

1 Section 3226. A. DISCOVERY METHODS; INITIAL DISCLOSURES.

2 1. DISCOVERY METHODS. Parties may obtain discovery by one or
3 more of the following methods: Depositions upon oral examination or
4 written questions; written interrogatories; production of documents
5 or things or permission to enter upon land or other property, for
6 inspection and other purposes; physical and mental examinations; and
7 requests for admission. Except as provided in this section or
8 unless the court orders otherwise under this section, the frequency
9 of use of these methods is not limited.

10 2. INITIAL DISCLOSURES.

11 a. Except in categories of proceedings specified in
12 subparagraph b of this paragraph, or to the extent
13 otherwise stipulated or directed by order, a party,
14 without awaiting a discovery request, shall provide to
15 other parties a computation of any category of damages
16 claimed by the disclosing party, making available for
17 inspection and copying the documents or other
18 evidentiary material, not privileged or protected from
19 disclosure, on which such computation is based,
20 including materials bearing on the nature and extent
21 of injuries suffered.

22 b. The following categories of proceedings are exempt
23 from initial disclosure under subparagraph a of this
24 paragraph:

- 1 (1) an action for review of an administrative record,
- 2 (2) a petition for habeas corpus or other proceeding
- 3 to challenge a criminal conviction or sentence,
- 4 (3) an action brought without counsel by a person in
- 5 custody of the United States, a state, or a state
- 6 subdivision,
- 7 (4) an action to enforce or quash an administrative
- 8 summons or subpoena,
- 9 (5) an action by the United States to recover benefit
- 10 payments,
- 11 (6) an action by the United States to collect on a
- 12 student loan guaranteed by the United States,
- 13 (7) a proceeding ancillary to proceedings in other
- 14 courts, and
- 15 (8) an action to enforce an arbitration award.

16 c. Disclosures required under this paragraph shall be
17 made at or within sixty (60) days after service unless
18 a different time is set by stipulation or court order,
19 or unless a party objects that initial disclosures are
20 not appropriate in the circumstances of the action and
21 states the objection in a motion filed with the court.
22 In ruling on the objection, the court shall determine
23 what disclosures, if any, are to be made and set the
24 time for disclosure. A party shall make its initial

1 disclosures based on the information then readily
2 available to it and is not excused from making its
3 disclosures because it has not fully completed its
4 investigation of the case or because it challenges the
5 sufficiency of another party's disclosures or because
6 another party has not made its disclosures.

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

10 1. IN GENERAL.

11 a. Parties may obtain discovery regarding any matter, not
12 privileged, which is relevant to the subject matter
13 involved in the pending action, whether it relates to
14 the claim or defense of the party seeking discovery or
15 to the claim or defense of any other party, including
16 the existence, description, nature, custody, condition
17 and location of any documents, electronically stored
18 information or other tangible things and the identity
19 and location of persons having knowledge of any
20 discoverable matter. It is not a ground for objection
21 that the information sought will be inadmissible at
22 the trial if the information sought appears reasonably
23 calculated to lead to the discovery of admissible
24 evidence.

1 b. A party shall produce upon request pursuant to Section
2 3234 of this title, any insurance agreement under
3 which any person carrying on an insurance business may
4 be liable to satisfy part or all of a judgment which
5 may be entered in the action or to indemnify or
6 reimburse for payments made to satisfy the judgment.
7 Information concerning the insurance agreement is not
8 by reason of disclosure admissible in evidence at
9 trial. For purposes of this section, an application
10 for insurance shall not be treated as a part of an
11 insurance agreement.

12 2. LIMITATIONS ON FREQUENCY AND EXTENT.

13 a. By order, the court may alter the limits on the length
14 of depositions under Section 3230 of this title, on
15 the number of interrogatories under Section 3233 of
16 this title, on the number of requests to produce under
17 Section 3234 of this title, or on the number of
18 requests for admission under Section 3236 of this
19 title.

20 b. A party is not required to provide discovery of
21 electronically stored information from sources that
22 the party identifies as not reasonably accessible
23 because of undue burden or cost. On motion to compel
24 discovery or for a protective order, the party from

1 whom discovery is sought must show that the
2 information is not reasonably accessible because of
3 undue burden or cost. If that showing is made, the
4 court may order discovery from such sources if the
5 requesting party shows good cause, considering the
6 limitations of subparagraph c of this paragraph. The
7 court may specify conditions for the discovery.

