

1 ENGROSSED SENATE AMENDMENT
TO
2 ENGROSSED HOUSE
BILL NO. 1920

By: Jordan of the House
and
Sykes of the Senate

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7 An Act relating to civil procedure; amending 12 O.S.
8 2011, Section 3233, which relates to the Oklahoma
9 Discovery Code; requiring restatement of
interrogatory when answering; and providing an
effective date.

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11 AMENDMENT NO. 1. Page 1, substitute the following for the title,
12 enacting clause and the entire body of the bill:

13 "An Act relating to discovery; amending 12 O.S. 2011,
14 Section 3233, which relates to interrogatories;
15 requiring restatement of interrogatory when
16 answering; authorizing appointment of discovery
17 master; requiring certain orders to contain specified
18 findings; establishing procedures for certain
19 disqualification; requiring certain notice;
20 specifying contents of certain orders; authorizing
21 amendment of certain orders; requiring certain oath;
22 establishing authority of discovery master; providing
23 for certain sanctions; requiring filing of certain
24 report; establishing procedures for adoption or
modification of certain report; requiring certain
review; establishing guidelines for certain
compensation; construing provision; providing certain
immunity from civil liability; providing for
codification; and providing an effective date.

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

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 3225.1 of Title 12, unless there
4 is created a duplication in numbering, reads as follows:

5 A. Appointment.

6 1. Scope. Unless a statute provides otherwise, on motion by a
7 party or on its own motion, upon hearing unless waived, a court may
8 in its discretion appoint a discovery master to:

9 a. perform duties related to discovery, consented to by
10 the parties, or

11 b. address pretrial and posttrial discovery matters to
12 facilitate effective and timely resolution.

13 2. Required Findings. An order appointing a discovery master
14 under subparagraph b of paragraph 1 of subsection A of this section
15 shall contain the following findings by the court:

16 a. the appointment and referral are necessary in the
17 administration of justice due to the nature,
18 complexity or volume of the materials involved, or for
19 other exceptional circumstances,

20 b. the likely benefit of the appointment of a discovery
21 master outweighs its burden or expense, considering
22 the needs of the case, the amount in controversy, the
23 parties' resources, the importance of the issues at
24 stake in the action, the importance of the referred

1 issues in resolving the matter or proceeding in which
2 the appointment is made, and

3 c. the appointment will not improperly burden the rights
4 of the parties to access the courts.

5 3. Possible Expense or Delay. In appointing a discovery
6 master, the court shall consider the fairness of imposing the likely
7 expenses on the parties and shall protect against unreasonable
8 expense or delay.

9 B. Disqualification.

10 1. In General. A discovery master shall not have a
11 relationship to the parties, attorneys, action, or court that would
12 require disqualification of a judge, unless the parties, with the
13 court's approval, consent to the appointment after the discovery
14 master discloses any potential grounds for disqualification.

15 2. Disclosure. The discovery master shall disclose any
16 possible conflicts within fourteen (14) days of appointment.

17 3. Motions to Disqualify. A motion to disqualify a discovery
18 master shall be made within fourteen (14) days of the discovery
19 master's disclosure of the conflict. The discovery master shall
20 rule originally on any motion to disqualify.

21 4. Review by Assigned Judge. Any interested party who deems
22 himself or herself aggrieved by the refusal of a discovery master to
23 grant a motion to disqualify may present his or her motion to the
24 judge assigned to the case by filing in the case within five (5)

1 days from the date of the refusal a written request for rehearing.
2 A copy of the request shall be mailed or delivered to the judge
3 assigned to the case, to the adverse party and to the discovery
4 master.

5 5. Review by Presiding Judge. Any interested party who deems
6 himself or herself aggrieved by the refusal of the judge assigned to
7 the case to grant a motion to disqualify the discovery master may
8 present his or her motion to the presiding judge of the county in
9 which the case is pending. A copy of the request shall be mailed or
10 delivered to the presiding judge, to the adverse party, to the judge
11 assigned to the case, and to the discovery master.

12 6. Review by Supreme Court. If the hearing before the
13 presiding judge results in an order adverse to the movant, the
14 movant shall be granted not more than five (5) days to institute a
15 proceeding in the Supreme Court for a writ of mandamus. The Supreme
16 Court shall not entertain an original proceeding to disqualify a
17 discovery master unless it is shown that the relief sought was
18 previously denied by the discovery master, the judge assigned to the
19 case, and the presiding judge, in accordance with this section. An
20 order favorable to the moving party may not be reviewed by appeal or
21 other method.

