

1 ENGROSSED HOUSE
2 BILL NO. 2789

By: Walke of the House

3 and

4 Rosino of the Senate

5
6
7 An Act relating to civil procedure; amending 12 O.S.
8 2011, Section 2004.1, which relates to subpoenas;
9 providing for electronic service of subpoenas in
10 criminal cases; and providing an effective date.

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

12 SECTION 1. AMENDATORY 12 O.S. 2011, Section 2004.1, is
13 amended to read as follows:

14 Section 2004.1

15 SUBPOENA

16 A. SUBPOENA; FORM; ISSUANCE.

17 1. Every subpoena shall:

18 a. state the name of the court from which it is issued
19 and the title of the action, and

20 b. command each person to whom it is directed to attend
21 and give testimony or to produce and permit
22 inspection, copying, testing or sampling of designated
23 books, documents, electronically stored information or
24 tangible things in the possession, custody or control

1 of that person, or to permit inspection of premises,
2 at a time and place therein specified. A subpoena may
3 specify the form or forms in which electronically
4 stored information is to be produced.

5 2. A subpoena shall issue from the court where the action is
6 pending, and it may be served at any place within the state.

7 a. Deposition in Action Pending Outside of This State.

8 If the action is pending outside of this state, the
9 district court for the county in which the deposition
10 is to be taken shall issue the subpoena and, upon
11 application, any other order or process that may be
12 appropriate in aid of discovery in that action. Proof
13 of service of a notice to take deposition constitutes
14 a sufficient authorization for the issuance of
15 subpoenas for the persons named or described therein.

16 b. Subpoena for Production or Inspection in Action
17 Pending Outside of This State.

18 If the action is pending outside of this state, the
19 district court for the county in which the production
20 or inspection is to be made shall issue a subpoena for
21 production or inspection as provided in subparagraph b
22 of paragraph 1 of subsection A of this section, if
23 separate from a subpoena commanding the attendance of
24 a person, and upon application, any other order or

1 process that may be appropriate in aid of discovery in
2 that action. Proof of service of a notice of request
3 for production of documents without a deposition
4 constitutes a sufficient authorization for the
5 issuance of a subpoena for production or inspection,
6 and.

7 c. Judicial Assistance or Review Available.

8 Any person seeking an order or process in aid of
9 discovery or any person aggrieved by the issuance or
10 enforcement of a subpoena issued in aid of discovery
11 for an action pending outside of this state may obtain
12 judicial assistance or review upon the filing of a
13 civil action and payment of required fees.

14 3. A witness shall be obligated upon service of a subpoena to
15 attend a trial or hearing at any place within the state and to
16 attend a deposition or produce or allow inspection of documents at a
17 location that is authorized by subsection B of Section 3230 of this
18 title.

19 4. The clerk shall issue a subpoena, or a subpoena for the
20 production of documentary evidence, signed and sealed but otherwise
21 in blank, to a party requesting it, who shall fill it in before
22 service. As an officer of the court, an attorney authorized to
23 practice law in this state may also issue and sign a subpoena on
24 behalf of a court of this state.

1 5. Leave of court for issuance of a subpoena for the production
2 of documentary evidence shall be required if the plaintiff seeks to
3 serve a subpoena for the production of documentary evidence on any
4 person who is not a party prior to the expiration of thirty (30)
5 days after service of the summons and petition upon any defendant.

6 6. Notwithstanding any other provision of law, a court clerk of
7 this state shall not be subject to a subpoena in matters relating to
8 court records unless the court makes a specific finding that the
9 appearance and testimony of the court clerk are both material and
10 necessary because of a written objection to the introduction of the
11 court records made by a party prior to trial.