8 c. On motion or on its own, the court shall limit the
9 frequency or extent of discovery otherwise allowed if
10 it determines that:

11 (1) the discovery sought is unreasonably cumulative
12 or duplicative, or can be obtained from some
13 other source that is more convenient, less
14 burdensome, or less expensive,

15 (2) the party seeking discovery has had ample
16 opportunity to obtain the information by
17 discovery in the action, or

18 (3) the burden or expense of the proposed discovery
19 outweighs its likely benefit, considering the
20 needs of the case, the amount in controversy, the
21 parties' resources, the importance of the issues
22 at stake in the action, and the importance of the
23 discovery in resolving the issues.

24 3. TRIAL PREPARATION: MATERIALS.

1 a. Unless as provided by paragraph 4 of this subsection,
2 a party may not discover documents and tangible things
3 that are prepared in anticipation of litigation or for
4 trial by or for another party or its representative,
5 including the other party's attorney, consultant,
6 surety, indemnitor, insurer or agent. Subject to
7 paragraph 4 of this subsection, such materials may be
8 discovered if:

9 (1) they are otherwise discoverable under paragraph 1
10 of this subsection, and

11 (2) the party shows that it has substantial need for
12 the materials to prepare its case and cannot,
13 without undue hardship, obtain their substantial
14 equivalent by other means.

15 b. If the court orders discovery of such materials, the
16 court shall protect against disclosure of the mental
17 impressions, conclusions, opinions or legal theories
18 of a party's attorney or other representative
19 concerning the litigation.

20 c. A party or other person may, upon request and without
21 the required showing, obtain the person's own previous
22 statement about the action or its subject matter. If
23 the request is refused, the person may move for a
24 court order, and the provisions of paragraph 4 of

1 subsection A of Section 3237 of this title apply to
2 the award of expenses. A previous statement is
3 either:

- 4 (1) a written statement that the person has signed or
5 otherwise adopted or approved, or
- 6 (2) a contemporaneous stenographic, mechanical,
7 electrical, or other recording, or a
8 transcription thereof, which recites
9 substantially verbatim the person's oral
10 statement.

11 4. TRIAL PREPARATION: EXPERTS.

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

- 17 (1) a party may, through interrogatories, require any
18 other party to identify each person whom that
19 other party expects to call as an expert witness
20 at trial and give the address at which that
21 expert witness may be located,
- 22 (2) after disclosure of the names and addresses of
23 the expert witnesses, the other party expects to
24 call as witnesses, the party, who has requested

1 disclosure, may depose any such expert witnesses
2 subject to scope of this section. Prior to
3 taking the deposition the party must give notice
4 as required in subsections A and C of Section
5 3230 of this title, and

6 (3) in addition to taking the depositions of expert
7 witnesses the party may, through interrogatories,
8 require the party who expects to call the expert
9 witnesses to state the subject matter on which
10 each expert witness is expected to testify; the
11 substance of the facts and opinions to which the
12 expert is expected to testify and a summary of
13 the grounds for each opinion; the qualifications
14 of each expert witness, including a list of all
15 publications authored by the expert witness
16 within the preceding ten (10) years; the
17 compensation to be paid to the expert witness for
18 the testimony and preparation for the testimony;
19 and a listing of any other cases in which the
20 expert witness has testified as an expert at
21 trial or by deposition within the preceding four
22 (4) years. An interrogatory seeking the
23 information specified above shall be treated as a
24 single interrogatory for purposes of the

1 limitation on the number of interrogatories in
2 Section 3233 of this title.

3 b. The protection provided by paragraph 3 of this
4 subsection extends to communications between the
5 party's attorney and any expert witness retained or
6 specially employed to provide expert testimony in the
7 case or whose duties as the party's employee regularly
8 involve giving expert testimony, except to the extent
9 that the communications:

10 (1) relate to compensation for the expert's study or
11 testimony,

12 (2) identify facts or data that the party's attorney
13 provided and that the expert considered in
14 forming the opinions to be expressed, or

15 (3) identify assumptions that the party's attorney
16 provided and that the expert relied upon in
17 forming the opinions to be expressed.

18 c. A party may not, by interrogatories or deposition,
19 discover facts known or opinions held by an expert who
20 has been retained or specially employed by another
21 party in anticipation of litigation or to prepare for
22 trial and who is not expected to be called as a
23 witness at trial, except as provided in Section 3235
24 of this title or upon a showing of exceptional

1 circumstances under which it is impracticable for the
2 party to obtain facts or opinions on the same subject
3 by other means.

