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Discovery: What Constitutes Good Cause for Discovery under Section 548 in Oklahoma

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appears justified. Without further action, *Branti* signals a reduction in permissible patronage, if not its eventual demise.

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Discovery: What Constitutes "Good Cause" for Discovery Under Section 548 in Oklahoma?

The Oklahoma statute entitled "Discovery and Production of Documents"[1] deals exclusively with the discovery and production of tangible items, such as documents, letters, photographs, reports, and the like. This should not be confused with the Oklahoma statute concerned with written interrogatories.[2] The latter section affords no power or right of production. Only after the existence of the document has been clearly established is the moving party entitled to make use of section 548 and move for its production.[3]

Clearly, the purpose of section 548 is to insure that litigation in Oklahoma would be "neither a surprise party nor a guessing contest. . . ."[4] The Oklahoma Supreme Court has succinctly stated that:

> The purposes of the discovery statute are to facilitate and simplify identification of the issues by limiting the matters in controversy, avoid unnecessary testimony, promote justice, provide a more efficient . . . disposition of cases, eliminate secrets and surprise, prevent the trial of a law suit from becoming a guessing game, and lead to a fair and just settlement without the necessity of trial.[5]

The supreme court has declared that in order to promote this basic policy, the discovery rules are to be liberally applied and construed, while

[1] 12 OKLA. STAT. § 548 (1971). "Upon motion of any party showing good cause and upon notice to all other parties, and subject to the equitable power of the court to protect any party or witness . . . the Court . . . may (1) order any such party to produce and permit the inspection and copying or photographing by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, not privileged, which constitute or contain evidence relating to any of the matters within the scope of examination permitted by deposition and which are in such parties' possession, custody or control, or (2) order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying or photographing the property. . . ."

[2] 12 OKLA. STAT. § 549 (1971). "Any party to a civil action or proceeding, may serve written interrogatories upon any adverse party, to be answered by the party served . . . who shall furnish such information as is available to the party . . . . Interrogatories may relate to any matters which can be inquired into by deposition and the answers may be used to the same extent as answers in depositions."

[3] Jones Packing Co. v. Caldwell, 510 P.2d 683 (Okla. 1973).

[4] Westerheide v. Shilling, 190 Okla. 305, 123 P.2d 674, 678 (1942).

[5] Remington Arms Co. v. Powers, 552 P.2d 1150, 1152 (Okla. 1976).

any legislation that purports to exempt certain types and classes of relevant materials from discovery will be strictly construed.[6]

There are, however, some important limitations set out within the section on the production of documents which, to a certain extent, militate against a broad and far-reaching application of discovery. First, the adverse party may refuse to disclose privileged matter.[7] Second, the material sought must be relevant. This has been interpreted in Oklahoma to mean those materials either admissible as evidence at trial or which might lead to disclosure of admissible evidence.[8] It is important that the relevancy requirement does not restrict discovery only to clearly admissible evidence. So long as the material sought might lead to admissible evidence, relevancy is satisfied and the policy of liberal discovery is maintained.[9]

Third, section 548 specifically provides that the district court is authorized to compel production of certain materials only after the moving party has made a showing of "good cause."[10] No automatic granting of a motion for discovery is allowed.[11] This third limitation is clearly the most controversial. "Good cause" represents the most important limitation to the discovery of materials because even if the document is both relevant and unprivileged, the movant must still establish some reason for requiring production.

The Oklahoma Supreme Court has recognized that the "good cause" threshold must first be crossed before discovery is allowed.[12] Yet, the court has been reluctant to define it. Perhaps it is for this reason that the court has allowed itself considerable flexibility in declaring that the determination of "good cause" will be made on a case-by-case basis, without reference to any predetermined set of facts that would establish a prima facie case for discovery.[13]

Carman v. Fishel[14] is perhaps the court's most important treatment of section 548 and "good cause" because the case represents the first attempt at judicial interpretation of the newly enacted statute. For this reason, the court's opinion sought to be far-reaching. The opinion, written by Judge Lavender, dealt largely with the discovery of witnesses' statements obtained by the defendant's insurance carrier. The defendant argued that these

[6] City of Edmond v. Parr, 587 P.2d 56 (Okla. 1978).

