

An Act

ENROLLED SENATE
BILL NO. 424

By: Sparks and Sykes of the
Senate

and

Kannady of the House

An Act relating to discovery; amending 12 O.S. 2011, Sections 3233, as amended by Section 2, Chapter 309, O.S.L. 2015, 3234 and 3236 (12 O.S. Supp. 2016, Section 3233), which relate to interrogatories, production of documents and requests for admissions; updating language; modifying requirements for service; modifying procedures for certain responses; making language gender neutral; and providing an effective date.

SUBJECT: Discovery

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

SECTION 1. AMENDATORY 12 O.S. 2011, Section 3233, as amended by Section 2, Chapter 309, O.S.L. 2015 (12 O.S. Supp. 2016, 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 any party after the filing of an answer. Upon leave of court or otherwise agreed to in writing by the parties subject to Section 3229 of this title, interrogatories may be served and answered prior to the filing of an answer.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable. When answering each interrogatory, the party shall restate the interrogatory, then provide the answer. The number of interrogatories to a party shall not exceed thirty in number. Interrogatories inquiring as to the names and locations of witnesses, or the existence, location and custodian of documents or physical evidence shall be construed as one interrogatory. All other interrogatories, including subdivisions of one numbered interrogatory, shall be construed as separate interrogatories. No further interrogatories will be served unless authorized by the court. If counsel for a party believes that more than thirty interrogatories are necessary, ~~he~~ counsel shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional interrogatories. Counsel are expected to comply with this requirement in good faith. In the event a written stipulation cannot be agreed upon, the party seeking to submit such additional interrogatories shall file a motion with the court (1) showing that counsel have conferred in good faith but sincere attempts to resolve the issue have been unavailing, (2) showing reasons establishing good cause for their use, and (3) setting forth the proposed additional interrogatories. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within thirty (30) days after the service of the interrogatories, ~~except that a defendant may serve answers or objections to interrogatories within forty-five (45) days after service of the summons and complaint upon that defendant.~~ A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties subject to Section 3229 of this title. All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to

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

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

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

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

SECTION 2. AMENDATORY 12 O.S. 2011, Section 3234, is amended to read as follows:

Section 3234. A. SCOPE. Any party may serve on any other party a request:

1. To produce and permit the party making the request, or someone acting on the party's behalf, to inspect, copy, test and sample any designated documents or electronically stored information - including, but not limited to, writings, drawings, graphs, charts, photographs, motion picture films, phonograph records, tape and video recordings, records and other data compilations from which information can be obtained - translated, if necessary, by the respondent through detection devices into reasonably usable form, or to inspect and copy, test or sample any tangible things which constitute or contain matters within the scope of subsection B of Section 3226 of this title and which are in the possession, custody or control of the party upon whom the request is served; or

2. To permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing or sampling the property or any designated object or operation thereon, within the scope of subsection B of Section 3226 of this title.

B. PROCEDURE. 1. The request to produce or permit inspection or copying may, without leave of court, be served upon ~~the plaintiff after commencement of the action and upon any other party with the summons and petition or after service of the summons and petition upon that party~~ any party after the filing of an answer. Upon leave of court or otherwise agreed to in writing by the parties subject to Section 3229 of this title, request to produce or permit inspection or copying may be served and responded to prior to the filing of an answer.

2. The number of requests to produce or permit inspection or copying shall not exceed thirty in number. If counsel for a party believes that more than thirty requests to produce or permit inspection or copying are necessary, ~~he or she~~ counsel shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional requests. Counsel are expected to comply with this requirement in good faith. In the event a written stipulation cannot be agreed upon, the party seeking to submit such additional requests for production or inspection shall file a motion with the court (1) showing that counsel have conferred in good faith but sincere attempts to resolve the issue have been unavailing, (2) showing reasons establishing

good cause for their use, and (3) setting forth the proposed additional requests for production or inspection.

3. The request:

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

- 4. a. The party, upon whom the request is served, shall serve a written response within thirty (30) days after the service of the request, ~~except that a defendant may serve a response within forty-five (45) days after service of the summons and petition upon that defendant.~~ The court may allow a shorter or longer time.
- b. The response shall state, with respect to each item or category, that inspection and related activities shall be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts.
- c. If objection is made to the requested form or forms for producing electronically stored information, or if no form was specified in the request, the responding party shall state the form or forms it intends to use.
- d. The party submitting the request may move for an order under subsection A of Section 3237 of this title with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

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

- a. a party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request,
- b. if a request does not specify the form or forms for producing electronically stored information, a responding party shall produce the information in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable, and
- c. a party is not required to produce the same electronically stored information in more than one form.

C. PERSONS NOT PARTIES. A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Section 2004.1 of this title.

SECTION 3. AMENDATORY 12 O.S. 2011, Section 3236, is amended to read as follows:

Section 3236. A. REQUEST FOR ADMISSION. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Section 3226 of this title set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request for admission unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon ~~the plaintiff after commencement of the action and upon any other party with the summons and petition or after service of the summons and petition upon that party~~ any party after the filing of an answer. Upon leave of court or otherwise agreed to in writing by the parties subject to Section 3229 of this title, the request may be served and responded to prior to the filing of an answer. The number of

requests for admissions for each party is limited to thirty. No further requests for admission will be served unless authorized by the court. If counsel for a party believes that more than thirty requests for admissions are necessary, ~~he~~ counsel shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional requests for admissions. Counsel are expected to comply with this requirement in good faith. In the event a written stipulation cannot be agreed upon, the party seeking to submit such additional requests for admissions shall file a motion with the court (1) showing that counsel have conferred in good faith but sincere attempts to resolve the issue have been unavailing, (2) showing reasons establishing good cause for their use, and (3) setting forth the proposed additional requests.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty (30) days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by ~~his~~ the party's attorney, ~~but unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of forty-five (45) days after service of the summons and petition upon him.~~

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

The party who has requested the admission may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this section, it may order either that the matter is admitted or that an amended answer be served.

The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. 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.

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

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

SECTION 4. This act shall become effective November 1, 2017.

Passed the Senate the 8th day of May, 2017.

Presiding Officer of the Senate

Passed the House of Representatives the 12th day of April, 2017.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____