# JOLLEY v. McCLAIN

**2025 OK 6**

**Case Number: 122114**

**Decided: 01/22/2025**

**THE SUPREME COURT OF THE STATE OF OKLAHOMA**

Cite as: 2025 OK 6, __ P.3d __



CHRISTOPHER CHARLES JOLLEY, a single person, Petitioner, and OKLAHOMA HERITAGE BANK, Real Party in Interest/Defendant,

v.

THE HONORABLE LAURA McCLAIN, District Judge of the District Court of Garvin County, STATE OF OKLAHOMA, Respondent, and STATE OF OKLAHOMA, ex rel. DEPARTMENT OF TRANSPORTATION, Real Party in Interest/Plaintiff.

¶0 Petitioner, Christopher Charles Jolley (Jolley), seeks extraordinary relief from this Court to vacate Judge Laura McClain's order quashing a subpoena duces tecum. Jolley sent the subpoena to the Oklahoma Department of Transportation's (ODOT) expert property appraiser in an attempt to discover how much income the appraiser has received as an expert witness in past. We assumed original jurisdiction, Okla. Const. Art. 7 § 4, and now hold that issuance of a subpoena *duces tecum* is not among the methods prescribed by the Oklahoma Discovery Code by which an expert witness's financial information may be discovered.

**ORIGINAL JURISDICTION PREVIOUSLY ASSUMED;**
**WRIT OF PROHIBITION DENIED**

Brett Agee, Jacob Yturri, Pauls Valley, Oklahoma, for Petitioner Jolley and Real Party in Interest, Oklahoma Heritage Bank.

Michael W. Phillips, Assistant General Counsel, Oklahoma Department of Transportation, Oklahoma City, Oklahoma, for Respondent Judge and Real Party in Interest, Oklahoma Department of Transportation.

**KUEHN, V.C.J.:**

¶1 The issue presented in this appeal is whether an expert witness's income is discoverable through a subpoena *duces tecum*. We hold that it is not. The Oklahoma Discovery Code prescribes the methods available to discover financial motive, as relevant to bias, on the part of expert witnesses, and a subpoena *duces tecum* is not among them.

**PROCEDURAL HISTORY**

¶2 Real Party in Interest, the Oklahoma Department of Transportation (ODOT), attempted to acquire a strip of land owned by Petitioner, Christopher Charles Jolley (Jolley). When ODOT's efforts to purchase the property failed, it instituted a condemnation action against Jolley in the District Court of Garvin County. Consistent with Oklahoma law on such proceedings, ODOT sought the appointment of three disinterested freeholders to serve as commissioners who would appraise the property in question. *See generally* 69 O.S. § 1203.

¶3 The commissioners valued the property at $15,310.00. Jolley filed a demand for a jury trial. ODOT's preliminary witness list named Robert Grace (Grace) as its expert appraiser. In November 2023, Jolley mailed a subpoena *duces tecum* to Grace and ODOT.[1] Jolley's subpoena sought the past three years' worth of certain financial records pertaining to Grace's undertakings as an expert witness. Jolley sought all financial records, including tax forms (IRS Forms 1099), pertaining to any work Grace had done in any "Oklahoma condemnation actions." Jolley also sought "[a]ll 2021 and 2022 I.R.S. 1099 forms from any governmental entity, lawyers and/or law firms issued to any entity wholly or partly owned by Robert Grace" -- that is, tax forms for any work Grace had performed for *any* government client, for *any* reason. ODOT moved to quash or modify the subpoena, arguing that it was outside the scope of discovery allowed by the Oklahoma Discovery Code. Jolley filed a response to the motion to quash, claiming ODOT lacked standing to object to a subpoena issued to a third party, that the subpoena was consistent with the Discovery Code, and that it was not unduly burdensome. After a hearing in January 2024, the trial court granted ODOT's motion to quash. Jolley then filed the instant proceeding, seeking to compel the trial court to enforce his subpoena.

