

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

SENATE BILL 1299

By: Sparks of the Senate

and

Echols and Kannady of the
House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to the Oklahoma Discovery Code;
amending 12 O.S. 2011, Sections 3233, as last amended
by Section 5, Chapter 389, O.S.L. 2017, 3234, as
amended by Section 4, Chapter 378, O.S.L. 2017, and
3236, as amended by Section 7, Chapter 389, O.S.L.
2017 (12 O.S. Supp. 2017, Sections 3233, 3234 and
3236), which relate to interrogatories, requests for
production and requests for admission; modifying
procedures for certain service and response;
clarifying commencement of certain time period;
repealing 12 O.S. 2011, Section 3234, as amended by
Section 6, Chapter 389, O.S.L. 2017 (12 O.S. Supp.
2017, Section 3234), which relates to requests for
production; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 2011, Section 3233, as
last amended by Section 5, Chapter 389, O.S.L. 2017 (12 O.S. Supp.
2017, Section 3233), is amended to read as follows:

1 Section 3233. A. AVAILABILITY; PROCEDURES FOR USE. Any party
2 may serve upon any other party written interrogatories to be
3 answered by the party served or, if the party served is a public or
4 private corporation or a partnership or association or governmental
5 agency, by any officer or agent, who shall furnish such information
6 as is available to that party. ~~Interrogatories may, without leave~~
7 ~~of court, be served upon any party after the filing of an answer.~~
8 ~~Upon leave of court or otherwise agreed to in writing by the parties~~
9 ~~subject to Section 3229 of this title, interrogatories may be served~~
10 ~~and answered prior to the filing of an answer.~~

11 Each interrogatory shall be answered separately and fully in
12 writing under oath, unless it is objected to, in which event the
13 objecting party shall state the reasons for objection and shall
14 answer to the extent the interrogatory is not objectionable. When
15 answering each interrogatory, the party shall restate the
16 interrogatory, then provide the answer. The number of
17 interrogatories to a party shall not exceed thirty in number.
18 Interrogatories inquiring as to the names and locations of
19 witnesses, or the existence, location and custodian of documents or
20 physical evidence shall be construed as one interrogatory. All
21 other interrogatories, including subdivisions of one numbered
22 interrogatory, shall be construed as separate interrogatories. No
23 further interrogatories will be served unless authorized by the
24 court. If counsel for a party believes that more than thirty

1 interrogatories are necessary, counsel shall consult with opposing
2 counsel promptly and attempt to reach a written stipulation as to a
3 reasonable number of additional interrogatories. Counsel are
4 expected to comply with this requirement in good faith. In the
5 event a written stipulation cannot be agreed upon, the party seeking
6 to submit such additional interrogatories shall file a motion with
7 the court (1) showing that counsel have conferred in good faith but
8 sincere attempts to resolve the issue have been unavailing, (2)
9 showing reasons establishing good cause for their use, and (3)
10 setting forth the proposed additional interrogatories. The answers
11 are to be signed by the person making them, and the objections
12 signed by the attorney making them. Interrogatories may, without
13 leave of court, be served upon any party after the filing of a
14 petition. The party upon whom the interrogatories have been served
15 shall serve a copy of the answers, and objections if any, within
16 thirty (30) days after the service of the interrogatories. A
17 ~~shorter or longer time may be directed by the~~ The 30-day response
18 period shall not commence until an answer to the petition is filed.
19 However, upon leave of court or, in the absence of such an order,
20 otherwise agreed to in writing by the parties subject to Section
21 3229 of this title, answers to interrogatories may be required prior
22 to the filing of an answer to the petition. All grounds for an
23 objection to an interrogatory shall be stated with specificity. Any
24 ground not stated in a timely objection is waived unless the party's

1 failure to object is excused by the court for good cause shown. The
2 party submitting the interrogatories may move for an order under
3 subsection A of Section 3237 of this title with respect to any
4 objection to or other failure to answer an interrogatory.

5 B. SCOPE; USE AT TRIAL. Interrogatories may relate to any
6 matters which can be inquired into under subsection B of Section
7 3226 of this title, and the answers may be used to the extent
8 permitted by the Oklahoma Evidence Code as set forth in Sections
9 2101 et seq. of this title.

