) days, file with the court a

counteroffer of judgment to each defendant who has filed an offer of judgment and the claim or claims which are the subject thereof. If a counteroffer of judgment is filed, each defendant to whom a counteroffer of judgment is made shall, within ten (10) days, file a written acceptance or rejection of the counteroffer of judgment. If a defendant fails to file a timely response, the counteroffer of judgment shall be deemed rejected. The fact a counteroffer of judgment is made but not accepted or is deemed rejected does not preclude subsequent counteroffers of judgment if subsequent offers of judgment are made.

3. If no offer of judgment or counteroffer of judgment is accepted and the judgment awarded the plaintiff, ~~exclusive of any costs or attorneys fees otherwise recoverable,~~ is less than one or more offers of judgment, the defendant shall be entitled to reasonable litigation costs and reasonable attorneys fees incurred by the defendant with respect to the action or the claim or claims included in the offer of judgment from and after the date of the first offer of judgment which is greater than the judgment until the date of the judgment. Such costs and fees may be offset from the judgment entered against the offering defendant.

4. If no offer of judgment or counteroffer of judgment is accepted and the judgment awarded the plaintiff, ~~exclusive of any costs or attorneys fees otherwise recoverable,~~ is greater than one or more counteroffers of judgment, the plaintiff shall be entitled to recover the reasonable litigation costs and reasonable attorneys fees incurred by the plaintiff with respect to the action or the claim or claims included in the counteroffer of judgment from and after the date of the first counteroffer of judgment which is less than the judgment until the date of the judgment. Such costs and fees may be added to the judgment entered in favor of the plaintiff.

5. An award of reasonable litigation costs and reasonable attorneys fees under paragraph 3 of this subsection shall not

preclude an award under paragraph 4 of this subsection, and an award under paragraph 4 of this subsection shall not preclude an award under paragraph 3 of this subsection.

6. This subsection shall not apply to actions brought pursuant to Chapter 21 of Title 25 or Section 5 of Title 85 of the Oklahoma Statutes.

C. For purposes of comparing the amount of a judgment with the amount of an offer under paragraph 3 or 4 of subsection A of this section or paragraph 3 or 4 of subsection B of this section, attorneys' fees and costs otherwise recoverable shall be included in the amount of the compared judgment only if the offer was inclusive of attorneys' fees and costs. Fees or costs recoverable for work performed after the date of the offer shall not be included in the amount of the judgment for purposes of comparison.

D. Evidence of an offer of judgment or a counteroffer of judgment shall not be admissible in any action or proceeding for any purpose except in proceedings to enforce a settlement arising out of an offer of judgment or counteroffer of judgment or to determine reasonable attorneys fees and reasonable litigation costs under this section.

~~D.~~ E. This section shall apply whether or not litigation costs or attorneys fees are otherwise recoverable.

~~E.~~ F. The provisions of this section are severable, and if any part or provision thereof shall be held void, the decision of the court shall not affect or impair any of the remaining parts or provisions thereof.

~~F.~~ G. This section shall apply to all civil actions filed after the effective date of this act.

SECTION 2. AMENDATORY 12 O.S. 2001, Section 1751, is amended to read as follows:

Section 1751. A. The following suits may be brought under the small claims procedure:

1. Actions for the recovery of money based on contract or tort, including subrogation claims, but excluding libel or slander, in which the amount sought to be recovered, exclusive of attorneys fees and other court costs, does not exceed Four Thousand Five Hundred Dollars (\$4,500.00);

2. Actions to replevy personal property the value of which does not exceed Four Thousand Five Hundred Dollars (\$4,500.00). If the claims for possession of personal property and to recover money are pled in the alternative, the joinder of claims is permissible if neither the value of the property nor the total amount of money sought to be recovered, exclusive of attorneys fees and other costs, ~~does exceed~~ exceeds Four Thousand Five Hundred Dollars (\$4,500.00); and

3. Actions in the nature of interpleader, as provided for in Section 2022 of this title, in which the value of the money which is the subject of such action does not exceed Four Thousand Five Hundred Dollars (\$4,500.00).

B. No action may be brought under the small claims procedure by any collection agency, collection agent, or assignee of a claim, except that an action may be brought against an insurer or third-party administrator by a health care provider as that term is defined in Section 6552 of Title 36 of the Oklahoma Statutes, who is an assignee of benefits available under an accident and health insurance policy, trust, plan, or contract.

C. In those cases which are uncontested, the amount of attorneys fees allowed shall not exceed ten percent (10%) of the judgment.

SECTION 3. AMENDATORY 12 O.S. 2001, Section 1753, is amended to read as follows:

Section 1753. A. Actions under the small claims procedure as described in paragraphs 1 and 2 of subsection A ~~and B~~ of Section 1751 of this title shall be initiated by plaintiff or plaintiff's

attorney filing an affidavit in substantially the following form with the clerk of the court:

In the District Court, County of _____,
State of Oklahoma.

Plaintiff

vs. Small Claims No. _____

Defendant

STATE OF OKLAHOMA)

) ss

COUNTY OF _____)

_____, being duly sworn, deposes and says:

That the defendant resides at _____,
in the above-named county, and that the mailing address of the
defendant is _____.

That the defendant is indebted to the plaintiff in the sum of
\$_____ for _____, that plaintiff has demanded payment of the
sum, but the defendant refused to pay the same and no part of the
amount sued for has been paid,

or

That the defendant is wrongfully in possession of certain
personal property described as _____

that the value of the personal property is \$_____, that plaintiff
is entitled to possession thereof and has demanded that defendant
relinquish possession of the personal property, but that defendant
wholly refuses to do so.

Subscribed and sworn to before me this _____ day of _____,
20__.

Notary Public (or Clerk or Judge)

My Commission Expires:

On the affidavit shall be printed:

ORDER

The people of the State of Oklahoma, to the within-named
defendant:

You are hereby directed to appear and answer the foregoing claim
and to have with you all books, papers, and witnesses needed by you
to establish your defense to the claim.

This matter shall be heard at _____ (name or
address of building), in _____, County of _____,
State of Oklahoma, at the hour of _____ o'clock of the _____ day of
_____, 20___. And you are further notified that in case you do
not so appear judgment will be given against you as follows:

For the amount of the claim as it is stated in the affidavit, or
for possession of the personal property described in the affidavit.

And, in addition, for costs of the action (including attorney
fees where provided by law), including costs of service of the
order.

Dated this _____ day of _____, 20__.

Clerk of the Court (or Judge)

B. Actions under the small claims procedure as described in
paragraph € 3 of subsection A of Section 1751 of this title shall be
initiated by plaintiff or plaintiff's attorney filing an affidavit
in substantially the following form with the clerk of the court:

In the District Court, County of _____,
State of Oklahoma.

Plaintiff

vs.

Defendant

Defendant

STATE OF OKLAHOMA)

) ss.

COUNTY OF _____)

_____, being duly sworn, deposes and says:

That, _____, the defendant resides at _____, in the above-named county, and that the mailing address of the defendant is _____.

That, _____, the defendant resides at _____, in the above-named county, and that the mailing address of the defendant is _____.

That the plaintiff has custody or possession of money in the amount or value of \$_____, held pursuant to the following:

_____.

That the defendants claim or may claim to be entitled to the money.

That the plaintiff deposits herewith into the court \$_____, which equals the amount of the money to be invested in accordance with the order of the court and that the plaintiff will abide with the judgment of the court as to the final disposition thereof.

Subscribed and sworn to before me this __ day of _____,

20__.

Notary Public (or Clerk or Judge)

My Commission Expires:

On the affidavit shall be printed:

ORDER

The people of the State of Oklahoma, to each of the within-named defendants:

You are hereby directed to appear and answer the foregoing claim and to have with you all books, papers, and witnesses needed by you to establish your claim to the money.

This matter shall be heard at _____ (name or address of building), in _____, County of _____, State of Oklahoma, at the hour of _____ o'clock of the _____ day of _____, 20__.

And you are further notified that in case you do not so appear judgment will be given against you as follows:

Determining or foreclosing your claim to the above-described money as well as the disposition thereof.

And, in addition, for costs of the action, including attorney fees where provided by law, and including costs of service of the order.

Dated this _____ day of _____, 20__.

Clerk of the Court (or Judge)

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1831 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. This act shall be known as the "Choice in Mediation Act".

