

<DateSubmitted>

HOUSE OF REPRESENTATIVES
CONFERENCE COMMITTEE REPORT

Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

HB1570

By: Echols of the House and Holt of the Senate

Title: Discovery Code; general provisions, production of documents and inspection and sanctions;
effective date.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from Amendment No. 1; and
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

House Action _____ Date _____ Senate Action _____ Date _____

SENATE CONFEREES

Holt	_____
Newberry	_____
Leewright	_____
Daniels	_____
Bice	_____
Sparks	_____
Floyd	_____

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1570

By: Echols of the House

and

Holt of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to civil procedure; amending 12 O.S. 2011, Section 95, as amended by Section 1 of Enrolled House Bill No. 1470 of the 1st Session of the 56th Oklahoma Legislature, which relates to the statute of limitations for civil actions; striking gross negligence standard for certain damages; deleting required award of court costs and attorney fees to prevailing party; 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 the Oklahoma Discovery Code; clarifying scope of Discovery Code; modifying limitations on scope of discovery; allowing discovery for inadmissible information; authorizing limitation on frequency or extent of discovery that is outside the permitted scope; authorizing submission of certain affidavit prior to deposition; permitting deposition; specifying limitation for protective order; adding condition for protective order; allowing stipulation for sequence of discovery methods; clarifying scope of items for production; authorizing production of copies instead of inspection; requiring information to be included in objections; listing procedures for producing documents or electronically stored information; allowing application for order compelling discovery

1 under specified circumstances; and providing an
2 effective date.

3
4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

5 SECTION 1. AMENDATORY 12 O.S. 2011, Section 95, as
6 amended by Section 1 of Enrolled House Bill No. 1470 of the 1st
7 Session of the 56th Oklahoma Legislature, is amended to read as
8 follows:

9 Section 95. A. Civil actions other than for the recovery of
10 real property can only be brought within the following periods,
11 after the cause of action shall have accrued, and not afterwards:

12 1. Within five (5) years: An action upon any contract,
13 agreement, or promise in writing;

14 2. Within three (3) years: An action upon a contract express
15 or implied not in writing; an action upon a liability created by
16 statute other than a forfeiture or penalty; and an action on a
17 foreign judgment;

18 3. Within two (2) years: An action for trespass upon real
19 property; an action for taking, detaining, or injuring personal
20 property, including actions for the specific recovery of personal
21 property; an action for injury to the rights of another, not arising
22 on contract, and not hereinafter enumerated; an action for relief on
23 the ground of fraud - the cause of action in such case shall not be
24 deemed to have accrued until the discovery of the fraud;

1 4. Within one (1) year: An action for libel, slander, assault,
2 battery, malicious prosecution, or false imprisonment; an action
3 upon a statute for penalty or forfeiture, except where the statute
4 imposing it prescribes a different limitation;

5 5. An action upon the official bond or undertaking of an
6 executor, administrator, guardian, sheriff, or any other officer, or
7 upon the bond or undertaking given in attachment, injunction,
8 arrest, or in any case whatever required by the statute, can only be
9 brought within five (5) years after the cause of action shall have
10 accrued;

11 6. An action based on intentional conduct brought by any person
12 for recovery of damages for injury suffered as a result of childhood
13 sexual abuse incidents or exploitation as defined by Section 1-1-105
14 of Title 10A of the Oklahoma Statutes or incest against the actual
15 perpetrator shall be commenced by the forty-fifth birthday of the
16 alleged victim. If the person committing the act of sexual abuse
17 against a child was employed by an institution, agency, firm,
18 business, corporation or other public or private legal entity that
19 owed a duty of care to the victim, or the accused and the child were
20 engaged in some activity over which the legal entity had some degree
21 of responsibility or control, the action must be brought against
22 such employer or legal entity within two (2) years; provided, that
23 the time limit for commencement of an action pursuant to this
24 paragraph is tolled for a child until the child reaches the age of

1 eight (18) years, ~~and damages against the legal entity shall be~~
2 ~~awarded only if there is a finding of gross negligence on the part~~
3 ~~of the legal entity.~~ No action may be brought against the alleged
4 perpetrator or the estate of the alleged perpetrator after the death
5 of such alleged perpetrator, unless the perpetrator was convicted of
6 a crime of sexual abuse involving the claimant. An action pursuant
7 to this paragraph must be based upon objective verifiable evidence
8 in order for the victim to recover damages for injuries suffered by
9 reason of such sexual abuse, exploitation, or incest. The victim
10 need not establish which act in a series of continuing sexual abuse
11 incidents, exploitation incidents, or incest caused the injury
12 complained of;

