

EHB 1889

THE STATE SENATE
Monday, April 4, 2005

ENGROSSED

House Bill No. 1889

ENGROSSED HOUSE BILL NO. 1889 - By: MORGAN (Fred) and NANCE of the House and LASTER of the Senate.

An Act relating to courts; amending 12 O.S. 2001, Section 3230, as amended by Section 74, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2004, Section 3230), which relates to depositions; changing who is responsible for expenses of taking deposition; amending 20 O.S. 2001, Sections 1503, as amended by Section 2, Chapter 183, O.S.L. 2003 and 1505 (20 O.S. Supp. 2004, Section 1503), which relate to certified shorthand reporters; modifying acceptable alternative credentials for enrollment as an Oklahoma certified court reporter; modifying testing component; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 2001, Section 3230, as amended by Section 74, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2004, 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.

1 Oklahoma Statutes. The court may grant an extension of these time
2 limits if the court finds that the witness or counsel has been
3 obstructive or uncooperative or if the court finds it to be in the
4 interest of justice.

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

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

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

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

17 1. A party desiring to take the deposition of any person upon
18 oral examination shall give notice in writing to every other party
19 to the action. The notice shall state the time and place for taking
20 the deposition and shall state the name and address of each person
21 to be examined, if known, and, if the name is not known, a general
22 description sufficient to identify the person or the particular
23 class or group to which the person belongs. The notice shall be

1 served in order to allow the adverse party sufficient time, by the
2 usual route of travel, to attend, and three (3) days for
3 preparation, exclusive of the day of service of the notice.

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

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

10 3. The parties may stipulate in writing or the court may upon
11 motion order that the testimony at a deposition be recorded by other
12 than stenographic means. Unless good cause is shown to the
13 contrary, such motions shall be freely granted. The stipulation or
14 order shall designate the person before whom the deposition shall be
15 taken, the manner of recording, preserving, and filing the
16 deposition, and may include other provisions to assure that the
17 recorded testimony will be accurate and trustworthy. If the
18 deposition is recorded by other than stenographic means, the party
19 taking the deposition shall upon request by any party or the witness
20 furnish a copy of the deposition to the witness. The party taking
21 the deposition may furnish either a stenographic copy of the
22 deposition or a copy of the deposition as recorded by other than
23 stenographic means.

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

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

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

1 subpoena shall advise a nonparty organization of its duty to make
2 such a designation. The persons so designated shall testify as to
3 matters known or reasonably available to the organization.

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

6 6. The parties may stipulate in writing or the court may upon
7 motion order that a deposition be taken by telephone or other remote
8 electronic means. For the purposes of this section, subsection A of
9 Section 3228, and paragraphs 1 of subsections A and B of Section
10 3237 of this title, a deposition taken by such means is taken in the
11 county and state and at the place where the deponent is to answer
12 questions.

13 D. EXAMINATION AND CROSS-EXAMINATION; RECORD OF EXAMINATION;
14 OATH; OBJECTIONS. Examination and cross-examination of witnesses
15 may proceed as permitted at the trial under the provisions of
16 Section 2101 et seq. of this title except Section 2104. The officer
17 before whom the deposition is to be taken shall put the witness on
18 oath or affirmation and shall personally, or by someone acting under
19 his direction and in his presence, record the testimony of the
20 witness. The testimony shall be taken stenographically or recorded
21 by any other method authorized by paragraph 3 of subsection C of
22 this section.

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

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

12 E. MOTION TO TERMINATE OR LIMIT EXAMINATION.

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

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

17 F. REVIEW BY WITNESS; CHANGES; SIGNING. The deponent shall
18 have the opportunity to review the transcript of the deposition
19 unless such examination and reading are waived by the deponent and
20 by the parties. After being notified by the officer that the
21 transcript is available, the deponent shall have thirty (30) days in
22 which to review it and, if there are changes in form or substance,
23 to sign a statement reciting such changes and the reasons given by

1 the deponent for making them. The officer shall indicate in the
2 certificate prescribed by paragraph 1 of subsection G of this
3 section whether any review was requested and, if so, shall append
4 any changes made by the deponent during the period allowed.

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

- 7 1. The officer shall certify on any stenographic deposition:
- 8 a. the qualification of the officer to administer oaths,
9 including the officer's certificate number,
 - 10 b. that the witness was duly sworn by the officer,
 - 11 c. that the deposition is a true record of the testimony
12 given by the witness, and
 - 13 d. that the officer is not a relative or employee or
14 attorney or counsel of any of the parties, or a
15 relative or employee of the attorney or counsel, and
16 is not financially interested in the action.

17 Except on order of the court or unless a deposition is attached to a
18 motion response thereto, is needed for use in a trial or hearing, or
19 the parties stipulate otherwise, depositions shall not be filed with
20 the court clerk. The officer shall securely seal any stenographic
21 deposition in an envelope endorsed with the title of the action and
22 marked "Deposition of (here insert name of witness)" and send it to
23 the attorney who arranged for the deposition, who shall store it

1 under conditions that will protect it against loss, destruction,
2 tampering, or deterioration.