B. The Legislature has previously enacted measures designed to create programs for and encourage the use of mediation in resolving disputes involving citizens of this state. These measures provide guidelines and standards for qualifications of mediators and their use in resolving disputes. Over the years since the first of these measures was enacted, there has developed a significant number of trained and experienced mediators, some of whom work solely in volunteer programs under the Dispute Resolution Act and some of whom provide mediation services on a "for fee" basis, either solely or in addition to volunteer work. The power of the parties to a dispute

to settle their own dispute with the help of a neutral person being the essence of mediation, there now exists a need to clarify the choice available to disputants to select a mediator.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1832 of Title 12, unless there is created a duplication in numbering, reads as follows:

Any county, municipality, accredited law school, school district, board, commission, department or agency of this state or its political subdivisions is hereby authorized to establish programs for the purpose of providing mediation as an alternative dispute resolution process or for referring disputes to mediation on an ad hoc basis. For the purposes of the Choice in Mediation Act, "mediation" means a process in which an impartial person, the mediator, facilitates communication between disputing parties to promote settlement of disputes, whether before or in the process of litigation or administrative proceedings.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1833 of Title 12, unless there is created a duplication in numbering, reads as follows:

Nothing in the Choice in Mediation Act shall require any such county, municipality, accredited law school, school district, board, commission, department or agency of this state or its political subdivisions to operate a mediation program under the auspices of the Dispute Resolution Act or to refer matters for mediation exclusively to mediators or programs qualified under the Dispute Resolution Act. Instead, any such entity may elect to do one or more of the following:

1. Utilize mediators certified under the Dispute Resolution Act or qualified under the District Court Mediation Act;
2. Specify required training in addition to that required for certification under the Dispute Resolution Act or qualification

under the District Court Mediation Act in order to receive referrals or disputes for mediation;

3. Maintain a list of qualified mediators to whom it may refer disputes for mediation;

4. Contract with the Administrative Office of the Courts to provide training for a fee for mediators to whom it may refer disputes for mediation;

5. Refer disputes to a center under the Dispute Resolution Act to be mediated under the rules and procedures applicable to such center;

6. Elect to be treated as a center for all purposes under the Dispute Resolution Act and make appropriate application pursuant to the Dispute Resolution Act;

7. Contract with another public agency providing mediation services under the Choice in Mediation Act or with a private individual, company or organization, whether for-profit or not-for-profit, to provide mediators or mediation training or both, so long as the contracting entity requires certification of mediators under the Dispute Resolution Act, or qualification of mediators under the District Court Mediation Act, if applicable; or

8. Utilize a mediator of the parties' choice.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1834 of Title 12, unless there is created a duplication in numbering, reads as follows:

Except in those instances in which a specific statute or rule prohibits compensation of mediators, the program authorized by Section 5 of this act may provide for appropriate compensation of the mediator.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1835 of Title 12, unless there is created a duplication in numbering, reads as follows:

Any program for mediation under the Choice in Mediation Act shall make provision for disclosure to the parties of the background, qualifications, experience and actual or potential conflicts of interest of the mediator, sufficient to permit the parties to participate in the choice of a mediator for their dispute and to determine that the mediator selected is qualified and neutral.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1836 of Title 12, unless there is created a duplication in numbering, reads as follows:

Any program for mediation under the Choice in Mediation Act shall adopt appropriate procedures for the conduct of mediation under the program, to ensure confidentiality of proceedings and impartiality of the mediator and to encourage participation in good faith by the disputing parties. The program may comply with this provision by adopting the provisions in Section 1824 of Title 12 of the Oklahoma Statutes or by becoming a center under the Dispute Resolution Act and complying with the procedures of the Dispute Resolution Act.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1837 of Title 12, unless there is created a duplication in numbering, reads as follows:

Any program for mediation under the Choice in Mediation Act shall make provision for a procedure whereby parties to a dispute or the administrator of the program may make complaints about the mediation process and/or the conduct of the mediator. Any such procedure shall include due process prior to removal of a mediator from a list of qualified mediators or "decertification" of a mediator.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1838 of Title 12, unless there is created a duplication in numbering, reads as follows:

Any entity, including the Administrative Office of the Courts, "certifying" mediators for its program shall make clear in all communications regarding the "certification" that the mediator is "certified" for that program only. Any mediator certified under the Dispute Resolution Act or qualified under the District Court Mediation Act shall be considered "certified" for purposes of any federal programs that require the use of "certified mediators" or "certified programs". The intent of this provision is to avoid the misconception that there is one certifying body for mediators in Oklahoma and to permit agencies to utilize available state and federal funds for operation of mediation programs, and, where appropriate, for the compensation of mediators.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1839 of Title 12, unless there is created a duplication in numbering, reads as follows:

Nothing in the Choice in Mediation Act shall impair the authority of trial courts or appellate courts of this state to establish or continue in effect programs for mediation of disputes within their jurisdiction or for conducting court-ordered settlement conferences.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1840 of Title 12, unless there is created a duplication in numbering, reads as follows:

Nothing in the Choice in Mediation Act shall limit the ability of parties to a dispute to select and, if appropriate, compensate a mediator of their choice, whether or not that mediator is certified under the Dispute Resolution Act or qualified under the District Court Mediation Act; nor shall anything in the Choice in Mediation Act prohibit any person from acting as a mediator of a dispute when so requested by the parties to the dispute.

SECTION 14. AMENDATORY 12 O.S. 2001, Section 2103, is amended to read as follows:

Section 2103. A. Except as otherwise provided in subsection B of this section, this Code shall apply in both criminal and civil proceedings, conducted by or under the supervision of a court, in which evidence is produced.

B. The rules set forth in this Code, ~~except those that relate~~ other than those applicable to privileges a valid claim of privilege, do not apply in the following situations:

1. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the judge under subsection A of Section 2105 of this title; and

2. Proceedings for extradition or rendition; sentencing or granting or revoking probation; advancement of deferred ~~sentencing judgment~~; issuance of warrants for arrest, criminal summonses and search warrants; proceedings with respect to release on bail or otherwise; and juvenile emergency show-cause hearings.

SECTION 15. AMENDATORY 12 O.S. 2001, Section 2105, is amended to read as follows:

Section 2105. A. Preliminary questions concerning the qualifications of a person to be a witness, the existence of a privilege or the admissibility of evidence shall be determined by the court, subject to the provisions of ~~subsection~~ subsections B and C of this section.

B. A person claiming a privilege must prove that the conditions prerequisite to the existence of the privilege are more probably true than not. A person claiming an exception to a privilege must prove that the conditions prerequisite to the applicability of the exception are more probably true than not. If there is a factual basis to support a good faith belief that a review of the allegedly privileged material is necessary, the court, in making its determination, may review the material outside the presence of any other person.

C. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the judge shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

~~E.~~ D. Hearings on the admissibility of confessions shall be conducted in all cases out of the hearing of the jury. Hearings on other preliminary matters shall also be conducted out of the hearing of the jury when the interests of justice require or when requested by an accused who is a witness.

~~D.~~ E. The accused does not subject himself to cross-examination on other issues in the case by testifying upon a preliminary matter.

~~E.~~ F. This section does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

SECTION 16. AMENDATORY 12 O.S. 2001, Section 2107, is amended to read as follows:

Section 2107. When a ~~writing or recorded statement~~ record or part thereof is introduced by a party, an adverse party may require ~~him~~ the introduction at that time ~~to introduce~~ of any other part or any other ~~writing or recorded statement which~~ record that should in fairness be considered contemporaneously with it.

SECTION 17. AMENDATORY 12 O.S. 2001, Section 2202, is amended to read as follows:

Section 2202. A. This section governs only judicial notice of adjudicative facts.

B. A judicially noticed adjudicative fact shall not be subject to reasonable dispute. ~~It shall be~~ in that it is either:

1. Generally known within the territorial jurisdiction of the trial court; or

2. Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

C. A court may take judicial notice, whether requested or not.

D. A court shall take judicial notice if requested by a party and supplied with the necessary information.

E. In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

SECTION 18. AMENDATORY 12 O.S. 2001, Section 2301, is amended to read as follows:

Section 2301. As used in this Code:

1. A "presumption" ~~is~~ means a rule of procedure ~~which means~~ that when a basic fact exists the existence of another fact must be assumed, whether or not the basic fact has any probative value of the existence of the assumed fact;

2. "Basic fact" means the fact or group of facts giving rise to a presumption;

3. "Presumed fact" means the fact which must be assumed; and

4. "Inconsistent presumptions" means the presumed fact of one presumption is inconsistent with the presumed fact of another presumption.

