

FILED

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INSURANCE COMMISSIONER
OKLAHOMA

BEFORE THE INSURANCE COMMISSIONER OF THE
STATE OF OKLAHOMA

IN RE: HEARING PURSUANT TO 36 O.S. § 984)
AS TO WHETHER THE OKLAHOMA) Case No. 26-0820-TRN
HOMEOWNERS INSURANCE)
MARKET IS NONCOMPETITIVE)

**THE NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES INC. AND
AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION, INC.'S
RESPONSE BRIEF OPPOSING THE AFFIDAVIT IN SUPPORT OF DISQUALIFICATION**

The National Association of Mutual Insurance Companies, Inc. ("NAMIC") and The American Property Casualty Insurance Association, Inc. ("APCIA") state as follows in Response to the "Joint Affidavit of the Oklahoma Attorney General and Bob Sullivan in Support of Disqualification of the Independent Hearing Examiner and of the Insurance Commissioner Pursuant to 75 O.S. § 316," filed on Sept. 10, 2026:

ARGUMENT AND AUTHORITIES

The relief requested in the Affidavit in Support of Disqualification filed by Messrs. Reggie Whitten and Michael Hunter (collectively, "Movants") should be denied in its entirety, and its attempt to make this proceeding into a political circus should not be well-taken.

Generally, a judge should disqualify himself "where there are circumstances of such a nature to cause doubt as to his partiality, bias or prejudice." *Johnson v. Bd. of Governors of Registered Dentists of State of Okla.*, 1996 OK 41, ¶ 33, 913 P.2d 1339, 1348, *as corrected*. "This rule applies equally to administrative boards acting in an adjudicatory capacity as it does to judges." *Id.* (citing *Gibson v. Berryhill*, 411 U.S. 564, 579 (1973)). However, the OID is acting in a rulemaking capacity under Section 984, not a judicial capacity. Therefore, the only requirement is that an agency head or hearing examiner have no "unalterably closed mind on matters critical to the disposition of the rulemaking." *Assn. of Nat. Advertisers, Inc. v. F.T.C.*, 627 F.2d 1151, 1154 (D.C. Cir. 1979). Movants'

self-serving suspicions and general references to political activities by the Insurance Commissioner and the hearing examiner fail to meet this tall burden.

Even if Article II of the Act were applicable here, Movants fail to meet their burden to demonstrate that disqualification is required. Movants make much ado about a recess that was taken by the hearing examiner during a pre-hearing conference. It is worth noting that OID offered to have meeting participants appear live at OID offices, and anyone could have attended the conference in person at the OID. Movants, however, declined that invitation and instead appeared via video conference. If there were actual concern about the hearing examiner, Movants' should have been at OID office to participate in the meeting in-person. They choose to do otherwise. They should not be heard to make bald accusation about what may or may have not transpired at a recess when they waived any right to attend the hearing in person.

Movants level extremely serious allegations against the Hearing Examiner based on an astoundingly weak record of alleged impermissible conduct. The fact that the Commissioner has already entered a ruling contrary to Movants' desires is not a grounds for disqualification. "[A]n administrator can ordinarily participate in an adjudication after opining on disputed issues in the course of other proceedings. After all, judges must often decide issues after squarely deciding the same issues in other proceedings." *Zen Magnets, LLC v. Consumer Prod. Safety Comm.*, 968 F.3d 1156, 1171 (10th Cir. 2020). Movants point to the Hearing Examiner's decision to grant continuance, over the objection of multiple parties, as evidence of impartiality. The undersigned was one of the parties that objected to the continuance, and in no way views this decision as motivated by bias or impartiality. The fact that the Commissioner or a hearing examiner engaged in constitutionally protected political activities is also irrelevant. "[C]omments by adjudicators outside their official duties are not enough, standing alone, to require disqualification." *Id.* at 1175. Movants also claim the fact that the hearing examiner is paid for work by the OID demonstrates the hearing examiner has a "financial interest in the outcome of the decision." *Affidavit* at § III, ¶ 24. This nonsense argument entails that every judge

in Oklahoma should be disqualified from criminal proceedings because they receive a salary from the State government – a true absurdity. The fact that the hearing examiner is paid by the OID for services rendered does not demonstrate bias in any way. None of these allegations, alone or in conjunction, establish that disqualification is required here.

Assuming disqualification were required, which it clearly is not, the appropriate remedy is not to permit the proceeding participants to pick their own hearing examiner, as Movants request. *See Affidavit* at § VI, ¶ 48 (stating “[t]he successor should be one the parties agree upon”). The appropriate remedy is to appoint a new hearing examiner in accordance with OID statutes and rules. Article II of the Act expressly states the process to be followed if a hearing examiner is disqualified: “[u]pon the entry of an order of disqualification affecting a hearing examiner, the agency shall assign another in his stead or shall conduct the hearing itself.” 75 O.S. 2021 § 316 (underline added). The use of “shall” is dispositive here. It demonstrates that the Legislature requires, rather than permits, the OID to replace a disqualified hearing examiner with another hearing examiner. It does not permit the proceeding participants to pick their own hearing examiner. Nothing in any of Movants’ authorities even suggests a contrary result, and for good reason – this is an unheard of request so out of bounds that it should be forcefully denied. It is further evidence that Movants are intent on impermissibly making this proceeding a political circus, and the OID should not tolerate the injection of such chicanery into its processes.

Finally, counsel for the Attorney General asserts that “Rule 15 of the District Court applies and this matter is stayed.” *Reggie Whitten Email* from 13 September 2026 at 5:50 pm. This is an administrative proceeding, not a lawsuit in district court. Rule 15 has no application here, and nothing in Title 36, OID regulations, or the Administrative Procedures Act demands a contrary conclusion. Nothing is stayed by operation of law, and no one has presented a legally cognizable reason why even more delay is necessary. Moreover, since Rule 15 has no application here, there is no basis for Movants to claim that this proceed is, or should be, stayed.

For these reasons, the disqualification request should be firmly denied. It is a stark reminder of why Article I applies to this proceeding. This is not a political circus. It is rulemaking and should be treated as such.

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