REQUIRED FINDINGS: AWARDING ATTORNEY FEES, DETERMINING PROPORTIONALITY, AND ALLOWING EXPERT TESTIMONY UNDER OKLAHOMA LAW

2026 OKLAHOMA JUDICIAL CONFERENCE

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TABLE OF CONTENTS

TABLE OF CASES

CASES

I. PURPOSE AND SCOPE

This paper is intended as a practical bench reference for Oklahoma trial judges addressing three recurring judicial duties that require the court to identify the governing authority, apply the proper framework, make an adequate record, and articulate reasoning sufficient to support appellate review. Specifically, the paper addresses: (1) awarding attorney fees under Oklahoma law, with particular attention to *State ex rel. Burk v. City of Oklahoma City*, *Spencer v. Oklahoma Gas & Electric Co.*, and *Fleig v. Landmark Construction Corp.*; (2) determining proportionality in civil discovery under 12 O.S. § 3226, including the Oklahoma Supreme Court's recent guidance in *CHICK-FIL-A v. The Honorable Richard Ogden & Lozada*, 2026 OK 13; and (3) admission of expert testimony under 12 O.S. § 2702, as amended effective September 1, 2025, which now requires the proponent to demonstrate to the court that it is more likely than not that the testimony satisfies the rule's reliability requirements.

Although these subjects arise in different procedural settings, they share a common trial-court function: the duty to do more than announce an outcome. In each area, the court must evaluate the record actually presented, decide the issue under the controlling legal standard, and make findings or explanations sufficient to permit meaningful appellate review. This paper is therefore organized not merely as a survey of the law, but as a judge-facing guide to what trial courts should say and do on the record to support durable rulings on attorney fees, proportionality, and expert admissibility.

II. ATTORNEY FEES

A. Oklahoma Follows the "American Rule"

The default position as to recovery of attorney fees in Oklahoma is no award is to be made. Oklahoma follows the American Rule in this regard and prohibits recovery of attorney fees in the absence of a specific statutory or contractual grant. As stated by the Oklahoma Supreme Court:

> Oklahoma follows the American Rule concerning the recovery of attorney fees. It provides that each litigant pay for legal representation and that courts are without authority to assess attorney fees in the absence of a specific statute or contract. *Whitehorse v. Johnson*, 2007 OK 11, ¶ 12, 156 P.3d 41, 47 (citations omitted) (emphasis supplied).

B. Contractual

Parties to a contract may agree to pay a prevailing party its attorneys fee and/or for litigation expenses. *Whitehorse*, 2007 OK 11, ¶ 17, 156 P.3d 41, although there is authority to support the proposition that the contract need not specifically reference "attorney fees" as such. "All costs incurred," like the term "collection costs" are broad terms, and when used in a contract authorize the recovery of attorney fees. *Oklahoma Fixture Co. v. Ask Computer Systems, Inc.,* 45 F.3d 380, 382 (10th Cir. 1995) ("The contract language 'all reasonable collection costs' is a broad term, and a commonsense reading includes attorneys' fees.") (citing *McClain v. Continental Supply Co.*, 1917 OK 516, 168 P. 815, 817).

C. Civil—Mandatory via Statute

The following statutes authorize an award of attorney fees using mandatory language:

12 O.S. § 936 – prevailing party on action on open account, account stated, negotiable instrument, or contract relating to sale of goods.

12 O.S. § 937 – action to collect on a check.

12 O.S. § 939 – breach of express warranty.

16 O.S. § 79 – Slanderous Notices of Claims – Penalties for Filing. If the court finds that a person has filed a slanderous notice of claim in quiet title, it shall award the plaintiff all costs of the action including attorney fees.

23 O.S. § 72 – Measure of Damages for Wrongful Injuries to Timber. Prevailing party in an action to recover wrongful injuries to timber is entitled to costs and fees.