SECTION 19. AMENDATORY 12 O.S. 2001, Section 2304, is amended to read as follows:

Section 2304. A. Except as otherwise provided by ~~law~~ act of the Legislature, this statute governs presumptions against an accused, in a criminal case, recognized at common law or created by statute, including statutory provisions that certain facts are prima facie evidence of other facts or of guilt, ~~are governed by this Code.~~

B. The court shall not direct the jury to find a presumed fact against ~~the~~ an accused. ~~The~~ If a presumed fact establishes guilt, is an element of the offense, or negates a defense, the court may ~~only~~ submit the question of guilt or of the existence of the presumed fact to the jury, if a reasonable juror considering the

evidence as a whole, including the evidence of the basic facts, could find guilt or the presumed fact beyond a reasonable doubt. If the presumed fact has a lesser effect, its existence may be submitted to the jury if the basic facts are supported by substantial evidence, or are otherwise established, unless the evidence as a whole negates the existence of the presumed fact.

C. Whenever the existence of a presumed fact against the accused establishes guilt or is an element of the offense or negatives a defense and is submitted to the jury, the judge shall give an instruction explaining that the jury may regard the basic facts as sufficient evidence of the presumed fact but is not required to do so. Where the presumed fact establishes guilt, is an element of the offense or negatives a defense, the judge also shall instruct the jury that its existence, on all the evidence, must be proved beyond a reasonable doubt.

SECTION 20. AMENDATORY 12 O.S. 2001, Section 2403, is amended to read as follows:

Section 2403. ~~Relevant~~ Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, undue delay, needless presentation of cumulative evidence, or unfair and harmful surprise.

SECTION 21. AMENDATORY 12 O.S. 2001, Section 2501, is amended to read as follows:

Section 2501. Except as otherwise provided by constitution, statute or rules promulgated by the Supreme Court no person has a privilege to:

1. Refuse to be a witness;
2. Refuse to disclose any matter;
3. Refuse to produce any object or ~~writing~~ record; or
4. Prevent another from being a witness or disclosing any matter or producing any object or ~~writing~~ record.

SECTION 22. AMENDATORY 12 O.S. 2001, Section 2502, is amended to read as follows:

Section 2502. A. As used in this section:

1. An "attorney" is a person authorized, or reasonably believed by the client to be authorized, to engage in the practice of law in any state or nation;

2. A "client" is a person, public officer, or corporation, association, or other organization or entity, either public or private, who consults an attorney with a view towards obtaining legal services or is rendered professional legal services by an attorney;

3. A "representative of an attorney" is one employed by the attorney to assist the attorney in the rendition of professional legal services;

4. A "representative of the client" is one having authority to obtain professional legal services, or to act on advice rendered pursuant thereto, on behalf of the client; and

5. A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

B. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

1. Between ~~himself~~ the client or ~~his~~ a representative of the client and ~~his~~ the client's attorney or ~~his attorney's~~ a representative of the attorney;

2. Between ~~his~~ the attorney and ~~the attorney's~~ a representative of the attorney;

3. By ~~him~~ the client or ~~his~~ a representative of the client or ~~his~~ the client's attorney or a representative of the attorney to an attorney or a representative of an attorney representing another party in a pending action and concerning a matter of common interest therein;

4. Between representatives of the client or between the client and a representative of the client; or

5. Among attorneys and their representatives representing the same client.

C. The privilege may be claimed by the client, ~~his~~ the client's guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the attorney or the attorney's representative at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.

D. There is no privilege under this rule:

1. If the services of the attorney were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;

2. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction;

3. As to a communication relevant to an issue of breach of duty by the attorney to ~~his~~ the client or by the client to ~~his~~ the attorney;

4. As to a communication necessary for an attorney to defend in a legal proceeding an accusation that the attorney assisted the client in criminal or fraudulent conduct;

5. As to a communication relevant to an issue concerning an attested document to which the attorney is an attesting witness;

~~5.~~ 6. As to a communication relevant to a matter of common interest between or among two or more clients if the communication was made by any of them to an attorney retained or consulted in common, when offered in an action between or among any of the clients; or

~~6.~~ 7. As to a communication between a public officer or agency and its attorney unless the communication concerns a pending investigation, claim or action and the court determines that disclosure will seriously impair the ability of the public officer or agency to process the claim or conduct a pending investigation, litigation or proceeding in the public interest.

SECTION 23. AMENDATORY 12 O.S. 2001, Section 2503, is amended to read as follows:

Section 2503. A. As used in this section:

1. A "patient" is a person who consults or is examined or interviewed by a physician or psychotherapist;

2. A "physician" is a person authorized to practice medicine in any state or nation, or reasonably believed by the patient to be so authorized;

3. A "psychotherapist" is:

a. a person authorized to practice medicine in any state or nation, or reasonably believed by the patient to be so authorized, while engaged in the diagnosis or treatment of a mental or emotional condition,

including alcohol or drug addiction, or

b. a person licensed or certified as a psychologist under the laws of any state or nation, or reasonably believed by the patient to be so licensed or certified, while similarly engaged; and

4. A communication is "confidential" if not intended to be disclosed to third persons, except persons present to further the interest of the patient in the consultation, examination or

interview, persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist, including members of the patient's family.

B. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of ~~his~~ the patient's physical, mental or emotional condition, including alcohol or drug addiction, among ~~himself~~ the patient, ~~his~~ the patient's physician or psychotherapist, and persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist, including members of the patient's family.

C. The privilege may be claimed by the patient, ~~his~~ the patient's guardian or conservator or the personal representative of a deceased patient. The person who was the physician or psychotherapist at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the patient.

D. ~~The following shall be exceptions to a claim of privilege~~
There is no privilege under this section for communications:

1. ~~There is no privilege under this section for communications relevant~~ Relevant to an issue in proceedings to hospitalize the patient for mental illness, if the psychotherapist in the course of diagnosis or treatment has determined that the patient is in need of hospitalization;

2. ~~Communications made~~ Made in the course of a court-ordered examination of the physical, mental or emotional condition of a patient, whether a party or a witness, are not privileged under this section when they relate to the particular purpose for which the examination is ordered unless the court orders otherwise; ~~or~~

3. ~~The privilege under this Code as to a communication relevant~~ Relevant to the physical, mental or emotional condition of the patient in any proceeding in which the patient relies upon that

condition as an element of ~~his~~ the patient's claim or defense or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of ~~his~~ the party's claim or defense, is qualified to the extent that an adverse party in said proceeding may obtain relevant information regarding said condition by statutory discovery;

4. If the services of the physician or psychotherapist were sought or obtained to enable or aid anyone to commit or plan to commit what the patient knew, or reasonably should have known, was a crime or fraud or physical injury to the patient or another individual;

5. In which the patient has expressed an intent to engage in conduct likely to result in imminent death or serious bodily injury to the patient or another individual;

6. Relevant to an issue in a proceeding challenging the competency of the physician or psychotherapist;

7. Relevant to a breach of duty by the physician or psychotherapist; or

8. That are subject to a duty to disclose under statutory law.

SECTION 24. AMENDATORY 12 O.S. 2001, Section 2506.1, is amended to read as follows:

Section 2506.1 A. As used in this section:

1. An "interpreter" is an interpreter for the deaf who is an interpreter certified by an association or board recognized by the Office of Services to the Deaf, Rehabilitative Services Division of the Department of Human Services;

2. A "deaf person" is a person whose preferred mode of communication is by other than auditory means; and

3. A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

B. A person has a privilege to refuse to disclose and to prevent an interpreter from disclosing such person's confidential communication made while such interpreter is acting in the capacity as an interpreter for persons who are deaf.

C. The privilege may be claimed by the interpreter, by the deaf person, by the deaf person's guardian or conservator, or by the deaf person's personal representative if the deaf person is deceased.

D. An interpreter who is employed to interpret, transliterate or relay a conversation between a person who can hear and a deaf person is a conduit for the conversation and may not disclose or be compelled to disclose, through reporting or testimony or by subpoena, the contents of a confidential communication.

