Attorney Jennifer Isaacs for the Journal Record - Oklahoma Supreme Court limits discovery of expert witness prior income

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While the Oklahoma Discovery Code requires disclosure of the compensation to be paid to an expert for a case, the Oklahoma Supreme Court in *Jolley v. McClain* held that the Oklahoma Discovery Code does not allow parties to compel the production of an expert's compensation from prior cases using a subpoena duces tecum. 2025 OK 6, ¶ 1, 564 P.3d 54.

In *Jolley*, the Oklahoma Department of Transportation ("ODOT") sought to acquire land from Christopher Jolley ("Jolley"). *Id*. ¶ 2. After unsuccessfully attempting to purchase the property, ODOT instituted a condemnation action against Jolley. *Id*. As part of the condemnation action, ODOT identified an expert appraiser, to whom Jolley sent a subpoena duces tecum. The subpoena duces tecum requested three years of financial records related to the expert's work in Oklahoma condemnation actions and all 2021–2022 IRS Forms 1099 from any governmental entity, lawyers, or law firms to any entity owned by the expert. *Id*. ¶ 3. ODOT succeeded in quashing the subpoena, and Jolley sought an extraordinary writ. *Id*.

Jolley argued that bias was always relevant to witness credibility and experts were usually paid, so an opposing party should be allowed to examine the expert's financial history through a subpoena duces tecum. *Id*. ¶ 7. The Oklahoma Supreme Court disagreed and held that a subpoena duces tecum was not among the statutorily enumerated methods for discovering an expert's financial information. *Id*. ¶ 1. In so holding, the Oklahoma Supreme Court reviewed the scope of 12 O.S. § 3226 and noted that discovery from experts, including bias, was limited. *Id*. ¶ 10. The Oklahoma Supreme Court did not foreclose parties from introducing compensation from prior cases at trial but instead found that the "onus for collecting that information [is] on the party seeking it, not the expert." *Id*. ¶ 11.

The Oklahoma Supreme Court's holding in *Jolley* serves as a reminder of the Oklahoma Discovery Code's limits on the methods available for evaluating an expert's potential bias, even though that information may be relevant to impeaching the expert's testimony. Parties should use an expert's response to an interrogatory propounded under 12 O.S. § 3226(B)(4)(a)(3) to find depositions and trials where an expert has previously provided testimony and research those cases, including the expert's prior testimony and

interrogatory responses, to determine information about an expert's compensation.

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