3 Documents and things produced for inspection during the
4 examination of the witness shall, upon the request of a party, be
5 marked for identification and annexed to the deposition and may be
6 inspected and copied by any party. If the person producing the
7 materials desires to retain them he may:

- 8 a. Offer copies to be marked for identification and
9 annexed to the deposition and to serve as originals if
10 he affords to all parties fair opportunity to verify
11 the copies by comparison with the originals, or
12 b. Offer the originals to be marked for identification,
13 after giving to each party an opportunity to inspect
14 and copy them, in which event the materials may then
15 be used in the same manner as if annexed to the
16 deposition. Any party may move for an order that the
17 original be annexed to and returned with the
18 deposition to the court, pending final disposition of
19 the case.

20 2. Each ~~party~~ party attorney who takes the deposition of a witness or
21 of ~~another~~ a party shall bear all expenses thereof, including the
22 cost of transcription, and shall furnish upon request to the adverse
23 party or parties, free of charge, one copy of the transcribed

1 deposition. If the party taking the deposition recorded it on
2 videotape or by other nonstenographic means, that party shall also
3 furnish upon request to the adverse party or parties, free of
4 charge, one copy of the videotape or other recording of the
5 deposition.

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

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

13 2. If the party giving the notice of the taking of a deposition
14 of a witness fails to serve a subpoena upon the witness and the
15 witness because of such failure does not attend, and if another
16 party attends in person or by attorney because he or she expects the
17 deposition of that witness to be taken, the court may order the
18 party giving the notice to pay to such other party the reasonable
19 expenses incurred by that party and his or her attorney in
20 attending, including reasonable attorney fees.

21 I. WITNESS FEES.

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

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

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

11 SECTION 2. AMENDATORY 20 O.S. 2001, Section 1503, as
12 amended by Section 2, Chapter 183, O.S.L. 2003 (20 O.S. Supp. 2004,
13 Section 1503), is amended to read as follows:

14 Section 1503. A. Every applicant who seeks to be examined for
15 enrollment as a certified shorthand reporter shall prove to the
16 satisfaction of the State Board of Examiners of Certified Shorthand
17 Reporters that he or she:

- 18 1. Is of legal age;
- 19 2. Meets the requisite standards of ethical fitness; and
- 20 3. Has at least a high school education or its equivalent.

21 B. The examination for certification in one or more authorized
22 methods of shorthand reporting consists of two parts, designated
23 Part 1 and Part 2 as follows:

1 1. Part 1 consists of ~~proof of having passed the Registered~~
2 ~~Professional Reporter Examination of the National Court Reporters~~
3 ~~Association (NCRA) or an equivalent~~ the test as authorized by the
4 Supreme Court consisting of the following requirements:
5 demonstrated proficiency in reporting testimony and proceedings at a
6 speed of not more than two hundred (200) words per minute in taking
7 a question-and-answer type dictation and at a speed of not more than
8 one hundred eighty (180) words per minute in taking literary
9 materials which shall be designed to test the ability of an
10 applicant to accurately ~~transcribe opening and closing arguments and~~
11 ~~in preparing an accurate transcription thereof~~ prepare a transcript
12 of testimony and proceedings that is reasonably free from spelling
13 errors. The Board may not increase or decrease such minimum speed
14 requirement, by rule or otherwise; and

15 2. Part 2 is the Oklahoma Written Knowledge test which consists
16 of not less than twenty-five multiple choice questions relating to
17 Oklahoma law and court rules, duties of certified shorthand
18 reporters, and general court procedure. The examination shall be
19 approved by the Supreme Court. A person who has tested with the
20 Board and successfully completed the written knowledge portion of
21 the examination shall be allowed to retain the credit for that
22 portion for two (2) years from the date passed, and shall not be
23 required to retake that portion during the two-year period.

1 C. An applicant who is academically dishonest when taking any
2 authorized examination is disqualified and may not take the
3 examination again until two (2) years have elapsed from the date of
4 the examination at which the applicant was disqualified.

5 D. A certification issued under this section must be for one or
6 more of the following methods of shorthand reporting:

7 1. Written shorthand;

8 2. Machine shorthand; or

9 3. Any other method of shorthand reporting authorized by the
10 Supreme Court.

11 E. No person may engage in shorthand reporting in this state
12 unless the person is a licensed or certified shorthand reporter or
13 otherwise authorized by law or the Supreme Court.

14 SECTION 3. AMENDATORY 20 O.S. 2001, Section 1505, is
15 amended to read as follows:

16 Section 1505. A person holding a license from another state
17 which is deemed by the State Board of Examiners of Certified
18 Shorthand Reporters to be equivalent to that of an Oklahoma
19 certified shorthand reporter, or holding current national
20 certification as a shorthand reporter, or holding both an equivalent
21 license from another state and national certification, may be
22 enrolled without examination as an Oklahoma certified shorthand
23 reporter upon satisfying the Board that ~~his~~ the credentials of the

1 applicant are in proper order and that ~~he~~ the person is a resident
2 of Oklahoma.

3 SECTION 4. This act shall become effective November 1, 2005.

4 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-29-05 - DO
5 PASS.