



OADC OUTLOOK

A Publication of the Oklahoma Association of Defense Counsel

December 2012

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Submissions should be sent to Skoshi Heron
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President's Message

by Nathan E. Clark

2012 is now drawing to a close, and it has been a successful year for OADC. OADC showed marked gains in its funding raising efforts, its attendance at the Summer Meeting, and in its efforts to represent the defense community as to the state legislature. All in all, OADC's presence continues to grow in the State of Oklahoma and beyond.

The New Year will usher in our 2013 OADC Winter Meeting. The meeting will take place on Friday, January 18, 2013 at the Skirvin Hilton in Oklahoma City. The reception starts at 6:30 p.m. followed by dinner at 7:30 p.m. This is a great opportunity to welcome in our incoming president, Malinda Matlock, and recognize OADC members for their outstanding service. It should be a wonderful event, so please make sure to sign up early.

As my term as OADC president comes to an end, I just want to thank all of those who have volunteered their time and resources to this great organization. OADC now has the infrastructure in place to improve the services it provides to its members, and with Malinda Matlock coming on as president for 2013, OADC will go nowhere but upwards. Thanks again a wonderful year, and it was my pleasure to serve as OADC's 2012 president.

Notice to Members

OADC Board and Officer Positions Available

2013 President Elect / President 2014

Board of Director: 3 year Term, 3 Positions Available

Vice President (2013 Term): with view to President Elect Position in 2014 & President in 2015.

Secretary (2013 Term):

Treasurer (2013 Term):

Send all nominations to G. Calvin Sharpe
gcsharpe@phillipsmurrah.com by **January 10.**

Initial Disclosures under 12 O.S. §3226(A)(2)

Meredith Dibert Lindaman

ATKINSON HASKINS NELLIS BRITTINGHAM GLADD & CARWILE

The Oklahoma Discovery Code requires initial disclosures to be made by a party no longer than sixty days after service of the lawsuit. 12 Okla. Stat. Tit. § 3226(A)(2). It states as follows:

[A] party, without awaiting a discovery request, shall provide to other parties a computation of any category of damages claimed by the disclosing party, making available for inspection and copying the documents and other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered.

Id. Certain categories of proceedings are exempt from providing initial disclosures. This includes, among others, an action for review of an administrative record, a petition for habeas corpus, or an action to enforce an arbitration award. 12 O.S. § 3226(A)(2)(b). It should be noted that a party asserting a cross claim or a counterclaim is not excluded from such disclosures. Section 3226(A)(2) applies to all parties seeking damages in a lawsuit unless otherwise excluded in the statute.

Initial disclosures are made based on the information readily available to the disclosing party. The party is not excused from such disclosures, because it has not fully completed its investigation of the case. 12 O.S. § 3226(A)(2)(c). There is not yet any Oklahoma case law construing or interpreting the statute as to what is sufficient to meet these requirements. Parties have utilized the Oklahoma Uniform Jury Instructions in formulating their initial disclosures. For example, in the personal injury setting, a party may use OUI 4.1 as a general guideline and provide a computation of loss of earnings, medical expenses (past and future), etc. Pursuant to Section 3226(A)(2), documents supporting such computations, including medical bills, lost wage verification, etc., should accompany the initial disclosures.

The statute imposes a deadline of sixty days after service of process for providing the initial disclosures. However, this timing may be extended by agreement of the parties or court order. 12 O.S. § 3226(A)(2)(c). There is no requirement of showing “good cause” to extend this deadline.

The Oklahoma legislature crafted this statute as essentially a limited adoption of the Federal Rules of Civil Procedure Rule 26. It is substantively identical to Fed. R. Civ. P. 26(a)(1)(A)(iii), which requires a party, without awaiting a discovery request, to provide “a computation of each category of damages claimed by the disclosing party”. It also requires the disclosing party to produce, or make available, the documents or other evidentiary material on which such computation.

The courts have consistently recognized that when the Oklahoma legislature enacts statutes adopted from other jurisdictions, cases construing the model statute becomes persuasive authority when interpreting the Oklahoma statute. *See e.g.*, *Marshall v. Allstate Ins. Co.*, 1990 OK CIV APP 100, 805 P.2d 689, 691 (*citing Shores v. First City Bank Corp.*, 1984 OK 67, 689 P.2d 299). Therefore, federal case law construing the model statute of FRCP 26 provides persuasive authority for an Oklahoma court’s interpretation of Section 3226(A)(2).

The committee notes on Fed. R. Civ. P. 26(a) state that the major purpose of the initial disclosure requirement is to “accelerate the exchange of basic information about the case”. The Oklahoma legislature, by enacting Okla. Stat. Tit. § 3226(A)(2), also concluded that such information is appropriately exchanged early in the discovery process.

When a party fails to comply with these statutory requirements, it should be treated as a failure to cooperate in discovery and a motion to compel is appropriate. While Section 3226(A)(2)(c) allows a party to challenge the sufficiency of another party’s disclosures, it does not specify the procedural venue for doing so. A failure to provide initial disclosures is not specifically enumerated in Okla. Stat. Tit. § 3237(A)(2) regarding motions to compel discovery. However, motions to compel have been the standard for addressing such issues in the federal courts with regard to Fed. R. Civ. P. 26(a). *See e.g.*, *Johnson v. Sector 10, Inc.*, 2012 WL 4386891 (D. Utah).

The Oklahoma legislature saw fit to place the burden on the damaged party to set forth each category of damages and, within that requirement, to also produce documents supporting such claims. Initial disclosures are statutorily mandated and should be regarded as such. When a party fails to cooperate in providing the required information or producing supporting documentation, a motion to compel is appropriate.

The Oklahoma Association of Defense Counsel
Board of Directors
and President Nathan E. Clark

Cordially Invite you to attend the

2013 OADC Winter Meeting

Friday, January 18, 2013

Hilton Skirvin

1 Park Avenue
Oklahoma City, Oklahoma

6:30pm Reception

7:30pm Dinner

Please join us for a great evening of fellowship and fun as we honor our outgoing President Nathan E. Clark, welcome our incoming President Malinda Matlock, and honor members for their outstanding service.

\$85 per person. Registrations due by January 10, 2013.

Name Firm Name

Email Address

Phone Number

Additional Attendees: _____ Total # of Attendees X \$85 = _____

Mail completed form and payment to:
OADC c/o: Skoshi Heron • PO Box 5445 • Edmond, Oklahoma 73083
FAX: 405.415.7366

2012 Outstanding Defense Lawyer

Candidate has demonstrated an outstanding commitment to the work of OADC and during 2012 has obtained one or more substantial litigation wins (not necessarily a defense verdict).

Nominations must include:

1. Candidate
2. Candidate's Firm
3. Person Nominating
4. Reason for Nomination

Send all nominations to Nathan E. Clark @ nclark@rhodesokla.com by **January 10**.

2012 Outstanding Young Lawyer

Candidates for the award must have demonstrated outstanding commitment to the work of OADC and during the 2012 year have one or more of the following:

1. Published Articles
2. Pro Bono Work
3. Work with Law Students
4. Community Service



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