22 C. Order Appointing a Discovery Master.
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1 1. Notice. Before appointing a discovery master, the court
2 shall give the parties notice and an opportunity to be heard unless
3 waived. Any party may suggest candidates for appointment.

4 2. Contents. The appointing order shall direct the discovery
5 master to proceed with all reasonable diligence and shall state:

- 6 a. the discovery master's duties, including any
7 investigation or enforcement duties, and any limits on
8 the discovery master's authority under subparagraph c
9 of this paragraph,
- 10 b. the circumstances, if any, in which the discovery
11 master may communicate ex parte with a party,
- 12 c. any limitations on the discovery master's
13 communications with the court,
- 14 d. the nature of the materials to be preserved and filed
15 as the record of the discovery master's activities,
- 16 e. the time limits, method of filing the record, other
17 procedures, and standards for reviewing the discovery
18 master's orders, findings, and recommendations, and
- 19 f. the basis, terms, and procedure for fixing the
20 discovery master's compensation under subsection G of
21 this section.

22 The court shall have the discretion to direct the discovery
23 master to circulate a proposed appointing order to the parties and
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1 provide a time period for the parties to comment prior to the
2 order's entry.

3 3. Amending. The order may be amended at any time after notice
4 to the parties and an opportunity to be heard.

5 4. Oath. Before the appointing order shall take effect, the
6 discovery master shall execute and file an oath that he or she will
7 faithfully execute the duties imposed by the order of appointment
8 and any amendments thereto.

9 D. Discovery Master's Authority.

10 1. In General. Unless the appointing order directs otherwise,
11 a discovery master may:

- 12 a. regulate all proceedings and respond to all discovery
13 motions of the parties within the scope of
14 appointment, including resolving all discovery
15 disputes between the parties,
- 16 b. call discovery conferences under Rule 5 of the Rules
17 for District Courts, at the request of a party or on
18 the discovery master's own motion,
- 19 c. set procedures for the timing and orderly presentation
20 of discovery disputes for resolution,
- 21 d. take all appropriate measures to perform the assigned
22 duties fairly and efficiently, and
- 23 e. if conducting an evidentiary hearing, exercise the
24 appointing court's power to take and record evidence,

1 including compelling appearance of witnesses or
2 production of documents in connection with these
3 duties.

4 2. Sanctions. The discovery master may recommend any sanction
5 provided by Sections 2004.1, 3226.1 or 3237 of Title 12 of the
6 Oklahoma Statutes.

7 E. Discovery Master's Orders, Reports, and Recommendations. A
8 discovery master who issues an order, report or recommendation shall
9 file it and promptly serve a copy on each party. The clerk shall
10 enter the order, report or recommendation on the docket.

11 F. Action on the Discovery Master's Order, Report or
12 Recommendations.

13 1. Time to Object or Move to Adopt or Modify. A party may file
14 objections to or a motion to adopt or modify the discovery master's
15 order, report or recommendations no later than fourteen (14) days
16 after a copy is filed, unless this section or the court sets a
17 different time. If no objection or motion to adopt or modify is
18 filed, the district court may approve the discovery master's order,
19 report or recommendations without further notice or hearing.

20 2. Action Generally. Upon the filing of objections to or a
21 motion to adopt or modify the discovery master's order, report or
22 recommendations within the time permitted, any party may respond
23 within fifteen (15) days after the objections or motions are filed.
24 If objections and motions are decided by the court without a

1 hearing, the court shall notify the parties of its ruling by mail.
2 In acting on a discovery master's order, report or recommendations,
3 the court may receive evidence; and may adopt or affirm, modify,
4 wholly or partly reject or reverse, or resubmit to the discovery
5 master with instructions.

6 3. Reviewing Factual Findings. The court shall decide de novo
7 all objections to findings of fact made or recommended by a
8 discovery master, unless the parties, with the court's approval,
9 stipulate that:

- 10 a. the findings will be reviewed for clear error, or
- 11 b. the findings of a discovery master appointed under
12 paragraph 1 of subsection A of this section will be
13 final.

14 4. Reviewing Legal Conclusions. The court shall decide de novo
15 all objections to conclusions of law made or recommended by a
16 discovery master.

17 5. Reviewing Procedural Matters. Unless the appointing order
18 establishes a different standard of review, the court may set aside
19 a discovery master's ruling on a procedural matter only for an abuse
20 of discretion.

