

COMMITTEE AMENDMENT

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB1570 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by
inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: Jon Echols

Adopted: _____

Reading Clerk

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

PROPOSED COMMITTEE
SUBSTITUTE
FOR
HOUSE BILL NO. 1570

By: Echols

PROPOSED COMMITTEE SUBSTITUTE

An Act relating to the Oklahoma Discovery Code;
amending 12 O.S. 2011, Sections 3225, 3226, as last
amended by Section 1, Chapter 192, O.S.L. 2014, 3234
and 3237 (12 O.S. Supp. 2016, Section 3226), which
relate to construction, general provisions,
production of documents and inspection and sanctions;
clarifying scope of Discovery Code; modifying
limitations on scope of discovery; listing categories
of electronically stored information exempt from
discovery; limiting frequency and extent of certain
discovery; modifying requirement for sequence of
discovery; establishing requirements for the
preservation of specified documents and information;
providing exceptions; establishing limitations for
production or inspection requests; modifying
requirements for written response; allowing
application for order compelling discovery under
specified circumstances; limiting sanctions for
failure to preserve relevant information; and
providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 2011, Section 3225, is
amended to read as follows:

1 Section 3225. The Discovery Code shall be ~~liberally constructed~~
2 construed, administered and employed by courts to provide the just,
3 speedy and inexpensive determination of every action.

4 SECTION 2. AMENDATORY 12 O.S. 2011, Section 3226, as
5 last amended by Section 1, Chapter 192, O.S.L. 2014 (12 O.S. Supp.
6 2016, Section 3226), is amended to read as follows:

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

8 1. DISCOVERY METHODS. Parties may obtain discovery regarding
9 any matter that is relevant to any party's claim or defense by one
10 or more of the following methods: Depositions upon oral examination
11 or written questions; written interrogatories; production of
12 documents or things or permission to enter upon land or other
13 property, for inspection and other purposes; physical and mental
14 examinations; requests for admission; authorizations for release of
15 records; and otherwise by court order upon showing of good cause.
16 Except as provided in this section or unless the court orders
17 otherwise under this section, the frequency of use of these methods
18 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. Subject to subsection B of this
7 section, in any action in which physical or mental
8 injury is claimed, the party making the claim shall
9 provide to the other parties a release or
10 authorization allowing the parties to obtain relevant
11 medical records and bills, and, when relevant, a
12 release or authorization for employment and scholastic
13 records.

14 b. The following categories of proceedings are exempt
15 from initial disclosure under subparagraph a of this
16 paragraph:

- 17 (1) an action for review of an administrative record,
- 18 (2) a petition for habeas corpus or other proceeding
19 to challenge a criminal conviction or sentence,
- 20 (3) an action brought without counsel by a person in
21 custody of the United States, a state, or a state
22 subdivision,
- 23 (4) an action to enforce or quash an administrative
24 summons or subpoena,

- 1 (5) an action by the United States to recover benefit
2 payments,
3 (6) an action by the United States to collect on a
4 student loan guaranteed by the United States,
5 (7) a proceeding ancillary to proceedings in other
6 courts, and
7 (8) an action to enforce an arbitration award.

8 c. Disclosures required under this paragraph shall be
9 made at or within sixty (60) days after service unless
10 a different time is set by stipulation or court order,
11 or unless a party objects that initial disclosures are
12 not appropriate in the circumstances of the action and
13 states the objection in a motion filed with the court.
14 In ruling on the objection, the court shall determine
15 what disclosures, if any, are to be made and set the
16 time for disclosure. A party shall make its initial
17 disclosures based on the information then readily
18 available to it and is not excused from making its
19 disclosures because it has not fully completed its
20 investigation of the case or because it challenges the
21 sufficiency of another party's disclosures or because
22 another party has not made its disclosures.
23
24

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

4 1. IN GENERAL.

- 5 a. ~~Parties may obtain discovery regarding any matter, not~~
6 ~~privileged, which is relevant to the subject matter~~
7 ~~involved in the pending action, whether it relates to~~
8 ~~the claim or defense of the party seeking discovery or~~
9 ~~to the claim or defense of any other party, including~~
10 ~~the existence, description, nature, custody, condition~~
11 ~~and location of any documents, electronically stored~~
12 ~~information or other tangible things and the identity~~
13 ~~and location of persons having knowledge of any~~
14 ~~discoverable matter. It is not a ground for objection~~
15 ~~that the information sought will be inadmissible at~~
16 ~~the trial if the information sought appears reasonably~~
17 ~~calculated to lead to the discovery of admissible~~
18 ~~evidence~~ The scope of discovery is limited to any
19 nonprivileged matter that would support proof of a
20 claim or defense and shall comport with the
21 proportionality assessment required by subparagraph c
22 of paragraph 2 of this subsection.
- 23 b. A party shall produce upon request pursuant to Section
24 3234 of this title, any insurance agreement under

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

10 2. LIMITATIONS ON FREQUENCY AND EXTENT.

