

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1570

By: Echols

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~~ 5 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~~+~~,  
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 56-1-7187 EK 03/01/17

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