4 d. Unless manifest injustice would result:

5 (1) the court shall require that the party seeking
6 discovery pay the expert a reasonable fee for
7 time spent in responding to discovery under
8 division (2) of subparagraph a of this paragraph
9 and subparagraph c of this paragraph, and

10 (2) the court shall require that the party seeking
11 discovery with respect to discovery obtained
12 under subparagraph c of this paragraph, pay the
13 other party a fair portion of the fees and
14 expenses reasonably incurred by the latter party
15 in obtaining facts and opinions from the expert.

16 5. CLAIMS OF PRIVILEGE OR PROTECTION OF TRIAL PREPARATION
17 MATERIALS.

18 a. When a party withholds information otherwise
19 discoverable under the Oklahoma Discovery Code by
20 claiming that it is privileged or subject to
21 protection as trial preparation material, the party
22 shall make the claim expressly and shall describe the
23 nature of the documents, communications, or things not
24 produced or disclosed in a manner that, without

1 revealing information itself privileged or protected,
2 will enable other parties to assess the applicability
3 of the privilege or protection.

4 b. If information produced in discovery is subject to a
5 claim of privilege or of protection as trial
6 preparation material, the party making the claim may
7 notify any party that received the information of the
8 claim and the basis for it. After being notified, a
9 party shall promptly return, sequester, or destroy the
10 specified information and any copies the party has;
11 shall not use or disclose the information until the
12 claim is resolved; shall take reasonable steps to
13 retrieve the information if the party has disclosed it
14 before being notified; and may promptly present the
15 information to the court under seal for a
16 determination of the claim. The producing party shall
17 preserve the information until the claim is resolved.
18 This mechanism is procedural only and does not alter
19 the standards governing whether the information is
20 privileged or subject to protection as trial
21 preparation material or whether such privilege or
22 protection has been waived.

23 C. PROTECTIVE ORDERS.
24

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

- 12 a. that the discovery not be had,
- 13 b. that the discovery may be had only on specified terms
14 and conditions, including a designation of the time or
15 place,
- 16 c. that the discovery may be had only by a method of
17 discovery other than that selected by the party
18 seeking discovery,
- 19 d. that certain matters not be inquired into, or that the
20 scope of the disclosure or discovery be limited to
21 certain matters,
- 22 e. that discovery be conducted with no one present except
23 persons designated by the court,

24

- 1 f. that a deposition after being sealed be opened only by
2 order of the court,
- 3 g. that a trade secret or other confidential research,
4 development or commercial information not be disclosed
5 or be disclosed only in a designated way, and
- 6 h. that the parties simultaneously file specified
7 documents or information enclosed in sealed envelopes
8 to be opened as directed by the court.

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

- 17 a. a statement that the court has determined it is
18 necessary in the interests of justice to remove the
19 material from the public record,
- 20 b. specific identification of the material which is to be
21 removed or withdrawn from the public record, or which
22 is to be filed but not placed in the public record,
23 and
- 24

1 c. a requirement that any party obtaining a protective
2 order place the protected material in a sealed manila
3 envelope clearly marked with the caption and case
4 number and is clearly marked with the word
5 "CONFIDENTIAL", and stating the date the order was
6 entered and the name of the judge entering the order.
7 This requirement may also be satisfied by requiring
8 the party to file the documents pursuant to the
9 procedure for electronically filing sealed or
10 confidential documents approved for electronic filing
11 in the courts of this state.

12 3. No protective order entered after the filing and
13 microfilming of documents of any kind shall be construed to require
14 the microfilm record of such filing to be amended in any fashion.

15 4. The party or counsel which has received the protective order
16 shall be responsible for promptly presenting the order to
17 appropriate court clerk personnel for appropriate action.

18 5. All documents produced or testimony given under a protective
19 order shall be retained in the office of counsel until required by
20 the court to be filed in the case.

21 6. Counsel for the respective parties shall be responsible for
22 informing witnesses, as necessary, of the contents of the protective
23 order.

