STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 1939

By: Toure and Vaughn of the House

and

Henry of the Senate

COMMITTEE SUBSTITUTE

[civil procedure - evidence – codification – recodification – repealer –

effective date]

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

SECTION 1. AMENDATORY 12 O.S. 1991, Section 66, as last amended by Section 2, Chapter 359, O.S.L. 1999 (12 O.S. Supp. 2000, Section 66), is amended to read as follows:

Section 66. A. Whenever an action is filed in any of the courts ~~in~~ of this state ~~by~~ where the State of Oklahoma, or ~~by direction of any department of the state, no bond, including cost, replevin, attachment, garnishment, redelivery, injunction, appeal~~ any of its departments or agencies, as defined in Section 152 of Title 51 of the Oklahoma Statutes, is a party, no bonds or other obligation of security shall be required from the state or from any party acting under the direction of the state, either to prosecute, answer, or appeal the action. The execution of a judgment or final order of any judicial tribunal against the state, or any of its departments or agencies, is automatically stayed without the execution of a supersedeas bond until any appeal of such judgment or final order has finally been determined.

In case of an adverse decision, such costs as by law are taxable against the state, or against the party acting by its direction, shall be paid out of the funds of the department under whose direction the proceedings were instituted~~; provided, that the court shall direct the nonprevailing party to pay all costs of the action in the final order of the court~~ or defended.

B. Costs shall be paid to the court fund of the district court in which an action is filed from the first funds collected in satisfaction of any judgment obtained by this state or any party acting under the direction of this state, except when the funds are collected pursuant to a child support order or judgment. No action filed by this state or by any party acting under the direction of this state shall be dismissed with unpaid costs of the action without the prior notification of the district court clerk of the county in which the action was filed.

SECTION 2. AMENDATORY 12 O.S. 1991, Section 140, is amended to read as follows:

Section 140. ~~In all~~ Only in cases in which it is made to appear to the court that a fair and impartial trial cannot be had in the county where the suit is pending, the court may, on application of either party, change the place of trial to some county where such objections do not exist.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 426 of Title 12, unless there is created a duplication in numbering, reads as follows:

Whenever, under any law of Oklahoma or under any rule, order, or requirement made pursuant to the law of Oklahoma, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn statement, declaration, verification, certificate, oath, or affidavit, in writing of the person making the same (other than a deposition, or any oath of office, or an oath required to be taken before a specified official other than a notary

public), the matter may with like force and effect be supported, evidenced, established, or proved by the unsworn statement in writing of the person made and signed under penalty of perjury setting forth the date and place of execution and that it is made under the laws of Oklahoma. The statement under penalty of perjury may be substantially in the following form:

"I state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct.

_____ _____

(Date and Place) (Signature)"

The signed statement under penalty of perjury shall constitute a legally binding assertion that the contents of the statement to which it refers are true. This section shall not affect any requirement for acknowledgment of an instrument affecting real property.

SECTION 4. AMENDATORY Section 11, Chapter 351, O.S.L. 1993, as last amended by Section 4, Chapter 102, O.S.L. 1997 (12 O.S. Supp. 2000, Section 696.4), is amended to read as follows:

Section 696.4 A. A judgment, decree or appealable order may provide for costs, ~~attorney's~~ attorney fees, and interest or any of these items, but it need not include them. The preparation and filing of the judgment, decree or appealable order shall not be delayed pending the determination of these items. Such items may be determined by the court if a timely request is made, regardless of whether a petition in error has been filed.

B. If ~~attorney's~~ attorney fees, costs or interest, including the amount of such attorney fees, costs, and the rate of interest, have not been included in the judgment, decree or appealable order, a party seeking any of these items must file an application with the court clerk along with the proof of service of the application on all affected parties in accordance with Section 2005 of this title. The application must set forth the amount requested and include

information which supports that amount. The application must be filed within thirty (30) days after the filing of the judgment, decree or appealable order unless a posttrial motion pursuant to subsection A of Section 990.2 of this title has been filed within ten (10) days after the filing of the judgment, decree, or appealable order. If such a motion is filed within that time, the application for attorney fees, costs, or interest shall be filed within thirty (30) days after the date an order disposing of the posttrial motion is filed. If the party filing the application did not prepare the judgment, decree, or appealable order, and Section 696.2 of this title required a copy of the judgment, decree, or appealable order to be mailed to the party filing application, and the court records do not reflect the mailing of a copy of the judgment, decree, or appealable order to the party filing the application within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or appealable order, the application may be filed no later than thirty (30) days after the earliest date on which the court records show that a copy of the judgment, decree, ~~or~~ appealable order, or order disposing of the posttrial motion was mailed to the party filing the application. For good cause shown, the court may extend the time for filing the application upon motion filed within the time that the application could be filed. Within fifteen (15) days after the application is filed with the court, any party may file written objections to it, with a copy to the moving party.

C. An application for ~~attorney's~~ attorney fees for services performed on appeal shall be made to the appellate court either in the applicant's brief on appeal or by separate motion filed any time before issuance of mandate. If in the brief, the application shall be made in a separate portion that is specifically identified. The application shall cite authority for awarding ~~attorney's~~ attorney fees but shall not include evidentiary material concerning their

amount. The appellate court shall decide whether to award ~~attorney's~~ attorney fees for services on appeal, and if fees are awarded, it shall remand the case to the trial court for a determination of their amount. The trial court's order determining the amount of fees is an appealable order.

