

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 1570

By: Echols of the House

and

Holt of the Senate

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; authorizing limitation on frequency or extent of discovery under certain circumstances; authorizing submission of certain affidavit; adding grounds for certain order; modifying certain exception; modifying requirements for certain response; allowing application for order compelling discovery under specified circumstances; authorizing court to take certain actions; 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:

Section 3225. The Discovery Code shall be ~~liberally constructed~~ construed, administered and employed by courts and parties to

1 ~~provide~~ secure the just, speedy and inexpensive determination of
2 every action.

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

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

7 1. DISCOVERY METHODS. Parties may obtain discovery regarding
8 any matter that is relevant to any party's claim or defense by one
9 or more of the following methods: Depositions upon oral examination
10 or written questions; written interrogatories; production of
11 documents or things or permission to enter upon land or other
12 property, for inspection and other purposes; physical and mental
13 examinations; requests for admission; authorizations for release of
14 records; and otherwise by court order upon showing of good cause.
15 Except as provided in this section or unless the court orders
16 otherwise under this section, the frequency of use of these methods
17 is not limited.

18 2. INITIAL DISCLOSURES.

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

1 inspection and copying the documents or other
2 evidentiary material, not privileged or protected from
3 disclosure, on which such computation is based,
4 including materials bearing on the nature and extent
5 of injuries suffered. Subject to subsection B of this
6 section, in any action in which physical or mental
7 injury is claimed, the party making the claim shall
8 provide to the other parties a release or
9 authorization allowing the parties to obtain relevant
10 medical records and bills, and, when relevant, a
11 release or authorization for employment and scholastic
12 records.

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

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

- 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~~ any party's claim or defense and proportional
19 to the needs of the case, considering the importance
20 of the issues at stake in the action, the amount in
21 controversy, the parties' relative access to relevant
22 information, the parties' resources, the importance of
23 the discovery in resolving the issues, and whether the
24 burden or expense of the proposed discovery outweighs

1 its likely benefit. Information within this scope of
2 discovery need not be admissible in evidence to be
3 discoverable.

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

15 2. LIMITATIONS ON FREQUENCY AND EXTENT.

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

23 b. A party is not required to provide discovery of
24 electronically stored information from sources that

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

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

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

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

21 (3) ~~the burden or expense of the proposed discovery~~
22 ~~outweighs its likely benefit, considering the~~
23 ~~needs of the case, the amount in controversy, the~~
24 ~~parties' resources, the importance of the issues~~

1 ~~at stake in the action, and the importance of the~~
2 ~~discovery in resolving the issues~~ is outside the
3 scope permitted by subparagraph a of paragraph 1
4 of this subsection.

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

17 3. TRIAL PREPARATION: MATERIALS.

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

1 paragraph 4 of this subsection, such materials may be
2 discovered if:

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

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

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

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

22 (1) a written statement that the person has signed or
23 otherwise adopted or approved, or
24

1 (2) a contemporaneous stenographic, mechanical,
2 electrical, or other recording, or a
3 transcription thereof, which recites
4 substantially verbatim the person's oral
5 statement.

6 4. TRIAL PREPARATION: EXPERTS.

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

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

17 (2) after disclosure of the names and addresses of
18 the expert witnesses, the other party expects to
19 call as witnesses, the party, who has requested
20 disclosure, may depose any such expert witnesses
21 subject to scope of this section. Prior to
22 taking the deposition the party must give notice
23 as required in subsections A and C of Section
24 3230 of this title, and

1 (3) in addition to taking the depositions of expert
2 witnesses the party may, through interrogatories,
3 require the party who expects to call the expert
4 witnesses to state the subject matter on which
5 each expert witness is expected to testify; the
6 substance of the facts and opinions to which the
7 expert is expected to testify and a summary of
8 the grounds for each opinion; the qualifications
9 of each expert witness, including a list of all
10 publications authored by the expert witness
11 within the preceding ten (10) years; the
12 compensation to be paid to the expert witness for
13 the testimony and preparation for the testimony;
14 and a listing of any other cases in which the
15 expert witness has testified as an expert at
16 trial or by deposition within the preceding four
17 (4) years. An interrogatory seeking the
18 information specified above shall be treated as a
19 single interrogatory for purposes of the
20 limitation on the number of interrogatories in
21 Section 3233 of this title.

22 b. The protection provided by paragraph 3 of this
23 subsection extends to communications between the
24 party's attorney and any expert witness retained or

1 specially employed to provide expert testimony in the
2 case or whose duties as the party's employee regularly
3 involve giving expert testimony, except to the extent
4 that the communications:

5 (1) relate to compensation for the expert's study or
6 testimony,

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

10 (3) identify assumptions that the party's attorney
11 provided and that the expert relied upon in
12 forming the opinions to be expressed.