E. There is no privilege pursuant to this section ~~if~~ for communications:

1. If the services of the interpreter were sought or obtained to enable or aid anyone to commit or plan to commit what the deaf person knew, or reasonably should have known, to be a crime or fraud or physical injury to the deaf person or another individual;

2. In which the deaf person has expressed an intent to engage in conduct likely to result in imminent death or serious bodily injury to the deaf person or another individual;

3. Relevant to an issue in a proceeding challenging the competency of the interpreter;

4. Relevant to a breach of duty by the interpreter; or

5. That are subject to a duty to disclose under statutory law.

SECTION 25. AMENDATORY 12 O.S. 2001, Section 2504, is amended to read as follows:

Section 2504. A. A communication is confidential for purposes of this section if it is made privately by any person to ~~his~~ the person's spouse and is not intended for disclosure to any other person.

B. An accused in a criminal proceeding has a privilege to prevent ~~his~~ the spouse of the accused from testifying as to any confidential communication between the accused and the spouse.

C. The privilege may be claimed by the accused or by the spouse on behalf of the accused. The authority of the spouse to do so is presumed.

D. There is no privilege under this section in a proceeding in which one spouse is charged with a crime against the person or property of:

1. The other;
2. A child of either;
3. A person residing in the household of either; or
4. A third person when the crime is committed in the course of committing a crime against any other person named in this section.

SECTION 26. AMENDATORY 12 O.S. 2001, Section 2505, is amended to read as follows:

Section 2505. A. As used in this section:

1. A "~~clergyman~~" "cleric" is a minister, priest, rabbi, accredited Christian Science practitioner or other similar functionary of a religious organization, or any individual reasonably believed to be a ~~clergyman~~ cleric by the person consulting ~~him~~ the cleric; and

2. A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

B. A person has a privilege to refuse to disclose and to prevent another from disclosing his confidential communication made to a clergyman acting in his professional capacity.

C. The privilege may be claimed by the person, by ~~his~~ the person's guardian or conservator, or by ~~his~~ the person's personal representative if ~~he~~ the person is deceased. The ~~clergyman~~ cleric

is presumed to have authority to claim the privilege but only on behalf of the communicant.

SECTION 27. AMENDATORY 12 O.S. 2001, Section 2506, is amended to read as follows:

Section 2506. A. As used in this section:

1. "State proceeding" includes any proceeding or investigation before or by any judicial, legislative, executive or administrative body in this state;

2. "Medium of communication" includes any newspaper, magazine, other periodical, book, pamphlet, news service, wire service, news or feature syndicate, broadcast station or network, ~~or~~ cable television system, or record;

3. "Information" includes any written, oral or pictorial news or other ~~material~~ record;

4. "Published information" means any information disseminated to the public by the person from whom disclosure is sought;

5. "Unpublished information" includes information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated, and includes, but is not limited to, all notes, outtakes, photographs, tapes or other data of whatever sort not itself disseminated to the public through a medium of communication, whether or not published information based upon or related to such material has been disseminated;

6. "Processing" includes compiling, storing and editing of information; and

7. ~~"Newsmen"~~ "Journalist" means any ~~man or woman~~ person who is a reporter, photographer, editor, commentator, journalist, correspondent, announcer, or other individual regularly engaged in obtaining, writing, reviewing, editing, or otherwise preparing news for any newspaper, periodical, press association, newspaper syndicate, wire service, radio or television station, or other news

service. Any individual employed by any such news service in the performance of any of the above-mentioned activities shall be deemed to be regularly engaged in such activities. However, "~~newsman~~" "journalist" shall not include any governmental entity or individual employed thereby engaged in official governmental information activities.

B. No ~~newsman~~ journalist shall be required to disclose in a state proceeding either:

1. The source of any published or unpublished information obtained in the gathering, receiving or processing of information for any medium of communication to the public; or

2. Any unpublished information obtained or prepared in gathering, receiving or processing of information for any medium of communication to the public; unless the court finds that the party seeking the information or identity has established by clear and convincing evidence that such information or identity is relevant to a significant issue in the action and could not with due diligence be obtained by alternate means.

This subsection does not apply with respect to the content or source of allegedly defamatory information, in a civil action for defamation wherein the defendant asserts a defense based on the content or source of such information.

SECTION 28. AMENDATORY 12 O.S. 2001, Section 2507, is amended to read as follows:

Section 2507. A. Every person has a privilege to refuse to disclose the tenor of ~~his~~ the person's vote at a political election conducted by secret ballot.

B. This privilege does not apply if the court finds that the vote was cast illegally.

SECTION 29. AMENDATORY 12 O.S. 2001, Section 2508, is amended to read as follows:

Section 2508. A person ~~or entity~~ has a privilege, which may be claimed by ~~him~~ the person, ~~his~~ the person's agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by ~~him~~ the person, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. If disclosure is directed, the court shall take such protective measures as the interest of the holder of the privilege, of the parties and of justice require.

SECTION 30. AMENDATORY 12 O.S. 2001, Section 2510, is amended to read as follows:

Section 2510. A. The United States, state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting the investigation.

B. The privilege under this section may be claimed by an appropriate representative of the public entity to which the information was furnished.

C. The following shall be exceptions to the privilege granted in this section:

1. No privilege exists if the identity of the informer or ~~his~~ the informer's interest in the subject matter of ~~his~~ the informer's communication has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informer's own action, or if the informer appears as a witness for the government;

2. If the informant is also a material witness to the criminal conduct with which the defendant is charged, or was a participant in said criminal conduct conjointly with the defendant, or is shown to be able to give testimony relevant to a material issue in the case.

3. If information from an informer is relied upon to establish the legality of the means by which evidence was obtained and the court or the defendant is not satisfied that the information was received from an informer reasonably believed to be reliable or credible, ~~he~~ the court or defendant may require the identity of the informer to be disclosed. The court shall, on request of the government, direct that the disclosure be made in ~~camera~~ chambers. All counsel and parties concerned with the issue of legality shall be permitted to be present at every stage of ~~proceedings~~ a proceeding under this subsection except a disclosure in ~~camera~~, ~~at which chambers if the court determines that~~ no counsel or party shall be permitted to be present. If disclosure of the identity of the informer is made in ~~camera~~ chambers, the record thereof shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the government.

SECTION 31. AMENDATORY 12 O.S. 2001, Section 2511, is amended to read as follows:

Section 2511. A person upon whom this Code confers a privilege against disclosure waives the privilege if ~~he~~ the person or ~~his~~ the person's predecessor voluntarily discloses or consents to disclosure of any significant part of the privileged matter. This section does not apply if the disclosure itself is privileged.

SECTION 32. AMENDATORY 12 O.S. 2001, Section 2602, is amended to read as follows:

Section 2602. A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that ~~he~~ the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony ~~of the witness himself~~. This rule is subject to the provisions of Section ~~703~~ 2703 of this Code title.

SECTION 33. AMENDATORY 12 O.S. 2001, Section 2603, is amended to read as follows:

Section 2603. Every witness shall be required to declare before testifying that ~~he~~ the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken ~~his~~ the witness's conscience and impress ~~his~~ the witness's mind with ~~his~~ the duty to do so.

SECTION 34. AMENDATORY 12 O.S. 2001, Section 2604, is amended to read as follows:

Section 2604. An interpreter is subject to the provisions of this Code relating to qualification as an expert and the administration of an oath or affirmation ~~that he will~~ to make a true ~~translation~~ and complete rendition of all communications made during the interpretive process to the best of the interpreter's knowledge and belief.

SECTION 35. AMENDATORY 12 O.S. 2001, Section 2606, is amended to read as follows:

Section 2606. A. A member of the jury shall not testify as a witness before that jury in the trial of the case in which ~~he~~ the juror is sitting ~~as a juror~~. If ~~he~~ the juror is called to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

B. Upon an inquiry into the validity of a verdict or indictment, a juror shall not testify as to any matter or statement occurring during the course of the jury's deliberations or as to the effect of anything upon ~~his~~ the juror's mind or another juror's mind or emotions as influencing ~~him~~ the juror to assent to or dissent from the verdict or indictment or concerning ~~his~~ the juror's mental processes during deliberations. A juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. An affidavit or evidence of any

statement by ~~him~~ the juror concerning a matter about which ~~he~~ the juror would be precluded from testifying shall not be received for these purposes.

SECTION 36. AMENDATORY 12 O.S. 2001, Section 2607, is amended to read as follows:

Section 2607. The credibility of a witness may be attacked by any party, including the party calling ~~him~~ the witness.