SECTION 5. AMENDATORY 12 O.S. 1991, Section 735, as last amended by Section 1, Chapter 384, O.S.L. 2000 (12 O.S. Supp. 2000, Section 735), is amended to read as follows:

Section 735. A. A judgment shall become unenforceable and of no effect if, within five (5) years after the date of filing of any judgment that now is or may hereafter be ~~rendered~~ filed in any court of record in this state:

1. Execution is not issued by the court clerk and filed with the county clerk as provided in Section 759 of this title;

2. A notice of renewal of judgment substantially in the form prescribed by the Administrative Director of the Courts is not filed with the court clerk;

3. A garnishment summons is not issued by the court clerk; or

4. A certified copy of a notice of income assignment is not sent to a payor of the judgment debtor.

B. A judgment shall become unenforceable and of no effect if more than five (5) years have passed from the date of:

1. The last execution on the judgment was filed with the county clerk;

2. The last notice of renewal of judgment was filed with the court clerk;

3. The last garnishment summons was issued; or

4. The sending of a certified copy of a notice of income assignment to a payor of the judgment debtor.

C. This section shall not apply to judgments against municipalities or to child support judgments by operation of law.

SECTION 6. AMENDATORY 12 O.S. 1991, Section 936, is amended to read as follows:

Section 936. In any civil action to recover for labor or services rendered, or on an open account, a statement of account, account stated, note, bill, negotiable instrument, or contract relating to the purchase or sale of goods, wares, or merchandise, ~~or for labor or services,~~ unless otherwise provided by law or the contract which is the subject ~~to~~ of the action, the prevailing party shall be allowed a reasonable attorney fee to be set by the court, to be taxed and collected as costs.

SECTION 7. AMENDATORY 12 O.S. 1991, Section 990A, as last amended by Section 7, Chapter 102, O.S.L. 1997 (12 O.S. Supp. 2000, Section 990A), is amended to read as follows:

Section 990A. A. An appeal to the Supreme Court of Oklahoma, if taken, must be commenced by filing a petition in error with the Clerk of the Supreme Court of Oklahoma within thirty (30) days from the date a judgment, decree, or appealable order prepared in conformance with Section 696.3 of this title is filed with the clerk of the trial court. If the appellant did not prepare the judgment, decree, or appealable order, and Section 696.2 of this title required a copy of the judgment, decree, or appealable order to be mailed to the appellant, and the court records do not reflect the mailing of a copy of the judgment, decree, or appealable order to the appellant within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or appealable order, the petition in error may be filed within thirty (30) days after the earliest date on which the court records show that a copy of the judgment, decree, or appealable order was mailed to the appellant.

B. The filing of the petition in error may be accomplished either by delivery or mailing by certified or first-class mail ~~with return receipt requested~~, postage prepaid, to the Clerk of the

Supreme Court. The date of filing or the date of mailing, as shown by the postmark affixed by the post office or other proof from the post office of the date of mailing, shall constitute the date of filing of the petition in error. If there is no proof from the post office of the date of mailing, the date of receipt by the Clerk of the Supreme Court shall constitute the date of filing of the petition in error.

C. The Supreme Court shall provide by rule, which shall have the force of statute, and be in furtherance of this method of appeal:

1. For the filing of cross-appeals;

2. The procedure to be followed by the trial courts or tribunals in the preparation and authentication of transcripts and records in cases appealed under this act; and

3. The procedure to be followed for the completion and submission of the appeal taken hereunder.

D. In all cases the record on appeal shall be complete and ready for filing in the Supreme Court within the time prescribed by rule.

E. Except for the filing of a petition in error as provided herein, all steps in perfecting an appeal are not jurisdictional.

F. 1. If a petition in error is filed before the time prescribed in this section, it shall be dismissed as premature; however, if the time to commence the appeal accrues before the appeal is dismissed, the appellant may file a supplemental petition in error, without the payment of any additional costs. Such supplemental petition in error shall state when the time for commencing the appeal began and shall set out all matters which have occurred since the filing of the original petition in error and which should be included in a timely petition in error. When a proper supplemental petition in error is filed, the appeal shall not be dismissed on the ground that it was premature.

2. If an appeal is dismissed on the ground that it was premature, the appellant may file a new petition in error within the time prescribed in this section for filing petitions in error or within thirty (30) days after notice is mailed to the parties which states that the appeal was dismissed on the ground that it was premature, whichever date is later. A notice that an appeal was dismissed on the ground that it was premature shall include the date of mailing and the ground for dismissal.

G. 1. No designation of record shall be accepted by the district court clerk for filing unless it contains one of the following:

a. where a transcript is designated: A signed acknowledgment from the court reporter who reported evidence in the case indicating receipt of the request for transcript, the date received, and the amount of deposit received, if applicable, in substantially the following form: I, _____, court reporter for the above styled case, do hereby acknowledge this request for transcript on this ____ day of____, ~~19~~ 20__, and have received a deposit in the sum of $____. , or

b. where a transcript is not designated: A signed statement by the attorney preparing the designation of record stating that a transcript has not been ordered and a brief explanation why, in substantially the following form: I, _____, attorney for the appellant, hereby state that I have not ordered a transcript because:

(1) a transcript is not necessary for this appeal, or

(2) no stenographic reporting was made.

2. This section shall not apply to counter-designations of record filed by appellees.

SECTION 8. AMENDATORY 12 O.S. 1991, Section 1653, is amended to read as follows:

Section 1653. A. When a declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.

B. The venue of ~~said~~ the action shall be established ~~by existing statutes~~ as otherwise provided by law; provided, however, where the action involves an individual defendant the venue shall be in the county of ~~his or her~~ the defendant's residence or where ~~he or she~~ the defendant may be served with summons. If ~~such~~ the action involves ~~more than one such individual defendant,~~ two or more defendants who reside in different counties, the venue shall be in any county where any ~~of such defendants reside~~ defendant resides or may be served with summons.

C. In any proceeding which involves the validity of a municipal ordinance or regulation, ~~such~~ the municipality shall be made a party, and shall be entitled to be heard, and if a statute or regulation is alleged to be unconstitutional, the Attorney General of the state shall also be served with a copy of the proceeding and be entitled to be heard.

SECTION 9. AMENDATORY 12 O.S. 1991, Section 2004.1, as last amended by Section 1, Chapter 172, O.S.L. 2000 (12 O.S. Supp. 2000, Section 2004.1), is amended to read as follows:

Section 2004.1

SUBPOENA

A. SUBPOENA; FORM; ISSUANCE.

1. Every subpoena shall:

a. state the name of the court from which it is issued and the title of the action; and

b. command each person to whom it is directed to attend and give testimony or to produce and permit inspection

and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified.