12 B. 1. SERVICE. Service of a subpoena upon a person named
13 therein shall be made by delivering or mailing a copy thereof to
14 such person and, if the person's attendance is demanded, by
15 tendering to that person the fees for one (1) day's attendance and
16 the mileage allowed by law. Service of a subpoena may be
17 accomplished by any person who is eighteen (18) years of age or
18 older. A copy of any subpoena that commands production of documents
19 and things or inspection of premises before trial shall be served on
20 each party in the manner prescribed by subsection B of Section 2005
21 of this title. If the subpoena commands production of documents and
22 things or inspection of premises from a nonparty before trial but
23 does not require attendance of a witness, the subpoena shall specify
24 a date for the production or inspection that is at least seven (7)

1 days after the date that the subpoena and copies of the subpoena are
2 served on the witness and all parties, and the subpoena shall
3 include the following language: "In order to allow objections to
4 the production of documents and things to be filed, you should not
5 produce them until the date specified in this subpoena, and if an
6 objection is filed, until the court rules on the objection."

7 2. Service of a subpoena by mail may be accomplished by mailing
8 a copy thereof by certified mail with return receipt requested and
9 delivery restricted to the person named in the subpoena. The person
10 serving the subpoena shall make proof of service thereof to the
11 court promptly and, in any event, before the witness is required to
12 testify at the hearing or trial. If service is made by a person
13 other than a sheriff or deputy sheriff, such person shall make
14 affidavit thereof. If service is by mail, the person serving the
15 subpoena shall show in the proof of service the date and place of
16 mailing and attach a copy of the return receipt showing that the
17 mailing was accepted. Failure to make proof of service does not
18 affect the validity of the service, but service of a subpoena by
19 mail shall not be effective if the mailing was not accepted by the
20 person named in the subpoena. Costs of service shall be allowed
21 whether service is made by the sheriff, the sheriff's deputy, or any
22 other person. When the subpoena is issued on behalf of a state
23 department, board, commission, or legislative committee, fees and
24 mileage shall be paid to the witness at the conclusion of the

1 testimony out of funds appropriated to the state department, board,
2 commission, or legislative committee.

3 3. For purposes of criminal procedure, service may also be
4 accomplished by electronically transmitting a copy of the subpoena,
5 acknowledgment of receipt requested, to the person's last-known
6 electronic address via text or email. Service shall be effected
7 when the witness acknowledges receipt of the subpoena to the sender
8 by telephone, email, completion of the sender's online form, or in
9 person. Verification of identity may occur by reference to date of
10 birth or other identifying information, such as driver license or
11 Social Security number. Failure to comply with a subpoena issued
12 and acknowledged pursuant to this section may be punished as a
13 contempt and the subpoena may so state; provided, that a warrant of
14 arrest shall not be issued based on failure to appear on a subpoena
15 electronically issued pursuant to this subsection.

16 C. PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

17 1. A party or an attorney responsible for the issuance and
18 service of a subpoena shall take reasonable steps to avoid imposing
19 undue burden or expense on a person subject to that subpoena. The
20 court on behalf of which the subpoena was issued shall enforce this
21 duty and impose upon the party or attorney, or both, in breach of
22 this duty an appropriate sanction, which may include, but is not
23 limited to, lost earnings and a reasonable attorney fee.

1 2. a. A person commanded to produce and permit inspection,
2 copying, testing or sampling of designated books,
3 papers, documents, electronically stored information
4 or tangible things, or inspection of premises need not
5 appear in person at the place of production or
6 inspection unless commanded to appear for deposition,
7 hearing or trial.

8 b. Subject to paragraph 2 of subsection D of this
9 section, a person commanded to produce and permit
10 inspection, copying, testing or sampling or any party
11 may, within fourteen (14) days after service of the
12 subpoena or before the time specified for compliance
13 if such time is less than fourteen (14) days after
14 service, serve written objection to inspection,
15 copying, testing or sampling of any or all of the
16 designated materials or of the premises, or to
17 producing electronically stored information in the
18 form or forms requested. An objection that all or a
19 portion of the requested material will or should be
20 withheld on a claim that it is privileged or subject
21 to protection as trial preparation materials shall be
22 made within this time period and in accordance with
23 subsection D of this section. If the objection is
24 made by the witness, the witness shall serve the