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

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

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

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

23 a. the identity and location of persons having knowledge
24 of discoverable matters, and

1 b. the identity of each person expected to be called as
2 an expert witness at trial, the subject matter on
3 which the person is expected to testify, and the
4 substance of the testimony of the person;

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

8 a. ~~(1)~~

9 (i) the party knows that the response was incorrect
10 in some material respect when made, or

11 ~~(2)~~

12 (ii) the party knows that the response, which was
13 correct when made, is no longer true in some
14 material respect; ~~and~~ and

15 b. the additional or corrective information has not
16 otherwise been made known to the other parties during
17 the discovery process or in writing; ~~and~~ and.

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

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

- 1 1. A statement of the issues as they then appear;
- 2 2. A proposed plan and schedule of discovery;
- 3 3. Any limitations proposed to be placed on discovery;
- 4 4. Any other proposed orders with respect to discovery; and
- 5 5. A statement showing that the attorney making the motion has
- 6 made a reasonable effort to reach agreement with opposing attorneys
- 7 on the matters set forth in the motion.

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

14 Following the discovery conference, the court shall enter an
15 order tentatively identifying the issues for discovery purposes,
16 establishing a plan and schedule for discovery, setting limitations
17 on discovery, if any; and determining such other matters, including
18 the allocation of expenses, as are necessary for the proper
19 management of discovery in the action. In preparing the plan for
20 discovery the court shall protect the parties from excessive or
21 abusive use of discovery. An order shall be altered or amended
22 whenever justice so requires.

23 Subject to the right of a party who properly moves for a
24 discovery conference to prompt convening of the conference, the

1 court may combine the discovery conference with a pretrial
2 conference.

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

4 Every request for discovery, response or objection thereto made by a
5 party represented by an attorney shall be signed by at least one of
6 the party's attorneys of record in the party's individual name whose
7 address shall be stated. A party who is not represented by an
8 attorney shall sign the request, response or objection and state the
9 party's address. The signature of the attorney or party constitutes
10 a certification that the party has read the request, response or
11 objection, and that it is:

12 1. To the best of the party's knowledge, information and belief
13 formed after a reasonable inquiry consistent with the Oklahoma
14 Discovery Code and warranted by existing law or a good faith
15 argument for the extension, modification or reversal of existing
16 law;

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

19 3. Not unreasonable or unduly burdensome or expensive, given
20 the nature and complexity of the case, the discovery already had in
21 the case, the amount in controversy, and other values at stake in
22 the litigation. If a request, response or objection is not signed,
23 it shall be deemed ineffective.

24

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

8 SECTION 3. AMENDATORY 12 O.S. 2011, Section 3226 as last
9 amended by Section 2 of this act, is amended to read as follows:

10 Section 3226. A. DISCOVERY METHODS; INITIAL DISCLOSURES.

11 1. DISCOVERY METHODS. Parties may obtain discovery by one or
12 more of the following methods: Depositions upon oral examination or
13 written questions; written interrogatories; production of documents
14 or things or permission to enter upon land or other property, for
15 inspection and other purposes; physical and mental examinations; and
16 requests for admission. Except as provided in this section or
17 unless the court orders otherwise under this section, the frequency
18 of use of these methods is not limited.

19 2. INITIAL DISCLOSURES.

20 a. Except in categories of proceedings specified in
21 subparagraph b of this paragraph, or to the extent
22 otherwise stipulated or directed by order, a party,
23 without awaiting a discovery request, shall provide to
24 other parties a computation of any category of damages

1 claimed by the disclosing party, making available for
2 inspection and copying the documents or other
3 evidentiary material, not privileged or protected from
4 disclosure, on which such computation is based,
5 including materials bearing on the nature and extent
6 of injuries suffered.

7 b. The following categories of proceedings are exempt
8 from initial disclosure under subparagraph a of this
9 paragraph:

- 10 (1) an action for review of an administrative record,
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12 to challenge a criminal conviction or sentence,
13 (3) an action brought without counsel by a person in
14 custody of the United States, a state, or a state
15 subdivision,
16 (4) an action to enforce or quash an administrative
17 summons or subpoena,
18 (5) an action by the United States to recover benefit
19 payments,
20 (6) an action by the United States to collect on a
21 student loan guaranteed by the United States,
22 (7) a proceeding ancillary to proceedings in other
23 courts, and
24 (8) an action to enforce an arbitration award.