2. A subpoena shall issue from the court where the action is pending, and it may be served at any place within the state. If the action is pending outside of this state, the district court for the county in which the deposition is to be taken shall issue the subpoena, and, upon application, any other order or process that may be appropriate in aid of discovery in that action. Proof of service of a notice to take deposition constitutes a sufficient authorization for the issuance by the clerk of subpoenas for the persons named or described therein; provided, any person aggrieved by the issuance or enforcement of the subpoena may obtain judicial review upon the filing of a civil action and payment of the required fees.

~~2.~~ 3. A witness shall be obligated upon service of a subpoena to attend a trial or hearing at any place within the state and to attend a deposition or produce or allow inspection of documents at a location that is authorized by subsection B of Section 3230 of this title.

~~3.~~ 4. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service. As an officer of the court, an attorney authorized to practice law in this state may also issue and sign a subpoena on behalf of a court of this state.

~~4.~~ 5. Leave of court for issuance of a subpoena for the production of documentary evidence shall be required if the plaintiff seeks to serve a subpoena for the production of documentary evidence on any person who is not a party prior to the

expiration of thirty (30) days after service of the summons and petition upon any defendant.

B. 1. SERVICE. Service of a subpoena upon a person named therein shall be made by delivering or mailing a copy thereof to such person and, if the person's attendance is demanded, by tendering to that person the fees for one (1) day's attendance and the mileage allowed by law. Service of a subpoena may be accomplished by any person who is eighteen (18) years of age or older. A copy of any subpoena that commands production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by subsection B of Section 2005 of this title. If the subpoena commands production of documents and things or inspection of premises from a nonparty before trial but does not require attendance of a witness, the subpoena shall specify a date for the production or inspection that is at least seven (7) days after the date that the subpoena and copies of the subpoena are served on the witness and all parties, and the subpoena shall include the following language: "In order to allow objections to the production of documents and things to be filed, you should not produce them until the date specified in this subpoena, and if an objection is filed, until the court rules on the objection."

2. Service of a subpoena by mail may be accomplished by mailing a copy thereof by certified mail with return receipt requested and delivery restricted to the person named in the subpoena. The person serving the subpoena shall make proof of service thereof to the court promptly and, in any event, before the witness is required to testify at the hearing or trial. If service is made by a person other than a sheriff or deputy sheriff, such person shall make affidavit thereof. If service is by mail, the person serving the subpoena shall show in the proof of service the date and place of mailing and attach a copy of the return receipt showing that the mailing was accepted. Failure to make proof of service does not

affect the validity of the service, but service of a subpoena by mail shall not be effective if the mailing was not accepted by the person named in the subpoena. Costs of service shall be allowed whether service is made by the sheriff, the sheriff's deputy, or any other person. When the subpoena is issued on behalf of a state department, board, commission, or legislative committee, fees and mileage shall be paid to the witness at the conclusion of the testimony out of funds appropriated to the state department, board, commission, or legislative committee.

C. PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

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

2. a. A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

b. Subject to paragraph 2 of subsection D of this section, a person commanded to produce and permit inspection and copying or any party may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve written objection to inspection or copying of any or all of the designated materials or of the premises. An objection that all or a portion of the requested

material will or should be withheld on a claim that it is privileged or subject to protection as trial preparation materials shall be made within this time period and in accordance with subsection D of this section. If the objection is made by the witness, the witness shall serve the objection on all parties; if objection is made by a party, the party shall serve the objection on the witness and all other parties. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. For failure to object in a timely fashion, the court may assess reasonable costs and attorney fees, or take any other action it deems proper; however, a privilege or the protection for trial preparation materials shall not be waived solely for a failure to timely object under this section. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

3. a. On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(1) fails to allow reasonable time for compliance; or

(2) requires a person to travel to a place beyond the limits allowed under paragraph ~~2~~ 3 of subsection A of this section; or

(3) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(4) subjects a person to undue burden; or

(5) requires production of books, papers, documents or tangible things that fall outside the scope of discovery permitted by Section 3226 of this title.

b. If a subpoena:

(1) requires disclosure of a trade secret or other confidential research, development, or commercial information; or

(2) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

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

D. DUTIES IN RESPONDING TO SUBPOENA.

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

2. When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

E. CONTEMPT.

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

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2005.2 of Title 12, unless there is created a duplication in numbering, reads as follows:

ENTRY OF APPEARANCE; OUT-OF-STATE COUNSEL;

WITHDRAWAL; ADDRESS OF RECORD

A. ENTRY OF APPEARANCE. Every party to any civil proceeding in the district courts shall file an entry of appearance by counsel or personally as an unrepresented party no later than the first filing of any pleading or other paper in the case by that counsel or party. In the event a party changes, adds, or substitutes counsel, new counsel must immediately file an entry of appearance as set forth in this section. The entry of appearance shall include the name and signature of counsel or the unrepresented party, the name of the party represented by counsel, the mailing address, telephone and fax numbers, Oklahoma Bar Association number, and name of the law firm, if any. Copies shall be served on all other parties of record. Filing an entry of appearance as required by this section does not waive any defenses enumerated in subsection B of Section 2012 of Title 12 of the Oklahoma Statutes.

B. COUNSEL NOT LICENSED IN OKLAHOMA. All motions of counsel not licensed to practice in Oklahoma shall comply with the requirements of Section 5 of Article 2 of the Rules Creating and

Controlling the Oklahoma Bar Association in Appendix 1 of Title 5 of the Oklahoma Statutes. The statement required by Section 5 of Article 2 of the Rules Creating and Controlling the Oklahoma Bar Association shall be in the form of an affidavit attached to the motion. The motion shall show that the requirements of Section 5 of Article 2 of the Rules Creating and Controlling the Oklahoma Bar Association are fulfilled. The required entry of appearance of the associate attorney shall be filed with the motion and affidavit.

C. WITHDRAWAL OF COUNSEL. A motion to withdraw may be filed at any time. All motions to withdraw shall be accompanied by a proposed order. No counsel may withdraw from a pending case without leave of the court. The counsel filing the motion shall serve a copy of the motion on the client and all attorneys of record. All motions to withdraw shall be signed by the party on whose behalf counsel has previously appeared or contain a certificate by counsel that:

1. The client has knowledge of counsel's intent to withdraw; or

2. Counsel has made a good faith effort to notify the client and the client cannot be located.

In civil actions, the court may grant a motion to withdraw where there is no successor counsel only if the withdrawing attorney clearly states in the body of the motion the name and last known address of the party. The order allowing withdrawal shall notify the unrepresented party that an entry of appearance must be filed either by the party pro se or by substitute counsel within thirty (30) days from the date of the order permitting the withdrawal and that a failure of the party to prosecute or defend the case may result in dismissal of the case without prejudice or a default judgment against the party. If no entry of appearance is filed within thirty (30) days from the date of the order permitting withdrawal, then the unrepresented party, other than a corporation, is deemed to be representing himself or herself and acting pro se.