13 7. An action based on intentional conduct brought by any person
14 for recovery of damages for injury suffered as a result of criminal
15 actions, as defined by the Oklahoma Statutes, may be brought against
16 any person incarcerated or under the supervision of a state, federal
17 or local correctional facility on or after November 1, 2003:

- 18 a. at any time during the incarceration of the offender
19 for the offense on which the action is based, or
20 b. within five (5) years after the perpetrator is
21 released from the custody of a state, federal or local
22 correctional facility, if the defendant was serving
23 time for the offense on which the action is based;
24

1 8. An action to establish paternity and to enforce support
2 obligations can be brought any time before the child reaches the age
3 of eighteen (18);

4 9. An action to establish paternity can be brought by a child
5 in accordance with Section 7700-606 of Title 10 of the Oklahoma
6 Statutes;

7 10. Court-ordered child support is owed until it is paid in
8 full and it is not subject to a statute of limitations;

9 11. All actions filed by an inmate or by a person based upon
10 facts that occurred while the person was an inmate in the custody of
11 one of the following:

12 a. the State of Oklahoma,

13 b. a contractor of the State of Oklahoma, or

14 c. a political subdivision of the State of Oklahoma,

15 to include, but not be limited to, the revocation of earned credits
16 and claims for injury to the rights of another, shall be commenced
17 within one (1) year after the cause of action shall have accrued;
18 and

19 12. An action for relief, not hereinbefore provided for, can
20 only be brought within five (5) years after the cause of action
21 shall have accrued.

22 B. Collection of debts owed by inmates who have received damage
23 awards pursuant to Section 566.1 of Title 57 of the Oklahoma
24

1 Statutes shall be governed by the time limitations imposed by that
2 section.

3 ~~C. In any action brought pursuant to the provisions of~~
4 ~~subsection A of this section, the court shall award court costs and~~
5 ~~reasonable attorney fees to the prevailing party.~~

6 SECTION 2. AMENDATORY 12 O.S. 2011, Section 3225, is
7 amended to read as follows:

8 Section 3225. The Discovery Code shall be ~~liberally constructed~~
9 construed, administered and employed by courts and parties to
10 provide secure the just, speedy and inexpensive determination of
11 every action.

12 SECTION 3. AMENDATORY 12 O.S. 2011, Section 3226, as
13 last amended by Section 1, Chapter 192, O.S.L. 2014 (12 O.S. Supp.
14 2016, Section 3226), is amended to read as follows:

15 Section 3226. A. DISCOVERY METHODS; INITIAL DISCLOSURES. 1.
16 DISCOVERY METHODS. Parties may obtain discovery regarding any
17 matter that is relevant to any party's claim or defense by one or
18 more of the following methods: Depositions upon oral examination or
19 written questions; written interrogatories; production of documents
20 or things or permission to enter upon land or other property, for
21 inspection and other purposes; physical and mental examinations;
22 requests for admission; authorizations for release of records; and
23 otherwise by court order upon showing of good cause. Except as
24

1 provided in this section or unless the court orders otherwise under
2 this section, the frequency of use of these methods is not limited.

3 2. INITIAL DISCLOSURES.

4 a. Except in categories of proceedings specified in
5 subparagraph b of this paragraph, or to the extent
6 otherwise stipulated or directed by order, a party,
7 without awaiting a discovery request, shall provide to
8 other parties a computation of any category of damages
9 claimed by the disclosing party, making available for
10 inspection and copying the documents or other
11 evidentiary material, not privileged or protected from
12 disclosure, on which such computation is based,
13 including materials bearing on the nature and extent
14 of injuries suffered. Subject to subsection B of this
15 section, in any action in which physical or mental
16 injury is claimed, the party making the claim shall
17 provide to the other parties a release or
18 authorization allowing the parties to obtain relevant
19 medical records and bills, and, when relevant, a
20 release or authorization for employment and scholastic
21 records.