- 11 a. By order, the court may alter the limits on the length
12 of depositions under Section 3230 of this title, on
13 the number of interrogatories under Section 3233 of
14 this title, on the number of requests to produce, the
15 temporal scope of the requests or the number of
16 custodial sources required to be searched for requests
17 under 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 the
21 following categories of electronically stored
22 information ~~from sources~~ absent a showing by the
23 receiving party of substantial need and good cause,
24

1 subject to the proportionality assessment pursuant to
2 subparagraph c of this paragraph:

3 (1) deleted, slack, fragmented or other data only
4 accessible by forensics,

5 (2) random access memory (RAM), temp files or other
6 ephemeral data that are difficult to preserve
7 without disabling the operating system,

8 (3) online access data such as temporary Internet
9 files, history, cache, cookies and the like,

10 (4) information of which retrieval cannot be
11 accomplished without substantial additional
12 programming or without transforming it into
13 another form before search and retrieval can be
14 achieved,

15 (5) backup data that is substantially duplicative of
16 data that are more accessible elsewhere,

17 (6) physically damaged media,

18 (7) legacy data remaining from obsolete systems that
19 is unintelligible on successor systems, or

20 (8) any other data that are not available to the
21 producing party in the ordinary course of

22 business and that the party identifies as not

23 reasonably accessible because of undue burden or

24 cost.—On, and that on motion to compel discovery

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

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

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

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

20 (3) the burden or expense of the proposed discovery
21 outweighs its likely benefit, or is not
22 proportional to the claims and defenses at issue
23 considering the needs of the case, the amount in
24 controversy, the parties' resources, the

1 complexity and importance of the issues at stake
2 in the action, and the importance of the
3 discovery in resolving the issues.

4 d. If an officer, director or managing agent of a
5 corporation or a government official is served with
6 notice of a deposition or subpoena regarding a matter
7 about which he or she has no knowledge, he or she may
8 submit at a reasonable time prior to the date of the
9 deposition an affidavit to the noticing party so
10 stating and identifying a person within the
11 corporation or government entity who has knowledge of
12 the subject matter involved in the pending action.
13 Notwithstanding such affidavit, the noticing party may
14 proceed with the deposition, subject to the noticed
15 witness's right to seek a protective order.

16 3. TRIAL PREPARATION: MATERIALS.

17 a. Unless as provided by paragraph 4 of this subsection,
18 a party may not discover documents and tangible things
19 that are prepared in anticipation of litigation or for
20 trial by or for another party or its representative,
21 including the other party's attorney, consultant,
22 surety, indemnitor, insurer or agent. Subject to
23 paragraph 4 of this subsection, such materials may be
24 discovered if:

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

3 (2) the party shows that it has substantial need for
4 the materials to prepare its case and cannot,
5 without undue hardship, obtain their substantial
6 equivalent by other means.

7 b. If the court orders discovery of such materials, the
8 court shall protect against disclosure of the mental
9 impressions, conclusions, opinions or legal theories
10 of a party's attorney or other representative
11 concerning the litigation.

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

20 (1) a written statement that the person has signed or
21 otherwise adopted or approved, or

22 (2) a contemporaneous stenographic, mechanical,
23 electrical, or other recording, or a
24 transcription thereof, which recites

1 substantially verbatim the person's oral
2 statement.

3 4. TRIAL PREPARATION: EXPERTS.