SECTION 37. AMENDATORY 12 O.S. 2001, Section 2608, is amended to read as follows:

Section 2608. A. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, subject to these limitations:

1. The evidence may refer only to character for truthfulness or untruthfulness; and

2. Evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked.

B. Specific instances of the conduct of a witness, for the purpose of attacking or supporting ~~his~~ the witness's credibility, other than conviction of crime as provided in Section ~~609~~ 2609 of this ~~Code~~ title, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness if they:

1. Concern ~~his~~ the witness's character for truthfulness or untruthfulness;

2. Concern the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

C. The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of ~~his~~ the accused's or the witness's privilege against self-incrimination when examined with respect to matters which relate only to credibility.

SECTION 38. AMENDATORY 12 O.S. 2001, Section 2609, is amended to read as follows:

Section 2609. A. For the purpose of attacking the credibility of a witness:

1. Evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Section 2403 of this title, if the crime was punishable by death or imprisonment in excess of one (1) year pursuant to the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

2. Evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

B. Evidence of a conviction under this section is not admissible if a period of more than ten (10) years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is later, to the date of the witness's testimony, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, if the witness is a defendant currently charged with a sexual offense involving a child, testifying at a criminal proceeding regarding the current charge of the defendant and has a prior conviction for a sexual offense involving a child, the conviction of the prior sexual offense involving a child is admissible for the purpose of impeachment of the defendant regardless of the age of the prior conviction. Evidence of a conviction more than ten (10) years old, as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such

evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

C. Evidence of a conviction is not admissible under this Code if:

1. The conviction has been the subject of a pardon, annulment, certificate of rehabilitation or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which was

punishable by death or imprisonment in excess of one (1) year; or

2. The conviction has been the subject of a pardon, annulment or other equivalent procedure based on a finding of innocence.

D. Evidence of juvenile adjudications is not admissible under this Code. The court in a criminal case may, however, allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

E. The pendency of an appeal from the conviction does not render evidence of that conviction inadmissible. Evidence of the pendency of an appeal is admissible.

SECTION 39. AMENDATORY 12 O.S. 2001, Section 2610, is amended to read as follows:

Section 2610. Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature ~~his~~ the witness's credibility is impaired or enhanced.

SECTION 40. AMENDATORY 12 O.S. 2001, Section 2611, is amended to read as follows:

Section 2611. A. Subject to subsection B of ~~Section 611 of~~ this ~~Code~~ section, the court shall exercise control over the manner

and order of interrogating witnesses and presenting evidence so as to:

1. Make the interrogation and presentation effective for the ascertainment of the truth;

2. Avoid needless consumption of time; and

3. Protect witnesses from harassment or undue embarrassment.

B. Any party to a civil action or proceeding may compel any adverse party or person, or any agent, servant or employee of such party or person, for whose benefit such action or proceeding is instituted, prosecuted or defended, to testify as a witness, at the trial, or by deposition, in the same manner and subject to the same rules as other witnesses, provided that any such adverse party, ~~his~~ or the adverse party's agent, servant or employee called as a witness by the opposing party shall be deemed a hostile witness and may be cross-examined by the party calling ~~him~~ the witness to the same extent as any opposition witness.

C. Cross-examination shall be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may permit inquiry into additional matters as if on direct examination.

D. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop ~~his~~ the witness's testimony. Leading questions should ordinarily be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, leading questions may be used on direct examination.

SECTION 41. AMENDATORY 12 O.S. 2001, Section 2611.2, is amended to read as follows:

Section 2611.2 A. It is the intent of the Legislature in enacting this section to provide the court with discretion to employ unusual court procedures to protect the rights of children and

incapacitated persons, while ensuring the rights of a criminal defendant and the integrity of the judicial process.

B. As used in this section:

1. "~~Minor~~ Child witness" means any child witness in a criminal, civil, or juvenile proceeding ~~that who~~ is under ~~eighteen (18)~~ thirteen (13) years of age;

2. "Support person" means a parent, other relative or a next friend chosen by the witness to accompany the witness to court proceedings;

3. "Incapacitated witness" means any witness in a criminal proceeding that is a person who is defined as an incapacitated person or vulnerable adult as such terms are defined by the provisions of Section 10-103 of Title 43A of the Oklahoma Statutes; and

4. "Witness" means ~~minor~~ child witness ~~and or~~ incapacitated witness.

C. ~~1. In any criminal proceeding, the~~ The court, upon motion of counsel, shall conduct a hearing to determine whether the testimony of a witness shall be closed to the public. In making the decision, the court shall consider:

~~a. the~~

1. The nature and seriousness of the ~~offense,~~ issues in the proceeding;

~~b. the~~

2. The age of the witness;

~~c. the~~

3. The relationship, if any, of the witness to the defendant;

~~d. the~~

4. The extent to which the size of the community would preclude the anonymity of the witness;

~~e. the~~

5. The likelihood of public disgrace of the witness;

~~f. whether~~

6. Whether there is an overriding public interest in having the testimony of ~~the minor or incapacitated person~~ the witness presented in open court, τi

~~g. whether the district attorney has demonstrated a~~

7. The substantial risk that the identity of the witness would be disclosed to the public during the proceeding, τi

~~h. whether the district attorney has demonstrated~~

8. The substantial probability that the disclosure of the identity of the witness would cause serious harm to the witness, τi

~~i. whether~~

9. Whether the witness has disclosed information concerning the case to the public in a manner which would preclude anonymity of the witness, τi and

~~j. other~~

10. Other factors the court may deem necessary to protect the interests of justice.

~~2. The court shall enter an order stating its findings. D.~~ If the court determines that the testimony of the witness is to be closed to the public, the court shall in its order ~~establish accordingly and set forth the persons~~ who ~~will or will not~~ can be present during the taking of testimony of the witness, which ~~may~~ shall include:

~~a. the defendant and/or the defense~~

1. The parties to the proceeding and their counsel, τi

~~b. any~~

2. Any officer having custody of the ~~defendant,~~ witness;

~~c. the district attorney or designee and a representative for the state,~~

~~d. court~~

3. Court personnel as may be necessary to conduct the hearing and maintain order, including but not limited to the judge, the court clerk, the bailiff, and the court reporter~~;~~

e. jury

4. Jury members, if appropriate; and

f. the

5. The witness and a support person for the witness.

~~D. If the court determines it to be appropriate, the~~ E. The testimony of the witness may be taken in the courtroom, in chambers, or in some other comfortable place ~~other than the courtroom. When~~ If the testimony of a witness is to be taken in a courtroom, the witness and support person shall be ~~brought into~~ assembled in the court chambers prior to the taking of the testimony to meet for a reasonable period of time with the judge, ~~the prosecutor and the defense attorney~~ and counsel for the parties. ~~This~~ At this meeting shall be ~~for the purpose of explaining the~~ court procedures shall be explained to the witness and ~~to allow the attorneys~~ counsel shall be given an opportunity to establish a rapport with the witness to facilitate taking the testimony of the witness at a later ~~questioning~~ time. ~~No one shall discuss the defendant or any~~ The facts ~~of the case~~ involved in the proceeding shall not be discussed with the witness during this meeting.

~~E. F.~~ F. A witness shall have the right to be accompanied by a support person while giving testimony ~~at any criminal proceeding.~~ ~~The~~ in the proceeding, but the support person shall not discuss the testimony of the witness with any other witnesses ~~and shall be admonished by the court to not sway,~~ or attempt to prompt or influence the testimony of the witness in any way.

SECTION 42. AMENDATORY 12 O.S. 2001, Section 2612, is amended to read as follows:

Section 2612. If a witness uses a ~~writing~~ record or object to refresh ~~his~~ the witness's memory either while testifying or before

testifying, the court shall allow an adverse party to have the ~~writing~~ record or object produced at the hearing, to inspect it, to cross-examine the witness thereon and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed by an opposing party that the ~~writing~~ record or object contains matters not related to the subject matter of the testimony, the court shall examine the ~~writing~~ record or object in ~~camera~~ chambers, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved, and ~~made part of the record, and shall be~~ available to the appellate court in the event of an appeal. If a ~~writing~~ record or object is not produced, made available for inspection, or delivered pursuant to order, the court ~~in a civil case~~ shall make any order justice requires. ~~In~~ , but in criminal cases ~~when~~ if the prosecution elects not to comply, the order shall be ~~one~~ an order striking the testimony or declaring a mistrial.

