

1a

**Appendix A**

**TIMMONS COURT DECISION**

Filed September 29th, 2023



*D.C.*  
9/25/23

IN THE DISTRICT COURT OF  
OKLAHOMA COUNTY  
FILED IN DISTRICT,

COURT

OKLAHOMA

Oklahoma County,  
COUNTY

Albert G. Gerhart.

**RICK WARREN**

Plaintiff;

**36** \_\_\_\_\_

**Case No. CJ-21- 3992**

v.

SEP 29, 2023

JOHN ROBERT BENNETT,  
CHAIRMAN OF THE  
REPUBLICAN PARTY  
Defendant

CHAIRMAN OF THE

Journal Entry of Judgment Denying the Plaintiffs Motion to Reconsider Based  
Upon New Evidence of Fraud

Comes Now the Honorable Aletia Hayes Timmons, District Judge of the 7th  
Judicial District, this \_\_\_\_ day of \_\_\_\_\_ --- 2023 in consideration of the  
Plaintiff Albert G. Gerhart Motion to Reconsider Based Upon New Evidence of  
Fraud. Appearing are Albert G Gerhart pro se ; R Tom Hillis for the Defendant  
John R. Bennett and the Oklahoma Republican Party.

The Court having reviewed the pleadings and hearing the arguments of the  
parties, finds as follows:

1. The Motion to Reconsider Based Upon New Evidence of Fraud is denied.

IT IS THEREFORE ADJUDGED, ORDERED, AND DECREED that the Plaintiffs  
Motion to Reconsider Based Upon New Evidence of Fraud is DENIED.

2a

Aletia Hayes Timmons

Honorable Aletia Hayes Timmons

28<sup>th</sup> day of September, 2023

Approved of as to form and content:



Albert G Gerhart  
358 North Rockwell Ave  
Oklahoma City, OK, 73127  
*Plaintiff pro se*



R. Tom Hillis OBA# 12338  
Titus Hillis Reynolds and Love  
15 East Fifth Street Suite 3700  
Tulsa, OK, 74103

Hillis

*Attorneys for the Defendant  
John Robert Bennett and the  
Oklahoma Republican Party*

The undersigned certifies that a true and correct copy of the above and foregoing was mailed to the Defendant's attorneys the 14<sup>th</sup> day of January, 2022.

  
Albert G Gerhart, Pro Se

## Appendix B

## OPINION OF THE OKLAHOMA COURT OF CIVIL APPEALS

(Filed January 3<sup>rd</sup>, 2025)

DF121,523

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

## DIVISION II

ALBERT G. GERHART,

**FILED**

*Plaintiff/Appellant,*  
**APPEALS STATE**

**COURT OF CIVIL**

OF OKLAHOMA

JAN - 3 2025

V.

**JOHN D. HADDEN**  
**CLERK**

**JOHN ROBERT BENNETT,**  
Chairman of the Republican  
Party of Oklahoma,

Case No.  
DF121,523

*Defendant / Appellee,*  
and the REPUBLICAN  
PARTY OF OKLAHOMA,  
SHANE DILLON JEMISON,  
Vice Chairman of the  
Republican Party; PAMELA  
ANN POLLARD, National  
Committeewoman of the  
Republican Party and  
STEVEN WALTER CURRY,  
National Committeeman of  
the Republican Party,  
*Defendants / Appellee.*

Appeal From The District Court of Oklahoma  
County, Oklahoma

HONORABLE ALETIA HAYNES TIMMONS,  
TRIAL WDJG  
AFFIRMED

Albert G. Gerhart

Pro se Plaintiff

Oklahoma City, Oklahoma

v.

John Robert Bennett,

R. Tom Hillis

R. Kyle Alderson

TITUS HILLIS

REYNOLDS LOVE

Appellee

For Defendant/ Tulsa, Tulsa, Oklahoma

OPINION BY JANE P. WISEMAN, PRESIDING JUDGE:

Plaintiff Albert G. Gerhart appeals the trial court's order granting in part Defendant John Robert Bennett's application for attorney fees and costs and the trial court's order denying Plaintiff's motion to reconsider. After review, we affirm.