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

23 d. Unless manifest injustice would result:
24

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

12 5. CLAIMS OF PRIVILEGE OR PROTECTION OF TRIAL PREPARATION
13 MATERIALS.

- 14 a. When a party withholds information otherwise
15 discoverable under the Oklahoma Discovery Code by
16 claiming that it is privileged or subject to
17 protection as trial preparation material, the party
18 shall make the claim expressly and shall describe the
19 nature of the documents, communications, or things not
20 produced or disclosed in a manner that, without
21 revealing information itself privileged or protected,
22 will enable other parties to assess the applicability
23 of the privilege or protection.
24

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

20 C. PROTECTIVE ORDERS.

21 1. Upon motion by a party or by the person from whom discovery
22 is sought, accompanied by a certification that the movant has in
23 good faith conferred or attempted to confer, either in person or by
24 telephone, with other affected parties in an effort to resolve the

1 dispute without court action, and for good cause shown, the court in
2 which the action is pending or on matters relating to a deposition,
3 the district court in the county where the deposition is to be taken
4 may enter any order which justice requires to protect a party or
5 person from annoyance, harassment, embarrassment, oppression or
6 undue delay, burden or expense, including one or more of the
7 following:

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

1 h. that the parties simultaneously file specified
2 documents or information enclosed in sealed envelopes
3 to be opened as directed by the court.

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

12 a. a statement that the court has determined it is
13 necessary in the interests of justice to remove the
14 material from the public record,

15 b. specific identification of the material which is to be
16 removed or withdrawn from the public record, or which
17 is to be filed but not placed in the public record,
18 and

19 c. a requirement that any party obtaining a protective
20 order place the protected material in a sealed manila
21 envelope clearly marked with the caption and case
22 number and is clearly marked with the word
23 "CONFIDENTIAL", and stating the date the order was
24 entered and the name of the judge entering the order.

1 This requirement may also be satisfied by requiring
2 the party to file the documents pursuant to the
3 procedure for electronically filing sealed or
4 confidential documents approved for electronic filing
5 in the courts of this state.

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

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

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

15 6. Counsel for the respective parties shall be responsible for
16 informing witnesses, as necessary, of the contents of the protective
17 order.

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

1 shall immediately present application to the court, seeking
2 instructions for the conduct of the case, including confidentiality
3 of the records.

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

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

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

- 17 a. the identity and location of persons having knowledge
18 of discoverable matters, and
 - 19 b. the identity of each person expected to be called as
20 an expert witness at trial, the subject matter on
21 which the person is expected to testify, and the
22 substance of the testimony of the person;
- 23
24

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

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

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

9 b. the additional or corrective information has not
10 otherwise been made known to the other parties during
11 the discovery process or in writing; and

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

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

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

20 2. A proposed plan and schedule of discovery;

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

22 4. Any other proposed orders with respect to discovery; and
23
24

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

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

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

19 Subject to the right of a party who properly moves for a
20 discovery conference to prompt convening of the conference, the
21 court may combine the discovery conference with a pretrial
22 conference.

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

24 Every request for discovery, response or objection thereto made by a

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

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

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

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

20 If a certification is made in violation of the provisions of
21 this subsection, the court, upon motion or upon its own initiative,
22 shall impose upon the person who made the certification, the party
23 on whose behalf the request, response or objection is made, or both,
24 an appropriate sanction, which may include an order to pay to the

1 amount of the reasonable expenses occasioned thereby, including a
2 reasonable attorney fee.

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

5 Section 3234. A. SCOPE. Any party may serve on any other
6 party a request:

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

19 2. To permit entry upon designated land or other property in
20 the possession or control of the party upon whom the request is
21 served for the purpose of inspection and measuring, surveying,
22 photographing, testing or sampling the property or any designated
23 object or operation thereon, within the scope of subsection B of
24 Section 3226 of this title.

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

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

20 3. The request:

21 a. shall set forth and describe with reasonable
22 particularity the items to be inspected either by
23 individual item or by category,
24

1 b. shall specify a reasonable time, place and manner of
2 making the inspection and performing the related acts,
3 and

4 c. may specify the form or forms in which electronically
5 stored information is to be produced.

6 4. a. The party, upon whom the request is served, shall
7 serve a written response within thirty (30) days after
8 the service of the request, except that a defendant
9 may serve a response within forty-five (45) days after
10 service of the summons and petition upon that
11 defendant. The court may allow a shorter or longer
12 time.

