

1 **SENATE FLOOR VERSION**

2 February 24, 2015

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 802

By: Crain

6 An Act relating to discovery master; authorizing
7 appointment of discovery master; requiring certain
8 orders to contain specified findings; establishing
9 procedures for certain disqualification; requiring
10 certain notice; specifying contents of certain
11 orders; authorizing amendment of certain orders;
12 requiring certain oath; establishing authority of
13 discovery master; providing for certain sanctions;
14 requiring filing of certain report; establishing
15 procedures for adoption or modification of certain
16 report; requiring certain review; establishing
17 guidelines for certain compensation; construing
18 provision; providing certain immunity from civil
19 liability; providing for codification; and providing
20 an effective date.

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

22 SECTION 1. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 2053 of Title 12, unless there
24 is created a duplication in numbering, reads as follows:

A. Appointment.

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

- 1 a. perform duties related to discovery, consented to by
2 the parties, or
3 b. address pretrial and posttrial discovery matters to
4 facilitate effective and timely resolution.

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

- 8 a. the appointment and referral are necessary in the
9 administration of justice due to the nature,
10 complexity or volume of the materials involved, or for
11 other exceptional circumstances,
12 b. the likely benefit of the appointment of a discovery
13 master outweighs its burden or expense, considering
14 the needs of the case, the amount in controversy, the
15 parties' resources, the importance of the issues at
16 stake in the action, the importance of the referred
17 issues in resolving the matter or proceeding in which
18 the appointment is made, and
19 c. the appointment will not improperly burden the rights
20 of the parties to access the courts.

21 3. Possible Expense or Delay. In appointing a discovery
22 master, the court shall consider the fairness of imposing the likely
23 expenses on the parties and shall protect against unreasonable
24 expense or delay.

1 B. Disqualification.

2 1. In General. A discovery master shall not have a
3 relationship to the parties, attorneys, action, or court that would
4 require disqualification of a judge, unless the parties, with the
5 court's approval, consent to the appointment after the discovery
6 master discloses any potential grounds for disqualification.

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

9 3. Motions to Disqualify. A motion to disqualify a discovery
10 master shall be made within fourteen (14) days of the discovery
11 master's disclosure of the conflict. The discovery master shall
12 rule originally on any motion to disqualify.

13 4. Review by Assigned Judge. Any interested party who deems
14 himself or herself aggrieved by the refusal of a discovery master to
15 grant a motion to disqualify may present his or her motion to the
16 judge assigned to the case by filing in the case within five (5)
17 days from the date of the refusal a written request for rehearing.
18 A copy of the request shall be mailed or delivered to the judge
19 assigned to the case, to the adverse party and to the discovery
20 master.

21 5. Review by Presiding Judge. Any interested party who deems
22 himself or herself aggrieved by the refusal of the judge assigned to
23 the case to grant a motion to disqualify the discovery master may
24 present his or her motion to the presiding judge of the county in

1 which the case is pending. A copy of the request shall be mailed or
2 delivered to the presiding judge, to the adverse party, to the judge
3 assigned to the case, and to the discovery master.

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

14 C. Order Appointing a Discovery Master.

15 1. Notice. Before appointing a discovery master, the court
16 shall give the parties notice and an opportunity to be heard unless
17 waived. Any party may suggest candidates for appointment.

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

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

13 The court shall have the discretion to direct the discovery
14 master to circulate a proposed appointing order to the parties and
15 provide a time period for the parties to comment prior to the
16 order's entry.

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

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

23 D. Discovery Master's Authority.

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

- 3 a. regulate all proceedings and respond to all discovery
4 motions of the parties within the scope of
5 appointment, including resolving all discovery
6 disputes between the parties,
- 7 b. call discovery conferences under Rule 5 of the Rules
8 for District Courts, at the request of a party or on
9 the discovery master's own motion,
- 10 c. set procedures for the timing and orderly presentation
11 of discovery disputes for resolution,
- 12 d. take all appropriate measures to perform the assigned
13 duties fairly and efficiently, and
- 14 e. if conducting an evidentiary hearing, exercise the
15 appointing court's power to take and record evidence,
16 including compelling appearance of witnesses or
17 production of documents in connection with these
18 duties.

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

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

3 F. Action on the Discovery Master's Order, Report or
4 Recommendations.

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

12 2. Action Generally. Upon the filing of objections to or a
13 motion to adopt or modify the discovery master's order, report or
14 recommendations within the time permitted, any party may respond
15 within fifteen (15) days after the objections or motions are filed.
16 If objections and motions are decided by the court without a
17 hearing, the court shall notify the parties of its ruling by mail.
18 In acting on a discovery master's order, report or recommendations,
19 the court may receive evidence; and may adopt or affirm, modify,
20 wholly or partly reject or reverse, or resubmit to the discovery
21 master with instructions.

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

- 3 a. the findings will be reviewed for clear error, or
- 4 b. the findings of a discovery master appointed under
5 paragraph 1 of subsection A of this section will be
6 final.

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

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

14 G. Compensation.

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

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

- 20 a. by a party or parties, or
- 21 b. from a fund that is the subject of the specific action
22 or proceeding, or other subject matter of the specific
23 action or proceeding, to the extent such fund or
24 subject matter is within the court's control and

1 within the court's in rem jurisdiction. The
2 compensation shall not be paid from the court fund.

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

8 H. Other Statutes. A referee or master appointed under the
9 authority of another statute or provision is subject to this section
10 only when the order referring a matter to the referee or master
11 states that the reference is made under this section. Nothing in
12 this section shall be construed to replace or supersede any other
13 statute or provision authorizing the appointment of a referee or
14 master.

15 I. A discovery master appointed pursuant to this section acting
16 in that capacity shall be immune from civil liability to the same
17 extent as a judge of a court of this state acting in a judicial
18 capacity.

19 SECTION 2. This act shall become effective November 1, 2015.

20 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
21 February 24, 2015 - DO PASS AS AMENDED