SECTION 43. AMENDATORY 12 O.S. 2001, Section 2613, is amended to read as follows:

Section 2613. A. In examining a witness concerning a prior statement made by ~~him~~ the witness whether ~~written~~ in a record or not, the statement need not be shown nor its contents disclosed to ~~him~~ the witness at that time but on request the same shall be shown or disclosed to opposing counsel just prior to the cross-examination of the witness.

B. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate ~~him~~ the witness thereon. This provision does not apply to admissions of a party opponent as defined in ~~subparagraph B of paragraph 4~~ of subsection B of Section ~~801 2801~~ 2801 of this Code title.

SECTION 44. AMENDATORY 12 O.S. 2001, Section 2701, is amended to read as follows:

Section 2701. If the witness is not testifying as an expert, ~~his~~ the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are:

1. Rationally based on the perception of the witness; ~~and~~
2. Helpful to a clear understanding of his testimony or the determination of a fact in issue;
3. Not based on scientific, technical or other specialized knowledge within the scope of Section 2702 of this title.

SECTION 45. AMENDATORY 12 O.S. 2001, Section 2703, is amended to read as follows:

Section 2703. The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to ~~him~~ the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted.

SECTION 46. AMENDATORY 12 O.S. 2001, Section 2705, is amended to read as follows:

Section 2705. ~~The~~ An expert may testify in terms of opinion or inference and give ~~his~~ reasons therefor without ~~prior~~ previous disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

SECTION 47. AMENDATORY 12 O.S. 2001, Section 2801, is amended to read as follows:

Section 2801. A. For purposes of this Code:

1. A "statement" ~~is~~ means:
 - a. an oral ~~or written~~ assertion, ~~or~~
 - b. an assertion in a record, or

c. nonverbal conduct of a person, if it is intended by ~~him~~ a person as an assertion;

2. A "declarant" ~~is~~ means a person who makes a statement; and

3. "Hearsay" ~~is~~ means a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted; ~~and~~ .

~~4.~~ B. A statement is not hearsay if:

~~a.~~ the

1. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:

~~(1)~~

a. inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing or other proceeding, or in a deposition, or

~~(2)~~

b. consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive and was made before the supposed fabrication, influence, or motive arose, or

~~(3)~~

c. one of identification of a person made after perceiving the person; or

~~b.~~ the

2. The statement is offered against a party and is:

~~(1)~~

a. the party's own statement, in either an individual or a representative capacity, or

~~(2)~~

b. a statement of which the party has manifested an adoption or belief in its truth, or

~~(3)~~

c. a statement by a person authorized by the party to make a statement concerning the subject, or

~~(4)~~

d. a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or

~~(5)~~

e. a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

SECTION 48. AMENDATORY 12 O.S. 2001, Section 2802, is amended to read as follows:

Section 2802. Hearsay is not admissible except as otherwise provided by ~~law~~ act of the Legislature.

SECTION 49. AMENDATORY 12 O.S. 2001, Section 2803, is amended to read as follows:

Section 2803. The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

1. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter;

2. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition;

3. A statement of the declarant's then existing state of mind, emotion, sensation or physical condition, such as intent, plan, motive, design, mental feeling, pain and bodily health, but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification or terms of declarant's will;

4. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain or sensations, if reasonably pertinent to diagnosis or treatment;

5. A ~~memorandum or~~ record concerning a matter about which a witness once had knowledge but now has insufficient recollection ~~to enable him~~ to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in ~~his~~ the witness's memory and to reflect that knowledge correctly. The ~~memorandum or~~ record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party;

6. ~~Any form of memorandum, report,~~ A record or data compilation of acts, events, conditions, opinions or diagnosis, made at or near the time by or from information transmitted by a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the ~~memorandum, report, record or data compilation,~~ all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with paragraph 11 or 12 of Section 2902 of this title, or with a statute providing for certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation and calling of every kind, whether or not conducted for profit. A public record inadmissible under paragraph 8 of this section is inadmissible under this exception;

7. Evidence that a matter is not included in ~~the memoranda reports,~~ records ~~or data compilations,~~ in any form, kept in accordance with the provisions of paragraph 6 of this section, to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a ~~memorandum, report, record or data~~

~~compilation~~ was regularly made and preserved, or by certification that complies with paragraph 11 or 12 of Section 2902 of this title, or with a statute providing for certification, unless the sources of information or other circumstances indicate lack of trustworthiness;

8. To the extent not otherwise provided in this paragraph, ~~records, reports, statements or data compilations in any form~~ a record of a public office or agency setting forth its regularly conducted and regularly recorded activities or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual finding resulting from an investigation made pursuant to authority granted by law. The following are not within this exception to the hearsay rule:

- a. investigative reports by police and other law enforcement personnel,
- b. investigative reports prepared by or for a government, a public office or agency when offered by it in a case in which it is a party,
- c. factual findings offered by the government in criminal cases,
- d. factual findings resulting from special investigation of a particular complaint, case or incident, or
- e. any matter as to which the sources of information or other circumstances indicate lack of trustworthiness;

9. Records ~~or data~~ of births, fetal deaths, deaths or marriages, if the report thereof was made to a public office pursuant to statutory requirements ~~of law~~;

10. To prove the absence of a record, ~~report, statement or data compilation, in any form,~~ or the nonoccurrence or nonexistence of a matter of which a record, ~~report, statement or data compilation, in any form,~~ was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Section ~~902~~ 2903 of this Code title, or testimony, that diligent

search failed to disclose the record, ~~report, statement or data compilation~~ or entry;

11. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage or other similar facts of personal or family history contained in a regularly kept record of a religious organization;

12. Statements of fact contained in a ~~certificate~~ certified record that the maker performed a marriage or other ceremony or administered a sacrament, made by a ~~clergyman~~ cleric, public official or other person authorized by the rules or practices of a religious organization or by law to perform the act certified and purporting to have been issued at the time of the act or within a reasonable time thereafter;

13. Statements of fact concerning personal or family history including those contained in family Bibles, ~~genealogies~~ genealogy, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts or tombstones, or the like;

14. ~~The~~ A public record ~~of a document~~ purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, ~~if the record is a record of a public office and a statute authorizes the recording of documents of that kind in that office~~ and delivered;

15. A statement contained in a ~~document~~ record purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the ~~document~~ record unless dealings with the property since the ~~document~~ record was made have been inconsistent with the truth of the statement or the purport of the ~~document~~ record;

16. Statements in a ~~document which is at least~~ record in existence twenty (20) years ~~old and whose~~ or more, the authenticity of which is established;

17. Market quotations, tabulations, lists, directories or other published or publicly recorded compilations generally used and relied upon by the public or by persons in particular occupations;

18. To the extent called to the attention of an expert witness upon cross-examination or relied upon by ~~him~~ the witness in direct examination, statements contained in published treatises, periodicals or pamphlets on a subject of history, medicine or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits;

19. Reputation among members of ~~his~~ an individual's family by blood, adoption or marriage, or among ~~his~~ the individual's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption or marriage, ancestry or other similar fact of ~~his~~ the individual's personal or family history;

20. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community and reputation as to events of general history important to the community or state or nation in which located;

21. Reputation of a person's character among ~~his~~ the person's associates or in the community;

22. Evidence of a final judgment, ~~entered after a trial or upon a plea of guilty,~~ but not upon a plea of nolo contendere, adjudging a person guilty of a crime punishable by death or imprisonment in excess of one (1) year, to prove any fact essential to sustain the judgment, but not including, when offered by the state in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility; or

23. Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the ~~same matter~~ would be provable by evidence of reputation; ~~or~~

~~24. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that:~~

- ~~a. the statement is offered as evidence of a material fact,~~
- ~~b. the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts, and~~
- ~~c. the general purposes of this Code and the interests of justice will best be served by admission of the statement into evidence.~~

~~A statement shall not be admitted under this exception unless its proponent makes known to the adverse party, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.~~

SECTION 50. AMENDATORY 12 O.S. 2001, Section 2804, is amended to read as follows:

Section 2804. A. "Unavailability as a witness," as used in this section, includes the situation in which the declarant:

1. Is exempt by ruling of the court on the ground of privilege from testifying concerning the subject matter or ~~his~~ of the declarant's statement;

2. Persists in refusing to testify concerning the subject matter of ~~his~~ the declarant's statement despite an order of the court to do so;

3. Testifies to a lack of memory of the subject matter of ~~his~~ the declarant's statement;

4. Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity;
or

5. Is absent from the hearing and the proponent of ~~his~~ the declarant's statement has been unable to procure ~~his~~ the declarant's attendance or, in the case of a hearsay exception under paragraphs 2, 3 or 4 of subsection B of this section, ~~his~~ the declarant's attendance or testimony, by process or other reasonable means.