23 O.S. § 103 – Claim or Defense Asserted in Bad Faith – Order Reimbursing Non-prevailing Party Costs and Fees. Provides for the award of fees and costs when a claim or defense was asserted in bad faith; capped at $10,000. The court must make a determination that the claim or defense presented by the non-prevailing party was in bad faith, not well grounded in facts, unwarranted under existing law, or not a good-faith argument for modification of existing law. *Gilbert v. Sec. Fin. Corp. of Okla., Inc.*, 2006 OK 58, *62, quoting 23 O.S. § 103. The statute is intended to penalize a party who abuses the courts by pursuing a frivolous claim or defense. *Beard v. Richards*, 1991 OK 117, *11.

27 O.S. § 12 – Inverse Condemnation Proceedings – Reimbursement of Expenses. If a judgment favors the owner of any right, title, or interest in real property and compensation is awarded, the court will award fees and costs actually incurred as part of the judgment. Expenses, including appraisal and engineering fees, must be proven to have been incurred because of the proceeding. *Corbell v. State ex rel. DOT*, 1993 OK CIV APP 45, *42–44.

36 O.S. § 1219 – Action based on failure of insurer to reimburse "clean claim" in accident and health policy. If an insurer fails to notify a policyholder in writing of the cause for delay in payment of any claim where the claim is not paid within thirty days after receipt of proof of loss, and litigation occurs based on that unfair trade practice, the prevailing party is entitled to recover attorney's fees. Fees are to be set by the court and taxed as costs against the losing party.

41 O.S. § 105 – Action for Breach of Rental Agreement or to Enforce any Right or Obligation under Residential Landlord and Tenant Act. Prevailing party is entitled to attorney's fees in any appropriate jurisdiction, including small claims court.

42 O.S. § 176 – Action to Enforce Lien. Prevailing party in an action brought to enforce any lien is entitled to recover attorneys' fees. Fee is to be fixed by court and taxed as costs in the action. The statute does not require actual enforcement of the lien for the party to be entitled to attorney fees. Prevailing party is entitled to attorney fees and costs even if they recover less than the offer to allow judgment. *Van Cleave v. Kolpak Builders Co.*, 1984 OK CIV APP 54, *14.

50 O.S. § 1.1 – Agricultural Activities as Nuisance. In an action where agricultural activities are alleged to be a nuisance, and the action is found to be frivolous or malicious by the court, defendant will recover the aggregate amount of costs and expenses determined by the court and attorney fees.

51 O.S. § 24A.17 – Action for declaratory or injunctive relief to enforce Open Records Act. A person who is denied access to a public record and successfully brings a civil action for declaratory or injunctive relief is entitled to reasonable attorney fees.

52 O.S. § 581.10 – Action under Natural Gas Market Sharing Act. A prevailing party is entitled to recover court costs, attorney's fees and allowable litigation expenses.

60 O.S. § 837 – Action under Residential Property Condition Disclosure Act. In a civil action under this act, the prevailing party shall be allowed court costs and fees to be set by the court and to be collected as costs. The act is the sole remedy for civil actions for a seller's failure to disclose a defect that was known prior to the acceptance of an offer to purchase.

60 O.S. § 852 – Action to Enforce Lien Authorized under Real Estate Development Section. This provision applies when an owners' association seeks to enforce any obligation in

connection with membership by means of a levy or assessment which may become a lien on the lots or parcels of defaulting owners or members. Prevailing party in an action to enforce these liens is entitled to recover attorney's fees, fixed by the court and taxed as costs.

79 O.S. § 205 – Action under Oklahoma Antitrust Reform Act. Any person whose business or property is injured by a violation of the act shall recover the cost of the suit including reasonable attorney fees.

D. Civil—Discretionary

The following statutes authorize an award of attorney fees using permissive language, including 12 O.S. §§ 928, 940, 941, 1101.1, 1141, and 2023; 15 O.S. §§ 421, 689, 721, and 776.7; 36 O.S. § 1105; 51 O.S. § 256; 52 O.S. § 318.5; 54 O.S. §§ 1-701 and 500-1005A; 60 O.S. § 175.57(D); 70 O.S. § 6-149.5; and 78 O.S. §§ 54 and 89. See attachment for subjects of these.

