

**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF OKLAHOMA**

FILED
OCT 02 2026
INSURANCE COMMISSIONER
OKLAHOMA

IN RE: HEARING PURSUANT TO 36 O.S. § 984)
AS TO WHETHER THE OKLAHOMA)
HOMEOWNERS INSURANCE)
MARKET IS NONCOMPETITIVE)

Case No. 26-0820-TRN

**ORDER DENYING
THE JOINT AFFIDAVIT SEEKING DISQUALIFICATION OF THE
INDEPENDENT HEARING EXAMINER AND THE INSURANCE COMMISSIONER**

This matter comes before the undersigned Independent Hearing Examiner, designated by the Insurance Commissioner (“Commissioner”) pursuant to 75 O.S. § 316, to determine 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 September 10, 2026 (the “Affidavit”) by the State of Oklahoma, ex rel. Genter Drummon, Attorney General of the State of Oklahoma (“Attorney General”) and Bob Sullivan (“Sullivan”)(collectively referred to as “Movants”).

The undersigned has considered the Affidavit; *The Oklahoma Insurance Department’s Response Opposing the Disqualification* filed September 22, 2026 (the “Response”) by the State of Oklahoma, ex rel. Glen Mulready, Insurance Commissioner (the “Department” or “OID”) and its supporting affidavits; *The National Association of Mutual Insurance Companies Inc. and American Property Casualty Insurance Associations, Inc.’s Response Brief Opposing the Affidavit in Support of Disqualification* filed September 14, 2026 (the “NAMIC Response”) by The National Association of Mutual Insurance Companies, Inc. (“NAMIC”) and The American Property Casualty Insurance Association, Inc. (“APCIA”); the *Joint Objection of the Oklahoma Attorney General and Bob Sullivan to the Filing by the Oklahoma Insurance Department on September 22, 2026, and Renewed Request for Prompt Determination Pursuant to 75 O.S. § 316*

filed September 29, 2026 (“Joint Objection”) by the Movants, the transcript of the September 4, 2026 pre-hearing conference; and the applicable governing law.

For the reasons set forth below, the undersigned finds that the Movants have not met their burden of overcoming the presumption of impartiality, and that neither the individual grounds asserted nor their totality would cause a reasonable, disinterested observer to doubt the impartiality of Independent Hearing Examiner, John D. Miller (the “Hearing Examiner”). Therefore, the relief requested in the Affidavit is **DENIED in part and GRANTED in part**.

I. Summary of the Parties’ Contentions

The Movants seek the disqualification of both Hearing Examiner and the Commissioner under 75 O.S. § 316, from any adjudicative, decisional, or supervisory role in this proceeding, contending that the circumstances deprive them of a fair and impartial tribunal. *See* Affidavit, p. 1. Movants argue that the governing standard is objective, and that disqualification is required where the circumstances would cause a reasonable observer to doubt the adjudicator’s impartiality, regardless of the adjudicator’s own belief in his neutrality, and that the appearance of partiality is measured by what a reasonable observer may conclude rather than by what the Movants can prove. *See* Affidavit, p. 5, 8, and 9.

As to the Hearing Examiner, the Movants contend that he appeared at the September 4, 2026 pre-hearing conference from within the Department’s offices and in the physical company of the Department’s paralegal, while the Department is a party. *See* Affidavit, p. 11. Movants contend that the Hearing Examiner stated he was disinclined to move the hearing date; however, after he took a thirteen-minute recess beyond the observation of every remote participant, he returned and granted a continuance over the objection of three of the four participants who addressed it, declined to rule on the fully briefed Omnibus Pre-Hearing Motion, and deferred the

pending motions to a date set for argument on the Department's late-filed motion. *See id.* Movants appear to contend that because it was impossible to know what occurred during the recess, there is an appearance of impropriety. Movants further contend that the Hearing Examiner is compensated by the Department under a continuing engagement subject to the Department's renewal, notwithstanding that 36 O.S. § 319 requires an "independent" examiner. *See id.* For these reasons, Movants contend that the totality of the circumstances creates an appearance of partiality/conflict of interest that requires the Examiner to be disqualified.

