ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE
BILL NO. 1920

By: Jordan of the House

and

Sykes of the Senate

An Act relating to civil procedure; amending 12 O.S. 2011, Section 3233, which relates to the Oklahoma Discovery Code; requiring restatement of interrogatory when answering; and providing an effective date.

AMENDMENT NO. 1. Page 1, substitute the following for the title, enacting clause and the entire body of the bill:

"An Act relating to discovery; amending 12 O.S. 2011, Section 3233, which relates to interrogatories; requiring restatement of interrogatory when answering; authorizing appointment of discovery master; requiring certain orders to contain specified findings; establishing procedures for certain disqualification; requiring certain notice; specifying contents of certain orders; authorizing amendment of certain orders; requiring certain oath; establishing authority of discovery master; providing for certain sanctions; requiring filing of certain report; establishing procedures for adoption or modification of certain report; requiring certain review; establishing guidelines for certain compensation; construing provision; providing certain immunity from civil liability; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3225.1 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. Appointment.

1. Scope. Unless a statute provides otherwise, on motion by a party or on its own motion, upon hearing unless waived, a court may in its discretion appoint a discovery master to:

a. perform duties related to discovery, consented to by the parties, or

b. address pretrial and posttrial discovery matters to facilitate effective and timely resolution.

2. Required Findings. An order appointing a discovery master under subparagraph b of paragraph 1 of subsection A of this section shall contain the following findings by the court:

a. the appointment and referral are necessary in the administration of justice due to the nature, complexity or volume of the materials involved, or for other exceptional circumstances,

b. the likely benefit of the appointment of a discovery master outweighs its burden or expense, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, the importance of the referred

issues in resolving the matter or proceeding in which the appointment is made, and

c. the appointment will not improperly burden the rights of the parties to access the courts.

3. Possible Expense or Delay. In appointing a discovery master, the court shall consider the fairness of imposing the likely expenses on the parties and shall protect against unreasonable expense or delay.

B. Disqualification.

1. In General. A discovery master shall not have a relationship to the parties, attorneys, action, or court that would require disqualification of a judge, unless the parties, with the court's approval, consent to the appointment after the discovery master discloses any potential grounds for disqualification.

2. Disclosure. The discovery master shall disclose any possible conflicts within fourteen (14) days of appointment.

3. Motions to Disqualify. A motion to disqualify a discovery master shall be made within fourteen (14) days of the discovery master's disclosure of the conflict. The discovery master shall rule originally on any motion to disqualify.

4. Review by Assigned Judge. Any interested party who deems himself or herself aggrieved by the refusal of a discovery master to grant a motion to disqualify may present his or her motion to the judge assigned to the case by filing in the case within five (5)

days from the date of the refusal a written request for rehearing. A copy of the request shall be mailed or delivered to the judge assigned to the case, to the adverse party and to the discovery master.

5. Review by Presiding Judge. Any interested party who deems himself or herself aggrieved by the refusal of the judge assigned to the case to grant a motion to disqualify the discovery master may present his or her motion to the presiding judge of the county in which the case is pending. A copy of the request shall be mailed or delivered to the presiding judge, to the adverse party, to the judge assigned to the case, and to the discovery master.

6. Review by Supreme Court. If the hearing before the presiding judge results in an order adverse to the movant, the movant shall be granted not more than five (5) days to institute a proceeding in the Supreme Court for a writ of mandamus. The Supreme Court shall not entertain an original proceeding to disqualify a discovery master unless it is shown that the relief sought was previously denied by the discovery master, the judge assigned to the case, and the presiding judge, in accordance with this section. An order favorable to the moving party may not be reviewed by appeal or other method.

C. Order Appointing a Discovery Master.

1. Notice. Before appointing a discovery master, the court shall give the parties notice and an opportunity to be heard unless waived. Any party may suggest candidates for appointment.

2. Contents. The appointing order shall direct the discovery master to proceed with all reasonable diligence and shall state:

a. the discovery master's duties, including any investigation or enforcement duties, and any limits on the discovery master's authority under subparagraph c of this paragraph,

b. the circumstances, if any, in which the discovery master may communicate ex parte with a party,

c. any limitations on the discovery master's communications with the court,

d. the nature of the materials to be preserved and filed as the record of the discovery master's activities,

e. the time limits, method of filing the record, other procedures, and standards for reviewing the discovery master's orders, findings, and recommendations, and

f. the basis, terms, and procedure for fixing the discovery master's compensation under subsection G of this section.

The court shall have the discretion to direct the discovery master to circulate a proposed appointing order to the parties and

provide a time period for the parties to comment prior to the order's entry.

3. Amending. The order may be amended at any time after notice to the parties and an opportunity to be heard.

4. Oath. Before the appointing order shall take effect, the discovery master shall execute and file an oath that he or she will faithfully execute the duties imposed by the order of appointment and any amendments thereto.

D. Discovery Master's Authority.

1. In General. Unless the appointing order directs otherwise, a discovery master may:

a. regulate all proceedings and respond to all discovery motions of the parties within the scope of appointment, including resolving all discovery disputes between the parties,

b. call discovery conferences under Rule 5 of the Rules for District Courts, at the request of a party or on the discovery master's own motion,

c. set procedures for the timing and orderly presentation of discovery disputes for resolution,

d. take all appropriate measures to perform the assigned duties fairly and efficiently, and

e. if conducting an evidentiary hearing, exercise the appointing court's power to take and record evidence,

including compelling appearance of witnesses or production of documents in connection with these duties.