As with mandatory statutes, trial courts should identify the precise source of authority, determine whether the statute makes entitlement discretionary or conditional, and explain the basis for the amount awarded.

E. Family Law—Statutory and Equitable

Generally, attorney fee award statutes must be strictly construed in family law cases. *Gruenwald v. Gruenwald*, 2014 OK CIV APP 43, ¶ 8. For an excellent case on how the family-law attorney-fee statutes interplay with one another, see *Hubert v. Hubert*, 2023 OK CIV APP 40.

The following recurring statutes illustrate the range of family-law fee authorities: 10 O.S. § 7700-636(c), 43 O.S. §§ 109.2(B), 107.3(A)(3), 107.3(A)(D), 109.4(F)(6)(d), 109.4(I), 110(D)-(E), 111.1(C)(3), 111.3(E), 112(D), 111.2, 112.3(F)(1)(d), 112.3(L)(2), 112.6, and 150.10; and 22 O.S. § 60.2(c)(1)-(2). See attachment for subjects of these statutes.

F. Fee-Shifting vs. Sanctions (Clarification)

Attorney-fee awards based on statutory or contractual fee-shifting are compensatory in nature and are intended to reimburse a prevailing party. By contrast, attorney-fee awards imposed as sanctions are punitive or deterrent and require distinct legal authority and express findings of misconduct. Trial-court orders should clearly identify whether an attorney-fee award is compensatory or imposed as a sanction.

G. Sanctions (Litigation Conduct, Discovery Abuse)

Attorney fees and costs may be charged against a litigant who has engaged in bad-faith litigation tactics or vexatious and oppressive conduct. *City National Bank & Trust Co. of Okla. City v. Owens*, 1977 OK 86, 565 P.2d 4; *Beard v. Richards*, 1991 OK 117, 820 P.2d 812, 816.

12 O.S. § 3226.1 – Discovery Abuses. The court may award reasonable expenses, including attorney fees, for abusive discovery.

H. Procedure

The default position under the applicable American Rule is no attorney fees. Consequently, the initial assessment is to determine whether there is either a specific statute or contract that authorizes an award of attorney fees.

Oklahoma case law establishes the mandatory procedure that must be followed to determine such an award and support same on appeal. *State ex rel. Burk v. City of Oklahoma City*, 1979 OK 115.

Burk addressed "the proper standards to be used by the trial court in fixing the amount of the fee." It was an issue of first impression in *Burk*. Three federal cases were relied upon as highly persuasive: *Lindy Bros. Builders, Inc. of Phila. v. American R&S San. Corp.*, 487 F.2d 161 (3d Cir. 1973); *Evans v. Sheraton Park Hotel*, 503 F.2d 177, 187 (1974); *National Ass'n of Reg. Med.*

Prog. Inc. v. Weinberger, 396 F. Supp. 842 (D.C. 1975). The process and factors identified in these cases were found not to be in conflict with Oklahoma Code of Professional Responsibility.

The two components of am award fee are lodestar and adjustment factors. The lodestar is determined by finding the number of hours reasonably spent times the hourly rate. Attorneys are to present to the trial court detailed time records showing the work performed and offer evidence of the reasonable value for the services performed for different types of legal work. The reasonable value is to be predicated on the standards within the local legal community.

Burk held the proper procedure is first to determine hourly compensation on an hours-times-rate basis, and then adjust based on the applicable *Evans* factors. The adopted *Evans* factors include time and labor required; novelty and difficulty; requisite skill; preclusion of other employment; customary fee; whether the fee is fixed or contingent; time limitations; amount involved and results obtained; experience, reputation, and ability of the attorneys; undesirability; and nature and length of the professional relationship with the client.