In all cases, counsel seeking to withdraw shall advise the court if the case is currently set for motion docket, pretrial conference, or trial.

D. ADDRESS OF RECORD. The address of record for any attorney or party appearing in a case pending in any district court shall be the last address provided to the court. The attorney or unrepresented party who has an address change must, in all cases pending before the court involving the attorney or party, file with the court and serve upon all counsel and unrepresented parties a notice of a change of address. Any attorney or unrepresented party has the duty of maintaining a current address with the court. Service of notice to the address of record of counsel or an unrepresented party shall be considered valid service for all purposes, including dismissal of cases for failure to appear.

E. NOTICE OF CHANGE OF ADDRESS. All attorneys and unrepresented parties shall give immediate notice to the court of a change of address by filing notice with the court clerk. The notice of the change of address shall contain the same information required in the entry of appearance, shall be served on all parties, and a copy shall be provided to the assigned judge. If an attorney or an unrepresented party files an entry of appearance, the court will assume the correctness of the last address of record until a notice of change of address is received. Attorneys of record who change law firms shall notify the court clerk and the assigned judge of the status of representation of their clients, and shall immediately withdraw, when appropriate.

SECTION 11. AMENDATORY 12 O.S. 1991, Section 2012, as amended by Section 4, Chapter 380, O.S.L. 2000 (12 O.S. Supp. 2000, Section 2012), is amended to read as follows:

Section 2012.

DEFENSES AND OBJECTIONS; WHEN AND HOW PRESENTED;

BY PLEADING OR MOTION

A. WHEN PRESENTED. A defendant shall serve an answer within twenty (20) days after the service of the summons and petition upon the defendant, except as otherwise provided by ~~the~~ Oklahoma law ~~of this state~~. Within twenty (20) days, or thirty-five (35) days, when applicable, after the service of the summons and petition upon the defendant, a defendant may file ~~an appearance~~ a reservation of time which shall extend the time to respond twenty (20) days from the last date for answering. The filing of such ~~appearance~~ a reservation of time waives defenses of paragraphs 2, 3, 4, 5, 6, and 9 of subsection B of this section. A party served with a pleading stating a cross-claim against ~~the~~ that party shall serve an answer thereto within twenty (20) days after the service upon the party. The plaintiff shall serve a reply to a counterclaim in the answer within twenty (20) days after service of the answer or, if a reply is ordered by the court, within twenty (20) days after service of the order, unless the order otherwise directs. The party requesting a summons to be issued or filing a counter-claim or cross-claim may elect to have the answer served within thirty-five (35) days in lieu of the twenty (20) days set forth in this section. The service of a motion permitted under this section or a motion for summary judgment alters these periods of time as follows, unless a different time is fixed by order of the court: if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within twenty (20) days after notice of the court's action.

B. HOW PRESENTED. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

1. Lack of jurisdiction over the subject matter;

2. Lack of jurisdiction over the person;

3. Improper venue;

4. Insufficiency of process;

5. Insufficiency of service of process;

6. Failure to state a claim upon which relief can be granted;

7. Failure to join a party under Section 2019 of this title;

8. Another action pending between the same parties for the same claim;

9. Lack of capacity of a party to be sued; and

10. Lack of capacity of a party to sue.

A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered 6 of this subsection to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and all parties shall be given reasonable opportunity to present all material made pertinent to the motion by the rules for summary judgment. A motion to dismiss for failure to state a claim upon which relief can be granted shall separately state each omission or defect in the petition, and a motion that does not specify such defects or omissions shall be denied without a hearing and the defendant shall answer within twenty (20) days after notice of the court's action.

C. PRELIMINARY HEARINGS. The defenses specifically enumerated in paragraphs 1 through 10 of subsection B of this section, whether made in a pleading or by motion, and the motion to strike mentioned

in subsection D of this section shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial. If the court determines that venue is proper, the action shall not be dismissed for improper venue as a result of the jury's verdict or the subsequent ruling of the court on a demurrer to the evidence or a motion for a directed verdict.

D. MOTION TO STRIKE. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by this act, upon motion made by a party within twenty (20) days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense. If, on a motion to strike an insufficient defense, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for partial summary judgment and all parties shall be given reasonable opportunity to present all materials made pertinent to the motion by the rules for summary judgment.

E. CONSOLIDATION OF DEFENSES IN MOTION. A party who makes a motion under this section may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this section but omits therefrom any defense or objection then available to the party which this section permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in paragraph 2 of subsection F of this section on the grounds there stated. The court in its discretion may permit a party to amend a motion by stating additional defenses or objections if an amendment is sought at least five (5) days before the hearing on the motion.

F. WAIVER OR PRESERVATION OF CERTAIN DEFENSES.

1. A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process, failure to state a claim upon which relief can be granted, or lack of capacity of a party to be sued is waived:

a. if omitted from a motion that raises any of the defenses or objections which this section permits to be raised by motion, or

b. if it is not made by motion and it is not included in a responsive pleading or an amendment thereof permitted by subsection A of Section 2015 of this title to be made as a matter of course. A motion to strike an insufficient defense is waived if not raised as in subsection D of this section.

2. A defense of failure to join a party indispensable under Section 2019 of this title may be made in any pleading permitted or ordered under subsection A of Section 2007 of this title or at the trial on the merits. A defense of another action pending between the same parties for the same claim or a defense of lack of capacity of a party to sue may be made in any pleading permitted or ordered pursuant to the provisions of subsection A of Section 2007 of this title or at the pretrial conference.

3. Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

4. A waiver of the defense in paragraph 6 of subsection B of this section does not preclude a later contention that a party is not entitled to any relief as a matter of law, either by motion for summary judgment, or by demurrer or motion at or after trial.