22 b. The following categories of proceedings are exempt
23 from initial disclosure under subparagraph a of this
24 paragraph:

- (1) an action for review of an administrative record,
- (2) a petition for habeas corpus or other proceeding to challenge a criminal conviction or sentence,
- (3) an action brought without counsel by a person in custody of the United States, a state, or a state subdivision,
- (4) an action to enforce or quash an administrative summons or subpoena,
- (5) an action by the United States to recover benefit payments,
- (6) an action by the United States to collect on a student loan guaranteed by the United States,
- (7) a proceeding ancillary to proceedings in other courts, and
- (8) an action to enforce an arbitration award.

c. Disclosures required under this paragraph shall be made at or within sixty (60) days after service unless a different time is set by stipulation or court order, or unless a party objects that initial disclosures are not appropriate in the circumstances of the action and states the objection in a motion filed with the court. In ruling on the objection, the court shall determine what disclosures, if any, are to be made and set the time for disclosure. A party shall make its initial

1 disclosures based on the information then readily
2 available to it and is not excused from making its
3 disclosures because it has not fully completed its
4 investigation of the case or because it challenges the
5 sufficiency of another party's disclosures or because
6 another party has not made its disclosures.

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

10 1. IN GENERAL.

11 a. Parties may obtain discovery regarding any matter, not
12 privileged, which is relevant to ~~the subject matter~~
13 ~~involved in the pending action, whether it relates to~~
14 ~~the claim or defense of the party seeking discovery or~~
15 ~~to the claim or defense of any other party, including~~
16 ~~the existence, description, nature, custody, condition~~
17 ~~and location of any documents, electronically stored~~
18 ~~information or other tangible things and the identity~~
19 ~~and location of persons having knowledge of any~~
20 ~~discoverable matter. It is not a ground for objection~~
21 ~~that the information sought will be inadmissible at~~
22 ~~the trial if the information sought appears reasonably~~
23 ~~calculated to lead to the discovery of admissible~~
24 ~~evidence~~ any party's claim or defense, reasonably

1 calculated to lead to the discovery of admissible
2 evidence and proportional to the needs of the case,
3 considering the importance of the issues at stake in
4 the action, the amount in controversy, the parties'
5 relative access to relevant information, the parties'
6 resources, the importance of the discovery in
7 resolving the issues, and whether the burden or
8 expense of the proposed discovery outweighs its likely
9 benefit. Information within this scope of discovery
10 need not be admissible in evidence to be discoverable.

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

22 2. LIMITATIONS ON FREQUENCY AND EXTENT.

23 a. By order, the court may alter the limits on the length
24 of depositions under Section 3230 of this title, on

1 the number of interrogatories under Section 3233 of
2 this title, on the number of requests to produce under
3 Section 3234 of this title, or on the number of
4 requests for admission under Section 3236 of this
5 title.

6 b. A party is not required to provide discovery of
7 electronically stored information from sources that
8 the party identifies as not reasonably accessible
9 because of undue burden or cost. On motion to compel
10 discovery or for a protective order, the party from
11 whom discovery is sought must show that the
12 information is not reasonably accessible because of
13 undue burden or cost. If that showing is made, the
14 court may order discovery from such sources if the
15 requesting party shows good cause, considering the
16 limitations of subparagraph c of this paragraph. The
17 court may specify conditions for the discovery.

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

21 (1) the discovery sought is unreasonably cumulative
22 or duplicative, or can be obtained from some
23 other source that is more convenient, less
24 burdensome, or less expensive,

1 (2) the party seeking discovery has had ample
2 opportunity to obtain the information by
3 discovery in the action, or
4 (3) ~~the burden or expense of the proposed discovery~~
5 ~~outweighs its likely benefit, considering the~~
6 ~~needs of the case, the amount in controversy, the~~
7 ~~parties' resources, the importance of the issues~~
8 ~~at stake in the action, and the importance of the~~
9 ~~discovery in resolving the issues~~ is outside the
10 scope permitted by subparagraph a of paragraph 1
11 of this subsection.

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

24 3. TRIAL PREPARATION: MATERIALS.

1 a. Unless as provided by paragraph 4 of this subsection,
2 a party may not discover documents and tangible things
3 that are prepared in anticipation of litigation or for
4 trial by or for another party or its representative,
5 including the other party's attorney, consultant,
6 surety, indemnitor, insurer or agent. Subject to
7 paragraph 4 of this subsection, such materials may be
8 discovered if:

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

11 (2) the party shows that it has substantial need for
12 the materials to prepare its case and cannot,
13 without undue hardship, obtain their substantial
14 equivalent by other means.