While *de novo* is the standard of review for entitlement, the standard is abuse of discretion as to the amount of the award. A significant difference in value found by the trial court and the Supreme Court has been found to be an abuse of discretion. *Spencer v. O.G. & E.* A trial court's failure to follow the directives of *Burk* is an abuse of discretion requiring reversal. The fee awarded must bear a rational relationship to the evidence presented.

Fleig v. Landmark Const. Corp., 2024 OK 25, granted certiorari to address only whether the trial court followed proper procedure in assessing fees. There, the parties agreed and requested the trial court not do a detailed analysis but just "give a number." The Court held that a trial court order awarding attorney fees must, with specificity of facts and computations to support an award,

include findings of fact regarding hours spent, reasonable hourly rates, and the value placed on additional factors in each case.

Evidence per *Burk* and *Fleig* includes detailed time records showing the work performed; other evidence as to the reasonable value of the services as measured by local legal community standards; and evidence supporting any amount sought above the lodestar. The reasonable value to be given for incentive fees should bear a reasonable relationship to the aggregate hourly compensation. Parties may not by agreement alter the process for assessing fees. Failure to make findings of fact as to hours spent, reasonable hourly rates, and value assigned to additional factors was an abuse of discretion.

If both parties prevail on separate fee-bearing claims in the same lawsuit, both may be entitled to fees. *Welling v. American Roofing & Sheet Metal Co.*, 1980 OK 131, ¶ 17, 617 P.2d 206, 210. If a party prevails on fee-bearing and non-fee-bearing claims in the same action, the court must apportion the fee award. *RJB Gas Pipeline Co. v. Colorado Interstate Gas Co.*, 1989 OK CIV APP 100, ¶ 68, 813 P.2d 1 (citing *Sisney v. Smalley*, 1984 OK 70, 690 P.2d 1048).

Judicial Takeaway: A sustainable attorney-fee award requires more than a result. The trial court must identify the source of authority, calculate the lodestar from the evidence, apply any appropriate adjustments, and make findings showing a rational relationship between the award and the record.

I. Time for Filing

The request for attorney fees is made by application pursuant to 12 O.S. § 696.4 and is to be made within 30 days after filing of the judgment unless a post-trial motion pursuant to 12 O.S. § 990.2 has been filed within 10 days of the judgment. In that case, the application is due within 30 days of the order disposing of that motion.

J. On Appeal

Appeal-related attorney fees are recoverable if there is statutory authority for their award in the trial court. 12 O.S. § 696.4(C); *Friend v. Friend*, 2022 OK 29, ¶ 0; *Phillips v. Hedges*, 2005 OK 77, ¶ 17.

An application for attorney fees for services performed on appeal should be made to the appellate court, and if fees are awarded, the case will be remanded to the trial court for determination of amount. 12 O.S. § 696.4(C). A motion for an appeal-related attorney's fee must be made by a separately filed and labeled motion in the appellate court prior to issuance of mandate. Okla. Sup. Ct. R. 1.14(B).

Also, the trial court's order determining the amount of fees is an appealable order. 12 O.S. § 696.4(C).

If the right to recover attorney fees for services performed on appeal depends on a determination of prevailing party and that cannot be determined from the appellate decision, the application shall be made to the trial court. 12 O.S. § 696.4(D).

III. PROPORTIONALITY

In Oklahoma civil practice, proportionality is no longer a background consideration. It is part of the scope of discovery itself. Section 3226 provides that parties may obtain discovery regarding matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense outweighs its likely benefit. 12 O.S. § 3226(B)(1)(a).

CHICK-FIL-A v. The Honorable Richard Ogden & Lozada, 2026 OK 13, makes two points that are immediately useful to trial judges. First, the governing relevance standard is no longer "relevant to the subject matter." Oklahoma's 2017 amendment to § 3226—like the 2015 federal amendment to Rule 26—requires discovery to be relevant to a party's actual claim or defense. Second, proportionality is a core element in defining discovery's permissible scope, not an afterthought to be addressed only after relevance is assumed.