[7] 12 OKLA. STAT. § 548 (1971). Matter is privileged from discovery if it would be privileged at trial under the applicable rules of evidence. Thus, for example, transactions and communications between an attorney and client, or a husband and wife would not be discoverable nor admissible at trial. *See, e.g.*, 12 OKLA. STAT. § 2502, 2504 (Supp. 1980).

[8] Stone v. Coleman, 557 P.2d 904 (Okla. 1976).

[9] Carman v. Fishel, 418 P.2d 963 (Okla. 1966).

[10] 12 OKLA. STAT. § 548 (1971).

[11] Carman v. Fishel, 418 P.2d 963, 972 (Okla. 1966).

[12] Lisle v. Owens, 521 P.2d 1375 (Okla. 1974); Jones Packing Co. v. Caldwell, 510 P.2d 683 (Okla. 1973); Cowen v. Hughes, 509 P.2d 461 (Okla. 1973).

[13] Carman v. Fishel, 418 P.2d 963, 971 (Okla. 1966).

[14] *Id.*

statements represented the legitimate "work-product" of the attorney and, thus, were unobtainable.[15] The court, while holding that the "work-product" exception was not applicable in that case, noted that where a moving party sought the "work-product" of an adversary, a showing of "special circumstances" would be required, while the typical case of production would require only an "ordinary showing" of good cause.[16]

While the Oklahoma court provides no analytical basis for determining what an ordinary showing of good cause might be, a more specific definition of good cause under section 548 can be fashioned from the cases decided under it and under Federal Rule of Civil Procedure 34 as it existed prior to its amendment in 1970.[17] *Carman* recognized that section 548 and Federal Rule 34, as it existed in 1966, are identical.[18] To the extent that Oklahoma has adopted this rule from the Federal Rules of Civil Procedure, it is presumed that the Oklahoma legislature adopted the construction placed upon the rule by the federal courts.[19] Furthermore, in view of this similarity, the wisdom gleaned from twenty-two years of judicial construction on the federal level should most certainly be considered. Thus, the purpose of this note is to explore the "good cause" limitation to discovery in Oklahoma and to develop some understanding of what it might mean in various situations. To this end, the Oklahoma law will be viewed within the framework of the pre-1970 Federal Rule of Civil Procedure 34 and the surrounding case law.

The Good Cause Standard

Rule 34, prior to its amendment in 1970, made "good cause" a requirement for the production of tangible objects. During this time, two widely

[15] The scope of this note does not extend into this area. Work-product has been defined as the mental impressions, legal theories, and strategies that a lawyer has pursued or adopted. United States v. Pfizer, Inc., 560 F.2d 326, 335 (8th Cir. 1977). FED. R. CIV. P. 26(b)(3) defines work-product as "documents and tangible things . . . prepared in anticipation of litigation or for trial by or for another party or by or for the other party's representatives. . . ."

[16] 418 P.2d at 969. This distinction between a showing of "special circumstances" and an ordinary showing of good cause, especially where the question of work-product is raised, has been used by the court on other occasions. Lisle v. Owens, 521 P.2d 1375 (Okla. 1974). As a practical matter, the distinction serves very little purpose. There is a presumption that an understanding of a threshold level of good cause exists. Obviously, one cannot know what an extraordinary showing of good cause is without first knowing what constitutes an ordinary showing. The court did not articulate this minimal definition, opting instead for a flexible case-by-case approach.

[17] FED. R. CIV. P. 34 (1948). "Upon motion of any party showing good cause therefore and upon notice to all other parties . . . the Court . . . may (1) order any party to produce and permit the inspection and copying or photographing . . . of any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privileged, which constitute or contain evidence relating to any of the matters within the scope of the examination . . . and which are in his possession, custody or control; or (2) order any party to permit entry upon designated land or other property in his possession or control. . . ."

[18] 418 P.2d at 967.