2. Sanctions. The discovery master may recommend any sanction provided by Sections 2004.1, 3226.1 or 3237 of Title 12 of the Oklahoma Statutes.

E. Discovery Master's Orders, Reports, and Recommendations. A discovery master who issues an order, report or recommendation shall file it and promptly serve a copy on each party. The clerk shall enter the order, report or recommendation on the docket.

F. Action on the Discovery Master's Order, Report or Recommendations.

1. Time to Object or Move to Adopt or Modify. A party may file objections to or a motion to adopt or modify the discovery master's order, report or recommendations no later than fourteen (14) days after a copy is filed, unless this section or the court sets a different time. If no objection or motion to adopt or modify is filed, the district court may approve the discovery master's order, report or recommendations without further notice or hearing.

2. Action Generally. Upon the filing of objections to or a motion to adopt or modify the discovery master's order, report or recommendations within the time permitted, any party may respond within fifteen (15) days after the objections or motions are filed. If objections and motions are decided by the court without a

hearing, the court shall notify the parties of its ruling by mail. In acting on a discovery master's order, report or recommendations, the court may receive evidence; and may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the discovery master with instructions.

3. Reviewing Factual Findings. The court shall decide de novo all objections to findings of fact made or recommended by a discovery master, unless the parties, with the court's approval, stipulate that:

a. the findings will be reviewed for clear error, or

b. the findings of a discovery master appointed under paragraph 1 of subsection A of this section will be final.

4. Reviewing Legal Conclusions. The court shall decide de novo all objections to conclusions of law made or recommended by a discovery master.

5. Reviewing Procedural Matters. Unless the appointing order establishes a different standard of review, the court may set aside a discovery master's ruling on a procedural matter only for an abuse of discretion.

G. Compensation.

1. Fixing Compensation. Before or after judgment, the court shall fix the discovery master's compensation on the basis and terms

stated in the appointing order, but the court may set a new basis and terms after giving notice and an opportunity to be heard.

2. Payment. The compensation shall be paid either:

a. by a party or parties, or

b. from a fund that is the subject of the specific action or proceeding, or other subject matter of the specific action or proceeding, to the extent such fund or subject matter is within the court's control and within the court's in rem jurisdiction. The compensation shall not be paid from the court fund.

3. Allocating Payment. The court shall allocate payment after considering the nature and amount of the controversy, the parties' means, and the extent to which any party is more responsible than other parties for the reference to a discovery master. An interim allocation may be amended to reflect a decision on the merits.

H. Other Statutes. A referee or master appointed under the authority of another statute or provision is subject to this section only when the order referring a matter to the referee or master states that the reference is made under this section. Nothing in this section shall be construed to replace or supersede any other statute or provision authorizing the appointment of a referee or master.

I. A discovery master appointed pursuant to this section acting in such capacity shall be immune from civil liability to the same

extent as a judge of a court of this state acting in a judicial capacity.

SECTION 2. AMENDATORY 12 O.S. 2011, Section 3233, is amended to read as follows:

Section 3233. A. AVAILABILITY; PROCEDURES FOR USE. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to that party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action or upon any other party with the summons and petition or after service of the summons and petition on that party.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable. <u>When answering each interrogatory, the party shall restate the interrogatory, then provide the answer.</u> The number of interrogatories to a party shall not exceed thirty in number. Interrogatories inquiring as to the names and locations of witnesses, or the existence, location and custodian of documents or physical evidence shall be construed as one interrogatory. All other interrogatories, including subdivisions of one numbered

interrogatory, shall be construed as separate interrogatories. No further interrogatories will be served unless authorized by the court. If counsel for a party believes that more than thirty interrogatories are necessary, he shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional interrogatories. Counsel are expected to comply with this requirement in good faith. In the event a written stipulation cannot be agreed upon, the party seeking to submit such additional interrogatories shall file a motion with the court (1) showing that counsel have conferred in good faith but sincere attempts to resolve the issue have been unavailing, (2) showing reasons establishing good cause for their use, and (3) setting forth the proposed additional interrogatories. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within thirty (30) days after the service of the interrogatories, except that a defendant may serve answers or objections to interrogatories within forty-five (45) days after service of the summons and complaint upon that defendant. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties subject to Section 3229 of this title. All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not

stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown. The party submitting the interrogatories may move for an order under subsection A of Section 3237 of this title with respect to any objection to or other failure to answer an interrogatory.

B. SCOPE; USE AT TRIAL. Interrogatories may relate to any matters which can be inquired into under subsection B of Section 3226 of this title, and the answers may be used to the extent permitted by the Oklahoma Evidence Code as set forth in Sections 2101 et seq. of this title.

An interrogatory otherwise proper is not necessarily objectionable because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact. The court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

C. OPTION TO PRODUCE BUSINESS RECORDS. Where the answer to an interrogatory may be derived or ascertained from the business records, including electronically stored information, of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a

sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries thereof. A specification shall be in sufficient detail to permit the party submitting the interrogatory to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

SECTION 3. This act shall become effective November 1, 2015."

Passed the Senate the 22nd day of April, 2015.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2015.

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Presiding Officer of the House of Representatives