As to the Commissioner, the Movants contend that the Department anticipates calling him as a witness on the very question to be adjudicated. *See* Affidavit, p. 11. Specifically, Movants contend that he determined that question by written order on April 7, 2026 without receiving evidence, and that Commissioner has publicly and repeatedly announced that the market is competitive, including in the release announcing this hearing. *See id.* Movants further contend that the Commissioner publicly opposed Mr. Sullivan's candidacy and co-hosted a fundraiser for his opponent. *See id.* Based upon these contentions, Movants contend that the Commissioner should withdraw from any adjudicative, decisional, or supervisory role in this proceeding, including any determination of this Affidavit. *See id.* p. 12.

The Department opposes disqualification, contending that administrative adjudicators are presumed capable of judging a controversy fairly and that the Movants bear the burden of overcoming that presumption. *See* Response, p. 1-2. The Department argues that holding hearings at agency facilities is routine and proper, that agency staff assistance to a hearing examiner is a recognized and lawful practice, and that no ex parte communication concerning the merits occurred. *See id.*, p. 3-5. The Department contends that the Hearing Examiner's statement about the hearing date was not a ruling and preceded argument, that his continuance ruling was a single

decision made after hearing all parties, and that an adverse ruling is insufficient to establish that a fair and impartial hearing cannot be afforded. *See id.*, p. 5-6. The Department further contends that the Hearing Examiner's compensated engagement does not disqualify him, noting that his contract is not set for renewal until next year, once the next Oklahoma Insurance Commissioner is in office. *See id.* at 7.

As to the Commissioner, the Department contends that he is not presiding over these proceedings, having delegated his adjudicative authority to the Hearing Examiner, which distinguishes the authorities on which the Movants rely. *See Response*, p. 9. The Department further contends that the Administrative Procedures Act does not bar an agency head from testifying in an administrative hearing conducted by that agency, that the Commissioner is called only as a fact witness, and that his constitutionally protected political activity and prior ruling in a separate case are not grounds for disqualification. *See id.* p. 10-11. The Department contends that the disqualification issue may be heard by an independent examiner appointed by the Commissioner pursuant to 36 O.S. § 319. *See id.* p. 8. Finally, the Department contends that any successor examiner must be assigned by the agency rather than selected by the parties, but that in any event, the Affidavit should be denied and the matter should proceed before the currently appointed Hearing Examiner. *See id.* at 11-12.

NAMIC and APCIA also oppose disqualification and urge that the Affidavit be denied in its entirety. *See NAMIC Response*. They contend that in conducting a § 984 proceeding the Department acts in a rulemaking capacity rather than a judicial one, so that the only requirement is that the decisionmaker not have an "unalterably closed mind on matters critical to the disposition of the rulemaking," a burden the Movants fail to meet. *See id.* p. 1-2. They contend that even under an adjudicative standard the Movants cannot meet their burden. They contend that the Department

offered in-person attendance and the Movants elected to appear remotely, and Movants should not be heard to speculate about the recess. *See id.* at p. 2. They further contend that a prior ruling or opinion on the issue does not disqualify an adjudicator, and political activity and a salary paid by the Department are not grounds for disqualification. *See id.*

II. Legal Standard

Under 75 O.S. § 316, “[a] hearing examiner or agency member shall withdraw from any individual proceeding in which he cannot accord a fair and impartial hearing or consideration,” and any party may request disqualification “by filing an affidavit, promptly upon discovery of the alleged disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded.” Due process requires that every litigant receive a decision that is the product of “the cold neutrality of an impartial judge,” a standard that “applies equally to administrative boards acting in an adjudicatory capacity as it does to judges.” *Johnson v. Bd. of Governors of Registered Dentists of State of Okl.*, 1996 OK 41, ¶¶ 32-33, 913 P.2d 1339, 1347-1348.