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

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

14 (2) after disclosure of the names and addresses of
15 the expert witnesses, the other party expects to
16 call as witnesses, the party, who has requested
17 disclosure, may depose any such expert witnesses
18 subject to scope of this section. Prior to
19 taking the deposition the party must give notice
20 as required in subsections A and C of Section
21 3230 of this title, and

22 (3) in addition to taking the depositions of expert
23 witnesses the party may, through interrogatories,
24 require the party who expects to call the expert

witnesses to state the subject matter on which each expert witness is expected to testify; 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. The protection provided by paragraph 3 of this subsection extends to communications between the party's attorney and any expert witness retained or specially employed to provide expert testimony in the case or whose duties as the party's employee regularly

1 involve giving expert testimony, except to the extent
2 that the communications:

- 3 (1) relate to compensation for the expert's study or
4 testimony,
- 5 (2) identify facts or data that the party's attorney
6 provided and that the expert considered in
7 forming the opinions to be expressed, or
- 8 (3) identify assumptions that the party's attorney
9 provided and that the expert relied upon in
10 forming the opinions to be expressed.

11 c. A party may not, by interrogatories or deposition,
12 discover facts known or opinions held by an expert who
13 has been retained or specially employed by another
14 party in anticipation of litigation or to prepare for
15 trial and who is not expected to be called as a
16 witness at trial, except as provided in Section 3235
17 of this title or upon a showing of exceptional
18 circumstances under which it is impracticable for the
19 party to obtain facts or opinions on the same subject
20 by other means.

21 d. Unless manifest injustice would result:

- 22 (1) the court shall require that the party seeking
23 discovery pay the expert a reasonable fee for
24 time spent in responding to discovery under

1 division (2) of subparagraph a of this paragraph
2 and subparagraph c of this paragraph, and
3 (2) the court shall require that the party seeking
4 discovery with respect to discovery obtained
5 under subparagraph c of this paragraph, pay the
6 other party a fair portion of the fees and
7 expenses reasonably incurred by the latter party
8 in obtaining facts and opinions from the expert.

9 5. CLAIMS OF PRIVILEGE OR PROTECTION OF TRIAL PREPARATION
10 MATERIALS.

11 a. When a party withholds information otherwise
12 discoverable under the Oklahoma Discovery Code by
13 claiming that it is privileged or subject to
14 protection as trial preparation material, the party
15 shall make the claim expressly and shall describe the
16 nature of the documents, communications, or things not
17 produced or disclosed in a manner that, without
18 revealing information itself privileged or protected,
19 will enable other parties to assess the applicability
20 of the privilege or protection.

21 b. If information produced in discovery is subject to a
22 claim of privilege or of protection as trial
23 preparation material, the party making the claim may
24 notify any party that received the information of the

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

16 C. PROTECTIVE ORDERS.

17 1. Upon motion by a party or by the person from whom discovery
18 is sought, accompanied by a certification that the movant has in
19 good faith conferred or attempted to confer, either in person or by
20 telephone, with other affected parties in an effort to resolve the
21 dispute without court action, and for good cause shown, the court in
22 which the action is pending or on matters relating to a deposition,
23 the district court in the county where the deposition is to be taken
24 may enter any order which justice requires to protect a party or

1 person from annoyance, harassment, embarrassment, oppression or
2 undue delay, burden or expense, including one or more of the
3 following:

- 4 a. that the discovery not be had,
 - 5 b. that the discovery may be had only on specified terms
6 and conditions, including a designation of the time or
7 place,
 - 8 c. that the discovery may be had only by a method of
9 discovery other than that selected by the party
10 seeking discovery,
 - 11 d. that certain matters not be inquired into, or that the
12 scope of the disclosure or discovery be limited to
13 certain matters,
 - 14 e. that discovery be conducted with no one present except
15 persons designated by the court,
 - 16 f. that a deposition after being sealed be opened only by
17 order of the court,
 - 18 g. that a trade secret or other confidential research,
19 development or commercial information not be disclosed
20 or be disclosed only in a designated way, and
 - 21 h. that the parties simultaneously file specified
22 documents or information enclosed in sealed envelopes
23 to be opened as directed by the court.
- 24

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

- 9 a. a statement that the court has determined it is
10 necessary in the interests of justice to remove the
11 material from the public record,
12 b. specific identification of the material which is to be
13 removed or withdrawn from the public record, or which
14 is to be filed but not placed in the public record,
15 and
16 c. a requirement that any party obtaining a protective
17 order place the protected material in a sealed manila
18 envelope clearly marked with the caption and case
19 number and is clearly marked with the word
20 "CONFIDENTIAL", and stating the date the order was
21 entered and the name of the judge entering the order.
22 This requirement may also be satisfied by requiring
23 the party to file the documents pursuant to the
24 procedure for electronically filing sealed or

1 confidential documents approved for electronic filing
2 in the courts of this state.

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

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

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

12 6. Counsel for the respective parties shall be responsible for
13 informing witnesses, as necessary, of the contents of the protective
14 order.