1 c. Disclosures required under this paragraph shall be
2 made at or within sixty (60) days after service unless
3 a different time is set by stipulation or court order,
4 or unless a party objects that initial disclosures are
5 not appropriate in the circumstances of the action and
6 states the objection in a motion filed with the court.
7 In ruling on the objection, the court shall determine
8 what disclosures, if any, are to be made and set the
9 time for disclosure. A party shall make its initial
10 disclosures based on the information then readily
11 available to it and is not excused from making its
12 disclosures because it has not fully completed its
13 investigation of the case or because it challenges the
14 sufficiency of another party's disclosures or because
15 another party has not made its disclosures.

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17 order of the court in accordance with the Oklahoma Discovery Code,
18 the scope of discovery is as follows:

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21 privileged, which is relevant to the subject matter
22 involved in the pending action, whether it relates to
23 the claim or defense of the party seeking discovery or
24 to the claim or defense of any other party, including

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

10 b. A party shall produce upon request pursuant to Section
11 3234 of this title, any insurance agreement under
12 which any person carrying on an insurance business may
13 be liable to satisfy part or all of a judgment which
14 may be entered in the action or to indemnify or
15 reimburse for payments made to satisfy the judgment.
16 Information concerning the insurance agreement is not
17 by reason of disclosure admissible in evidence at
18 trial. For purposes of this section, an application
19 for insurance shall not be treated as a part of an
20 insurance agreement.

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22 a. By order, the court may alter the limits on the length
23 of depositions under Section 3230 of this title, on
24 the number of interrogatories under Section 3233 of

1 this title, on the number of requests to produce under
2 Section 3234 of this title, or on the number of
3 requests for admission under Section 3236 of this
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5 b. A party is not required to provide discovery of
6 electronically stored information from sources that
7 the party identifies as not reasonably accessible
8 because of undue burden or cost. On motion to compel
9 discovery or for a protective order, the party from
10 whom discovery is sought must show that the
11 information is not reasonably accessible because of
12 undue burden or cost. If that showing is made, the
13 court may order discovery from such sources if the
14 requesting party shows good cause, considering the
15 limitations of subparagraph c of this paragraph. The
16 court may specify conditions for the discovery.

17 c. On motion or on its own, the court shall limit the
18 frequency or extent of discovery otherwise allowed if
19 it determines that:

20 (1) the discovery sought is unreasonably cumulative
21 or duplicative, or can be obtained from some
22 other source that is more convenient, less
23 burdensome, or less expensive,
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1 (2) the party seeking discovery has had ample
2 opportunity to obtain the information by
3 discovery in the action, or

4 (3) the burden or expense of the proposed discovery
5 outweighs its likely benefit, considering the
6 needs of the case, the amount in controversy, the
7 parties' resources, the importance of the issues
8 at stake in the action, and the importance of the
9 discovery in resolving the issues.

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12 a party may not discover documents and tangible things
13 that are prepared in anticipation of litigation or for
14 trial by or for another party or its representative,
15 including the other party's attorney, consultant,
16 surety, indemnitor, insurer or agent. Subject to
17 paragraph 4 of this subsection, such materials may be
18 discovered if:

19 (1) they are otherwise discoverable under paragraph 1
20 of this subsection, and

21 (2) the party shows that it has substantial need for
22 the materials to prepare its case and cannot,
23 without undue hardship, obtain their substantial
24 equivalent by other means.

1 b. If the court orders discovery of such materials, the
2 court shall protect against disclosure of the mental
3 impressions, conclusions, opinions or legal theories
4 of a party's attorney or other representative
5 concerning the litigation.

6 c. A party or other person may, upon request and without
7 the required showing, obtain the person's own previous
8 statement about the action or its subject matter. If
9 the request is refused, the person may move for a
10 court order, and the provisions of paragraph 4 of
11 subsection A of Section 3237 of this title apply to
12 the award of expenses. A previous statement is
13 either:

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15 otherwise adopted or approved, or

16 (2) a contemporaneous stenographic, mechanical,
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19 substantially verbatim the person's oral
20 statement.