13 b. The response shall state, with respect to each item or
14 category, that inspection and related activities shall
15 be permitted as requested, ~~unless~~ or state with
16 specificity the ground for objection to the request is
17 ~~objected to~~, in which event the reasons for objection
18 shall be stated. If objection is made to part of an
19 item or category, the part shall be specified and
20 inspection permitted of the remaining parts. The
21 responding party may state that it will produce copies
22 of documents or of electronically stored information
23 instead of permitting inspection. The production
24 shall be completed no later than the time for

1 inspection specified in the request, or another
2 reasonable time specified in the request or the
3 response.

- 4 c. If objection is made to the requested form or forms
5 for producing electronically stored information, or if
6 no form was specified in the request, the responding
7 party shall state the form or forms it intends to use.
- 8 d. The party submitting the request may move for an order
9 under subsection A of Section 3237 of this title with
10 respect to any objection to or other failure to
11 respond to the request or any part thereof, or any
12 failure to permit inspection as requested.

13 5. Unless the parties otherwise agree, or the court otherwise
14 orders:

- 15 a. a party who produces documents for inspection shall
16 produce them as they are kept in the usual course of
17 business or shall organize and label them to
18 correspond with the categories in the request,
- 19 b. if a request does not specify the form or forms for
20 producing electronically stored information, a
21 responding party shall produce the information in a
22 form or forms in which it is ordinarily maintained or
23 in a form or forms that are reasonably usable, and
24

1 c. a party is not required to produce the same
2 electronically stored information in more than one
3 form.

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

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

9 Section 3237. A. MOTION FOR ORDER COMPELLING DISCOVERY. A
10 party, upon reasonable notice to other parties and all persons
11 affected thereby, may apply for an order compelling discovery as
12 follows:

13 1. APPROPRIATE COURT. An application for an order to a party
14 may be made to the court in which the action is pending, or, on
15 matters, relating to a deposition, to the district court in the
16 county where the deposition is being taken. An application for an
17 order to a deponent who is not a party shall be made to the district
18 court in the county where the deposition is being taken or to the
19 court in which the action is pending.

20 2. MOTION. If a deponent fails to answer a question propounded
21 or submitted under Section 3230 or 3231 of this title, or a
22 corporation or other entity fails to make a designation under
23 paragraph 6 of subsection C of Section 3230 or subsection A of
24 Section 3231 of this title, or a party fails to answer an

1 interrogatory submitted under Section 3233 of this title, or if a
2 party, in response to a request for inspection and copying submitted
3 under Section 3234 of this title, fails to produce documents or
4 respond that the inspection or copying will be permitted as
5 requested or fails to permit the inspection or copying as requested,
6 or if a party or witness objects to the inspection or copying of any
7 materials designated in a subpoena issued pursuant to subsection A
8 of Section 2004.1 of this title, the discovering party may move for
9 an order compelling an answer, or a designation, or an order
10 compelling inspection and copying in accordance with the request or
11 subpoena. The motion must include a statement that the movant has
12 in good faith conferred or attempted to confer either in person or
13 by telephone with the person or party failing to make the discovery
14 in an effort to secure the information or material without court
15 action. When taking a deposition on oral examination, the proponent
16 of the question may complete or adjourn the examination before
17 applying for an order.

18 When a claim of privilege or other protection from discovery is
19 made in response to any request or subpoena for documents, and the
20 court, in its discretion, determines that a privilege log is
21 necessary in order to determine the validity of the claim, the court
22 shall order the party claiming the privilege to prepare and serve a
23 privilege log upon the terms and conditions deemed appropriate by
24 the court. The privilege log shall be served upon all other

1 parties. Unless otherwise ordered by the court, the privilege log
2 shall include, as to each document for which a claim of privilege or
3 other protection from discovery has been made, the following:

- 4 a. the author or authors,
- 5 b. the recipient or recipients,
- 6 c. its origination date,
- 7 d. its length,
- 8 e. the nature of the document or its intended purpose,
- 9 and
- 10 f. the basis for the objection.

11 The court may conduct an in camera review of the documents for which
12 the privilege or other protection from discovery is claimed. If the
13 court denies the motion in whole or in part, it may make such
14 protective order as it would have been empowered to make on a motion
15 made pursuant to subsection C of Section 3226 of this title.

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

19 4. AWARD OF EXPENSES OF MOTION. If the motion is granted, the
20 court shall, after opportunity for hearing, require the party or
21 deponent whose conduct necessitated the motion or the party or
22 attorney advising such conduct or both of them to pay to the moving
23 party the reasonable expenses incurred in obtaining the order,
24 including attorney fees, unless the court finds that the opposition

1 to the motion was substantially justified or that other
2 circumstances make an award of expenses unjust.

3 If the motion is denied, the court shall, after opportunity for
4 hearing, require the moving party or the attorney advising the
5 motion or both of them to pay to the party or deponent who opposed
6 the motion the reasonable expenses incurred in opposing the motion,
7 including attorney fees, unless the court finds that the making of
8 the motion was substantially justified or that other circumstances
9 make an award of expenses unjust.