[19] Laubach v. Morgan, 588 P.2d 1071 (Okla. 1978); Baker v. Knott, 494 P.2d 302 (Okla. 1972).

disparate definitions of good cause emerged from the federal courts. One distinctly minority view, primarily shaped by the courts from the Southern District of New York, held that good cause merely meant relevancy,[20] that is, good cause is established when it appears that the documents sought are relevant to the subject matter of the action.[21] The rationale for this position was twofold. First, there was a strong desire to give the term "good cause" a broad construction, "consistently keeping faith with the policy to construe pre-trial discovery rules liberally, in the absence of a showing of undue prejudice to the opposing party."[22] Second, these courts objected to any other standard because they felt that anything requiring a showing of special circumstances would tend to emphasize the sporting aspects of litigation, which was felt to be contrary to the notion of a trial as an exercise in truth seeking.[23]

To a minority of these federal courts, then, only relevancy has to be determined. Because the tests of relevancy as they relate to discovery are considerably less stringent than general relevancy requirements that govern admissibility of evidence at trial, the movant need only show that the material sought would be admissible at trial, or that it might only tend to lead to other evidence which might be admissible.[24]

This simplified test was soundly rejected by a majority of federal courts throughout the nation. The most frequently quoted position was articulated in *Guilford National Bank v. Southern Ry.*[25] The court declared that mere relevancy of the material to the controversy was not sufficient and that the Federal Rules required that something more was necessary to satisfy rule 34.[26] Thus, it would appear that the majority view of what constituted "good cause" was essentially a two-pronged test involving a showing of relevancy and of need.[27] What constituted need certainly depended on the facts of each case, but one court indicated that there had to be special circumstances in the particular case that made discovery essential to the preparation of that case.[28] This position was embraced by the Tenth Circuit in *Williams v. Continental Oil Co.*,[29] where the plaintiff in a trespass action was denied an order permitting him to make a deviational and directional survey of an oil and gas

[20] Reid v. Harper & Bros., 17 F.R.D. 281 (S.D.N.Y. 1955); Wild v. Payson, 7 F.R.D. 495 (S.D.N.Y. 1946); Gielow v. Warner Bros. Pictures, Inc., 26 F. Supp. 425 (S.D.N.Y. 1938).

[21] Connecticut Mut. Life Ins. Co. v. Shields, 17 F.R.D. 273, 277 (S.D.N.Y. 1955).

[22] Houdry Process Corp. v. Commonwealth Oil Ref. Co., 24 F.R.D. 58, 61 (S.D.N.Y. 1959).

[23] Crowe v. Chesapeake & Ohio Ry., 29 F.R.D. 148, 150 (E.D. Mich. 1961).

[24] Scuderi v. Boston Ins. Co., 34 F.R.D. 463 (D. Del. 1964); Jensen v. Boston Ins. Co., 20 F.R.D. 619 (N.D. Cal. 1957).

[25] 297 F.2d 921 (4th Cir. 1962).

[26] *Id.* at 923-24.

[27] Burke v. United States, 32 F.R.D. 213 (E.D.N.Y. 1963); Reeves v. Pennsylvania R.R., 8 F.R.D. 616 (D. Del. 1949).

[28] Alltmont v. United States, 177 F.2d 971, 978 (3d Cir. 1949), *cert. denied*, 339 U.S. 967 (1950).

[29] 215 F.2d 4 (10th Cir. 1954).

well belonging to the defendant for the purpose of determining ownership. The court reversed on appeal, noting that the survey was the only way to prove or disprove the fact of trespass, and that without the survey a critical issue in the case would go unresolved.[30]

Under this test, a determination of need was often based on whether the movant had the ability to explore the facts of the case fully through other sources or by other means. Thus, good cause was not established where the documents sought were available through other discovery devices, such as depositions,[31] or where the documents were ultimately a matter of public record.[32] On the other hand, under old rule 34, good cause could be shown for the production of physical examination records where a report of the examination is critical to a case and is not available through other avenues.[33] Examples of how the federal courts applied this test are helpful.

Some of the greatest problems to arise out of rule 34 came from requests for the production of documents or items prepared in anticipation of litigation or for trial.[34] Essentially, this trial preparation material consisted of either written statements obtained from witnesses by an adversary, or reports prepared by experts retained by an adversary.[35] Those who opposed discovery of witness statements argued that it would be patently unfair to require an attorney, who perhaps had worked diligently in interviewing witnesses and obtaining statements, to turn his file of statements over to his opponent. Such a requirement, one court said, would have the effect of rewarding slothfulness and would tend to discourage initiative.[36] The same doctrine of unfairness was extended by the courts to experts because the adversary had spent a good deal of money in obtaining the services of an expert, thereby acquiring a property interest in the information.[37]

Those who sought discovery complained that it was impossible to cross-examine effectively without the advanced preparation afforded by discovery.[38] Furthermore, such material consisted of and constituted real evidence.[39] The federal courts were required to balance these competing needs, and to this end used the two-factor test of relevancy plus need as the

[30] *Id.* at 8.