21 4. **TRIAL PREPARATION: EXPERTS.**

22 a. Discovery of facts known and opinions held by experts,
23 otherwise discoverable under the provisions of
24 paragraph 1 of this subsection and acquired or

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4 other party to identify each person whom that
5 other party expects to call as an expert witness
6 at trial and give the address at which that
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9 the expert witnesses, the other party expects to
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12 subject to scope of this section. Prior to
13 taking the deposition the party must give notice
14 as required in subsections A and C of Section
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16 (3) in addition to taking the depositions of expert
17 witnesses the party may, through interrogatories,
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19 witnesses to state the subject matter on which
20 each expert witness is expected to testify; the
21 substance of the facts and opinions to which the
22 expert is expected to testify and a summary of
23 the grounds for each opinion; the qualifications
24 of each expert witness, including a list of all

1 publications authored by the expert witness
2 within the preceding ten (10) years; the
3 compensation to be paid to the expert witness for
4 the testimony and preparation for the testimony;
5 and a listing of any other cases in which the
6 expert witness has testified as an expert at
7 trial or by deposition within the preceding four
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24 forming the opinions to be expressed, or

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5 discover facts known or opinions held by an expert who
6 has been retained or specially employed by another
7 party in anticipation of litigation or to prepare for
8 trial and who is not expected to be called as a
9 witness at trial, except as provided in Section 3235
10 of this title or upon a showing of exceptional
11 circumstances under which it is impracticable for the
12 party to obtain facts or opinions on the same subject
13 by other means.

14 d. Unless manifest injustice would result:

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

20 (2) the court shall require that the party seeking
21 discovery with respect to discovery obtained
22 under subparagraph c of this paragraph, pay the
23 other party a fair portion of the fees and
24

1 expenses reasonably incurred by the latter party
2 in obtaining facts and opinions from the expert.

3 5. CLAIMS OF PRIVILEGE OR PROTECTION OF TRIAL PREPARATION
4 MATERIALS.

- 5 a. When a party withholds information otherwise
6 discoverable under the Oklahoma Discovery Code by
7 claiming that it is privileged or subject to
8 protection as trial preparation material, the party
9 shall make the claim expressly and shall describe the
10 nature of the documents, communications, or things not
11 produced or disclosed in a manner that, without
12 revealing information itself privileged or protected,
13 will enable other parties to assess the applicability
14 of the privilege or protection.
- 15 b. If information produced in discovery is subject to a
16 claim of privilege or of protection as trial
17 preparation material, the party making the claim may
18 notify any party that received the information of the
19 claim and the basis for it. After being notified, a
20 party shall promptly return, sequester, or destroy the
21 specified information and any copies the party has;
22 shall not use or disclose the information until the
23 claim is resolved; shall take reasonable steps to
24 retrieve the information if the party has disclosed it

1 before being notified; and may promptly present the
2 information to the court under seal for a
3 determination of the claim. The producing party shall
4 preserve the information until the claim is resolved.
5 This mechanism is procedural only and does not alter
6 the standards governing whether the information is
7 privileged or subject to protection as trial
8 preparation material or whether such privilege or
9 protection has been waived.

10 C. PROTECTIVE ORDERS.

11 1. Upon motion by a party or by the person from whom discovery
12 is sought, accompanied by a certification that the movant has in
13 good faith conferred or attempted to confer, either in person or by
14 telephone, with other affected parties in an effort to resolve the
15 dispute without court action, and for good cause shown, the court in
16 which the action is pending or on matters relating to a deposition,
17 the district court in the county where the deposition is to be taken
18 may enter any order which justice requires to protect a party or
19 person from annoyance, harassment, embarrassment, oppression or
20 undue delay, burden or expense, including one or more of the
21 following:

22 a. that the discovery not be had,

23
24

- 1 b. that the discovery may be had only on specified terms
2 and conditions, including a designation of the time or
3 place,
4 c. that the discovery may be had only by a method of
5 discovery other than that selected by the party
6 seeking discovery,
7 d. that certain matters not be inquired into, or that the
8 scope of the disclosure or discovery be limited to
9 certain matters,
10 e. that discovery be conducted with no one present except
11 persons designated by the court,
12 f. that a deposition after being sealed be opened only by
13 order of the court,
14 g. that a trade secret or other confidential research,
15 development or commercial information not be disclosed
16 or be disclosed only in a designated way, and
17 h. that the parties simultaneously file specified
18 documents or information enclosed in sealed envelopes
19 to be opened as directed by the court.