G. FINAL DISMISSAL ON FAILURE TO AMEND. On granting a motion to dismiss a claim for relief, the court shall grant leave to amend if the defect can be remedied and shall specify the time within which an amended pleading shall be filed. If the amended pleading

is not filed within the time allowed, final judgment of dismissal with prejudice shall be entered on motion except in cases of excusable neglect. In such cases amendment shall be made by the party in default within a time specified by the court for filing an amended pleading. Within the time allowed by the court for filing an amended pleading, a plaintiff may voluntarily dismiss the action without prejudice.

SECTION 12. AMENDATORY 12 O.S. 1991, 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~~ other than those ~~that relate~~ 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 13. AMENDATORY 12 O.S. 1991, 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.

~~C.~~ 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 become 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 14. AMENDATORY 12 O.S. 1991, 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~~ record which should in fairness be considered contemporaneously with it.

SECTION 15. AMENDATORY 12 O.S. 1991, 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 16. AMENDATORY 12 O.S. 1991, Section 2301, is amended to read as follows:

Section 2301. As used in this Code:

1. ~~A "presumption" is~~ "Presumption" 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 17. AMENDATORY 12 O.S. 1991, Section 2303, is amended to read as follows:

Section 2303. Except when otherwise provided by statutory law, when the basic fact of a presumption has been established as provided in Section ~~302~~ 2302 of this ~~Code~~ title:

1. If the basic fact has any probative value of the existence of the presumed fact, the presumed fact shall be assumed to exist and the burden of persuading the trier of fact of the nonexistence of the presumed fact rests on the party against whom the presumption operates; or

2. If the basic fact does not have any probative value of the existence of the presumed fact, the presumed fact is disregarded when the party against whom the presumption operates introduces evidence which would support a finding of the nonexistence of the presumed fact and the existence of the fact otherwise presumed is then determined from the evidence in the same manner as if no presumption had been operable in the case.

SECTION 18. AMENDATORY 12 O.S. 1991, Section 2304, is amended to read as follows:

Section 2304. A. Except as otherwise provided by statutory law, 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~~ on the evidence as a whole, including the evidence of the basic facts, could find guilt or the presumed fact beyond a reasonable doubt. If a 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~~ negates 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~~ negates a defense, the judge also shall instruct the jury that its existence, on all the evidence, must be proved beyond a reasonable doubt.

SECTION 19. AMENDATORY 12 O.S. 1991, 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 20. AMENDATORY 12 O.S. 1991, Section 2404, is amended to read as follows:

Section 2404. A. Evidence of a person's character or a trait of ~~his~~ character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

1. Evidence of a pertinent trait of character offered by an accused or by the prosecution to rebut the same;

2. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor; or

3. Evidence of the character of a witness, as provided in Sections 2607, 2608 and 2609 of this Code.

B. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

SECTION 21. AMENDATORY 12 O.S. 1991, Section 2405, is amended to read as follows:

Section 2405. A. ~~Where~~ If evidence of a person's character or trait of character is admissible, proof may be by testimony as to reputation or by testimony in the form of opinion. Inquiry is allowable on cross-examination into relevant specific instances of conduct.

B. In cases in which a person's character or a trait of character is an essential element of a charge, claim or defense, proof may be made of specific instances of ~~his~~ the person's conduct.

SECTION 22. AMENDATORY 12 O.S. 1991, 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 23. AMENDATORY 12 O.S. 1991, 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 or his~~ a client or a representative of the client and ~~his~~ the client's attorney or ~~his attorney's~~ a representative of the attorney;

2. Between ~~his~~ the client's 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 client's 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 24. AMENDATORY 12 O.S. 1991, 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:~~

~~1.~~ There is no privilege under this section for communications ~~relevant~~:

1. 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 25. AMENDATORY 12 O.S. 1991, 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. 1991, 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~~ a confidential communication made to a ~~clergyman~~ cleric acting in ~~his~~ the cleric's 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. 1991, 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~~ record 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. ~~"Newsman"~~ "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 Section 1, Chapter 297, O.S.L. 1993 (12 O.S. Supp. 2000, 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 29. AMENDATORY 12 O.S. 1991, 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 30. AMENDATORY 12 O.S. 1991, 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 31. AMENDATORY 12 O.S. 1991, 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 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 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 the 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 has determined 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 32. AMENDATORY 12 O.S. 1991, 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 or his~~ the person or 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 33. AMENDATORY 12 O.S. 1991, 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~~ section is subject to the provisions of Section ~~703~~ 2703 of this ~~Code~~ title.

SECTION 34. AMENDATORY 12 O.S. 1991, 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 35. AMENDATORY 12 O.S. 1991, 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 36. AMENDATORY 12 O.S. 1991, 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 emotions 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 concerning a matter about which ~~he~~ the juror would be precluded from testifying shall not be received for these purposes.

SECTION 37. AMENDATORY 12 O.S. 1991, 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 38. AMENDATORY 12 O.S. 1991, 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 privilege of the accused or other witness against self-incrimination when examined with respect to matters which relate only to credibility.

SECTION 39. AMENDATORY 12 O.S. 1991, Section 2609, as amended by Section 1, Chapter 245, O.S.L. 2000 (12 O.S. Supp. 2000, 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 40. AMENDATORY 12 O.S. 1991, 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 41. AMENDATORY 12 O.S. 1991, 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~~ 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 42. AMENDATORY Section 1, Chapter 202, O.S.L. 1996, as renumbered by Section 1, Chapter 108, O.S.L. 1999, and as amended by Section 21, Chapter 340, O.S.L. 2000 (12 O.S. Supp. 2000, 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 to protect the rights of the witness while ensuring the rights of the parties to the proceeding and the interests of justice in conducting the proceeding. In making the decision, the court shall consider:

a. the nature and seriousness of the ~~offense~~ issues in the proceeding,

b. the age of the witness,

c. the relationship, if any, of the witness to the ~~defendant~~ parties,

d. the extent to which the size of the community would preclude the anonymity of the witness,

e. the likelihood of public disgrace of the witness,

f. whether there is an overriding public interest in having the ~~testimony of the minor or incapacitated person presented~~ witness testify in open court,

g. whether ~~the district attorney has demonstrated a~~ there is substantial risk that the identity of the witness

would be disclosed to the public during the proceeding,

h. whether ~~the district attorney has demonstrated~~ there is substantial probability that the disclosure of the identity of the witness would cause serious harm to the witness,

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

j. other factors the court may deem necessary to protect the interests of justice.