1 objection on all parties; if objection is made by a
2 party, the party shall serve the objection on the
3 witness and all other parties. If objection is made,
4 the party serving the subpoena shall not be entitled
5 to inspect, copy, test or sample the materials or
6 inspect the premises except pursuant to an order of
7 the court by which the subpoena was issued. For
8 failure to object in a timely fashion, the court may
9 assess reasonable costs and attorney fees or take any
10 other action it deems proper; however, a privilege or
11 the protection for trial preparation materials shall
12 not be waived solely for a failure to timely object
13 under this section. If objection has been made, the
14 party serving the subpoena may, upon notice to the
15 person commanded to produce, move at any time for an
16 order to compel the production. Such an order to
17 compel production shall protect any person who is not
18 a party or an officer of a party from significant
19 expense resulting from the inspection and copying
20 commanded.

- 21 3. a. On timely motion, the court by which a subpoena was
22 issued shall quash or modify the subpoena if it:
23 (1) fails to allow reasonable time for compliance,
24

- 1 (2) requires a person to travel to a place beyond the
2 limits allowed under paragraph 3 of subsection A
3 of this section,
4 (3) requires disclosure of privileged or other
5 protected matter and no exception or waiver
6 applies,
7 (4) subjects a person to undue burden, or
8 (5) requires production of books, papers, documents
9 or tangible things that fall outside the scope of
10 discovery permitted by Section 3226 of this
11 title.

12 b. If a subpoena:

- 13 (1) requires disclosure of a trade secret or other
14 confidential research, development, or commercial
15 information, or
16 (2) requires disclosure of an unretained expert's
17 opinion or information not describing specific
18 events or occurrences in dispute and resulting
19 from the expert's study made not at the request
20 of any party,

21 the court may, to protect a person subject to or
22 affected by the subpoena, quash or modify the
23 subpoena. However, if the party in whose behalf the
24 subpoena is issued shows a substantial need for the

1 testimony or material that cannot be otherwise met
2 without undue hardship and assures that the person to
3 whom the subpoena is addressed will be reasonably
4 compensated, the court may order appearance or
5 production only upon specified conditions.

6 D. DUTIES IN RESPONDING TO SUBPOENA.

7 1. a. A person responding to a subpoena to produce documents
8 shall produce them as they are kept in the usual
9 course of business or shall organize and label them to
10 correspond with the categories in the demand.

11 b. If a subpoena does not specify the form or forms for
12 producing electronically stored information, a person
13 responding to a subpoena shall produce the information
14 in a form or forms in which the person ordinarily
15 maintains it or in a form or forms that are reasonably
16 usable.

17 c. A person responding to a subpoena is not required to
18 produce the same electronically stored information in
19 more than one form.

20 d. A person responding to a subpoena is not required to
21 provide discovery of electronically stored information
22 from sources that the person identifies as not
23 reasonably accessible because of undue burden or cost.
24 If such showing is made, the court may order discovery

1 from such sources if the requesting party shows good
2 cause, considering the limitations of subparagraph c
3 of paragraph 2 of subsection B of Section 3226 of this
4 title. The court may specify conditions for the
5 discovery.

6 2. a. When information subject to a subpoena is withheld on
7 a claim that it is privileged or subject to protection
8 as trial preparation materials, the claim shall be
9 made expressly and shall be supported by a description
10 of the nature of the documents, communications, or
11 things not produced that is sufficient to enable the
12 demanding party to contest the claim.

13 b. If information is produced in response to a subpoena
14 that is subject to a claim or privilege or of
15 protection as trial preparation material, the person
16 making the claim may notify any party that received
17 the information of the claim and the basis for such
18 claim. After being notified, a party shall promptly
19 return, sequester, or destroy the specified
20 information and any copies the party has and may not
21 use or disclose the information until the claim is
22 resolved. A receiving party may promptly present the
23 information to the court under seal for a
24 determination of the claim. If the receiving party