FACTS AND PROCEDURAL BACKGROUND

Plaintiff brought this action against Defendants for intentional infliction of emotional distress, false light, and to enforce the Bylaws of the Republican Party. Plaintiff sought temporary injunctive relief against Defendants which the trial court denied. The trial court then granted Plaintiff's request to dismiss all Defendants except John Robert Bennett in his individual capacity and as Chairman of the Oklahoma Republican Party. Plaintiff then obtained leave of court to amend his petition against Bennett to ask the court to intervene to protect his First, Fifth, and Fourteenth Amendment Rights by:

1. issuing a ruling requiring Chairman John Bennett, or one of the other elected officials compromising *[sic]* the Central Committee, to call for a[n] immediate State Committee meeting, with the required ten day notice of an officer's removal action, the agenda being to investigate the allegations

and wrongdoings described in this petition, allow the Plaintiff to offer testimony and witnesses at this State Committee meeting, and ask the State Committee to hold Chairman Bennett and the other officials accountable for those acts, and/or the refusals to act, as allowed in the Republican Party bylaws, should the State Committee find the allegations of wrong-doing true. And (2) The Plaintiff also requests the court to require the State Committee to report back to the Court on the results of the investigations and removal processes within a 120 day time frame.

In response to the amended petition, Defendant filed a motion to dismiss for lack of standing to sue and for failure to state a claim on which relief could be granted pursuant to the Oklahoma Citizens Participation Act (OCPA). Plaintiff filed a "response to Defendant's response to the statement of facts" and later filed a "motion for dismissal of the Defendant's motion to dismiss."

Defendant removed the action to the Federal District Court for the Western District of Oklahoma based on Plaintiff's amended petition asserting violations of his civil rights under the First, Fifth, and Fourteenth Amendments to the United States Constitution. The federal district court remanded the case to state court stating in part:

Defendant removed the case from Oklahoma County District Court based on Plaintiff's allegation that the OKGOP violated his First, Fifth, and Fourteenth Amendment rights under the United States

Constitution when members, among other things, removed him from a meeting, removed him from the party email list, and essentially "close[d] off all access" to the OKGOP.

Here, Plaintiffs pro se complaint can only be construed as arising under 42 U.S.C. § 1983 and "[i]nternal political party disputes do not constitute state action so as to trigger liability under § 1983." ....Accordingly, Plaintiffs federal claims are entirely frivolous and constitute "no claim at all."

After remand, the trial court granted Defendant's motion to dismiss and the order of dismissal was filed on April 11, 2022, reserving the issue of attorney fees and costs to be addressed on application.

On May 10, 2022, Defendants Bennett and the OKGOP filed an application for attorney fees, costs, and sanctions pursuant to the OCPA, 12 O.S. § 1438(A), to which Plaintiff objected. In a hearing held on April 20, 2023, the trial court granted in part Defendants' application, a ruling later memorialized in an order dated July 25, 2023.

On May 9, 2023, Plaintiff filed a "motion to reconsider based upon new evidence of fraud" pursuant to 12 O.S. § 651(1), essentially asking the trial court to reconsider its April 11, 2022 dismissal order. In the conclusion section of his brief, Plaintiff also appears to ask the trial court to reconsider its decision

granting in part Defendant's motion for attorney fees, costs, and sanctions pursuant to the OCPA because the motion to dismiss was improperly granted pursuant to the OCPA. Plaintiff requested: "The Plaintiff asks the Court to set a hearing to rightfully address the Plaintiffs OCPA based objections and the motion to reconsider the Defendant's motion for attorney fees, costs, and sanctions." Plaintiff further asked the trial court to reconsider "the April 2022 decision by Judge Mai."

Defendant responded urging the denial of Plaintiffs motion to reconsider because "most of the issues complained of by Plaintiff have already been heard and discarded by this Court." Defendant also states that the only "argument which has not been heard by this Court is the new conspiracy theory involving the counsel for a party voluntarily dismissed by Plaintiff and pseudonymous email addresses." Defendant further urges the motion to reconsider is untimely and improperly filed.