**STANDARD OF REVIEW**

¶4 This Court may issue an extraordinary writ when a district court adjudicating a discovery dispute exceeds its authority, or issues an order that abuses its discretion. *Farmers Ins. Co., Inc. v. Peterson*, 2003 OK 99, ¶ 8, 81 P.3d 659, 661. An abuse of discretion occurs when a court makes an erroneous conclusion of law, or where there is no rational basis in evidence for its ruling. *Christian v. Gray*, 2003 OK 10, ¶¶ 43-44, 65 P.3d 591, 608-609.

**DISCUSSION**

¶5 Our Legislature has promulgated rules on what evidence is admissible in a judicial proceeding (the Oklahoma Evidence Code), and what information is discoverable by the parties, in anticipation of a hearing or trial (the Oklahoma Discovery Code). In short, the scope of discovery is somewhat broader than the scope of admissible evidence. This allows litigants to discover information that, while perhaps not itself admissible in a court of law, could reasonably lead to the discovery of admissible evidence. *See* 12 O.S. § 3226(B)(1)(a) ("Information within this scope of discovery need not be admissible in evidence to be discoverable").

¶6 In a judicial proceeding, a witness's credibility may be attacked in several ways. *See* 12 O.S. § 2608-09. But inquiry is subject to the trial court's discretionary power to exclude even relevant evidence, if its probative value is substantially outweighed by unfair prejudice, needless repetition, or confusion of the issues. 12 O.S. § 2403. The law has long recognized that a relationship between a party and a witness may lead the witness, unconsciously or otherwise, to slant his or her testimony. *Braden v. Hendricks*, 1985 OK 14, ¶ 5, 695 P.2d 1343, 1348. Bias can be exposed by showing the witness's personal association with one of the parties, or a financial stake in the outcome. *Id*.

¶7 Expert witnesses pose unique challenges. They are essential in evaluating complicated scientific, financial, or other information beyond the layman's understanding. They can advise parties throughout the litigation, and they can translate their findings and opinions to the factfinder during trial. Yet it is universally understood, even by the lay juror, that expert witnesses are usually compensated by the party that sponsors them. How much information about an expert's personal financial history is reasonably necessary to shed light on his or her potential for bias?

¶8 Our Discovery Code has a specific provision regarding the discovery of financial information relevant to expert witnesses. At issue here is whether that provision is intended to be the exclusive method of obtaining such information, or merely a suggested avenue. Jolley argues that because bias is always relevant to a witness's credibility, and because an expert witness usually is paid to provide an opinion, an opposing party is entitled to see a broad swath of the expert's financial history. We believe Jolley's method, and the scope of his request, are contrary to legislative intent.

¶9 The General Provisions section of the Discovery Code, 12 O.S. § 3226, contains (1) descriptions of the methods used to take discovery; (2) a list of who can obtain discovery through those methods, and what type of evidence can be discovered; and (3) exceptions or limitations to these general rules. The basic methods for obtaining information from an opposing party are depositions; written interrogatories; requests for admissions; and requests for documents, mental and physical examinations, and inspection of property. 12 O.S. § 3226(A)(1). A subpoena is used to compel a person to give testimony at a deposition, permit inspection of certain tangible items, or permit inspection of premises. 12 O.S. § 3251(5).

¶10 Section 3226(B) of the Discovery Code is entitled, "DISCOVERY SCOPE AND LIMITS." The limitations to the general provisions in subsection A are broken down into general limitations for all relevant evidence, limitations on the frequency and extent of requests, what materials may be subject to privileges, and -- most pertinent here -- a specific subsection on discovery pertaining to expert witnesses. The discovery of facts known and opinions held by an expert, including bias in the formulation of those opinions, can be discovered "*only* as follows" using the means listed. 12 O.S. § 3226(B)(4)(a) (emphasis added). Through interrogatories, a party can discover (1) the expert's qualifications, including any publications in the past ten years; (2) the compensation received by the expert in the instant case; and (3) a list of any other cases the expert has testified for (at trial or by deposition) in the past four years. 12 O.S. § 3226(B)(4)(a)(3). A party may also depose an opponent's expert, "*subject to* [the] scope of this section." 12 O.S. § 3226(B)(4)(a)(2) (emphasis added). And that scope limits inquiry into bias, as specifically described in (B)(4)(a)(3).