21 G. Compensation.

22 1. Fixing Compensation. Before or after judgment, the court
23 shall fix the discovery master's compensation on the basis and terms
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1 stated in the appointing order, but the court may set a new basis
2 and terms after giving notice and an opportunity to be heard.

3 2. Payment. The compensation shall be paid either:

4 a. by a party or parties, or

5 b. from a fund that is the subject of the specific action
6 or proceeding, or other subject matter of the specific
7 action or proceeding, to the extent such fund or
8 subject matter is within the court's control and
9 within the court's in rem jurisdiction. The
10 compensation shall not be paid from the court fund.

11 3. Allocating Payment. The court shall allocate payment after
12 considering the nature and amount of the controversy, the parties'
13 means, and the extent to which any party is more responsible than
14 other parties for the reference to a discovery master. An interim
15 allocation may be amended to reflect a decision on the merits.

16 H. Other Statutes. A referee or master appointed under the
17 authority of another statute or provision is subject to this section
18 only when the order referring a matter to the referee or master
19 states that the reference is made under this section. Nothing in
20 this section shall be construed to replace or supersede any other
21 statute or provision authorizing the appointment of a referee or
22 master.

23 I. A discovery master appointed pursuant to this section acting
24 in such capacity shall be immune from civil liability to the same

1 extent as a judge of a court of this state acting in a judicial
2 capacity.

3 SECTION 2. AMENDATORY 12 O.S. 2011, Section 3233, is
4 amended to read as follows:

5 Section 3233. A. AVAILABILITY; PROCEDURES FOR USE. Any party
6 may serve upon any other party written interrogatories to be
7 answered by the party served or, if the party served is a public or
8 private corporation or a partnership or association or governmental
9 agency, by any officer or agent, who shall furnish such information
10 as is available to that party. Interrogatories may, without leave
11 of court, be served upon the plaintiff after commencement of the
12 action or upon any other party with the summons and petition or
13 after service of the summons and petition on that party.

14 Each interrogatory shall be answered separately and fully in
15 writing under oath, unless it is objected to, in which event the
16 objecting party shall state the reasons for objection and shall
17 answer to the extent the interrogatory is not objectionable. When
18 answering each interrogatory, the party shall restate the
19 interrogatory, then provide the answer. The number of
20 interrogatories to a party shall not exceed thirty in number.
21 Interrogatories inquiring as to the names and locations of
22 witnesses, or the existence, location and custodian of documents or
23 physical evidence shall be construed as one interrogatory. All
24 other interrogatories, including subdivisions of one numbered

1 interrogatory, shall be construed as separate interrogatories. No
2 further interrogatories will be served unless authorized by the
3 court. If counsel for a party believes that more than thirty
4 interrogatories are necessary, he shall consult with opposing
5 counsel promptly and attempt to reach a written stipulation as to a
6 reasonable number of additional interrogatories. Counsel are
7 expected to comply with this requirement in good faith. In the
8 event a written stipulation cannot be agreed upon, the party seeking
9 to submit such additional interrogatories shall file a motion with
10 the court (1) showing that counsel have conferred in good faith but
11 sincere attempts to resolve the issue have been unavailing, (2)
12 showing reasons establishing good cause for their use, and (3)
13 setting forth the proposed additional interrogatories. The answers
14 are to be signed by the person making them, and the objections
15 signed by the attorney making them. The party upon whom the
16 interrogatories have been served shall serve a copy of the answers,
17 and objections if any, within thirty (30) days after the service of
18 the interrogatories, except that a defendant may serve answers or
19 objections to interrogatories within forty-five (45) days after
20 service of the summons and complaint upon that defendant. A shorter
21 or longer time may be directed by the court or, in the absence of
22 such an order, agreed to in writing by the parties subject to
23 Section 3229 of this title. All grounds for an objection to an
24 interrogatory shall be stated with specificity. Any ground not

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

6 B. SCOPE; USE AT TRIAL. Interrogatories may relate to any
7 matters which can be inquired into under subsection B of Section
8 3226 of this title, and the answers may be used to the extent
9 permitted by the Oklahoma Evidence Code as set forth in Sections
10 2101 et seq. of this title.

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

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

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

9 SECTION 3. This act shall become effective November 1, 2015."
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11 Passed the Senate the 22nd day of April, 2015.
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13 _____
14 Presiding Officer of the Senate

15 Passed the House of Representatives the ____ day of _____,
16 2015.

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18 _____
19 Presiding Officer of the House
20 of Representatives
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1 ENGROSSED HOUSE
2 BILL NO. 1920

By: Jordan of the House
and
Sykes of the Senate

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7 An Act relating to civil procedure; amending 12 O.S.
8 2011, Section 3233, which relates to the Oklahoma
9 Discovery Code; requiring restatement of
interrogatory when answering; and providing an
effective date.