15 b. If the court orders discovery of such materials, the
16 court shall protect against disclosure of the mental
17 impressions, conclusions, opinions or legal theories
18 of a party's attorney or other representative
19 concerning the litigation.

20 c. A party or other person may, upon request and without
21 the required showing, obtain the person's own previous
22 statement about the action or its subject matter. If
23 the request is refused, the person may move for a
24 court order, and the provisions of paragraph 4 of

1 subsection A of Section 3237 of this title apply to
2 the award of expenses. A previous statement is
3 either:

- 4 (1) a written statement that the person has signed or
5 otherwise adopted or approved, or
- 6 (2) a contemporaneous stenographic, mechanical,
7 electrical, or other recording, or a
8 transcription thereof, which recites
9 substantially verbatim the person's oral
10 statement.

11 4. TRIAL PREPARATION: EXPERTS.

12 a. Discovery of facts known and opinions held by experts,
13 otherwise discoverable under the provisions of
14 paragraph 1 of this subsection and acquired or
15 developed in anticipation of litigation or for trial,
16 may be obtained only as follows:

- 17 (1) a party may, through interrogatories, require any
18 other party to identify each person whom that
19 other party expects to call as an expert witness
20 at trial and give the address at which that
21 expert witness may be located,
- 22 (2) after disclosure of the names and addresses of
23 the expert witnesses, the other party expects to
24 call as witnesses, the party, who has requested

1 disclosure, may depose any such expert witnesses
2 subject to scope of this section. Prior to
3 taking the deposition the party must give notice
4 as required in subsections A and C of Section
5 3230 of this title, and

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

1 limitation on the number of interrogatories in
2 Section 3233 of this title.

3 b. The protection provided by paragraph 3 of this
4 subsection extends to communications between the
5 party's attorney and any expert witness retained or
6 specially employed to provide expert testimony in the
7 case or whose duties as the party's employee regularly
8 involve giving expert testimony, except to the extent
9 that the communications:

10 (1) relate to compensation for the expert's study or
11 testimony,

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

15 (3) identify assumptions that the party's attorney
16 provided and that the expert relied upon in
17 forming the opinions to be expressed.

18 c. A party may not, by interrogatories or deposition,
19 discover facts known or opinions held by an expert who
20 has been retained or specially employed by another
21 party in anticipation of litigation or to prepare for
22 trial and who is not expected to be called as a
23 witness at trial, except as provided in Section 3235
24 of this title or upon a showing of exceptional

1 circumstances under which it is impracticable for the
2 party to obtain facts or opinions on the same subject
3 by other means.

4 d. Unless manifest injustice would result:

5 (1) the court shall require that the party seeking
6 discovery pay the expert a reasonable fee for
7 time spent in responding to discovery under
8 division (2) of subparagraph a of this paragraph
9 and subparagraph c of this paragraph, and

10 (2) the court shall require that the party seeking
11 discovery with respect to discovery obtained
12 under subparagraph c of this paragraph, pay the
13 other party a fair portion of the fees and
14 expenses reasonably incurred by the latter party
15 in obtaining facts and opinions from the expert.

16 5. CLAIMS OF PRIVILEGE OR PROTECTION OF TRIAL PREPARATION
17 MATERIALS.

18 a. When a party withholds information otherwise
19 discoverable under the Oklahoma Discovery Code by
20 claiming that it is privileged or subject to
21 protection as trial preparation material, the party
22 shall make the claim expressly and shall describe the
23 nature of the documents, communications, or things not
24 produced or disclosed in a manner that, without

1 revealing information itself privileged or protected,
2 will enable other parties to assess the applicability
3 of the privilege or protection.

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

23 C. PROTECTIVE ORDERS.
24

1 1. Upon motion by a party or by the person from whom discovery
2 is sought, accompanied by a certification that the movant has in
3 good faith conferred or attempted to confer, either in person or by
4 telephone, with other affected parties in an effort to resolve the
5 dispute without court action, and for good cause shown, the court in
6 which the action is pending or on matters relating to a deposition,
7 the district court in the county where the deposition is to be taken
8 may enter any order which justice requires to protect a party or
9 person from annoyance, harassment, embarrassment, oppression or
10 undue delay, burden or expense, including one or more of the
11 following:

- 12 a. that the discovery not be had,
- 13 b. that the discovery may be had only on specified terms
14 and conditions, including a designation of the time
15 ~~or~~, place or the allocation of expenses,
- 16 c. that the discovery may be had only by a method of
17 discovery other than that selected by the party
18 seeking discovery,
- 19 d. that certain matters not be inquired into, or that the
20 scope of the disclosure or discovery be limited to
21 certain matters,
- 22 e. that discovery be conducted with no one present except
23 persons designated by the court,

- f. that a deposition after being sealed be opened only by order of the court,
- g. that a trade secret or other confidential research, development or commercial information not be disclosed or be disclosed only in a designated way, and
- h. that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

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

- a. a statement that the court has determined it is necessary in the interests of justice to remove the material from the public record,
- b. specific identification of the material which is to be removed or withdrawn from the public record, or which is to be filed but not placed in the public record, and

1 c. a requirement that any party obtaining a protective
2 order place the protected material in a sealed manila
3 envelope clearly marked with the caption and case
4 number and is clearly marked with the word
5 "CONFIDENTIAL", and stating the date the order was
6 entered and the name of the judge entering the order.
7 This requirement may also be satisfied by requiring
8 the party to file the documents pursuant to the
9 procedure for electronically filing sealed or
10 confidential documents approved for electronic filing
11 in the courts of this state.

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

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

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

21 6. Counsel for the respective parties shall be responsible for
22 informing witnesses, as necessary, of the contents of the protective
23 order.
24

1 7. When a case is filed in which a party intends to seek a
2 protective order removing material from the public record, the
3 plaintiff(s) and defendant(s) shall be initially designated on the
4 petition under pseudonym such as "John or Jane Doe", or "Roe", and
5 the petition shall clearly indicate that the party designations are
6 fictitious. The party seeking confidentiality or other order
7 removing the case, in whole or in part, from the public record,
8 shall immediately present application to the court, seeking
9 instructions for the conduct of the case, including confidentiality
10 of the records.

11 D. SEQUENCE AND TIMING OF DISCOVERY. Unless the parties
12 stipulate or the court ~~upon motion~~, orders otherwise for the
13 convenience of parties and witnesses and in the interests of
14 justice, ~~orders otherwise~~, methods of discovery may be used in any
15 sequence. The fact that a party is conducting discovery, whether by
16 deposition or otherwise, shall not operate to delay discovery by any
17 other party.

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

22 1. A party is under a duty seasonably to supplement the
23 response with respect to any question directly addressed to:
24

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

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

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

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

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

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

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

- 1 1. A statement of the issues as they then appear;
- 2 2. A proposed plan and schedule of discovery;
- 3 3. Any limitations proposed to be placed on discovery;
- 4 4. Any other proposed orders with respect to discovery; and
- 5 5. A statement showing that the attorney making the motion has
- 6 made a reasonable effort to reach agreement with opposing attorneys
- 7 on the matters set forth in the motion.

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

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

23 Subject to the right of a party who properly moves for a
24 discovery conference to prompt convening of the conference, the

1 court may combine the discovery conference with a pretrial
2 conference.

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

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

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

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

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

24

1 If a certification is made in violation of the provisions of
2 this subsection, the court, upon motion or upon its own initiative,
3 shall impose upon the person who made the certification, the party
4 on whose behalf the request, response or objection is made, or both,
5 an appropriate sanction, which may include an order to pay to the
6 amount of the reasonable expenses occasioned thereby, including a
7 reasonable attorney fee.

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

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

13 1. To produce and permit the requesting party ~~making the~~
14 ~~request, or someone acting on the party's behalf,~~ its representative
15 to inspect, copy, test and or sample the following items in the
16 possession, custody or control of the responding party:

17 a. any designated documents or electronically stored
18 information - ~~including, but not limited to,~~ writings,
19 drawings, graphs, charts, photographs, ~~motion picture~~
20 ~~films, phonograph records, tape and video~~ sound
21 recordings, records images and other data or data
22 compilations - stored in any medium from which
23 information can be obtained ~~—translated~~ either
24 directly or, if necessary, after translation by the

1 ~~respondent through detection devices~~ responding party
2 into a reasonably usable form, or ~~to inspect and copy,~~
3 ~~test or sample~~

4 b. any designated tangible things ~~which constitute or~~
5 ~~contain matters within the scope of subsection B of~~
6 ~~Section 3226 of this title and which are in the~~
7 ~~possession, custody or control of the party upon whom~~
8 ~~the request is served; or~~

9 2. To permit entry ~~upon~~ onto designated land or other property
10 ~~in the possession or control of the~~ possessed or controlled by the
11 responding party upon whom the request is served for the purpose of
12 ~~inspection and measuring, surveying, photographing, testing or~~
13 ~~sampling~~ so that the requesting party may inspect, measure, survey,
14 photograph, test or sample the property or any designated object or
15 ~~operation thereon, within the scope of subsection B of Section 3226~~
16 ~~of this title~~ on it.