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

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

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

8 SECTION 2. AMENDATORY 12 O.S. 2011, Section 3234, as
9 amended by Section 4, Chapter 378, O.S.L. 2017 (12 O.S. Supp. 2017,
10 Section 3234), is amended to read as follows:

11 Section 3234. A. IN GENERAL. A party may serve on any other
12 party a request within the scope of Section 3226 of this title:

13 1. To produce and permit the requesting party or its
14 representative to inspect, copy, test or sample the following items
15 in the possession, custody or control of the responding party:

16 a. any designated documents or electronically stored
17 information - including writings, drawings, graphs,
18 charts, photographs, sound recordings, images and
19 other data or data compilations - stored in any medium
20 from which information can be obtained either directly
21 or, if necessary, after translation by the responding
22 party into a reasonably usable form, or

23 b. any designated tangible things; or
24

1 2. To permit entry onto designated land or other property
2 possessed or controlled by the responding party so that the
3 requesting party may inspect, measure, survey, photograph, test or
4 sample the property or any designated object or operation on it.

5 B. PROCEDURE. 1. The request:

- 6 a. shall describe with reasonable particularity each item
7 or category of items to be inspected,
8 b. shall specify a reasonable time, place and manner for
9 the inspection and for performing the related acts,
10 and
11 c. may specify the form or forms in which electronically
12 stored information is to be produced.

- 13 2. a. The request may be served, without leave of court,
14 upon any party after the filing of a petition. The
15 party to whom the request is directed shall respond in
16 writing within thirty (30) days after being served.
17 The thirty-day response period shall not commence
18 until an answer to the petition is filed. However,
19 upon leave of court or otherwise agreed to in writing
20 by the parties subject to Section 3229 of this title,
21 the response to the request may be required prior to
22 the filing of an answer to the petition.
23 b. For each item or category, the response shall either
24 state that inspection and related activities will be

1 permitted as requested or state with specificity the
2 grounds for objecting to the request, including the
3 reasons. The responding party may state that it will
4 produce copies of documents or of electronically
5 stored information instead of permitting inspection.
6 The production shall be completed no later than the
7 time for inspection specified in the request, or
8 another reasonable time specified in the response.

9 c. An objection shall state whether any responsive
10 materials are being withheld on the basis of that
11 objection. An objection to part of a request shall
12 specify the part and permit inspection of the rest.

13 d. The response may state an objection to a requested
14 form for producing electronically stored information.
15 If the responding party objects to a requested form,
16 or if no form was specified in the request, the party
17 shall state the form or forms it intends to use.

18 e. Unless otherwise stipulated or ordered by the court,
19 these procedures apply to producing documents or
20 electronically stored information:

21 (1) a party shall produce documents as they are kept
22 in the usual course of business or shall organize
23 and label them to correspond to the categories in
24 the request,

1 (2) if a request does not specify a form for
2 producing electronically stored information, a
3 party shall produce it in a form or forms in
4 which it is ordinarily maintained or in a
5 reasonably usable form or forms, and

6 (3) a party need not produce the same electronically
7 stored information in more than one form.

8 C. NONPARTIES. A nonparty may be compelled to produce
9 documents and tangible things or to permit an inspection as provided
10 in Section 2004.1 of this title.

11 SECTION 3. AMENDATORY 12 O.S. 2011, Section 3236, as
12 amended by Section 7, Chapter 389, O.S.L. 2017 (12 O.S. Supp. 2017,
13 Section 3236), is amended to read as follows:

14 Section 3236. A. REQUEST FOR ADMISSION. A party may serve
15 upon any other party a written request for the admission, for
16 purposes of the pending action only, of the truth of any matters
17 within the scope of Section 3226 of this title set forth in the
18 request that relate to statements or opinions of fact or of the
19 application of law to fact, including the genuineness of any
20 documents described in the request. Copies of documents shall be
21 served with the request for admission unless they have been or are
22 otherwise furnished or made available for inspection and copying.
23 ~~The request may, without leave of court, be served upon any party~~
24 ~~after the filing of an answer. Upon leave of court or otherwise~~