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

a. the ~~defendant and/or the defense~~ parties to the proceedings and their counsel,

b. ~~any officer having custody of the defendant,~~

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

~~d.~~ court and other personnel as may be necessary to conduct the hearing, including but not limited to the judge, the court clerk, the bailiff, and the court reporter,

~~e.~~ c. jury members, if appropriate, and

~~f.~~ d. the witness and a support person for the witness.

D. ~~If the court determines it to be appropriate, the~~ 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~~ the 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, court procedures shall be ~~for the purpose of explaining the court procedures~~ 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. ~~A~~ The witness shall have the right to be accompanied by ~~a~~ the support person while ~~giving testimony at any criminal~~ testifying in the proceeding~~. The~~, 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 in any way to prompt or influence the testimony of the witness ~~in any way~~.

SECTION 43. AMENDATORY 12 O.S. 1991, 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 in camera~~ record or object, 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 striking the testimony or declaring a mistrial.

SECTION 44. AMENDATORY 12 O.S. 1991, 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~~ provided for in ~~subparagraph~~ paragraph 2 of subsection B ~~of paragraph 4~~ of Section ~~801~~ 2801 of this ~~Code~~ title.

SECTION 45. AMENDATORY 12 O.S. 1991, 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~~ the witness's testimony or the determination of a fact in issue; and

3. Not based on scientific, technical, or other specialized knowledge within the scope of Section 2702 of this title.

SECTION 46. AMENDATORY 12 O.S. 1991, 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 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. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweigh their prejudicial effect.

SECTION 47. AMENDATORY 12 O.S. 1991, 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 in any event may be required to disclose the underlying facts or data on cross-examination.

SECTION 48. AMENDATORY 12 O.S. 1991, Section 2801, is amended to read as follows:

Section 2801. A. For purposes of this Code:

1. ~~A "statement" is~~ "Statement" 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~~ the person as an assertion;

2. ~~A "declarant" is~~ "Declarant" 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 49. AMENDATORY 12 O.S. 1991, Section 2802, is amended to read as follows:

Section 2802. Hearsay is not admissible except as otherwise provided by statutory law.

SECTION 50. AMENDATORY 12 O.S. 1991, 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, 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 that is inadmissible under paragraph 8 of this section is inadmissible under this paragraph;

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~~ 2902 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 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, 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 51. AMENDATORY 12 O.S. 1991, 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~~ 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 covered by the exception provided for by this paragraph; 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 52. 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 Title 12 of the Oklahoma Statutes, 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 the Oklahoma Evidence 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 53. AMENDATORY 12 O.S. 1991, 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 ~~801~~ 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 54. AMENDATORY 12 O.S. 1991, 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~~ the 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~~ the official capacity ~~by~~ of 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 55. AMENDATORY 12 O.S. 1991, 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 56. AMENDATORY 12 O.S. 1991, Section 3001, as last amended by Section 1, Chapter 135, O.S.L. 1995 (12 O.S. Supp. 2000, Section 3001), is amended to read as follows:

Section 3001. For purposes of this Code:

1. ~~"Writings" and "recordings" consist of~~ "Records" means letters, words, or numbers, or their equivalent, ~~set down~~ 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~~ means 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 print out~~ The term includes a printout 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~~ "Duplicate" 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 re-recording, ~~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~~ reproduces the original;

5. "Image" means a form of a record which consists of a digitized copy 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 57. AMENDATORY 12 O.S. 1991, Section 3002, is amended to read as follows:

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

SECTION 58. AMENDATORY 12 O.S. 1991, 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 59. AMENDATORY 12 O.S. 1991, Section 3004, as amended by Section 2, Chapter 135, O.S.L. 1995 (12 O.S. Supp. 2000, 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~~ An original ~~can~~ cannot 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 60. AMENDATORY 12 O.S. 1991, 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 record and actually recorded or filed~~, including data in any form, if otherwise admissible,~~ may be proved by a copy in a

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 61. AMENDATORY 12 O.S. 1991, Section 3006, is amended to read as follows:

Section 3006. The contents of voluminous ~~writings, recordings or photographs~~ records which cannot conveniently be examined in court may be presented in the form of a chart, summary ~~or~~, calculation, or other perceivable presentation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The judge may order that they be produced in court.

SECTION 62. AMENDATORY 12 O.S. 1991, 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 63. AMENDATORY 12 O.S. 1991, Section 3008, is amended to read as follows:

Section 3008. When the admissibility of other evidence of contents of ~~writings, recordings or photographs~~ records 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 64. AMENDATORY 12 O.S. 1991, 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 65. AMENDATORY 12 O.S. 1991, Section 3226, as last amended by Section 21, Chapter 293, O.S.L. 1999 (12 O.S. Supp. 2000, Section 3226), is amended to read as follows:

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

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

1. IN GENERAL. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

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

A party may obtain, without the required showing provided for in this paragraph, a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning

the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of paragraph 4 of subsection A of Section 3237 of this title apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is:

a. A written statement signed or otherwise adopted or approved by the person making it, or

b. A stenographic, mechanical, electrical, or other recording, or a transcription thereof, which substantially recites an oral statement by the person making it and contemporaneously recorded.

3. TRIAL PREPARATION: EXPERTS.

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

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

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

(3) In addition to taking the ~~deposition~~ depositions of ~~an~~ expert ~~witness~~ witnesses the party may, through interrogatories, require the party who expects to call the expert ~~witness~~ witnesses to state the subject matter on which ~~the~~ each expert witness 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; the qualifications of each expert witness, including a list of all publications authored by the expert witness within the preceding ten (10) years; the compensation to be paid to the expert witness for the testimony and preparation for the testimony; and a listing of any other cases in which the expert witness has testified as an expert at trial or by deposition within the preceding four (4) years. An interrogatory seeking the information specified above shall be treated as a single interrogatory for purposes of the limitation on the number of interrogatories in Section 3233 of this title.