¶11 The Discovery Code allows inquiry into how much the expert expects to make in the instant case. Jolley's request included, *inter alia*, the production of recent IRS 1099 forms for any work Grace, or any entity wholly or partially owned by him, had performed for "any governmental entity, lawyers and/or law firm." This is beyond what the Code allows. The Code permits a party to discover all other cases the expert has worked on in the past four years -- regardless of type, and regardless of what type of litigant the expert worked for. But the Code does not require the expert (or anyone else) to provide documentation on how much he or she was paid in those cases. In delineating the scope of discovery, the Code considers "the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." 12 O.S. § 3226(B)(1)(a). A little research can uncover the expert's compensation in past cases. But the Code places the onus for collecting that information on the party seeking it, not on the expert.[2]

¶12 We stress that our holding is based on the Discovery Code's proviso regarding expert witness compensation as it generally pertains to the issue of bias. Subpoenas *duces tecum* may certainly be appropriate where a non-party possesses financial information that is central to the issues in the case. *See e.g. Royal Hot Shot Investments, Inc., v. Keeton*, 2024 OK 70, __ P.3d __. But our Legislature has placed a limit on how wide a net can be cast with regard to an expert's pay history. We believe this limit reasonably balances the litigant's need to uncover potential bias against the expert's privacy, and recognizes the diminishing returns and chilling effects of a "shotgun" approach to pretrial discovery.

**ORIGINAL JURISDICTION PREVIOUSLY ASSUMED;**
**WRIT OF PROHIBITION DENIED**

CONCUR: ROWE, C.J., KUEHN, V.C.J., and WINCHESTER, EDMONDSON, COMBS, GURICH, DARBY and KANE, JJ.

**FOOTNOTES**

**KUEHN, V.C.J.:**

[1] Subpoenas *duces tecum* have generally been defined as the process to cause a witness to appear at a certain time and place to give testimony, and it compels the person to produce physical evidence such as books, papers, and other documents or tangible things relevant thereto. *See generally Rice v. State Bd. of Med. Examiners*, 1953 OK 143, ¶ 3, 257 P.2d 292, 293.

[2] Attorneys, especially those who specialize in certain types of lawsuits where the same experts may be recurring participants, are quite adept at discovering an expert's track record. An expert's filed interrogatories or memorialized testimony in past cases will almost surely include an answer to the question, "How much are you being paid for your work in this case?" With a little research, a party can track an expert's receipts in other cases backwards in time indefinitely.

## Cite Name Level

**Oklahoma Supreme Court Cases**

| Cite | Name | Level |
|---|---|---|
| 1953 OK 143, 257 P.2d 292, 208 Okla 440, | RICE v. STATE BOARD OF MEDICAL EXAMINERS | Discussed |
| 2003 OK 10, 65 P.3d 591, | CHRISTIAN v. GRAY | Discussed |
| 2003 OK 99, 81 P.3d 659, | FARMERS INSURANCE COMPANY, INC. v. PETERSON | Discussed |
| 2024 OK 70, | ROYAL HOT SHOT INVESTMENTS v. KIEFER PRODUCTION CO. | Cited |
| 1985 OK 14, 695 P.2d 1343, | Braden v. Hendricks | Discussed |

**Title 12. Civil Procedure**

| Cite | Name | Level |
|---|---|---|
| 12 O.S. 3226, | General Provisions Governing Discovery | Discussed at Length |
| 12 O.S. 3251, | Definitions | Cited |
| 12 O.S. 2403, | Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion or Cumulative Nature of Evidence | Cited |

**Title 69. Roads, Bridges, and Ferries**

| Cite | Name | Level |
|---|---|---|
| 69 O.S. 1203, | Acquisition of Lands or Interests by Purchase, Donation, or Condemnation | Cited |