1 ~~agreed to in writing by the parties subject to Section 3229 of this~~
2 ~~title, the request may be served and responded to prior to the~~
3 ~~filing of an answer.~~ The number of requests for admissions for each
4 party is limited to thirty. No further requests for admission will
5 be served unless authorized by the court. If counsel for a party
6 believes that more than thirty requests for admissions are
7 necessary, counsel shall consult with opposing counsel promptly and
8 attempt to reach a written stipulation as to a reasonable number of
9 additional requests for admissions. Counsel are expected to comply
10 with this requirement in good faith. In the event a written
11 stipulation cannot be agreed upon, the party seeking to submit such
12 additional requests for admissions shall file a motion with the
13 court (1) showing that counsel have conferred in good faith but
14 sincere attempts to resolve the issue have been unavailing, (2)
15 showing reasons establishing good cause for their use, and (3)
16 setting forth the proposed additional requests.

17 The request may, without leave of court, be served upon any
18 party after the filing of a petition. Each matter of which an
19 admission is requested shall be separately set forth. The matter is
20 admitted unless, within thirty (30) days after service of the
21 request, or within such shorter or longer time as the court may
22 allow, the party to whom the request is directed serves upon the
23 party requesting the admission a written answer or objection
24 addressed to the matter, signed by the party or by the party's

1 attorney. The thirty-day response period shall not commence until
2 an answer to the petition is filed. However, upon leave of court or
3 otherwise agreed to in writing by the parties subject to Section
4 3229 of this title, the response to the request may be required
5 prior to the filing of an answer to the petition.

6 If objection is made, the reasons therefor shall be stated. The
7 answer shall specifically deny the matter or set forth in detail the
8 reasons why the answering party cannot truthfully admit or deny the
9 matter. A denial shall fairly meet the substance of the requested
10 admission, and when good faith requires that a party qualify his or
11 her answer or deny only a part of the matter of which an admission
12 is requested, he or she shall specify so much of it as is true and
13 qualify or deny the remainder. An answering party may not give lack
14 of information or knowledge as a reason for failure to admit or deny
15 unless the party states that he or she has made reasonable inquiry
16 and that the information known or readily obtainable by the party is
17 insufficient to enable him or her to admit or deny. A party who
18 considers that a matter of which an admission has been requested
19 presents a genuine issue for trial may not, on that ground alone,
20 object to the request; he or she may, subject to the provisions of
21 subsection D of Section 3237 of this title, deny the matter or set
22 forth reasons why he or she cannot admit or deny it.

23 The party who has requested the admission may move to determine
24 the sufficiency of the answers or objections. Unless the court

1 determines that an objection is justified, it shall order that an
2 answer be served. If the court determines that an answer does not
3 comply with the requirements of this section, it may order either
4 that the matter is admitted or that an amended answer be served.

5 The court may, in lieu of these orders, determine that final
6 disposition of the request be made at a pretrial conference or at a
7 designated time prior to trial. The provisions of paragraph 4 of
8 subsection A of Section 3237 of this title apply to the award of
9 expenses incurred in relation to the motion.

10 B. EFFECT OF ADMISSION. Any matter admitted under this section
11 is conclusively established unless the court on motion permits
12 withdrawal or amendment of the admission. The court may permit
13 withdrawal or amendment of an admission when the presentation of the
14 merits of the action will be subserved thereby and the party who
15 obtained the admission fails to satisfy the court that withdrawal or
16 amendment will prejudice him or her in maintaining his or her action
17 or defense on the merits.

18 C. SCOPE OF ADMISSIONS. Any admission made by a party under
19 this section is for the purpose of the pending action only and is
20 not an admission for any other purpose nor may it be used against
21 him or her in any other proceeding.

22 SECTION 4. REPEALER 12 O.S. 2011, Section 3234, as
23 amended by Section 6, Chapter 389, O.S.L. 2017 (12 O.S. Supp. 2017,
24 Section 3234), is hereby repealed.

SECTION 5. This act shall become effective January 1, 2019.

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