17 B. PROCEDURE. 1. ~~The request to produce or permit inspection~~
18 ~~or copying may, without leave of court, be served upon the plaintiff~~
19 ~~after commencement of the action and upon any other party with the~~
20 ~~summons and petition or after service of the summons and petition~~
21 ~~upon that party.~~

22 2. ~~The number of requests to produce or permit inspection or~~
23 ~~copying shall not exceed thirty in number. If counsel for a party~~
24 ~~believes that more than thirty requests to produce or permit~~

1 ~~inspection or copying are necessary, he or she shall consult with~~
2 ~~opposing counsel promptly and attempt to reach a written stipulation~~
3 ~~as to a reasonable number of additional requests. 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 requests for production or inspection~~
7 ~~shall file a motion with the court (1) showing that counsel have~~
8 ~~conferred in good faith but sincere attempts to resolve the issue~~
9 ~~have been unavailing, (2) showing reasons establishing good cause~~
10 ~~for their use, and (3) setting forth the proposed additional~~
11 ~~requests for production or inspection.~~

12 ~~3.~~ The request:

- 13 a. shall ~~set forth~~ and describe with reasonable
14 particularity ~~the~~ each item or category of items to be
15 inspected ~~either by individual item or by category,~~
16 b. shall specify a reasonable time, place and manner ~~of~~
17 ~~making~~ for the inspection and for performing the
18 related acts, and
19 c. may specify the form or forms in which electronically
20 stored information is to be produced.

21 ~~4.~~

- 22 2. a. The party, ~~upon~~ to whom the request is ~~served,~~
23 directed shall ~~serve a written response~~ respond in
24 writing within thirty (30) days after ~~the service of~~

1 ~~the request, except that a defendant may serve a~~
2 ~~response within forty-five (45) days after service of~~
3 ~~the summons and petition upon that defendant. The~~
4 ~~court may allow a shorter or longer time being served.~~

5 b. ~~The~~ For each item or category, the response shall
6 either state, ~~with respect to each item or category,~~
7 that inspection and related activities ~~shall~~ will be
8 permitted as requested, ~~unless~~ or state with
9 specificity the grounds for objecting to the request
10 ~~is objected to, in which event,~~ including the reasons
11 ~~for objection shall be stated. If objection is made~~
12 ~~to part of an item or category, the part shall be~~
13 ~~specified and inspection permitted of the remaining~~
14 ~~parts.~~ The responding party may state that it will
15 produce copies of documents or of electronically
16 stored information instead of permitting inspection.
17 The production shall be completed no later than the
18 time for inspection specified in the request, or
19 another reasonable time specified in the response.

20 c. ~~If objection is made to the requested form or forms~~
21 ~~for producing electronically stored information, or if~~
22 ~~no form was specified in the request, the responding~~
23 ~~party shall state the form or forms it intends to use.~~

1 d. ~~The party submitting the request may move for an order~~
2 ~~under subsection A of Section 3237 of this title with~~
3 ~~respect to any objection to or other failure to~~
4 ~~respond to the request or any part thereof, or any~~
5 ~~failure to permit inspection as requested.~~

6 5. ~~Unless the parties otherwise agree, or the court otherwise~~
7 ~~orders:~~

8 a. ~~a party who produces documents for inspection shall~~
9 ~~produce them as they are kept in the usual course of~~
10 ~~business or shall organize and label them to~~
11 ~~correspond with the categories in the request,~~

12 b. ~~if a request does not specify the form or forms for~~
13 ~~producing electronically stored information, a~~
14 ~~responding party shall produce the information in a~~
15 ~~form or forms in which it is ordinarily maintained or~~
16 ~~in a form or forms that are reasonably usable, and~~

17 c. ~~a party is not required to produce the same~~
18 ~~electronically stored information in more than one~~
19 ~~form. An objection shall state whether any responsive~~
20 ~~materials are being withheld on the basis of that~~
21 ~~objection. An objection to part of a request shall~~
22 ~~specify the part and permit inspection of the rest,~~

23 d. The response may state an objection to a requested
24 form for producing electronically stored information.