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

SECTION 4. AMENDATORY 12 O.S. 2011, Section 3233, is amended to read as follows:

Section 3233. A. AVAILABILITY; PROCEDURES FOR USE. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to that party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action or upon any other party with the summons and petition or after service of the summons and petition on that party.

1 Each interrogatory shall be answered separately and fully in
2 writing under oath, unless it is objected to, in which event the
3 objecting party shall state the reasons for objection and shall
4 answer to the extent the interrogatory is not objectionable. When
5 answering each interrogatory, the party shall restate the
6 interrogatory then provide the answer. The number of
7 interrogatories to a party shall not exceed thirty in number.
8 Interrogatories inquiring as to the names and locations of
9 witnesses, or the existence, location and custodian of documents or
10 physical evidence shall be construed as one interrogatory. All
11 other interrogatories, including subdivisions of one numbered
12 interrogatory, shall be construed as separate interrogatories. No
13 further interrogatories will be served unless authorized by the
14 court. If counsel for a party believes that more than thirty
15 interrogatories are necessary, he shall consult with opposing
16 counsel promptly and attempt to reach a written stipulation as to a
17 reasonable number of additional interrogatories. Counsel are
18 expected to comply with this requirement in good faith. In the
19 event a written stipulation cannot be agreed upon, the party seeking
20 to submit such additional interrogatories shall file a motion with
21 the court (1) showing that counsel have conferred in good faith but
22 sincere attempts to resolve the issue have been unavailing, (2)
23 showing reasons establishing good cause for their use, and (3)
24 setting forth the proposed additional interrogatories. The answers

1 are to be signed by the person making them, and the objections
2 signed by the attorney making them. The party upon whom the
3 interrogatories have been served shall serve a copy of the answers,
4 and objections if any, within thirty (30) days after the service of
5 the interrogatories, except that a defendant may serve answers or
6 objections to interrogatories within forty-five (45) days after
7 service of the summons and complaint upon that defendant. A shorter
8 or longer time may be directed by the court or, in the absence of
9 such an order, agreed to in writing by the parties subject to
10 Section 3229 of this title. All grounds for an objection to an
11 interrogatory shall be stated with specificity. Any ground not
12 stated in a timely objection is waived unless the party's failure to
13 object is excused by the court for good cause shown. The party
14 submitting the interrogatories may move for an order under
15 subsection A of Section 3237 of this title with respect to any
16 objection to or other failure to answer an interrogatory.

17 B. SCOPE; USE AT TRIAL. Interrogatories may relate to any
18 matters which can be inquired into under subsection B of Section
19 3226 of this title, and the answers may be used to the extent
20 permitted by the Oklahoma Evidence Code as set forth in Sections
21 2101 et seq. of this title.

22 An interrogatory otherwise proper is not necessarily
23 objectionable because an answer to the interrogatory involves an
24 opinion or contention that relates to fact or the application of law

1 to fact. The court may order that such an interrogatory need not be
2 answered until after designated discovery has been completed or
3 until a pretrial conference or other later time.

4 C. OPTION TO PRODUCE BUSINESS RECORDS. Where the answer to an
5 interrogatory may be derived or ascertained from the business
6 records, including electronically stored information, of the party
7 upon whom the interrogatory has been served or from an examination,
8 audit or inspection of such business records, including a
9 compilation, abstract or summary thereof, and the burden of deriving
10 or ascertaining the answer is substantially the same for the party
11 serving the interrogatory as for the party served, it is a
12 sufficient answer to such interrogatory to specify the records from
13 which the answer may be derived or ascertained and to afford to the
14 party serving the interrogatory reasonable opportunity to examine,
15 audit or inspect such records and to make copies, compilations,
16 abstracts or summaries thereof. A specification shall be in
17 sufficient detail to permit the party submitting the interrogatory
18 to locate and to identify, as readily as can the party served, the
19 records from which the answer may be ascertained.

20 SECTION 5. This act shall become effective November 1, 2015.
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1 Passed the House of Representatives the 4th day of March, 2015.

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3 _____
4 Presiding Officer of the House
of Representatives

5 Passed the Senate the ____ day of _____, 2015.

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8 _____
9 Presiding Officer of the Senate