

ENROLLED SENATE
BILL NO. 1618

By: Smith of the Senate

and

Harrison and Askins of the
House

An Act relating to civil procedure and courts;
amending 12 O.S. 2001, Section 3227, which relates to
depositions; modifying person required to pay certain
costs; amending 20 O.S. 2001, Sections 15, 78.1 and
1503.1, as amended by Section 3, Chapter 183, O.S.L.
2003 (20 O.S. Supp. 2003, Section 1503.1), which
relate to deposits, management of records and
continuing education; adding fee for certain
application; deleting construing provision;
clarifying certain continuing education requirements;
and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 2001, Section 3227, is
amended to read as follows:

Section 3227. A. BEFORE ACTION.

1. PETITION. A person who desires to perpetuate his own
testimony or that of another person regarding any matter that may be
cognizable in any court may file a verified petition in the district
court in the county of the residence of any expected adverse party
for such perpetuation of testimony. The petition shall be entitled
in the name of the petitioner and shall show:

- a. That the petitioner or his personal representative,
heirs, beneficiaries, successors or assigns may be a
party to an action cognizable in a court but is
presently unable to bring it or cause it to be
brought.
- b. The subject matter of the expected action and his
interest therein, and a copy, attached to the
petition, of any written instrument the validity or
construction of which may be called in question or
which is connected with the subject matter of the
requested deposition.
- c. The facts which he desires to establish by the
proposed testimony and his reasons for desiring to
perpetuate it.

- d. The names or, if the names are unknown, a description of the persons he expects will be adverse parties and their addresses so far as known.
- e. The names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each.

The petition shall request an order authorizing the petitioner to take the depositions of the persons named in the petition to be examined for the purpose of perpetuating their testimony.

2. NOTICE AND SERVICE. The petitioner shall thereafter serve a notice upon each person named or described in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least twenty (20) days before the date of hearing, the notice shall be served either within or without the state in the manner provided for personal service of summons. If such service cannot, with due diligence, be made upon any expected adverse party named or described in the petition, the court may enter such order as is just for service by publication or otherwise, and shall appoint, for persons not served by personal service, an attorney who shall represent them and, if they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the court shall appoint a guardian ad litem for any such minor or incompetent not legally represented.

3. ORDER AND EXAMINATION. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall enter an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and how the depositions shall be taken. The depositions may then be taken in accordance with the Oklahoma Discovery Code, Section 3224 et seq. of this title. The court may enter orders of the character provided for by Sections 3234 and 3235 of this title. For the purpose of applying the Oklahoma Discovery Code to depositions for perpetuating testimony, each reference to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

4. USE OF DEPOSITION. If a deposition to perpetuate testimony is taken under the Oklahoma Discovery Code, it may be used in any action involving the same subject matter subsequently brought in a court of this state, in accordance with the provisions of subsection A of Section 3232 of this title.

B. PENDING APPEAL. If an appeal has been taken from a judgment of a district court or before the taking of an appeal if the time therefor has not expired, the district court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the district court. In such case, the party who desires to perpetuate the testimony may make a motion in the district court for leave to take the depositions, upon the same

notice and service thereof as if the action was pending in the district court. The motion shall show:

1. The names and addresses of persons to be examined and the substance of the testimony which he expects to elicit from each;
2. The reasons for perpetuating the testimony.

If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may enter an order allowing the depositions to be taken and may make orders of the character provided for by Sections 3234 and 3235 of this title, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in the Oklahoma Discovery Code for depositions taken in actions pending in the district court.

C. PERPETUATION BY ACTION. The procedures prescribed in this section do not limit the power of a court to entertain an action to perpetuate testimony.

D. FILING OF DEPOSITION. Depositions taken under this section shall not be filed with the court in which the petition is filed or the motion is made except on order of the court or unless they are attached to a motion, response thereto, or are needed for use in a trial or hearing.

E. COSTS. The ~~party~~ attorney taking any deposition under this section shall pay the costs thereof unless otherwise ordered by the court.

F. DEPOSITIONS TAKEN IN OTHER JURISDICTIONS ADMISSIBLE. A deposition taken under procedures of another jurisdiction, which are similar to those in this section, is admissible in this state to the same extent as a deposition taken under this section.

SECTION 2. AMENDATORY 20 O.S. 2001, Section 15, is amended to read as follows:

Section 15. In each case filed in the Supreme Court and in each application seeking reinstatement to the Oklahoma Bar Association, and at the time of filing same, there shall be deposited with the Clerk as costs in said cause Two Hundred Dollars (\$200.00) of which no rebate of any part thereof shall be made; provided, the Supreme Court may prescribe by rules the procedure for affording access to that Court, without the deposit of costs, to those indigent persons who are deemed by it entitled thereto.

SECTION 3. AMENDATORY 20 O.S. 2001, Section 78.1, is amended to read as follows:

Section 78.1 The Supreme Court, Court of Criminal Appeals, Court of Tax Review, and the Court on the Judiciary shall provide by rule, which shall have the force of law, for the retention, copying, preservation, archiving and destruction of the records, files and papers committed to the care of the Clerk of the Supreme Court by the respective courts. ~~The provisions of this section shall not be~~

~~construed to authorize said courts to promulgate or adopt rules contrary to the provisions of the Records Management Act or Oklahoma Open Records Act.~~

SECTION 4. AMENDATORY 20 O.S. 2001, Section 1503.1, as amended by Section 3, Chapter 183, O.S.L. 2003 (20 O.S. Supp. 2003, Section 1503.1), is amended to read as follows:

Section 1503.1 A. Every certified shorthand reporter and every court reporter temporarily employed by the district court, Workers' Compensation Court, or Corporation Commission shall annually complete at least four (4) hours of continuing education approved by the State Board of Examiners of Certified Shorthand Reporters, ~~which shall include.~~ Included in the four-hour minimum requirement for every official shorthand reporter and every court reporter temporarily employed by the district court, Workers' Compensation Court, or Corporation Commission at least one (1) hour which relates shall relate to Oklahoma court rules and procedures. All four (4) hours of continuing education shall be approved by the State Board of Examiners of Certified Shorthand Reporters.

B. A certified shorthand reporter or court reporter is exempt from the requirements of subsection A of this section if the reporter verifies under oath to the State Board of Examiners of Certified Shorthand Reporters that he or she:

1. Has attained the age of sixty-five (65) before or during the calendar year for which the reporter seeks an exemption;

2. Is a member of the armed forces on full-time active duty during the entire calendar year for which the reporter seeks an exemption; or

3. Has provided written verification by a licensed physician that a medical condition has prevented the court reporter from working in such capacity and completing continuing education for the calendar year for which the reporter seeks an exemption.

SECTION 5. This act shall become effective November 1, 2004.

Passed the Senate the 4th day of May, 2004.

Presiding Officer of the Senate

Passed the House of Representatives the 22nd day of April, 2004.

Presiding Officer of the House
of Representatives