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

13 B. FAILURE TO COMPLY WITH ORDER.

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

19 2. SANCTION BY COURT IN WHICH ACTION IS PENDING. If a party or
20 an officer, director or managing agent of a party or a person
21 designated under paragraph 6 of subsection C of Section 3230 or
22 subsection A of Section 3231 of this title to testify on behalf of a
23 party fails to obey an order to provide or permit discovery,
24 including an order made under subsection A of this section or

1 Section 3235 of this title, or if a party fails to obey an order
2 entered under subsection F of Section 3226 of this title, the court
3 in which the action is pending may make such orders in regard to the
4 failure as are just. Such orders may include the following:

5 a. An order that the matters regarding which the order
6 was made or any other designated facts shall be taken
7 to be established for the purposes of the action in
8 accordance with the claim of the party obtaining the
9 order,

10 b. An order refusing to allow the disobedient party to
11 support or oppose designated claims or defenses, or
12 prohibiting him from introducing designated matters in
13 evidence,

14 c. An order striking out pleadings or parts thereof, or
15 staying further proceedings until the order is obeyed,
16 or dismissing the action or proceedings or any part
17 thereof, or rendering a judgment by default against
18 the disobedient party,

19 d. In lieu of or in addition to the orders provided for
20 in subparagraphs a through c of this paragraph, an
21 order treating as a contempt of court the failure to
22 obey any orders except an order to submit to a
23 physical or mental examination,

1 e. Where a party has failed to comply with an order under
2 subsection A of Section 3235 of this title requiring
3 him to produce another for examination, such orders as
4 are listed in subparagraphs a, b and c of this
5 paragraph, unless the party failing to comply shows
6 that he is unable to produce such person for
7 examination,

8 f. If a person, not a party, fails to obey an order
9 entered under subsection C of Section 3234 of this
10 title, the court may treat the failure to obey the
11 order as contempt of court.

12 In lieu of or in addition to the orders provided for in this
13 paragraph, the court shall require the party failing to obey the
14 order or the attorney advising the party or both to pay the
15 reasonable expenses, including attorney fees, caused by the failure,
16 unless the court finds that the failure was substantially justified
17 or that other circumstances make an award of expenses unjust.

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

1 D. EXPENSES ON FAILURE TO ADMIT. If a party fails to admit the
2 genuineness of any document or the truth of any matter as requested
3 under Section 3236 of this title, and if the party requesting the
4 admission thereafter proves the genuineness of the document or the
5 truth of the matter, the party may apply to the court for an order
6 requiring the other party to pay him or her the reasonable expenses
7 incurred in making that proof, including reasonable attorney fees.
8 The court shall make the order unless it finds that:

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

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

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

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

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

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

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

4 3. To serve a written response to a request for inspection
5 submitted under Section 3234 of this title, after proper service of
6 the request;
7 the court in which the action is pending on motion may make such
8 orders in regard to the failure as are just, and among others it may
9 take any action authorized under subparagraphs a, b and c of
10 paragraph 2 of subsection B of this section. In lieu of or in
11 addition to any order, the court shall require the party failing to
12 act or the attorney advising him or her or both to pay the
13 reasonable expenses, including attorney fees, caused by the failure,
14 unless the court finds that the failure was substantially justified
15 or that other circumstances make an award of expenses unjust.

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

20 F. FAILURE TO PARTICIPATE IN THE FRAMING OF A DISCOVERY PLAN.
21 If a party or a party's attorney fails to participate in good faith
22 in the framing of a discovery plan by agreement as is required by
23 subsection F of Section 3226 of this title, the court may, after
24 opportunity for hearing, require such party or his or her attorney

1 to pay to any other party the reasonable expenses, including
2 attorney fees, caused by the failure.

3 G. ELECTRONICALLY STORED INFORMATION. ~~Absent exceptional~~
4 ~~circumstances, a court may not impose sanctions on a party for~~
5 ~~failure to provide electronically stored information lost as a~~
6 ~~result of the routine, good-faith operation of an electronic~~
7 ~~information system~~ If electronically stored information that should
8 have been preserved in the anticipation or conduct of litigation is
9 lost because a party failed to take reasonable steps to preserve it,
10 and it cannot be restored or replaced through additional discovery,
11 the court may:

12 1. Upon finding prejudice to another party from loss of the
13 information, order measures no greater than necessary to cure the
14 prejudice; or

15 2. Upon finding that the party acted with intent to deprive
16 another party of the information's use in the litigation:

17 a. presume that the lost information was unfavorable to
18 the party,

19 b. instruct the jury that it may or must presume the
20 information was unfavorable to the party, or

21 c. dismiss the action or enter a default judgment.

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