The standard for determining disqualification of a hearing examiner is objective and does not turn on proof of actual bias or actual misconduct. The question “is not whether one personally believes herself or himself to be unprejudiced, unbiased, and impartial,” but “whether the circumstances are of such nature to cause doubt as to his or her partiality, bias, or prejudice.” *Bowen v. State ex rel. Oklahoma Real Est. Appraiser Bd.*, 2011 OK 86, ¶22, 270 P.3d 133, 139. The parties are entitled to a hearing that “avoids the appearance that fairness and impartiality are lacking.” *Arbuckle Simpson Aquifer Prot. Fed’n of Oklahoma, Inc. v. Oklahoma Water Res. Bd.*, 2013 OK 29, ¶15, 343 P.3d 1266, 1272. Whether an appearance of unfairness and partiality exists is assessed on the totality of the circumstances. *Bowen*, 2011 OK 86, ¶23, 270 P.3d 133, 139.

That objective inquiry operates against a presumption of impartiality that the challenging party bears the burden to overcome. *See Casey v. Casey*, 2011 OK 46, ¶ 11, 270 P.3d 109, 112 (“The burden is on the party seeking disqualification to substantiate a claim that the appearance of a fair trial is not present, or that the judge's impartiality might reasonably be questioned.”) Administrators are “assumed to be men of conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances,” and a party asserting a disqualifying risk of bias “must overcome a presumption of honesty and integrity in those serving as adjudicators.” *Withrow v. Larkin*, 421 U.S. 35, 47, 55 (1975). “Agency administrators are presumed to be capable of judging a particular controversy fairly.” *Wilson v. Oklahoma Horse Racing Comm’n*, 1996 OK 3, ¶13, 910 P.2d 1020, 1023.

III. Analysis

a. Preliminary matters

Because the Affidavit names the Commissioner and the Department anticipates calling him as a witness, the Commissioner has designated the undersigned, an independent hearing examiner having no role in the merits of this proceeding, to determine the Affidavit in his stead.

The undersigned has considered the Movants Joint Objection, and finds that said objection is **OVERRULED**. While there is nothing in Section 316 that expressly authorizes parties to submit responsive pleadings to an affidavit seeking the disqualification of a hearing examiner, there is nothing in Section 316 that precludes the filing of responsive pleadings. As such, the undersigned exercises his inherent authority to control the proceedings over which he is appointed, and finds that the Response and the NAICO Response should remain part of the record, and has taken them under consideration.

The NAICO Response asserts that the Department is operating in a rulemaking capacity under Section 984, rather than a judicial capacity. As such, NAICO and APCIA contend that the Hearing Examiner could only be disqualified if it was demonstrated that he had an “unalterably closed mind on matters critical to the disposition of the rulemaking.” NAICO Response, p. 1. However, because the undersigned finds that the Hearing Examiner is not disqualified under the more stringent standard applied when a Hearing Examiner is operating in a judicial capacity, the undersigned does not reach a decision regarding whether or not the Hearing Examiner is operating in a rulemaking capacity or a judicial capacity.

a. Grounds for disqualifying the Hearing Examiner

Movants have identified numerous alleged issues that they contend, when viewed together, create an appearance of impartiality/conflict of interest, and require the Hearing Examiner to be disqualified. The undersigned will address these contentions below.

i. The Hearing Examiner’s appearance from the Department’s building with the administrative court clerk present

The undersigned finds that the fact the Hearing Examiner appeared from the Department’s building, with the Department’s administrative court clerk assisting him, would not cause a reasonable observer to doubt his impartiality. Oklahoma law expressly contemplates that an insurance-code hearing be conducted “in person, by authorized disinterested employees or by hearing examiners appointed by the Commissioner for that purpose.” 36 O.S. § 307. For a host of practical reasons, the administrative hearings carried out by independent hearing examiners are routinely and permissibly held at agency facilities. Further, there is no record of any party to this proceeding objecting to the location of the hearing prior to it taking place.

