

FILED

OCT 08 2026

BEFORE THE INSURANCE COMMISSIONER OF THE
STATE OF OKLAHOMA

**INSURANCE COMMISSIONER
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)

**JOINT REPLY OF THE OKLAHOMA ATTORNEY GENERAL AND BOB SULLIVAN
IN SUPPORT OF THEIR JOINT MOTION TO STAY PROCEEDINGS PENDING
ORIGINAL ACTION**

COME NOW the State of Oklahoma, ex rel. Gentner Drummond, Attorney General of the State of Oklahoma (the "Attorney General"), and Bob Sullivan (together, "Movants"), and reply to the Objection to the Joint Motion to Stay filed October 7, 2026 (the "Objection") by the National Association of Mutual Insurance Companies, Inc. and the American Property Casualty Insurance Association, Inc. (the "Trade Associations"). The Objection is addressed to Movants' Joint Motion to Stay Proceedings Pending Original Action filed October 5, 2026 (the "Motion"). Movants state:

1. Section 319(2) does not govern this Motion. The Objection contends that a stay requires "verified statements of material fact" showing irreparable impairment of constitutional rights. Objection at 4 (quoting 75 O.S. § 319(2)). That subsection applies "[i]n every proceeding in any court for the review of an order of an agency," and states when a reviewing court must enter a stay. 75 O.S. § 319(2). It does not limit the agency. Subsection (1) provides that the filing of a proceeding for review "shall not stay enforcement of the agency decision; but the agency may do so." 75 O.S. § 319(1). Supreme Court Rule 1.15(b), which will govern once the original action is filed, is to the same effect: unless a statute or rule provides otherwise, "the lower tribunal may in its sound discretion stay enforcement of the decision which is the subject of proceedings in this Court on terms which will protect the rights of the parties." Okla. Sup. Ct. R. 1.15(b). The

Objection identifies no provision of the Insurance Code that governs this request, Objection at 3–4, and Movants know of none. The question is one of discretion.

2. **The Objection relies on Article II.** The Objection reasserts the Trade Associations’ illogical argument that the present competitive market proceeding is rulemaking under Article I of the Administrative Procedures Act (“APA”), while paradoxically relying on § 319, which is part of Article II¹. Objection at 4. 75 O.S. § 250.1. As set out in more depth in the September 3, 2026, Reply of the Oklahoma Attorney General to the Response of NAMIC and APCIA, this matter has proceeded under Article II of the APA from its very inception with the appointment of a hearing examiner, “a person meeting the qualifications specified by Article II of the Administrative Procedures Act and who has been duly appointed by an agency to hold hearings and, as required, render orders or proposed orders.” 75 O.S. § 250.3 (defining “hearing examiner”). The present disqualification inquiry, including the Department’s Response and the October 2, 2026 Order, continues to proceed under 75 O.S. § 316, which is also a creature of Article II. See September 22, 2026, Oklahoma Insurance Department’s Response Opposing the Disqualification of the Independent Hearing Examiner and the Insurance Commissioner and October 2, 2026, Order Denying the Joint Affidavit Seeking Disqualification of Independent Hearing Examiner and the Insurance Commissioner. The Order declined to decide whether this proceeding is rulemaking. Order at 7. Ultimately, this matter will conclude pursuant to Article II with the entry of a final agency order as provided in 75 O.S. § 312. It has every mark of an individual proceeding, “the formal process employed by an agency having jurisdiction by law to resolve issues of law or fact between parties and which results in the exercise of discretion of a judicial nature.” 75 O.S. § 250.3 (defining “individual proceeding”). The definition of “rule” found in the APA expressly excludes

¹ Article II “shall consist of Sections 308a through 323.” 75 O.S. § 250.1(A).

“orders by an agency.” 75 O.S. § 250.3 (defining “rule,” subparagraph e). As the present proceeding will result in an order as specifically required by statute, this proceeding cannot be characterized as rulemaking and Article I does not apply. Section 984 places “[t]he burden of proof in any hearing” on “the party or parties advocating the position that competition does not exist” and requires that “[a]ll determinations by the Commissioner shall be made on the basis of findings of fact and conclusions of law.” 36 O.S. § 984(A), (B)(2). Those are the features of an individual proceeding, not of rulemaking.