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~~ the person is expected to testify, and the substance of ~~his~~ the testimony of the person.

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~~ attorney fee.

SECTION 66. AMENDATORY 12 O.S. 1991, Section 3230, as last amended by Section 22, Chapter 293, O.S.L. 1999 (12 O.S. Supp. 2000, Section 3230), is amended to read as follows:

Section 3230. A. WHEN DEPOSITIONS MAY BE TAKEN; WHEN LEAVE REQUIRED.

1. A party may take the testimony of any person, including a party, by deposition upon oral examination without leave of court except as provided in paragraph 2 of this subsection. The

attendance of witnesses may be compelled by subpoena as provided in Section 2004.1 of this title.

2. a. A party shall obtain leave of court, if the person to be examined is confined in prison, or if, without the written stipulation of the parties:

(1) the person to be examined already has been deposed in the case, or

(2) a party seeks to take a deposition prior to the expiration of thirty (30) days after service of the summons and petition upon any defendant unless the notice contains a certification, with supporting facts, that the person to be examined is expected to leave this state and will be unavailable for examination in this state unless deposed before that time.

b. A request for leave of court shall include a statement that the requesting party has in good faith conferred or attempted to confer either in person or by telephone with the opposing parties to obtain a written stipulation.

3. Unless otherwise agreed by the parties or ordered by the court, a deposition upon oral examination shall not last more than six (6) hours and shall be taken only between the hours of 8:00 a.m. and 5:00 p.m. on a day other than a Saturday or Sunday and on a date other than a holiday designated in Section 82.1 of Title 25 of the Oklahoma Statutes. The court may grant an extension of these time limits if the court finds that the witness or counsel has been obstructive or uncooperative or if the court finds it to be in the interest of justice.

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

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

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

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

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

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

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

3. The parties may stipulate in writing or the court may upon motion order that the testimony at a deposition be recorded by other than stenographic means. Unless good cause is shown to the contrary, such motions shall be freely granted. The stipulation or order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving, and filing the

deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the deposition is recorded by other than stenographic means, the party taking the deposition shall upon request by any party or the witness furnish a copy of the deposition to the witness. The party taking the deposition may furnish either a stenographic copy of the deposition or a copy of the deposition as recorded by other than stenographic means.

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

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

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

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

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

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

D. EXAMINATION AND CROSS-EXAMINATION; RECORD OF EXAMINATION; OATH; OBJECTIONS. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of Section 2101 et seq. of this title except Section 2104. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other method authorized by paragraph 4 of subsection C of this section.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any party, or to any other aspect of the proceedings shall be noted by the officer upon the record of the deposition; however, the examination shall proceed, with the testimony being taken subject to the objections.

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

E. MOTION TO TERMINATE OR LIMIT EXAMINATION.

1. Any objection to evidence during a deposition shall be stated concisely and in a nonargumentative and nonsuggestive manner. A party may instruct a deponent not to answer only ~~where the information sought is not discoverable by law,~~ when necessary to preserve a privilege or work product protection, to enforce a limitation on evidence directed by the court, to present a motion under paragraph 2 of this subsection, or to move for a protective order under subsection C of Section 3226 of this title. If the court finds a person has engaged in conduct which has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and ~~attorney's~~ attorney fees incurred by any parties as a result thereof.

2. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass or oppress the deponent or party, the court in which the action is pending or the court in the county where the deposition is being taken may order the officer conducting the examination to cease taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in subsection C of Section 3226 of this title. If the order entered terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for the order provided for in this section. The provisions of paragraph 4 of subsection A of Section 3237 of this title apply to the award of expenses incurred in relation to the motion.

F. REVIEW BY WITNESS; CHANGES; SIGNING. The deponent shall have the opportunity to review the transcript of the deposition

unless such examination and reading are waived by the deponent and by the parties. After being notified by the officer that the transcript is available, the deponent shall have thirty (30) days in which to review it and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by paragraph 1 of subsection G of this section whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

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

1. The officer shall certify on any stenographic deposition:

a. the qualification of the officer to administer oaths, including the officer's certificate number,

b. that the witness was duly sworn by the officer,

c. that the deposition is a true record of the testimony given by the witness, and

d. that the officer is not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of the attorney or counsel, and is not financially interested in the action.

Except on order of the court or unless a deposition is attached to a motion response thereto, is needed for use in a trial or hearing, or the parties stipulate otherwise, depositions shall not be filed with the court clerk. The officer shall securely seal any stenographic deposition in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and send it to the attorney who arranged for the deposition, who shall store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be

marked for identification and annexed to the deposition and may be inspected and copied by any party. If the person producing the materials desires to retain them he may:

a. Offer copies to be marked for identification and annexed to the deposition and to serve as originals if he affords to all parties fair opportunity to verify the copies by comparison with the originals, or

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

2. Each party who takes the deposition of a witness or of another party shall bear all expenses thereof, including the cost of transcription, and shall furnish upon request to the adverse party or parties, free of charge, one copy of the transcribed deposition. If the party taking the deposition recorded it on videotape or by other nonstenographic means, that party shall also furnish upon request to the adverse party or parties, free of charge, one copy of the videotape or other recording of the deposition.

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

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

2. If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the

witness because of such failure does not attend, and if another party attends in person or by attorney because he or she expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and his or her attorney in attending, including reasonable ~~attorney's~~ attorney fees.

I. WITNESS FEES.

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

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

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

SECTION 67. AMENDATORY 12 O.S. 1991, Section 3237, as amended by Section 8, Chapter 61, O.S.L. 1996 (12 O.S. Supp. 2000, Section 3237), is amended to read as follows:

Section 3237. A. MOTION FOR ORDER COMPELLING DISCOVERY. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

1. APPROPRIATE COURT. An application for an order to a party may be made to the court in which the action is pending, or, on matters, relating to a deposition, to the district court in the county where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the district

court in the county where the deposition is being taken or to the court in which the action is pending.