The ex parte prohibition of 75 O.S. § 313 forbids a decision-maker from communicating on issues of fact “with any person or party,” and on issues of law “with any party or his

representative,” except on notice and an opportunity for all parties to participate, but it expressly permits the decision-maker to “have the aid and advice of one or more personal assistants.” Okla. Stat. Ann. tit. 75, § 313. A hearing examiner’s use of agency staff for administrative and clerical support during a hearing taking place at an agency facility is a routine practice. There is nothing to suggest that the Hearing Examiner communicated with the agency support staff regarding issues of fact or issues of law related to the case. The allegations contained in the Affidavit reflect only routine clerical assistance by the Department’s administrative court clerk. As such, the fact the Hearing Examiner was assisted by an administrative clerk during the hearing does not create any appearance of impartiality.¹ Further, the undersigned agrees with the Department that setting such a precedent would call into question the validity of a majority of administrative hearings held at agency facilities.

ii. The recess and continuance ruling

An adverse ruling is not evidence of partiality. The Movants concede that the continuance was not, standing alone, an abuse of discretion and that a disqualification request resting solely on a ruling is insufficient. *See* Affidavit, p. 5. Movants object, instead, to the circumstances in which the ruling was reached. *See id.* However, the Movants’ contention that the Hearing Examiner reversed a prior “ruling” after a recess is inaccurate. The record reflects that the Hearing

¹ The undersigned’s specifically rules that the Hearing Examiner’s conduct at the September 4, 2026 hearing does not create an objective appearance of impartiality or bias without the need to rely upon the affidavits provided by the Department stating that no ex parte communications took place. However, it should be noted that in the event there was evidence that an ex parte communication had taken place, the remedy would not be to disqualify the Hearing Examiner, but to order that the alleged ex parte communications be disclosed so that all parties may respond accordingly. *See Arbuckle Simpson Aquifer Prot. Fed’n of Oklahoma, Inc. v. Oklahoma Water Res. Bd.*, 2013 OK 29, ¶ 0, 343 P.3d 1266, 1267 (Wherein the Oklahoma Supreme Court refused to order the disqualification of a hearing examiner, but held “in the interest of fairness and in order to remedy any appearance of impropriety we issue a writ of mandamus compelling the hearing officer to notify the parties to the administrative proceeding of any and all ex parte communications that occurred between her and federal agencies and to include those communications in the record, so that the parties may have an opportunity to respond.”) Here, the Department has already provided sworn affidavits describing the communications between the Hearing Examiner and the administrative support staff on the day of the hearing. Nevertheless, because these affidavits do not serve as the basis of this order, the undersigned will not provide any further comment on the affidavits.

Examiner's initial remark that he was disinclined to move the hearing date was made before any continuance motion and before hearing from the parties. The fact that the Hearing Examiner ultimately decided to grant a continuance, after an oral motion for continuance was made and the parties addressed the merits of the motion, does nothing more than reflect that the Hearing Examiner made a decision on fuller consideration of the issues. Measured objectively, a recess taken to deliberate before announcing a ruling, is ordinary adjudicative conduct that would not cause a reasonable observer to doubt impartiality, even if the ultimate decision differed from the examiner's initial remark.

The Movants identify no communication during the recess. They contend only that what occurred is "unknown and unknowable." However, this is true of every recess taken by a judge or hearing examiner. Movants assert that the location of the hearing at an agency facility creates an appearance of impropriety. However, Movants advocate for a rule that would render it impractical to conduct proceedings at agency facilities, as any break in the proceedings would render the hearing examiner subject to disqualification due to the potential for unknowable ex parte communications. This type of speculation is insufficient to meet the Movant's burden to substantiate a claim that the appearance of a fair proceeding is not present. Accordingly, the undersigned finds that no objective person could consider the circumstances surrounding the recess and continuance ruling as creating an appearance of partiality.

iii. Deferral of the pending motions

The Hearing Examiner's decision to set a briefing schedule and oral argument on the Department's motion to dismiss, and to defer the remaining motions to that date rather than rule at the pre-hearing conference, is an ordinary exercise of case-management authority. A hearing examiner authorized to preside over the proceeding, necessarily has the authority to do all things

necessary and incidental to conducting the proceeding. Looked at objectively, the decision to defer consideration of the pending motions did not create an appearance of impartiality.