A declarant is not unavailable as a witness if ~~his~~ the declarant's exemption, refusal, claim of lack of memory, inability or absence is due to an act by the proponent of ~~his~~ the declarant's statement for the purpose of preventing the witness from attending or testifying.

B. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

1. Testimony given as a witness at another hearing of the same or another proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered or, in a civil action or proceeding, a predecessor in interest had an opportunity and similar motive to develop the testimony by direct, cross or redirect examination;

2. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that ~~his~~ the declarant's death was imminent, concerning the cause or circumstances of what ~~he~~ the declarant believed to be ~~his~~ the declarant's impending death;

3. A statement which was at the time of its making contrary to the declarant's pecuniary or proprietary interest, or which tended to subject ~~him~~ the declarant to civil or criminal liability, or to render invalid a claim by ~~him~~ the declarant against another, and which a reasonable ~~man~~ person in ~~his~~ the declarant's position would not have made unless ~~he~~ the declarant believed it to be true. A

statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement. A statement or confession offered against the accused in a criminal case, made by a codefendant or other individual implicating both the codefendant or other individual and the accused, is not within this exception; and

4. A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, ancestry, relationship to another person or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or statement concerning the foregoing matters or death of another person, if the declarant was related to that person by blood, adoption or marriage or was so intimately associated with the person's family as to be likely to have accurate information concerning the matter declared; ~~and~~

~~5. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that:~~

- ~~a. the statement is offered as evidence of a material fact,~~
- ~~b. the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts, and~~
- ~~c. the general purposes of this Code and the interests of justice will best be served by admission of the statement into evidence.~~

~~A statement shall not be admitted under this exception unless its proponent makes known to the adverse party, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the~~

~~statement and the particulars of it, including the name and address of the declarant.~~

SECTION 51. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2804.1 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. In exceptional circumstances a statement not covered by Section 2803, 2804, 2805, or 2806 of this title but possessing equivalent, though not identical, circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule if the court determines that:

1. The statement is offered as evidence of a fact of consequence;

2. The statement is more probative on the point for which it is offered than any other evidence that the proponent can procure through reasonable efforts; and

3. The general purposes of this code and the interests of justice will best be served by admission of the statement into evidence.

B. The court shall state on the record the circumstances that support its determination of the admissibility of the statement offered pursuant to subsection A of this section.

C. A statement is not admissible under this exception unless its proponent gives to all parties reasonable notice in advance of trial, or during trial if the court excuses pretrial notice for good cause shown, of the substance of the statement and the identity of the declarant.

SECTION 52. AMENDATORY 12 O.S. 2001, Section 2806, is amended to read as follows:

Section 2806. When a hearsay statement, or a statement defined in ~~divisions (2), (3), (4) or (5)~~ of subparagraph b, c, d or e of paragraph 4 2 of subsection B of Section 2801 of this ~~Code~~ title, has been admitted in evidence, the credibility of the

declarant may be attacked and, if attacked, may be supported by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with ~~his~~ the declarant's hearsay statement, is not subject to any requirement that ~~he~~ the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine ~~him~~ the declarant on the statement as if under cross-examination.

SECTION 53. AMENDATORY 12 O.S. 2001, Section 2902, is amended to read as follows:

Section 2902. Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

1. A document bearing a seal purporting to be that of the United States or of any state, district, commonwealth, territory or insular possession thereof, including the Panama Canal Zone, or the trust territory of the Pacific Islands, or of a political subdivision, department, office or agency thereof, and a signature purporting to be an attestation or execution;

2. A document purporting to bear the signature in his official capacity of an officer or employee of any entity included in paragraph 1 of this section, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine;

3. A document purporting to be executed or attested in his official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position:

- a. of the executing or attesting person, or
- b. of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness or signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification;

4. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph 1, 2 or 3 of this section or complying with any statute or by rules prescribed by the Supreme Court pursuant to statutory authority;

5. Books, pamphlets or other publications purporting to be issued by public authority;

6. Printed materials purporting to be newspapers or periodicals;

7. Inscriptions, signs, tags or labels purporting to have been affixed in the course of business and indicating ownership, control or origin;

8. ~~Documents~~ Records accompanied by a certificate of acknowledgment under the hand and the seal of a notary public or other officer authorized by law to take acknowledgments;

9. Commercial paper, signatures thereon, and related ~~documents~~ records to the extent provided by general commercial law; ~~and~~

10. Any signature, ~~document~~ record or other matter declared by act of the Legislature to be presumptively or prima facie genuine or authentic;

11. The original or a duplicate of a domestic record of acts, events, conditions, opinions, or diagnoses if:

- a. the document is accompanied by a written declaration under oath of the custodian of the record, or other qualified individual that the record was made, at or near the time of the occurrence of the matters set forth by or from information transmitted by a person having knowledge of those matters; was kept in the course of the regularly conducted business activity; and was made pursuant to the regularly conducted activity,
- b. the party intending to offer the record in evidence gives notice of that intention to all adverse parties and makes the record available for inspection sufficiently in advance of its offer to provide the adverse parties with a fair opportunity to challenge the record, and
- c. notice is given to the proponent, sufficiently in advance of the offer to provide the proponent with a fair opportunity to meet the objection or obtain the testimony of a foundation witness, raising a genuine

question as to the trustworthiness or authenticity of
the record; and

12. The original or a duplicate of a record from a foreign
country of acts, events, conditions, opinions, or diagnoses if:

- a. the document is accompanied by a written declaration
under oath of the custodian of the record, or other
qualified individual that the record was made, at or
near the time of the occurrence of the matters set
forth by or from information transmitted by a person
having knowledge of those matters; was kept in the
course of a regularly conducted business activity; and
was made pursuant to the regularly conducted activity,
- b. the party intending to offer the record in evidence
gives notice of that intention to all adverse parties
and makes the record available for inspection
sufficiently in advance of its offer to provide the
adverse parties with a fair opportunity to challenge
the record, and
- c. notice is given to the proponent, sufficiently in
advance of the offer to provide the proponent with a
fair opportunity to meet the objection or obtain the
testimony of a foundation witness, raising a genuine
question as to the trustworthiness or authenticity of
the record.

SECTION 54. AMENDATORY 12 O.S. 2001, Section 2903, is amended to read as follows:

Section 2903. The testimony of a subscribing witness is not necessary to authenticate a ~~writing~~ record unless required by the laws of the jurisdiction governing the validity of the ~~writing~~ record.

SECTION 55. AMENDATORY 12 O.S. 2001, Section 3001, is amended to read as follows:

Section 3001. For purposes of this Code:

1. "Writings" and "recordings" ~~consist of~~ means letters, words, or numbers, or their equivalent, ~~set down by~~ inscribed on a tangible medium or stored in an electronic or other machine and retrievable in perceivable form by handwriting, typewriting, printing, photostating, photographing, ~~magnetic impulse,~~ mechanical or electronic recording, or other ~~form of data compilation~~ technique;

2. "Photographs" ~~include~~ mean a form of a record which consists of still photographs, stored images, x-ray films, video tapes, ~~and~~ or motion pictures;

3. An "original" of a writing ~~or,~~ recording is, or other record means the writing ~~or,~~ recording, or other record itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" ~~of,~~ when applied to a photograph, includes the negative or any print therefrom. ~~If data are stored in a computer or similar device, any~~ The term "original" includes a print out or other perceivable output ~~readable by sight,~~ of a record of data or images stored in a computer or similar device if shown to reflect the data or images accurately, ~~is an "original";~~ and

4. A "duplicate" ~~is~~ means a counterpart in the form of a record produced by the same impression as the original, ~~or~~ from the same matrix, ~~or~~ by means of photography, including enlargements and miniatures, or by mechanical or electronic rerecording, ~~or~~ by chemical reproduction, or by ~~other~~ another equivalent technique ~~including, but not limited to, storage and reproduction by means of an optical disk, or other forms of mass storage, electronic imaging, or electronic data processing, or a facsimile machine or similar device which reproduces documents transmitted over telephone lines, or similar devices or processes and which~~ that accurately reproduce the original;

5. "Image" means a form of a record which consists of a digitized copy or image of information; and

6. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

SECTION 56. AMENDATORY 12 O.S. 2001, Section 3002, is amended to read as follows:

Section 3002. To prove the content of a ~~writing~~ record, recording or photograph, the original ~~writing~~ record, recording or photograph is required except as otherwise provided in this Code or by other statutes.