When a request for production, interrogatory, or deposition topic is overly broad on its face, or when relevance is not readily apparent, the court should require the discovery proponent to articulate specifically how the requested material bears on a pleaded claim or defense. *CHICK-FIL-A* teaches that it is an abuse of discretion to compel broad discovery without that threshold explanation. The trial court should not simply narrow an overbroad request by instinct and then compel production on the assumption that some subset must be relevant. Relevance and proportionality must both be demonstrated.

A sustainable proportionality ruling should therefore identify: (1) the actual request at issue; (2) the objection made; (3) the claim or defense to which the discovery is said to relate; (4) why the request as phrased is or is not relevant to that claim or defense; and (5) why the burden and expense are or are not justified in light of the statutory proportionality factors. The court need not write a treatise, but the order should reflect that the court performed the inquiry rather than merely split the difference.

The better practice is to require counsel to make a concrete record. If the request is broad, the proponent should explain why narrower alternatives are inadequate. If burden is asserted, the responding party should provide enough information—by affidavit, verified response, or counsel proffer—to permit a reasoned assessment of the burden. The record should also reveal whether the

court considered narrowing by time, geography, incident type, custodian, search term, or other objective limitation tethered to the claims and defenses actually in the case.

Three recurring vulnerabilities emerge from *CHICK-FIL-A.* First, orders that compel discovery because the request pertains to the "subject matter" of the lawsuit rather than to a pleaded claim or defense are now suspect. Second, orders that compel facially broad discovery without requiring the proponent to explain relevance invite extraordinary relief. Third, orders that do not reflect any consideration of burden, expense, or tailoring are difficult to defend as proportional. In short, proportionality requires judicial reasoning, not just judicial instinct.

Record Tip: Even a brief oral ruling should identify the request, the objection, the claim or defense at issue, and why the scope ordered is proportionate.

Most Common Reversible Error: Compelling broad discovery without requiring the proponent to show relevance to a specific claim or defense.

Judicial Takeaway: Before compelling discovery, the trial judge should require the proponent to identify the specific claim or defense to which the request is directed and explain why the requested scope is justified. The order should reflect both relevance and proportionality—why the information matters, and why the burden is justified in light of the statutory factors.

IV. EXPERT OPINIONS

12 O.S. § 2702, as recently amended, now tracks the key language of amended Federal Rule of Evidence 702, including the "more likely than not" burden and the requirement that the expert's opinion reflect **a reliable application of the methodology to the facts**. Federal Rule 702 and its Advisory Committee materials therefore remain highly persuasive, but Oklahoma trial judges should cite and apply 12 O.S. § 2702 in state-court proceedings.

For Oklahoma state trial judges, the operative expert-admissibility rule is 12 O.S. § 2702. Effective September 1, 2025, § 2702 was amended to provide that the proponent must demonstrate to the court that it is "more likely than not" that the testimony satisfies the reliability and fit requirements now set out in four numbered paragraphs. The statute now mirrors the essential language of amended Federal Rule of Evidence 702. In state court, then, the right citation is § 2702; but because the Oklahoma amendment tracks amended Rule 702, the federal rule text and Advisory Committee Note remain persuasive in explaining the trial judge's gatekeeping function.

Oklahoma has long treated the trial judge as the gatekeeper for civil expert testimony. In *Christian v. Gray*, 2003 OK 10, 65 P.3d 591, the Oklahoma Supreme Court adopted *Daubert* and *Kumho* as the appropriate framework for civil cases and emphasized the trial court's responsibility to decide admissibility, not merely weight. The 2025 amendment to § 2702 strengthens that same gatekeeping duty by requiring the proponent to persuade the court—more likely than not—that the expert's opinion rests on sufficient facts or data, reliable principles and methods, and a reliable application of those methods to the facts of the case.