[31] A. Zerkowitz & Co. v. U.S. Rubber Co., 221 F. Supp. 855 (S.D.N.Y. 1963); Thompson v. Hoitsma, 19 F.R.D. 112 (D.N.J. 1956).

[32] Camco, Inc. v. Baker Oil Tools, Inc., 45 F.R.D. 384 (S.D. Tex. 1968); Speedrack, Inc. v. Baybarz, 45 F.R.D. 254 (E.D. Cal. 1968).

[33] Benning v. Phelps, 249 F.2d. 47 (2d Cir. 1957); Green v. Sears Roebuck & Co., 40 F.R.D. 14 (N.D. Ohio 1966).

[34] Proposed Amendments to the Federal Rules of Civil Procedure Relating to Discovery, 48 F.R.D. 487, 499 (1970).

[35] See 15 *supra*.

[36] Dritt v. Morris, 235 Ark. 40, 357 S.W.2d 13 (1962).

[37] Lewis v. United Air Lines Transp. Co., 32 F. Supp. 21, 23 (W.D. Pa. 1940).

[38] Proposed Amendments to the Federal Rules of Civil Procedure Relating to Discovery, 48 F.R.D. 487, 504 (1970).

[39] Sanford Constr. Co. v. Kaiser Aluminum & Chem. Sales, Inc., 45 F.R.D. 465 (E.D. Ky. 1968).

method of determining whether the written statements of a witness or of an expert were discoverable.[40]

Discovery of Witnesses' Written Statements

The federal courts allowed the discovery of the written statement of a witness obtained by a party only within a clearly defined and limited set of parameters.[41] Although the courts have consistently held that each determination on the discoverability of a witness statement would be had on a case-by-case basis,[42] certain competent generalizations can be made as to the types of need held sufficient to constitute good cause for the discovery of such statements. These could be discovered where the witness gave a statement to one party and then refused to talk to an opposing party.[43] Thus, in *Sachse v. W. T. Grant Co.*,[44] the court held that a written statement of a witness obtained shortly after the plaintiff sustained injuries falling from an escalator was discoverable where the witness refused to talk to the plaintiff.

Sufficient need could also be shown where the witness who made the reports or statements was particularly hostile to the movant, such as where he is the employee of the opposing party.[45] Furthermore, if the witness was simply unavailable to the movant, sufficient need could be shown in the movant's inability to obtain the witness's reflections himself.[46] Thus, need could be shown for production where a particular witness was on a tour of duty in the army,[47] or was subsequently living abroad in Europe.[48]

The principle of need in rule 34 that permitted production of witnesses' statements went much deeper than mere refusal, hostility, or unavailability. It also encompassed any situation in which there was any reason to believe that the information provided directly by the witness was materially less reliable than that contained in his statement.[49] In *Whitiker v. Davis*, the witness to an automobile crash gave a complete account to the plaintiff immediately after the accident. Yet, two years later, the witness, upon deposition by the defendant, was confused and gave incomplete testimony. The court permitted production of the statement originally given to the plaintiff, noting that "the elapse of time between the accident and the taking of the deposi-

[40] See text accompanying note 26 *supra*.

[41] Guilford Nat'l Bank v. Southern Ry., 297 F.2d 921 (4th Cir. 1962).

[42] Jackson v. Kennecott Copper Corp., 27 Utah 310, 495 P.2d 1254 (1972).

[43] Lindsay v. Prince, 8 F.R.D. 233 (N.D. Ohio 1948).

[44] 27 F.R.D. 397 (D. Conn. 1961).

[45] United Airlines, Inc. v. United States, 186 F. Supp. 824 (D. Del. 1960); Burns v. New York Central Rail Co., 33 F.R.D. 309 (N.D. Ohio 1963).

[46] Ownby v. United States, 293 F. Supp. 989 (W.D. Okla. 1968); McSparran v. Bethlehem-Cuba Iron Mines Co., 26 F.R.D. 619 (E.D. Pa. 1960).