Defendant argues:

"Plaintiff fails to follow the appropriate procedure to initiate his request and is barred by the relevant statute. The final judgment on which Plaintiff seeks a new trial was entered, filed, and delivered to Plaintiff on April 11, 2022." Plaintiff did not appeal this judgment. Defendant argues, among other things, that because Plaintiff failed to follow 12 O.S. § 655 by filing a petition for new trial and doing so within one year after the filing of the final order, Plaintiffs motion should be denied.

At the hearing on August 17, 2023, the trial court denied Plaintiffs motion to reconsider. A journal entry of judgment memorializing this ruling was filed on September 29, 2023.

Although Plaintiff initially appealed only the order granting in part Defendant's application for attorney fees and costs pursuant to the OCPA, the Oklahoma Supreme Court asked Plaintiff to amend his petition in error attaching the final order disposing of his motion to reconsider. However, the motion to reconsider requests reconsideration primarily of the trial court's April 11, 2022 order and presents an inchoate argument regarding the reconsideration of the order on attorney fees and costs. Plaintiff appeals the trial court's order granting in part Defendant's request for attorney fees and costs and the trial court's order denying his motion to reconsider.

### STANDARD OF REVIEW

"In reviewing a trial court's decision denying a motion for new trial, [or motion to reconsider], the appellate court employs an abuse of discretion standard of review." *Dopp v. Kirkendall*, 2021 OK 52, 11,498 P.3d 287. "Abuse of discretion



occurs if the trial court errs with respect to a pure, simple, and unmixed question of law or where the trial court acts arbitrarily." Id. "Nevertheless, the strength of the showing for error or abuse of discretion is much less when the trial court refuses to grant a new trial than when such a motion is sustained." Id.

We review de nova whether a party is entitled to a statutory attorney fee because it presents a question of law. See *Finnell v. Seismic*, 2003 OK 35, 7, 67 P.3d 339. "The court has plenary, independent, and non-deferential authority to reexamine a trial court's legal rulings." Id.; see also *Thacker v. Walton*, 2021 OK CIV APP 5,499 P.3d 1255 (applying de novo review in an OCPA case regarding the mandatory award of attorney fees and costs).

#### ANALYSIS

We must first determine whether Plaintiffs motion to reconsider was timely and properly brought before the trial court, an issue which raises questions about the trial court's jurisdiction to consider the motion on its merits and about this Court's jurisdiction to do the same. "This court is always free to inquire sua sponte into its jurisdiction over any pending matter." *Collins v. Mid-Continent Pipeline Co.*, 1999 OK 56, n.2, 6 P.3d 1050.

On April 11, 2022, the trial court entered its "Journal Entry of Judgment Granting Defendant's Motion to Dismiss." Pursuant to 12 O.S.2021 § 990A(A), Plaintiffs time to file an appeal from this order ended 30 days later. No appeal or post-judgment motion was filed within this time frame.

Thirteen months later on May 9, 2023, Plaintiff filed a "motion to reconsider based upon new evidence of fraud" pursuant to 12 O.S. § 651(1) seeking reconsideration of the April 11, 2022 order of dismissal and in the motion's conclusion section seeking reconsideration of the court's July 25, 2023 order granting in part Defendant's motion for attorney fees, costs, and sanctions.

Plaintiff argued:

"The Plaintiff asks the Court to set a hearing to rightfully address the Plaintiff's OCPA based objections and the motion to reconsider the Defendant's motion for attorney fees, costs, and sanctions. Then to hear the motions to amend the petition and reconsider the April 2022 decision by Judge Mai based upon her refusal to inform the Plaintiff of her Republican Party membership and self interest, not only because of the actual fraud upon the Plaintiff's rights but also because of the requirement that a judge avoids the appearance of impropriety as well as the actual impropriety."

In a nutshell, it appears Plaintiff asked the trial court to reconsider its April 11, 2022 ruling and its July 25, 2023 ruling in all probability because denying Defendant's motion to dismiss would also preclude recovery of fees, costs, and sanctions under the OCPA.

