

Discovering Efficiencies

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In October, I wrote about a proposal to add discovery masters as tools available to Oklahoma state court judges in managing their dockets. This proposal is working its way through the Oklahoma Legislature as Senate Bill 1686, authored by state Senator Brian Crain, R-Tulsa, and state Representative Jon Echols, R-Oklahoma City. On February 11, the bill was approved by the Senate Judiciary Committee, led by state Senator Anthony Sykes, R-Moore.

The goal of discovery masters is to ensure efficiency in the court system. "The appointment of masters to participate in pretrial proceedings has developed extensively over the last two decades as some district courts have felt the need for additional help in managing complex litigation," according to Federal Rules of Civil Procedure advisory notes.

Complex litigation matters add to the resolution time for all matters. The sheer magnitude of a complex case may overwhelm the time available to a judge who has other cases on the docket. Commentators say discovery master help address this problem, allowing judges to spend time addressing other matters.

Senate Bill 1686 contains protections to prevent overuse or abuse of discovery masters. Before a discovery master can be appointed in the face of objection or lack of consent, the judge must make special findings that the case is complex or otherwise exceptional and that the benefit of appointment of a discovery will outweigh the cost. The proposal expressly mandates that discovery masters should not be routinely appointed.

This proposal also addresses allocation of costs. Discovery masters are private professionals like attorneys, accountants and electronic data specialists. The bill allows the appointing court to allocate the cost of the discovery master based on, among other things, litigants' means to pay the costs and their responsibility for the dispute requiring appointment of a master.

By using private professionals to serve as discovery masters, this proposal shifts some of the complex discovery disputes away from the state, with those costs to be borne by the litigants or a common fund.

In short, the proposal contained in SB 1686 is designed to improve the efficiency of litigation in Oklahoma courts. At the same time, the bill is intended to shift some of the costs of handling discovery disputes away from state coffers and onto the parties responsible for the conflicts.

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