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

1 D. SEQUENCE AND TIMING OF DISCOVERY. Unless the parties
2 stipulate or the court ~~upon motion~~ orders otherwise, for the
3 convenience of parties and witnesses and in the interests of
4 justice, orders otherwise, methods of discovery may be used in any
5 sequence. The fact that a party is conducting discovery, whether by
6 deposition or otherwise, shall not operate to delay discovery by any
7 other party.

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

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

- 14 a. the identity and location of persons having knowledge
15 of discoverable matters, and
- 16 b. the identity of each person expected to be called as
17 an expert witness at trial, the subject matter on
18 which the person is expected to testify, and the
19 substance of the testimony of the person;

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

- 23 a. (1) the party knows that the response was incorrect
24 in some material respect when made, or

1 (2) the party knows that the response, which was
2 correct when made, is no longer true in some
3 material respect, and

4 b. the additional or corrective information has not
5 otherwise been made known to the other parties during
6 the discovery process or in writing; and

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

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

14 1. A statement of the issues as they then appear;

15 2. A proposed plan and schedule of discovery;

16 3. Any limitations proposed to be placed on discovery;

17 4. Any other proposed orders with respect to discovery; and

18 5. A statement showing that the attorney making the motion has
19 made a reasonable effort to reach agreement with opposing attorneys
20 on the matters set forth in the motion.

21 Each party and his attorney are under a duty to participate in
22 good faith in the framing of a discovery plan if a plan is proposed
23 by the attorney for any party. Notice of the motion shall be served
24 on all parties. Objections or additions to matters set forth in the

1 motion shall be served not later than ten (10) days after service of
2 the motion.

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

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

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

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

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

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

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

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

20 H. PRESERVATION.

21 1. DUTY TO PRESERVE. Unless otherwise ordered by the court,
22 preservation of documents, intangible items and electronically
23 stored information is limited to matters that would enable a party
24 to prove or disprove a claim or defense and shall comport with the

1 proportionality assessment required by paragraph 2 of subsection B
2 of this section. All preservation is subject to the limitations
3 imposed by paragraph 2 of subsection B of this section. The court
4 may specify conditions for preservation.

5 2. SPECIFIC LIMITATIONS ON ELECTRONICALLY STORED INFORMATION.

6 Absent court order demonstrating that the requesting party has (a) a
7 substantial need for discovery of the electronically stored
8 information requested and (b) preservation is subject to the
9 limitations of paragraph 1 of this subsection, a party need not
10 preserve the following categories of electronically stored
11 information:

- 12 a. deleted, slack, fragmented or other data only
13 accessible by forensics,
14 b. random access memory (RAM), temp files or other
15 ephemeral data that are difficult to preserve without
16 disabling the operating system,
17 c. online access data such as temporary Internet files,
18 history, cache, cookies and the like,
19 d. information of which retrieval cannot be accomplished
20 without substantial additional programming or without
21 transferring it into another form before search and
22 retrieval can be achieved,
23 e. backup data that is substantially duplicative of data
24 that are more accessible elsewhere,

- 1 f. physically damaged media,
2 g. legacy data remaining from obsolete systems that is
3 unintelligible on successor systems, or
4 h. any other data that are not available to the producing
5 party in the ordinary course of business.

6 SECTION 3. AMENDATORY 12 O.S. 2011, Section 3234, is
7 amended to read as follows:

8 Section 3234. A. SCOPE. Any party may serve on any other
9 party a request:

10 1. To produce and permit the party making the request, or
11 someone acting on the party's behalf, to inspect, copy, test and
12 sample any designated documents or electronically stored information
13 - including, but not limited to, writings, drawings, graphs, charts,
14 photographs, motion picture films, phonograph records, tape and
15 video recordings, records and other data compilations from which
16 information can be obtained - translated, if necessary, by the
17 respondent through detection devices into reasonably usable form, or
18 to inspect and copy, test or sample any tangible things which
19 constitute or contain matters within the scope of subsection B of
20 Section 3226 of this title and which are in the possession, custody
21 or control of the party upon whom the request is served; or

22 2. To permit entry upon designated land or other property in
23 the possession or control of the party upon whom the request is
24 served for the purpose of inspection and measuring, surveying,

1 photographing, testing or sampling the property or any designated
2 object or operation thereon, within the scope of subsection B of
3 Section 3226 of this title.