"Oklahoma's nisi prius practice and procedure authorize postjudgment relief by way of motion for new trial, see 12 O.S.2001 §§651-655, or by way of a motion to modify or vacate a judgment, see 12 O.S.2001 §§1031-1033." *Reeds v. Walker*, 2006 OK 43, n.4, 157 P.3d 100. "A motion seeking reconsideration, re-examination, rehearing or vacation of a judgment or final order, which is filed within 10 days of the day such decision was rendered, may be regarded as the functional equivalent of a new trial motion, no matter what its title." *Horizons, Inc. v. Keo Leasing Co.*, 1984 OK 24, ¶ 4, 681 P.2d 757; see also *Andrew v. Depani-Sparkes*, 2017 OK 42, ¶ 15, 396 P.3d 210.

"The meaning and effect of an instrument filed in court depends on its contents and substance rather than on form or title given it by the author." *Horizons*, 1984 OK 24, ¶ 14. "A timely-filed new trial motion does operate to extend appeal time." *Id.* ¶ 15; see also 12 O.S.2021 § 991(a) ("no appeal to the Supreme Court may be taken until subsequent to the ruling by the trial court on the motion for a new trial"); see also Supreme Court Rule 1.22(c)(1), 12 O.S.Supp. 2024, ch. 15, app. 1; see also 12 O.S.2021 § 990.2(A) (when a post-trial motion is filed within 10 days after the judgment is filed with the court clerk, "an appeal shall not be commenced until an order disposing of the motion is filed with the court clerk").

In setting out nine separate grounds for ordering a new trial, 12 O.S. § 651 states:

"A new trial is a reexamination in the same court, of an issue of fact or of law or both after a verdict by a jury, the approval of the report of a referee, or a decision by the court. The former verdict, report, or decision shall be vacated, and a new trial granted, on the application of the party aggrieved, for any of the following causes, affecting materially the substantial rights of the party:

1. Irregularity in the proceedings of the court, jury, referee, or prevailing party, or any order of the court or referee, or abuse of discretion, by which the party was prevented from having a fair trial;
2. Misconduct of the jury or a prevailing party;
3. Accident or surprise, which ordinary prudence could not have guarded against;
4. or Excessive or inadequate damages,
5. Appearing to have been given under the influence of passion or prejudice;
6. Error in the assessment of the amount of recovery, whether too large or too small, where the action is upon a contract, or for the injury or detention of property; That the verdict, report, or decision is not sustained by sufficient evidence, or is contrary to law;
7. Newly discovered evidence, material for the party applying, which could not, with reasonable diligence, have been discovered and produced at the



trial;

8. Error of law occurring at the trial, and                      objected to by the party making the application; or
9. When, without fault of the complaining party, it becomes impossible to prepare a record for an appeal.

12 O.S.2021 § 651. Although titled a "motion to reconsider based upon new evidence of fraud," Plaintiff asserted "[i]rregularity in the proceedings of the court" pursuant to § 651(1).

Title 12 O.S.2021 § 653(A) states that "[u]nless unavoidably prevented, an application for a new trial by motion, if made, must be filed not later than ten (10) days after the judgment, decree or appealable order ...." There is, however, an exception to this ten-day time limit in 12 O.S.2021 § 655 which allows an application for new trial to be made by petition:

Where the grounds for a new trial could not with reasonable diligence have been discovered before but are discovered more than ten (10) days after the judgment, decree, or appealable order was filed, or where the impossibility of preparing a record for an appeal, without fault of the complaining party, arose more than ten (10) days after the judgment, decree, or appealable order was filed, the application may be made by petition filed in the original case, as in other cases, within thirty (30) days after such discovery or occurrence; on which a summons shall issue, be returnable and served, or publication made, as in the beginning of civil actions, or service may be made on the attorney of record in the original case. The facts stated in the petition shall be considered as denied without answer, and the case shall be heard and summarily decided after the expiration of twenty (20) days from the date of service and not more than sixty days after service, and the witnesses shall be examined in open court, or their depositions taken as in other cases; but no petition shall be filed more than one (1) year after the filing of the final judgment.