3. **The right at stake is constitutional.** The Objection asserts that “no constitutional rights are implicated.” Objection at 4 n.1. The Supreme Court has held otherwise. Due process “entitles a person to an impartial and disinterested tribunal in both civil and criminal” adjudicative proceedings, and it is “a protection afforded by both the United States and the Oklahoma Constitutions.” *Johnson v. Board of Governors of Registered Dentists*, 1996 OK 41, ¶ 14, 913 P.2d 1339, 1344 (quoting *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980)). This is an individual proceeding, see ¶ 2 above, and a challenge to the impartiality of the tribunal is no less fundamental than the challenge to its jurisdiction the Objection offers as an example. Objection at 4 n.1.

4. **The stay requested is limited, and scheduling is not stayed.** The Objection describes the request as an “indefinite stay,” Objection at 5, and argues that “[s]etting a hearing date and making arrangements for an orderly hearing process” should go forward, *id.* at 6. The Motion does not ask otherwise. It asks that substantive rulings, including rulings on the pending motions, and any evidentiary hearing await the Supreme Court’s disposition, and it does “not ask that the exchange of filings or any other non-substantive step be suspended.” Motion ¶ 8. The stay ends when the Supreme Court acts. Movants do not object to the setting of a hearing date, provided the hearing does not commence before the Supreme Court has ruled.

5. **The harm is concrete.** Two motions are pending: the Attorney General's Omnibus Pre-Hearing Motion, briefed under the stipulated schedule, and the Department's Motion to Dismiss Parties Due to Lack of Standing, which seeks to remove Mr. Sullivan and Craig MacIntyre from this proceeding. The Order directs that "the proceeding shall resume under the Hearing Examiner without further delay." Order at 12. A ruling on either motion by the officer whose disqualification Movants are presenting to the Supreme Court is the harm the Motion seeks to avoid. In the courts, a judge whose disqualification is sought "cannot proceed with the case until the disqualification stands overruled of record," which occurs only after the appellate court has acted. Rule 15(d), Rules for District Courts of Oklahoma, 12 O.S., ch. 2, app.; see *Miller Dollarhide, P.C. v. Tal*, 2007 OK 58, ¶ 21, 163 P.3d 548, 555–56. The same principle supports a stay here.

6. **The Objection's own prediction favors a stay.** The Objection predicts that the Supreme Court will likely rule before any hearing in this proceeding. Objection at 3, 4. If so, a stay limited to substantive rulings and the hearing costs the other participants nothing.

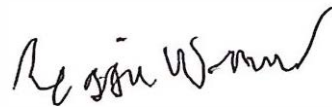
7. **The Affidavit did not rest on the ruling.** The Objection describes the Affidavit as "based on [the Hearing Examiner's] granting of an oral motion." Objection at 1. The Affidavit says the opposite: "The objection is not to the ruling." Affidavit ¶ 22. The Affidavit also named the Commissioner, Affidavit, Relief Requested ¶ 2, and it did not ask that Movants "hand-pick" an examiner, Objection at 5. It asked for an agreed successor or, failing agreement, selection by alternating strikes from a list of persons with no engagement with the Department, a process in which every party would take part. Affidavit ¶ 48.

8. **Movants have opposed delay throughout.** The Objection attributes to Movants an intent to delay the hearing until a new Insurance Commissioner takes office. Objection at 6.

The record shows otherwise. At the September 4, 2026 conference counsel for the Attorney General stated that his client “would strenuously object to moving” the hearing, Sept. 4 Tr. 15:17–18, and counsel for Mr. Sullivan objected to the continuance and asked to argue the pending motion that day, *id.* at 16:22–24. The Trade Associations objected as well. *Id.* at 17:4–8. The continuance issued over those objections. Order for Continuance (Sept. 10, 2026) at 1. And on the Order’s own account the Commissioner has no adjudicative, decisional, or supervisory role in this proceeding. Order at 11. If that is so, the identity of the officeholder has no bearing on when the hearing is held.

WHEREFORE, PREMISES CONSIDERED, Movants respectfully request that the Motion be granted to the extent stated in paragraph 8 of the Motion and paragraph 4 above; that the Hearing Examiner rule on it promptly by written order; and that Movants be granted such other and further relief as is fair and proper.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Michael J. Hunter, hereby certify that on this 9th day of October, 2026, a true and correct copy of the above and foregoing **JOINT REPLY OF THE OKLAHOMA ATTORNEY GENERAL AND BOB SULLIVAN IN SUPPORT OF THEIR JOINT MOTION TO STAY PROCEEDINGS PENDING ORIGINAL ACTION** was filed with the Oklahoma Insurance Department by electronic mail to OIDlegal@oid.ok.gov, and was served by electronic mail upon:

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