4 B. PROCEDURE. 1. The request to produce or permit inspection
5 or copying may, without leave of court, be served upon the plaintiff
6 after commencement of the action and upon any other party with the
7 summons and petition or after service of the summons and petition
8 upon that party.

9 2. The number of requests to produce or permit inspection or
10 copying shall not exceed thirty in number. If counsel for a party
11 believes that more than thirty requests to produce or permit
12 inspection or copying are necessary, he or she shall consult with
13 opposing counsel promptly and attempt to reach a written stipulation
14 as to a reasonable number of additional requests. Counsel ~~are~~ is
15 expected to comply with this requirement in good faith. In the
16 event a written stipulation cannot be agreed upon, the party seeking
17 to submit such additional requests for production or inspection
18 shall file a motion with the court (1) showing that counsel have
19 conferred in good faith but sincere attempts to resolve the issue
20 have been unavailing, (2) showing reasons establishing good cause
21 for their use, and (3) setting forth the proposed additional
22 requests for production or inspection.

23 3. The request:
24

- 1 a. shall set forth and describe with reasonable
2 particularity the items to be inspected either by
3 individual item or by category,
4 b. unless otherwise stipulated or ordered by the court,
5 shall be limited in a manner consistent with
6 subsection B of Section 3226 of this title, to:
7 (1) a reasonable number of requests, not to exceed
8 thirty, including all discrete subparts, and
9 (2) a reasonable number of custodial or other
10 information sources for production, not to exceed
11 ten,
12 c. shall specify a reasonable time, place and manner of
13 making the inspection and performing the related acts,
14 and
15 ~~e.~~ d. may specify the form or forms in which electronically
16 stored information is to be produced.

- 17 4. a. The party, upon whom the request is served, shall
18 serve a written response within thirty (30) days after
19 the service of the request, except that a defendant
20 may serve a response within forty-five (45) days after
21 service of the summons and petition upon that
22 defendant. The court may allow a shorter or longer
23 time.
24

- 1 b. The response shall state, with respect to each item or
2 category, that inspection and related activities shall
3 be permitted as requested,~~unless~~ or state with
4 specificity the grounds for objecting to the request
5 ~~is objected to~~, in which event the reasons for
6 objection shall be stated. If objection is made to
7 part of an item or category, the part shall be
8 specified and inspection permitted of the remaining
9 parts. The responding party may state that it will
10 produce copies of documents or of electronically
11 stored information instead of permitting inspection.
12 The production shall then be completed no later than
13 the time for inspection specified in the request or
14 another reasonable time specified in the request or
15 the response.
- 16 c. If objection is made to the requested form or forms
17 for producing electronically stored information, or if
18 no form was specified in the request, the responding
19 party shall state the form or forms it intends to use.
- 20 d. The party submitting the request may move for an order
21 under subsection A of Section 3237 of this title with
22 respect to any objection to or other failure to
23 respond to the request or any part thereof, or any
24 failure to permit inspection as requested.

1 5. Unless the parties otherwise agree, or the court otherwise
2 orders:

3 a. a party who produces documents for inspection shall
4 produce them as they are kept in the usual course of
5 business or shall organize and label them to
6 correspond with the categories in the request,

7 b. if a request does not specify the form or forms for
8 producing electronically stored information, a
9 responding party shall produce the information in a
10 form or forms in which it is ordinarily maintained or
11 in a form or forms that are reasonably usable, and

12 c. a party is not required to produce the same
13 electronically stored information in more than one
14 form.

15 C. PERSONS NOT PARTIES. A person not a party to the action may
16 be compelled to produce documents and things or to submit to an
17 inspection as provided in Section 2004.1 of this title.

18 SECTION 4. AMENDATORY 12 O.S. 2011, Section 3237, is
19 amended to read as follows:

20 Section 3237. A. MOTION FOR ORDER COMPELLING DISCOVERY. A
21 party, upon reasonable notice to other parties and all persons
22 affected thereby, may apply for an order compelling discovery as
23 follows:
24