Plaintiffs motion to reconsider makes no reference to reconsidering the award of attorney fees and costs until the conclusion and instead focuses on how new evidence requires overturning the April 11, 2022 order. In fact, Plaintiff states in his appellate reply brief that "The right of Judge Timmons to overturn Judge Mai's decision comes from §12-651." However, Plaintiff chose not to appeal this order and his untimely request sought reconsideration pursuant to § 651. Because Plaintiffs post-judgment motion was filed more than a year after the April 11, 2022 order, he was required to proceed by petition as provided in 12 O.S.2021§ 655 which also requires service of summons and a copy of the petition. Because Plaintiffs motion to reconsider as to the April 2022 order was not timely or properly filed, we see no abuse of discretion in the trial court's refusal to grant Plaintiffs motion.

On the other hand, Plaintiffs post-trial request to reconsider its order granting



in part Defendant's request for attorney fees and costs was timely filed. The trial court announced its decision on April 20, 2023, and Plaintiff filed his motion to reconsider on May 9, 2023. The order memorializing the court's ruling was filed on July 25, 2023. Because Plaintiff's motion was "filed after the announcement of the decision on all issues in the case but before the filing of the judgment or decree [it] shall be deemed filed immediately after the filing of the judgment or decree." 12 O.S.2021 § 653(C).

Although this motion was timely, we agree with the trial court's decision to grant in part Defendant's fees and costs pursuant to the OCPA, 12 O.S.2021 § 1438(A) which states:

"If the court orders dismissal of a legal action under the Oklahoma Citizens Participation Act, the court shall award to the moving party:

1. Court costs, reasonable attorney fees and other expenses incurred in defending against the legal action as justice and equity may require; and
2. Sanctions against the party who brought the legal action as the court determines sufficient to deter the party who brought the legal action from bringing similar actions described in the Oklahoma Citizen Participation Act."

Because the trial court's April 11, 2022 order dismissing Plaintiff's case was not timely or properly challenged by post-trial motion or appeal, Defendant's dismissal stands, requiring the trial court to award reasonable attorney fees and costs pursuant to the OCPA. And because Plaintiff appears to challenge only Defendant's entitlement to fees and costs and nothing else, the trial court's decision on this is affirmed.

## CONCLUSION

For the reasons given, we conclude that Plaintiff's motion to reconsider based on new evidence of fraud pursuant to 12 O.S. § 651 and filed more than a year after the April 11, 2022 order was not timely filed pursuant to 12 O.S. § 653 and failed to meet the requirements of 12 O.S. § 655. And although the post-trial motion was timely filed as to the trial court's July 25, 2023 order, the court's order awarding fees and costs pursuant to 12 O.S.2021 § 1438(A) was correct, and we therefore affirm the trial court's September 29, 2023 order denying Plaintiff's motion to reconsider.

**AFFIRMED.**

BARNES, C.J., and FISCHER, J., concur.

January 3, 2025

**Appendix C**

**OKLAHOMA SUPREME COURT LETTER REFUSING CERTIORARI**

**ORIGINAL**



IN THE SUPREME COURT OF  
THE STATE OF OKLAHOMA

**Filed**

**Supreme Court  
State of Oklahoma  
May 12, 2025  
John D. HADDEN  
CLERK**

**2025**

**MONDAY, MAY**

**12,**

**THE CLERK IS DIRECTED TO ENTER THE FOLLOWING ORDERS OF THE COURT:**

121,450 In re the Marriage of: Jamie Lynn Niblett v. Richard Ray  
Niblett

Petition for Certiorari is denied.

CONCUR Rowe, C.J., Kuehn, V.C.J.,

Winchester, Gurich, Darby, Kane and Jett, JJ.

DISSENT:Edmondson and Combs, JJ.

121,523 Albert G. Gerhart v. John Robert Bennett, Chairman  
of the Republican Party; and the

Republican Party of Oklahoma, Shane Dillon Jemison,  
Pamela Ann Pollard and Steven Walter Curry

Petition for Certiorari is denied.

ALL JUSTICES CONCUR.

121,857 Kinslow Family Limited Partnership v.  
William Sanders and GBR Cattle Company LLC

Petition for Certiorari is denied.