SECTION 57. AMENDATORY 12 O.S. 2001, Section 3003, is amended to read as follows:

Section 3003. A duplicate is admissible to the same extent as an original under this rule or as may otherwise be provided by statute unless:

1. A genuine question is raised as to the authenticity of the original; or
2. In the circumstances it would be unfair to admit the duplicate in lieu of the original.

SECTION 58. AMENDATORY 12 O.S. 2001, Section 3004, is amended to read as follows:

Section 3004. The original is not required, and a duplicate or other evidence of the contents of a ~~writing, recording, or photograph~~ record is admissible if:

1. All originals are lost or have been destroyed unless the proponent lost or destroyed them in bad faith;
2. No original can be obtained by any available judicial process or procedure;
3. At a time when an original was under the control of the party against whom offered, the party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearings and the party does not produce the original at the hearing; or

4. The ~~writing, recording, or photograph~~ record is not closely related to a controlling issue.

SECTION 59. AMENDATORY 12 O.S. 2001, Section 3005, is amended to read as follows:

Section 3005. The contents of an official record or of a ~~document~~ private record authorized to be recorded or filed in the public records and actually recorded or filed, ~~including data in any form,~~ if otherwise admissible, may be proved by a copy in perceivable form, certified as correct in accordance with Section ~~902~~ 2902 of this ~~Code~~ title or testified to be correct by a witness who has compared it with the original. If a copy which complies with this section cannot be obtained by the exercise of reasonable diligence ~~then,~~ other evidence of the contents may be ~~given~~ admitted.

SECTION 60. AMENDATORY 12 O.S. 2001, Section 3007, is amended to read as follows:

Section 3007. Contents of ~~writings, recordings or photographs~~ a record may be proved by the testimony or deposition of the party against whom offered or by ~~his~~ that party's written admission without accounting for the nonproduction of the original.

SECTION 61. AMENDATORY 12 O.S. 2001, Section 3008, is amended to read as follows:

Section 3008. When the admissibility of other evidence of contents of ~~writings, recordings or photographs~~ a record depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of Section ~~104~~ 2104 of this ~~Code~~ title. However, when an issue is raised questioning:

1. Whether the asserted ~~writing~~ record ever existed;
2. Whether another ~~writing, recording or photograph~~ record produced at the trial is the original; or

3. Whether other evidence of contents correctly reflects the contents;

the issue is for the trier of fact to determine.

SECTION 62. AMENDATORY 12 O.S. 2001, Section 3009, is amended to read as follows:

Section 3009. Upon the trial of any civil case involving injury, disease or disability, the patient, a member of ~~his~~ the patient's family or any other person responsible for the care of the patient, shall be a competent witness to identify doctor bills, hospital bills, ambulance service bills, drug bills and similar bills for expenses incurred in the treatment of the patient upon a showing by the witness that such bills were received from a licensed practicing physician, hospital, ambulance service, pharmacy, drug store, or supplier of therapeutic or orthopedic devices, and that such expenses were incurred in connection with the treatment of the injury, disease or disability involved in the subject of litigation at trial. Such items of evidence need not be identified by the person who submits the bill, and it shall not be necessary for an expert witness to testify that the charges were reasonable and necessary.

SECTION 63. AMENDATORY 12 O.S. 2001, 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. If any documents are provided to such disclosed expert witnesses, the

documents shall not be protected from disclosure by privilege or work product protection and they may be obtained through discovery.

- (3) In addition to 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.

4. CLAIMS OF PRIVILEGE OR PROTECTION OF TRIAL PREPARATION
MATERIALS. When a party withholds information otherwise
discoverable under the Oklahoma Discovery Code by claiming that it
is privileged or subject to protection as trial preparation
material, the party shall make the claim expressly and shall
describe the nature of the documents, communications, or things not
produced or disclosed in a manner that, without revealing
information itself privileged or protected, will enable other
parties to assess the applicability of the privilege or protection.

C. PROTECTIVE ORDERS.

1. Upon motion by a party or by the person from whom discovery
is sought, accompanied by a certification that the movant has in
good faith conferred or attempted to confer, either in person or by
telephone, with other affected parties in an effort to resolve the
dispute without court action, 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:

- a. that the discovery not be had,
- b. that the discovery may be had only on specified terms
and conditions, including a designation of the time or
place,
- c. that the discovery may be had only by a method of
discovery other than that selected by the party
seeking discovery,
- d. that certain matters not be inquired into, or that the
scope of the disclosure or discovery be limited to
certain matters,

- e. that discovery be conducted with no one present except persons designated by the court,
- f. that a deposition after being sealed be opened only by order of the court,
- g. that a trade secret or other confidential research, development or commercial information not be disclosed or be disclosed only in a designated way, and
- h. 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 identity and location of persons having knowledge of discoverable matters, and
- b. 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 to an interrogatory, request for production, or request for admission if the party obtains information upon the basis of which:

- a. (i) the party knows that the response was incorrect in some material respect when made, or
(ii) the party knows that the response, which was correct when made, is no longer true in some material respect; and
- b. the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

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 64. AMENDATORY 47 O.S. 2001, Section 11-403, is amended to read as follows:

Section 11-403. ~~(a)~~ A. Preferential right-of-way at an intersection may be indicated by stop signs or yield signs as authorized in Section 15-108 of this ~~act~~ title.

~~(b)~~ B. Except when directed to proceed by a police officer or traffic control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop as required by subsection (d) of Section 11-703 ~~(d) 11-703 of this title~~ and after having stopped shall yield the right-of-way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard, but said driver having so yielded may proceed and the drivers of all other vehicles approaching the intersection shall yield the right-of-way to the vehicle so proceeding.

~~(e)~~ C. The driver of a vehicle approaching a yield sign shall in obedience to such sign slow down to a speed reasonable for the existing conditions, or shall stop if necessary as provided in subsection (e) of Section 11-703~~(e)~~ 11-703 of this title, and shall yield the right-of-way to any pedestrian legally crossing the roadway on which ~~he~~ the driver is driving, and to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard. Said driver having so yielded may proceed and the drivers of all other vehicles approaching the intersection shall yield to the vehicle so proceeding, provided, however, that if such driver is involved in a collision with a pedestrian in a crosswalk or vehicle in the intersection after driving past a yield sign without stopping, such collision shall be deemed prima facie evidence of his failure to yield right of way.

~~(d)~~ D. Where two or more vehicles face stop, slow, warning or caution signs or signals on two or more intersecting cross streets, and are approaching so as to enter the intersection at the same time, where each vehicle is required to stop, the vehicle coming from the right shall have the right-of-way. Where each vehicle is required to slow the vehicle coming from the right shall have the right-of-way. Where each vehicle is required to take caution, the vehicle coming from the right shall have the right-of-way. Where one vehicle is required to stop and the other to slow or take caution, the one slowing or taking caution shall have the right-of-way. Where one vehicle is required to slow and the other to take caution, the one required to take caution shall have the right-of-way. In any event, a vehicle which has already entered the intersection shall have the right-of-way over one which has not so entered the intersection.

E. A "T intersection" is hereby defined as a publicly maintained road which terminates directly upon another publicly maintained road. Termination of the road means that it is not

possible to continue in the same direction across the nonterminating publicly maintained roadway. If continuous travel is possible without regard to whether said travel would continue on a public or private way, said nonterminating travel lane or road shall not be considered a T intersection. If said road terminates at a T intersection, where two or more vehicles approach said T intersection, the vehicle or vehicles approaching on the terminating branch of the T intersection, regardless of direction of travel of any approaching vehicle or vehicles on the nonterminating branch of through road, shall yield to said approaching vehicle or vehicles unless traffic control devices are posted to the contrary. However, if there is a contiguous travel lane through the intersection, public or private way, the intersection shall not be defined as a T intersection, and the rules as set forth in subsections A and D of this section shall apply.

SECTION 65. RECODIFICATION 12 O.S. 2001, Section 2506.1, as amended by Section 24 of this act, shall be recodified as Section 2503.1 of Title 12 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 66. REPEALER 12 O.S. 2001, Sections 3101, 3102 and 3103, are hereby repealed.

SECTION 67. This act shall become effective November 1, 2002.

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