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

8 2. MOTION. If a deponent fails to answer a question propounded
9 or submitted under Section 3230 or 3231 of this title, or a
10 corporation or other entity fails to make a designation under
11 paragraph 6 of subsection C of Section 3230 or subsection A of
12 Section 3231 of this title, or a party fails to answer an
13 interrogatory submitted under Section 3233 of this title, or if a
14 party, in response to a request for inspection and copying submitted
15 under Section 3234 of this title, fails to produce documents or
16 fails to respond that the inspection or copying will be permitted as
17 requested or fails to permit the inspection or copying as requested,
18 or if a party or witness objects to the inspection or copying of any
19 materials designated in a subpoena issued pursuant to subsection A
20 of Section 2004.1 of this title, the discovering party may move for
21 an order compelling an answer, or a designation, or an order
22 compelling inspection and copying in accordance with the request or
23 subpoena. The motion must include a statement that the movant has
24 in good faith conferred or attempted to confer either in person or

1 by telephone with the person or party failing to make the discovery
2 in an effort to secure the information or material without court
3 action. When taking a deposition on oral examination, the proponent
4 of the question may complete or adjourn the examination before
5 applying for an order.

6 When a claim of privilege or other protection from discovery is
7 made in response to any request or subpoena for documents, and the
8 court, in its discretion, determines that a privilege log is
9 necessary in order to determine the validity of the claim, the court
10 shall order the party claiming the privilege to prepare and serve a
11 privilege log upon the terms and conditions deemed appropriate by
12 the court. The privilege log shall be served upon all other
13 parties. Unless otherwise ordered by the court, the privilege log
14 shall include, as to each document for which a claim of privilege or
15 other protection from discovery has been made, the following:

- 16 a. the author or authors,
- 17 b. the recipient or recipients,
- 18 c. its origination date,
- 19 d. its length,
- 20 e. the nature of the document or its intended purpose,
- 21 and
- 22 f. the basis for the objection.

23 The court may conduct an in camera review of the documents for which
24 the privilege or other protection from discovery is claimed. If the

1 court denies the motion in whole or in part, it may make such
2 protective order as it would have been empowered to make on a motion
3 made pursuant to subsection C of Section 3226 of this title.

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

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

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

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

1 B. FAILURE TO COMPLY WITH ORDER.

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

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

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

22 b. An order refusing to allow the disobedient party to
23 support or oppose designated claims or defenses, or
24

1 prohibiting him from introducing designated matters in
2 evidence,

3 c. An order striking out pleadings or parts thereof, or
4 staying further proceedings until the order is obeyed,
5 or dismissing the action or proceedings or any part
6 thereof, or rendering a judgment by default against
7 the disobedient party,

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

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

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

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

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

13 D. EXPENSES ON FAILURE TO ADMIT. If a party fails to admit the
14 genuineness of any document or the truth of any matter as requested
15 under Section 3236 of this title, and if the party requesting the
16 admission thereafter proves the genuineness of the document or the
17 truth of the matter, the party may apply to the court for an order
18 requiring the other party to pay him or her the reasonable expenses
19 incurred in making that proof, including reasonable attorney fees.
20 The court shall make the order unless it finds that:

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

23 2. The admission sought was of no substantial importance; or
24

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

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

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

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

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

15 3. To serve a written response to a request for inspection
16 submitted under Section 3234 of this title, after proper service of
17 the request~~+~~l,
18 the court in which the action is pending on motion may make such
19 orders in regard to the failure as are just, and among others it may
20 take any action authorized under subparagraphs a, b and c of
21 paragraph 2 of subsection B of this section. In lieu of or in
22 addition to any order, the court shall require the party failing to
23 act or the attorney advising him or her or both to pay the
24 reasonable expenses, including attorney fees, caused by the failure,

1 unless the court finds that the failure was substantially justified
2 or that other circumstances make an award of expenses unjust.

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

7 F. FAILURE TO PARTICIPATE IN THE FRAMING OF A DISCOVERY PLAN.

8 If a party or a party's attorney fails to participate in good faith
9 in the framing of a discovery plan by agreement as is required by
10 subsection F of Section 3226 of this title, the court may, after
11 opportunity for hearing, require such party or his or her attorney
12 to pay to any other party the reasonable expenses, including
13 attorney fees, caused by the failure.

14 G. ~~ELECTRONICALLY STORED INFORMATION. Absent exceptional~~
15 ~~circumstances, a court may not impose sanctions on a party~~ Sanctions
16 for failure to ~~provide~~ preserve relevant information including
17 electronically stored information lost as a result of the routine,
18 good-faith operation of an electronic information system shall be
19 imposed only if a party willfully destroys such information to
20 prevent its use in litigation and the information cannot be restored
21 or replaced through additional discovery.

22 SECTION 5. This act shall become effective November 1, 2017.

23

24 56-1-7139 EK 02/27/17

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24