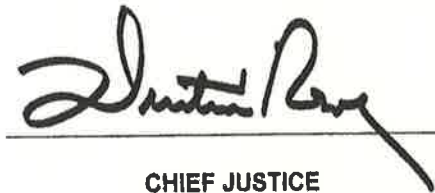
## ALL JUSTICES CONCUR

121,889 Gregory Zeiders, D.O. and  
 v. Memorial Hospital of Texas County and  
 of County Commissioners of Texas County  
 Petition for Certiorari is denied.  
 ALL JUSTICES CONCUR.

Orthopedics, PLLC  
 Board

122,063 Derrick R. Scott v. Candice J.  
 Petition for Certiorari is denied.  
 ALL JUSTICES CONCUR.

Foster



CHIEF JUSTICE

|              |   |
|--------------|---|
| Rec'd (date) | 5-17-23   |
| Posted       | <input checked="" type="checkbox"/>                                 |
| Mailed       | <input checked="" type="checkbox"/>                                 |
| Distrib      | <input checked="" type="checkbox"/>                                 |
| Publish      | yes <input checked="" type="checkbox"/> no <input type="checkbox"/> |

## **Appendix D STATUTORY EXCERPTS**

### **The First Amendment:**

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

### **The Fifth Amendment:**

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

### **The Fourteenth Amendment, Section 1**

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

### **Federal Rule of Civil Procedure Rule 23.1. Derivative Actions**

“(c) Settlement, Dismissal, and Compromise. A derivative action may be settled, voluntarily dismissed, or compromised only with the court's approval. Notice of a proposed settlement, voluntary dismissal, or compromise must be given to shareholders or members in the manner that the court orders.”

### **28 U.S. Code § 455 - Disqualification of justice, judge, or magistrate judge**

“(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal



knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;

(2) the degree of relationship is calculated according to the civil law system;

(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(e) No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate judge, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate judge, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification."

### **Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949)**

"..... It further provides that the class action shall not be dismissed or compromised without approval of the court, with notice to the members of the class. These provisions neither create nor exempt from liabilities, but require complete disclosure to the court and notice to the parties in interest. ...." Page 337 U. S. 557

## **The Oklahoma Constitution Article II, Section 6**

"Courts of justice open - Remedies for wrongs - Sale, denial or delay. The courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice."

### **The Oklahoma Constitution Article VII, Section 7, District Courts - Jurisdiction -**

“(a) The State shall be divided by the Legislature into judicial districts, each consisting of an entire county or of contiguous counties. There shall be one District Court for each judicial district, which shall have such number of District Judges, Associate District Judges and Special Judges as may be prescribed by statute. The District Court shall have unlimited original jurisdiction of all justiciable matters, except as otherwise provided in this Article, and such powers of review of administrative action as may be provided by statute. Existing electing districts for all who are or who become District Judges and Associate District Judges under the terms of this Article shall remain as they are constituted for the offices formerly held by such persons on the effective date of this Article, until changed by statute. The Legislature may at any time delegate authority to the Supreme Court to designate by court rule the division of the State into districts and the number of judges.”

### **Oklahoma Statutes Title 12. §12-1031. District court - Power to vacate or modify its judgments, when.**

“The district court shall have power to vacate or modify its own judgments or orders within the times prescribed hereafter:

1. By granting a new trial for the cause, within the time and in the manner prescribed in Sections 651 through 655 of this title;

2. As authorized in subsection C of Section 2004 of this title where the defendant had no actual notice of the pendency of the action at the time of the filing of the judgment or order;

3. For mistake, neglect, or omission of the clerk or irregularity in obtaining a judgment or order;

4. For fraud, practiced by the successful party, in obtaining a judgment or order;

5. For erroneous proceedings against an infant, or a person of unsound mind, where the condition of such defendant does not appear in the record, nor the error in the proceedings;

6. For the death of one of the parties before the judgment in the action;

7. For unavoidable casualty or misfortune, preventing the party from prosecuting or defending;

8. For errors in a judgment, shown by an infant in twelve (12) months after arriving at full age, as prescribed in Section 700 of this title; or

9. For taking judgments upon warrants of attorney for more than was due to

the plaintiff, when the defendant was not summoned or otherwise legally notified of the time and place of taking such judgment.”