A sustainable ruling under § 2702 should address four distinct questions: (1) whether the witness is qualified by knowledge, skill, experience, training, or education; (2) whether the testimony will help the trier of fact; (3) whether the testimony is based on sufficient facts or data and reliable principles and methods; and (4) whether the opinion offered actually reflects a reliable application of those principles and methods to the facts at hand. The amended language matters. It is no longer enough to say that the expert used a generally accepted methodology. The court must be satisfied that the opinion itself stays within the bounds of a reliable application of that methodology.

That point is reinforced by amended Federal Rule 702 and the 2023 Advisory Committee materials. They were adopted specifically to correct the mistaken notion that challenges to an expert's factual basis or application of methodology ordinarily go only to weight. The committee explained that courts had incorrectly treated sufficiency-of-basis and application-of-methodology questions as jury issues when Rules 702 and 104(a) require the judge to decide admissibility by a preponderance of the evidence. Oklahoma's 2025 amendment uses the same "more likely than not" formulation and should be applied in the same gatekeeping spirit.

The court does not need a formulaic findings recital in every case, but the record should show that the gatekeeping function was performed. When the challenge is substantial, the better practice is to hold a hearing or, at minimum, require briefing that addresses qualification, fit, basis, methodology, and application. The ruling should identify the challenged opinion or category of opinions, the methodology relied on, the evidentiary basis for the opinion, and the reason the court finds the opinion admissible or inadmissible. If the testimony is admitted subject to limits, those limits should be stated clearly.

Experience-based expert testimony should not be exempted from scrutiny. When an expert relies principally on experience, the proponent should explain how that experience leads to the conclusion reached, why it provides a sufficient basis, and how it has been reliably applied in this case. The judge may accept that explanation, but the record should reflect that the court required it.

Orders are vulnerable when they effectively say only "the objections go to weight." After the 2025 amendment to § 2702—and after the 2023 amendment to Rule 702—that response is often incomplete. A second vulnerability appears when the court addresses methodology in the abstract but never examines whether the opinion actually reflects a reliable application of that

methodology to the case facts. A third vulnerability is a record too thin to show whether the court exercised gatekeeping at all. If an appellate court cannot tell why the testimony came in or stayed out, the ruling is harder to defend.

Record Tip: The court may satisfy its gatekeeping obligation with a brief on-the-record statement identifying the challenged opinion, the methodology, and the basis for finding the testimony admissible or inadmissible.

Most Common Reversible Error: Treating reliability issues as matters of weight without first making the admissibility determination required by § 2702.

Judicial Takeaway: Before allowing expert testimony, the trial judge should make an explicit admissibility determination on the record. The court must decide—not defer—whether the proponent has shown, more likely than not, that the testimony is qualified, reliable, and reliably applied to the facts of the case.

V. CONCLUSION

In each of these areas—attorney fees, proportionality, and expert admissibility—the trial court's ruling is most defensible when the order identifies the governing authority, applies the correct framework, evaluates the record, and explains the result sufficiently to permit appellate review.

Attorney-fee awards, proportional discovery rulings, and expert-admissibility decisions are separate procedural subjects. In practice, however, they ask the same thing of a trial judge: identify the source of authority, apply the correct standard, build the record, and state enough reasoning to permit meaningful review. *Burk* and *Fleig* teach that a fee award requires more than "just give a number." *CHICK-FIL-A* teaches that proportionality requires more than a broad intuition that discovery might help. Section 2702 and Rule 702 teach that expert testimony cannot be admitted

merely because the objections seem to go to weight. In each setting, the trial court protects both the litigants and its own ruling by making the required findings at the time the decision is made. Careful record-making is not busy work. It is the discipline that turns discretion into a durable ruling.