iv. The Examiner's compensation agreement

The Hearing Examiner's status as a compensated, contract examiner does not disqualify him. The Movants concede that they "do not ask this Court to hold that every contract examiner is disqualified in every case." Affidavit, p. 5. Given this concession, it is unclear how the compensation arrangement of the Hearing Examiner, which is not alleged to be materially different than any other hearing examiner utilized by the Department, would be relevant to the analysis here. It is presumed that "someone who has a financial interest in the outcome of a decision, even a pretrial decision, cannot render a decision with 'the cold neutrality of an impartial judge.'" *Johnson v. Bd. of Governors of Registered Dentists of State of Okl.*, 1996 OK 41, 913 P.2d 1339. But the disqualifying interest recognized in Oklahoma law is a substantial, outcome-dependent pecuniary stake in the particular controversy. *See Johnson v. Bd. of Governors of Registered Dentists of State of Okl.*, 1996 OK 41, 913 P.2d 1339)(disqualifying an adjudicator who was a business competitor of the respondent). Here, the Hearing Examiner has no comparable stake in whether the homeowners market is found competitive or noncompetitive. As such, the fact the Hearing Examiner is compensated for his services by the Department does not provide a basis for disqualification.

v. The totality of the circumstances does not create an appearance of partiality

Because the appearance of partiality is assessed on the totality of the circumstances, the undersigned has considered the asserted grounds not only individually but in the aggregate: a contract examiner, compensated by the Department, who appeared for a video conference from the Department's building attended by the Department's administrative court clerk, took a recess

beyond the remote participants' observation, and returned to grant a continuance that differed from his preliminary inclination. Taken together, these circumstances would not cause a reasonable, disinterested observer to doubt the Hearing Examiner's impartiality. Each issue raised by Movants is either expressly authorized by statute, ordinary adjudicative conduct, or a compensation arrangement that is no different than any other hearing examiner and is unrelated to the outcome of this proceeding. An aggregation of individually lawful and unremarkable circumstances does not become an appearance of partiality merely by being listed together.

Accordingly, Movants request to disqualify the Hearing Examiner is **DENIED**.

b. Withdrawal of the Commissioner

The Movants request to for an order directing the Commissioner to withdraw from "any adjudicative, decisional, or supervisory role" is also **DENIED** as moot. The relief is unnecessary because the Commissioner occupies no such role. The Commissioner has appointed and delegated his adjudicative authority to the Hearing Examiner, and as such, does not preside, and cannot review, the Hearing Examiner's final order, which is final agency action under 36 O.S. § 313(A). Further, none of the issues raised by the Movant regarding the Commissioner, such as his anticipated appearance as a witness, his April 7, 2026 order, his public statements, and his political activity, have any bearing on the impartiality of the Hearing Examiner, who is a separate quasi-judicial officer and the sole adjudicator of this proceeding.

In addition, as noted above, the Commissioner has appointed the undersigned to make a determination regarding the Affidavit. As such, the Commissioner has no adjudicative, decisional, or supervisory role in the determination of the Affidavit.

c. Additional request for relief

i. Request that no substantive rulings issue pending determination.

Because the request to disqualify the Hearing Examiner is denied, the request to stay all substantive rulings is **DENIED**, and the proceeding shall resume under the Hearing Examiner without further delay.

ii. Request for a party-selected successor examiner.

The request that the parties confer and select an agreed successor examiner is **DENIED**. Because no order of disqualification has been entered, no successor is required.

iii. Request to preserve the record.

The request that the record of the September 4, 2026 pre-hearing conference, including the fact and duration of the recess, be preserved and made available to the parties is **GRANTED**. The undersigned orders that the transcript and any video or audio recording of the hearing be preserved by the Department and made available to the parties.

iv. Request for a written order.

The request for a written order is **GRANTED**. This Order satisfies the request that the disposition of the Affidavit be memorialized in a written order stating the reasons for the ruling and the findings on which it rests.

IT IS SO ORDERED.

Dated: October 2, 2026

A handwritten signature in black ink, reading "Stephan S Mathis". The signature is written in a cursive, flowing style. The first name "Stephan" is written with a large, stylized 'S' and 'h'. The last name "Mathis" is written with a large, stylized 'M' and 'h'. The signature is positioned above a horizontal line.

Stephan S. Mathis
Independent Hearing Examiner
Designated Pursuant to 75 O.S. § 316