### **Oklahoma Statutes §12-1032. Proceedings to be by motion - Notice.**

“The proceedings to correct mistakes or omissions of the clerk, or irregularity in obtaining a judgment or order, shall be by motion, upon reasonable notice to the adverse party or his attorney in the action. “

### **Oklahoma Statutes §12-1038. Limitations**

“Proceedings to vacate or modify a judgment, decree or order, for the causes mentioned in paragraphs 4, 5 and 7 of Section 1031 of this title must be commenced within two (2) years after the filing of the judgment, decree or order, unless the party entitled thereto be an infant, or a person of unsound mind and then within two (2) years after removal of such disability. Proceedings for the causes mentioned in paragraphs 3 and 6 of Section 1031 of this title, shall be within three (3) years, and in paragraph 9 of Section 1031 of this title, within one (1) year after the defendant has notice of the judgment, decree or order. A void judgment, decree or order may be vacated at any time, on motion of a party, or any person affected thereby.”

### **Oklahoma Statutes Title 12. -1430. Short title - Oklahoma Citizens Participation Act**

““A. This act may be known and shall be cited as the Oklahoma Citizens Participation Act.

B. The purpose of the Oklahoma Citizens Participation Act is to encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely and otherwise participate in government to the maximum extent permitted by law and, at the same time, protect the rights of a person to file meritorious lawsuits for demonstrable injury.””

### **Oklahoma Statutes Title 12. §12-1438**

“A. If the court orders dismissal of a legal action under the Oklahoma Citizens Participation Act, the court shall award to the moving party:

1. Court costs, reasonable attorney fees and other expenses incurred in defending against the legal action as justice and equity may require; and

2. Sanctions against the party who brought the legal action as the court determines sufficient to deter the party who brought the legal action from bringing similar actions described in the Oklahoma Citizens Participation Act.

B. If the court finds that a motion to dismiss filed under the Oklahoma Citizens Participation Act is frivolous or solely intended to delay, the court may award court costs and reasonable attorney fees to the responding party.”

### **Oklahoma Statutes Title 12. §12 2023.1. Derivative actions by shareholders**

“In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the petition shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law. The petition shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.”

### **Oklahoma Rules of Professional Conduct Rule 1.7. Conflict of Interest: Current Clients**

“(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;



- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing.”

## **Title 5. Attorneys and State Bar Chapter 1.—Appendix 4. Code of Judicial Conduct Canon**

2. A Judge Shall Perform the Duties of Judicial Office Impartially, Competently, and Diligently

### **Oklahoma Statutes Title 5 Code of Judicial Conduct Rule 2.11. Disqualification**

“(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge's spouse, a member of the judge's household, or a person within the third degree of relationship to any of them, or the spouse of such a person is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(b) acting as a lawyer in the proceeding;

(c) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent, or child, or any member of the judge's household, has an economic interest in the subject matter in controversy or is a party to the proceeding.

(4) The judge knows or learns by means of a timely motion that a party, a party's lawyer, or the law firm of a party's lawyer has within the previous four (4) years made aggregate contributions to the judge's campaign in an amount that a reasonable person would believe could affect the fairness of the judge's



consideration of a case involving the party, the party's lawyer or the law firm of the party's lawyer. The judge should consider what the public perception would be as to such contributions affecting the judge's ability to be fair to the parties. Contributions within the limits allowed by the Oklahoma Ethics Commission will not normally require disqualification unless other factors are present.

(5) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(6) The judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(c) was a material witness concerning the matter; or

(d) previously presided as a judge over the matter in another court or in any adjudicatory capacity.

(B) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and members of the judge's household.

(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding."

### **Oklahoma Republican Party Bylaws**

Rule 20 (c) "Matters not covered by Rules: All question of procedure and other matters affecting the Oklahoma Republican Party, or any of its organizations, unit meetings, or conventions, which are not specifically covered in these rules shall be governed by Robert's Rules of Order, Newly Revised, and the law of the State of Oklahoma, whichever may be applicable."

Rule 3 (b) Authority and Duties: The State Committee is the supreme

21a

Republican Party authority of the state Republican Party, subject to these rules and the direction and control of the State Convention.