[47] Wilson v. David, 21 F.R.D. 217 (W.D. Mich. 1957).

[48] *In re* Bloomfield Steamship Co., 42 F.R.D. 348 (S.D.N.Y. 1967).

[49] Whitiker v. Davis, 45 F.R.D. 270 (W.D. Mo. 1968).

tion give a unique value to a statement taken shortly after the accident."[50] Before the movant is allowed discovery, he must convince the court of his diligent efforts to obtain the information and to depose the witness before any substantial lapse of time.[51]

Oklahoma courts have applied the same standard promulgated under pre-1970 rule 34 in determining the discoverability of the written statements of a witness secured by his adversary. Thus, under similar circumstances, the movant in Oklahoma must be prepared to show the court that the material sought is unavailable elsewhere. The Court's opinion in *Carman* clearly and explicitly articulates an adherence to the federal court's standard of relevancy and need as it relates to the discovery of the statement of a witness.[52]

The position enunciated in *Carmen* on the discovery of witnesses' statements has been uniformly applied in Oklahoma. In *Lisle v. Owens*,[53] the court denied defendant auto dealer's motion for production of questionnaires completed by customers and obtained by the plaintiff because the customers who responded to the questionnaires were just as available to the defendant for interrogation. Conversely, production of witness interviews taken by defendant immediately after a train-auto collision in a wrongful death action was ordered in *Cowen v. Hughes*,[54] where the interviews were given by employees of the defendant and these employees were not deposed for two years. The court reasoned that the length of time that had elapsed, coupled with the witnesses' employment relationship to the defendant, justified production of the statements.

Quite clearly, both the pre-1970 rule 34 approach and the developing case law in Oklahoma parallels closely Rule 26 of the Federal Rules of Civil Procedure,[55] as amended in 1970, which, after that date, became the controlling rule on the discovery of witnesses' statements. Rule 26(b)(3) permits discovery "only upon a showing that the party seeking discovery has substantial need . . . and that he is unable without undue hardship to obtain the substantial equivalent of the material by other means."[56] Federal courts have interpreted this rule to require the same good cause for discovery as was needed under rule 34 prior to the amendments and that the movant would have to show that the information sought was not obtainable by other means.[57]

[50] *Id.* at 272.

[51] Helverson v. J.J. Newberry Co., 16 F.R.D. 330 (W.D. Mo. 1954).

[52] Carman v. Fishel, 418 P.2d 963, 972 (Okla. 1966).

[53] 521 P.2d 1375 (Okla. 1974).

[54] 509 P.2d 461 (Okla. 1973).

[55] FED. R. CIV. P. 26(b)(3) (1970).

[56] *Id.*

[57] Hodgson v. General Motors Acceptance Corp., 54 F.R.D. 445 (S.D. Fla. 1972); Rackers v. Siegfried, 54 F.R.D. 24 (W.D. Mo. 1971); Tinder v. McGowen, 15 Fed. R. Serv. 2d 1608 (W.D. Pa. 1970).

Expert Opinion

It is unclear how Oklahoma courts would treat the discovery of expert examinations or reports. Nevertheless, an examination of similar requests for production under Federal Rule 34 prior to its amendment in 1970 proves quite illuminating and provides a basis by which the Oklahoma courts can determine good cause for discovery of the expert report.

Under rule 34, the discovery of expert reports, examinations, test results, and studies was based primarily on the same compelling need analysis that wove its way through determinations involving witness statements. While the statement of a witness could be discovered only upon a showing that the movant could not obtain it elsewhere, the party who sought the products of an adversary's expert similarly had to show that the information sought could not be independently obtained.[58] In one case, the plaintiff's motion for production of reports of experts who examined a malfunctioning crane was denied because he did not show that the information sought was unobtainable through other means.[59]

The discoverer's inability to gather facts essential to the resolution of the controversy was a crucial factor in finding sufficient need. Thus, for example, where the adversary's expert consumed evidence while testing it, his report was discoverable because the movant was not in a position to obtain the information elsewhere.[60] Similarly, where reports on the condition of an accident scene disclosed the condition and description of premises, of machinery, or of equipment and sufficient time had elapsed, or something had occurred so that there had been a change in condition, sufficient need could be shown.[61] Thus, one court held that sufficient need was shown for the production of an expert's report on the condition of an escalator prepared immediately after plaintiff was injured in a fall where six months had elapsed since the accident, and the report and the escalator had been subjected to twenty-six maintenance and routine inspections between the date of the accident and the date of trial. Certainly, the court concluded, the condition of the escalator had changed.[62]