20 2. If the motion for a protective order is denied in whole or
21 in part, the court may, on such terms and conditions as are just,
22 order that any party or person provide or permit discovery. The
23 provisions of paragraph 4 of subsection A of Section 3237 of this
24 title apply to the award of expenses incurred in relation to the

1 motion. Any protective order of the court which has the effect of
2 removing any material obtained by discovery from the public record
3 shall contain the following:

4 a. a statement that the court has determined it is
5 necessary in the interests of justice to remove the
6 material from the public record,

7 b. specific identification of the material which is to be
8 removed or withdrawn from the public record, or which
9 is to be filed but not placed in the public record,
10 and

11 c. a requirement that any party obtaining a protective
12 order place the protected material in a sealed manila
13 envelope clearly marked with the caption and case
14 number and is clearly marked with the word
15 "CONFIDENTIAL", and stating the date the order was
16 entered and the name of the judge entering the order.
17 This requirement may also be satisfied by requiring
18 the party to file the documents pursuant to the
19 procedure for electronically filing sealed or
20 confidential documents approved for electronic filing
21 in the courts of this state.

22 3. No protective order entered after the filing and
23 microfilming of documents of any kind shall be construed to require
24 the microfilm record of such filing to be amended in any fashion.

1 4. The party or counsel which has received the protective order
2 shall be responsible for promptly presenting the order to
3 appropriate court clerk personnel for appropriate action.

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

7 6. Counsel for the respective parties shall be responsible for
8 informing witnesses, as necessary, of the contents of the protective
9 order.

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

20 D. SEQUENCE AND TIMING OF DISCOVERY. Unless the court upon
21 motion, for the convenience of parties and witnesses and in the
22 interests of justice, orders otherwise, methods of discovery may be
23 used in any sequence. The fact that a party is conducting
24

1 discovery, whether by deposition or otherwise, shall not operate to
2 delay discovery by any other party.

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

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

9 a. the identity and location of persons having knowledge
10 of discoverable matters, and

11 b. the identity of each person expected to be called as
12 an expert witness at trial, the subject matter on
13 which the person is expected to testify, and the
14 substance of the testimony of the person;

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

18 a. ~~(i)~~

19 (1) the party knows that the response was incorrect
20 in some material respect when made, or

21 ~~(ii)~~

22 (2) the party knows that the response, which was
23 correct when made, is no longer true in some
24 material respect, ~~and~~ and

1 b. the additional or corrective information has not
2 otherwise been made known to the other parties during
3 the discovery process or in writing~~;~~; and

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

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

- 11 1. A statement of the issues as they then appear;
- 12 2. A proposed plan and schedule of discovery;
- 13 3. Any limitations proposed to be placed on discovery;
- 14 4. Any other proposed orders with respect to discovery; and
- 15 5. A statement showing that the attorney making the motion has
16 made a reasonable effort to reach agreement with opposing attorneys
17 on the matters set forth in the motion.

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

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

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

14 **G. SIGNING OF DISCOVERY REQUESTS, RESPONSES AND OBJECTIONS.**

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

23 1. To the best of the party's knowledge, information and belief
24 formed after a reasonable inquiry consistent with the Oklahoma

1 Discovery Code and warranted by existing law or a good faith
2 argument for the extension, modification or reversal of existing
3 law;

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

6 3. Not unreasonable or unduly burdensome or expensive, given
7 the nature and complexity of the case, the discovery already had in
8 the case, the amount in controversy, and other values at stake in
9 the litigation. If a request, response or objection is not signed,
10 it shall be deemed ineffective.

11 If a certification is made in violation of the provisions of
12 this subsection, the court, upon motion or upon its own initiative,
13 shall impose upon the person who made the certification, the party
14 on whose behalf the request, response or objection is made, or both,
15 an appropriate sanction, which may include an order to pay to the
16 amount of the reasonable expenses occasioned thereby, including a
17 reasonable attorney fee.

18 SECTION 4. NEW LAW A new section of law not to be
19 codified in the Oklahoma Statutes reads as follows:

20 The amendatory provisions contained in Section 2 of this act
21 conform the statute to the holding in *Douglas v. Cox Retirement*
22 *Properties, Inc.*, 2013 OK 37, 302 P.2d 789 (Okla. 2013). The
23 amendatory provisions contained in Section 3 of this act conform the
24 statute to the amendatory provisions of Enrolled House Bill No. 1603

1 of the 1st Session of the 52nd Oklahoma Legislature, c. 228, O.S.L.
2 2009.

3 SECTION 5. It being immediately necessary for the preservation
4 of the public peace, health and safety, an emergency is hereby
5 declared to exist, by reason whereof this act shall take effect and
6 be in full force from and after its passage and approval.

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8 DIRECT TO CALENDAR.

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