1 If the responding party objects to a requested form,
2 or if no form was specified in the request, the party
3 shall state the form or forms it intends to use,
4 e. Unless otherwise stipulated or ordered by the court,
5 these procedures apply to producing documents or
6 electronically stored information:

7 (1) a party shall produce documents as they are kept
8 in the usual course of business or shall organize
9 and label them to correspond to the categories in
10 the request,

11 (2) if a request does not specify a form for
12 producing electronically stored information, a
13 party shall produce it in a form or forms in
14 which it is ordinarily maintained or in a
15 reasonably usable form or forms, and

16 (3) A party need not produce the same electronically
17 stored information in more than one form.

18 C. ~~PERSONS NOT PARTIES~~ NONPARTIES. A ~~person not a party to the~~
19 ~~action~~ nonparty may be compelled to produce documents and tangible
20 things or to ~~submit to~~ permit an inspection as provided in Section
21 2004.1 of this title.

22 SECTION 5. AMENDATORY 12 O.S. 2011, Section 3237, is
23 amended to read as follows:
24

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

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

12 2. MOTION. If a deponent fails to answer a question propounded
13 or submitted under Section 3230 or 3231 of this title, or a
14 corporation or other entity fails to make a designation under
15 paragraph 6 of subsection C of Section 3230 or subsection A of
16 Section 3231 of this title, or a party fails to answer an
17 interrogatory submitted under Section 3233 of this title, or if a
18 party, in response to a request for inspection and copying submitted
19 under Section 3234 of this title, fails to produce documents or
20 respond that the inspection or copying will be permitted as
21 requested or fails to permit the inspection or copying as requested,
22 or if a party or witness objects to the inspection or copying of any
23 materials designated in a subpoena issued pursuant to subsection A
24 of Section 2004.1 of this title, the discovering party may move for

1 an order compelling an answer, or a designation, or an order
2 compelling inspection and copying in accordance with the request or
3 subpoena. The motion must include a statement that the movant has
4 in good faith conferred or attempted to confer either in person or
5 by telephone with the person or party failing to make the discovery
6 in an effort to secure the information or material without court
7 action. When taking a deposition on oral examination, the proponent
8 of the question may complete or adjourn the examination before
9 applying for an order.

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

- 20 a. the author or authors,
- 21 b. the recipient or recipients,
- 22 c. its origination date,
- 23 d. its length,

24

- e. the nature of the document or its intended purpose,
and
- f. the basis for the objection.

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

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

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

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney fees, unless the court finds that the making of

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

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

6 B. FAILURE TO COMPLY WITH ORDER.

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

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

- 22 a. An order that the matters regarding which the order
23 was made or any other designated facts shall be taken
24 to be established for the purposes of the action in

1 accordance with the claim of the party obtaining the
2 order,

3 b. An order refusing to allow the disobedient party to
4 support or oppose designated claims or defenses, or
5 prohibiting him from introducing designated matters in
6 evidence,

7 c. An order striking out pleadings or parts thereof, or
8 staying further proceedings until the order is obeyed,
9 or dismissing the action or proceedings or any part
10 thereof, or rendering a judgment by default against
11 the disobedient party,

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

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

1 f. If a person, not a party, fails to obey an order
2 entered under subsection C of Section 3234 of this
3 title, the court may treat the failure to obey the
4 order as contempt of court.

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

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

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

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

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

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

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

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

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

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

18 3. To serve a written response to a request for inspection
19 submitted under Section 3234 of this title, after proper service of
20 the request;
21 the court in which the action is pending on motion may make such
22 orders in regard to the failure as are just, and among others it may
23 take any action authorized under subparagraphs a, b and c of
24 paragraph 2 of subsection B of this section. In lieu of or in

1 addition to any order, the court shall require the party failing to
2 act or the attorney advising him or her or both to pay the
3 reasonable expenses, including attorney fees, caused by the failure,
4 unless the court finds that the failure was substantially justified
5 or that other circumstances make an award of expenses unjust.

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

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

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

17 G. ELECTRONICALLY STORED INFORMATION. Absent exceptional
18 circumstances, a court may not impose sanctions on a party for
19 failure to provide electronically stored information lost as a
20 result of the routine, good-faith operation of an electronic
21 information system.

22 SECTION 6. This act shall become effective November 1, 2017.
23

24 56-1-8063 EK 05/20/17

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