The Oklahoma Supreme Court has not squarely addressed the issue of expert discovery under section 548, either before or since the statute's enactment. Upon examination, the court should employ the same showing of need required for the discovery of expert's reports in the federal courts under pre-1970 rule 34. This, of course, is equivalent to the standard employed for determining good cause for discovery of the written statements of a witness.

[58] Stoval v. Gulf & South American Steamship Co., 30 F.R.D. 152 (S.D. Tex. 1961).

[59] *Id.* at 155.

[60] Korman v. Shull, 184 F. Supp. 928 (W.D. Mich. 1960); Colden v. R.J. Schofield Motors, 14 F.R.D. 521 (N.D. Ohio 1952).

[61] Burke v. United States, 213 F.R.D. 213 (E.D.N.Y. 1963); Marks v. Gas Service Co., 168 F. Supp. 487 (W.D. Mo. 1958).

[62] Maginnis v. Westinghouse Elec. Co., 207 F. Supp. 739 (E.D. La. 1962).

The movant must show that the information could not be independently obtained. The Oklahoma Supreme Court, in *Carman v. Fishel*, quite clearly borrows the federal standard of relevancy plus need in determining the discoverability of a witness's statement.[63] When the court's pronouncement is seen in the context of rule 34's universal application to all forms of production and examination, it is obvious that the Oklahoma court would logically extend its application of the standard of relevancy plus need into the area of experts.[64]

Federal Rule of Civil Procedure 26, in its present form, represents the current guideline for the discovery of expert opinion. Yet, it is only partially reconcilable with the case law under pre-1970 rule 34 and section 548. Rule 26 specifically differentiates between the discovery of experts expected to be at trial and those who are not. Under this rule, an adversary's expert witness may be deposed, or his report or examination produced, once it has been determined that he will be a prospective witness.[65] Rule 26 presumes need if the expert is to be at trial and recognizes the complaint that the need to cross-examine the adversary's expert effectively constitutes good cause in itself.[66]

This represents a clear departure from pre-1970 rule 34 and the case law presently developing in Oklahoma under section 548. The need for effective cross-examination, which is recognized under the amended Federal Rules of Civil Procedure, was never considered sufficient to compel discovery under rule 34,[67] and has been specifically rejected as a factor on the issue of good cause in Oklahoma.[68] Thus, absent legislative amendment in Oklahoma, or a judicial reinterpretation of good cause, the mere fact that an adversary's expert is expected to be at trial is not going to represent the sufficient need required for the production of reports by an expert in Oklahoma.

The standard promulgated in rule 26 as it relates to those experts not expected to be at trial most accurately reflects the type of need required in Oklahoma under section 548 and under rule 34 prior to its amendment. Discovery of the expert's identity and the substance of his conclusions and findings can only be had upon a showing of "exceptional circumstances under which it is impractical for the other party seeking discovery to obtain facts or opinions on the same subject by other means."[69] There is total agreement that this represents little change in the law from rule 34[70] and that good

[63] Carman v. Fishel, 418 P.2d 963, 972 (Okla. 1966).

[64] *See* Remington Arms Co. v. Powers, 552 P.2d 1150 (Okla. 1976). The court implied an adherence to the two-factor test of relevancy and need in determining the discoverability of expert opinion.

[65] FED. R. CIV. P. 26(b)(4)(a)(i) (1970).

[66] *See* Advisory Committee Notes, FED. R. CIV. P. 26(b)(4) (1970).

[67] Whitiker v. Davis, 45 F.R.D. 270, 272 (W.D. Mo. 1968).

[68] Lisle v. Owens, 521 P.2d 1375, 1378 (Okla. 1974); Carman v. Fishel, 418 P.2d 963, 971 (Okla. 1966).

[69] FED. R. CIV. P. 26(b)(4)(B) (1970).

[70] *See* 4 MOORE, FEDERAL PRACTICE ¶ 26.66, at 26-483 (2d ed. 1979).