2. MOTION. If a deponent fails to answer a question propounded or submitted under Section 3230 or 3231 of this title, or a corporation or other entity fails to make a designation under paragraph 6 of subsection C of Section 3230 or subsection A of Section 3231 of this title, or a party fails to answer an interrogatory submitted under Section 3233 of this title, or if a party, in response to a request for inspection and copying submitted under Section 3234 of this title, fails to respond that the inspection or copying will be permitted as requested or fails to permit the inspection or copying as requested, or if a party or witness objects to the inspection or copying of any materials designated in a subpoena issued pursuant to subsection A of Section 2004.1 of this title, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection and copying in accordance with the request or subpoena. The motion must include a statement that the movant has in good faith conferred or attempted to confer either in person or by telephone with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before ~~he applies~~ applying for an order.

When a claim of privilege or other protection from discovery is made in response to any request or subpoena for documents, and the court, in its discretion, determines that a privilege log is necessary in order to determine the validity of the claim, the court shall order the party claiming the privilege to prepare and serve a privilege log upon the terms and conditions deemed appropriate by the court. The privilege log shall be served upon all other parties. Unless otherwise ordered by the court, the privilege log

shall include, as to each document for which a claim of privilege or other protection from discovery has been made, the following:

a. the author or authors,

b. the recipient or recipients,

c. its origination date,

d. its length,

e. the nature of the document or its intended purpose, and

f. the basis for the objection.

The court may conduct an in camera review of the documents for which the privilege or other protection from discovery is claimed. If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to subsection C of Section 3226 of this title.

3. EVASIVE OR INCOMPLETE ANSWER. For purposes of this subsection, an evasive or incomplete answer is to be treated as a failure to answer.

4. AWARD OF EXPENSES OF MOTION. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including ~~attorney's~~ attorney fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including ~~attorney's~~ attorney fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

B. FAILURE TO COMPLY WITH ORDER.

1. SANCTIONS BY COURT IN COUNTY WHERE DEPOSITION IS TAKEN. If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the county in which the deposition is being taken, the failure may be considered a contempt of that court.

2. SANCTION BY COURT IN WHICH ACTION IS PENDING. If a party or an officer, director or managing agent of a party or a person designated under paragraph 6 of subsection C of Section 3230 or subsection A of Section 3231 of this title to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subsection A of this section or Section 3235 of this title, or if a party fails to obey an order entered under subsection F of Section 3226 of this title, the court in which the action is pending may make such orders in regard to the failure as are just. Such orders may include the following:

a. An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order,

b. An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence,

c. An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceedings or any part

thereof, or rendering a judgment by default against the disobedient party,

d. In lieu of or in addition to the orders provided for in subparagraphs a through c of this paragraph, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination,

e. Where a party has failed to comply with an order under subsection A of Section 3235 of this title requiring him to produce another for examination, such orders as are listed in subparagraphs a, b and c of this paragraph, unless the party failing to comply shows that he is unable to produce such person for examination,

f. If a person, not a party, fails to obey an order entered under subsection C of Section 3234 of this title, the court may treat the failure to obey the order as contempt of court.

In lieu of or in addition to the orders provided for in this paragraph, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including ~~attorney's~~ attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

C. EXPENSES ON EXAMINATION OF PROPERTY. The reasonable expense of making the property available under Section 3234 of this title shall be paid by the requesting party, and at the time of the taxing of costs in the case, the court may tax such expenses as costs, or it may apportion such expenses between the parties, or it may provide that they are an expense of the requesting party.

D. EXPENSES ON FAILURE TO ADMIT. If a party fails to admit the genuineness of any document or the truth of any matter as requested

under Section 3236 of this title, and if the party requesting the admission thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable ~~attorney's~~ attorney fees. The court shall make the order unless it finds that:

1. The request was held objectionable pursuant to subsection C of Section 3236 of this title; or

2. The admission sought was of no substantial importance; or

3. The party failing to admit had reasonable ground to believe that he might prevail on the matter; or

4. There was other good reason for the failure to admit.

E. FAILURE OF PARTY TO ATTEND AT OWN DEPOSITION OR SERVE ANSWER TO INTERROGATORIES OR RESPOND TO REQUEST FOR INSPECTION. If a party or an officer, director or managing agent of a party or a person designated under paragraph 6 of subsection C of Section 3230 or subsection A of Section 3231 of this title to testify on behalf of a party fails:

1. To appear before the officer who is to take his deposition, after being served with a proper notice; or

2. To serve answers or objections to interrogatories submitted under Section 3233 of this title, after proper service of the interrogatories; or

3. To serve a written response to a request for inspection submitted under Section 3234 of this title, after proper service of the request;

the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subparagraphs a, b and c of paragraph 2 of subsection B of this section. In lieu of or in addition to any order, the court shall require the party failing to act or the attorney advising him or both to pay the reasonable

expenses, including ~~attorney's~~ attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act as described in this subsection may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by subsection C of Section 3226 of this title.

F. FAILURE TO PARTICIPATE IN THE FRAMING OF A DISCOVERY PLAN. If a party or his attorney fails to participate in good faith in the framing of a discovery plan by agreement as is required by subsection F of Section 3226 of this title, the court may, after opportunity for hearing, require such party or his attorney to pay to any other party the reasonable expenses, including ~~attorney's~~ attorney fees, caused by the failure.

SECTION 68. AMENDATORY 58 O.S. 1991, Section 52, as amended by Section 4, Chapter 359, O.S.L. 1998 (58 O.S. Supp. 2000, Section 52), is amended to read as follows:

Section 52. A. When a copy of the will and the order or decree admitting same to probate, duly certified, shall be produced by the executor, or by any other person interested in the will, with a petition for letters, the same must be filed, and the court or judge must appoint a time for the hearing, notice whereof must be given as provided for an original petition for the probate of a will.

B. Regardless of the value of the estate, any will admitted to probate in another jurisdiction may be ~~probated~~ admitted to probate and administered under the procedures prescribed pursuant to Section ~~1~~ 241 or 245 of this ~~act~~ title.

SECTION 69. RECODIFICATION Section 1, Chapter 297, O.S.L. 1993 (12 O.S. Supp. 2000, Section 2506.1), as amended by Section 28 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 70. REPEALER 12 O.S. 1991, Sections 462, 1703.02, 3101, 3102 and 3103, are hereby repealed.

SECTION 71. This act shall become effective November 1, 2001.

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