

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 COMMITTEE SUBSTITUTE  
4 FOR  
5 SENATE BILL 802

By: Crain

6  
7 COMMITTEE SUBSTITUTE

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

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

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

29 A. Appointment.

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

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

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

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

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

5           B. Disqualification.

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

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

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

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

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

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

18           C. Order Appointing a Discovery Master.

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

22           2. Contents. The appointing order shall direct the discovery  
23 master to proceed with all reasonable diligence and shall state:  
24

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

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

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

4. Oath. Before the appointing order shall take effect, the discovery master shall execute and file an oath that he or she will

1 faithfully execute the duties imposed by the order of appointment  
2 and any amendments thereto.

3 D. Discovery Master's Authority.

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

6 a. regulate all proceedings and respond to all discovery  
7 motions of the parties within the scope of  
8 appointment, including resolving all discovery  
9 disputes between the parties,

10 b. call discovery conferences under Rule 5 of the Rules  
11 for District Courts, at the request of a party or on  
12 the discovery master's own motion,

13 c. set procedures for the timing and orderly presentation  
14 of discovery disputes for resolution,

15 d. take all appropriate measures to perform the assigned  
16 duties fairly and efficiently, and

17 e. if conducting an evidentiary hearing, exercise the  
18 appointing court's power to take and record evidence,  
19 including compelling appearance of witnesses or  
20 production of documents in connection with these  
21 duties.

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

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

5 F. Action on the Discovery Master's Order, Report or  
6 Recommendations.

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

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

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

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

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

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

16           G. Compensation.

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

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

- 22           a. by a party or parties, or
- 23           b. from a fund that is the subject of the specific action  
24           or proceeding, or other subject matter of the specific



1 action or proceeding, to the extent such fund or  
2 subject matter is within the court's control and  
3 within the court's in rem jurisdiction. The  
4 compensation shall not be paid from the court fund.

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

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

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

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

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