APPENDIX A – ONE-PAGE BENCH QUICK-REFERENCE

BEFORE YOU RULE: QUICK CHECKLIST

Before ruling on attorney fees, proportionality, or expert testimony, the trial court should ensure that the record reflects:

1. Source of authority identified (statute, contract, rule, or inherent authority).
2. Correct legal standard applied (*Burk/Fleig*; § 3226 proportionality; § 2702 reliability).
3. Record evidence evaluated—not assumed, not generalized.
4. Key findings made on the record (hours and rates; relevance and scope; reliability and application).
5. Reasoning stated clearly enough for appellate review.

ATTORNEY FEES

What the court must do: identify fee authority; determine entitlement; calculate lodestar from evidence; explain any adjustment; make findings.

Most common reversible error: awarding fees without Burk- and Fleig-compliant findings tied to the record.

Minimum record: hours, rates, supporting evidence, adjustment rationale, and a statement showing a rational relationship between award and evidence.

PROPORTIONALITY

What the court must do: identify the request, the objection, the claim or defense at issue, and why the scope ordered is proportionate.

Most common reversible error: compelling facially broad discovery without requiring the proponent to show claim-or-defense relevance.

Minimum record: request, objection, relevance explanation, burden showing, and narrowing rationale if production is compelled.

EXPERT TESTIMONY

What the court must do: determine admissibility under § 2702 before allowing the testimony; decide qualification, helpfulness, reliability, and reliable application.

Most common reversible error: treating reliability objections as issues of weight without first making the admissibility determination required by § 2702.

Minimum record: challenged opinion, methodology, factual basis, and stated reason for admission or exclusion.

UNIFYING PRINCIPLE

A ruling is most defensible when the court identifies the source of authority, applies the correct framework, evaluates the record, and explains the result clearly enough to permit meaningful appellate review.

OKLAHOMA ATTORNEY FEE CHECKLIST (Post-Fleig)

Entitlement

- Has the Court expressly determined the prevailing party?
- Is there a specific statutory basis for the award?
- Is there a specific contractual basis for the award?

Procedural Prerequisites

- Has fee entitlement been pled?
- Has fee entitlement been preserved in the Pretrial Order, if applicable?
- Has a timely motion for attorney fees been filed pursuant to 12 OS 694.2 or other applicable statute or rule?
- Has an evidentiary hearing been set and heard?
- Has movant presented evidence of value of hours based on local legal community standards?

Apportionment

- Are there multiple causes of action?
- Are some claims fee-bearing and others not?
- Has time been adjusted or apportioned for work on non-fee-bearing claims?
- Is there an issue whether both parties may seek fee recovery?
- Has the Court independently evaluated any proposed apportionment?

Determination – Lodestar (Hours)

- Has movant presented evidence of hours spent, presenting detailed time records showing the work performed?
- Has the Court evaluated duplication, block billing, vagueness, or excessive time?

Determination – Lodestar (Rates)

- Has movant presented evidence of reasonable hourly rates based on local legal community standards?
- Has the Court identified the hourly rate(s) it finds reasonable?

Enhancements / Adjustments

- Has movant presented evidence supporting any proposed enhancement?
- Does any enhancement bear a reasonable relationship to the lodestar amount?
- Does any enhancement reasonably reflect the degree of success obtained?

Misconduct / Sanctions Clarification

- Is the fee award based solely on statutory or contractual fee-shifting, or is any portion based on attorney or party misconduct?

- If based on misconduct, has the Court identified the specific authority and conduct supporting the sanction?

Discretion and Proportionality

- Is the fee award discretionary or mandatory?
- Does the order reflect the Court's exercise of discretion as to amount?
- Is there a rational relationship between the fee awarded and the evidence presented?
- Has the degree of success on the fee-bearing claims been considered?

Documentation

- Does the order make findings of fact regarding the reasonable number of hours?
- Does the order make findings of fact regarding reasonable hourly rates?
- Does the order explain any enhancement or reduction applied?
- Does the order explain why the fee awarded is reasonable and supported by the record?

Attorney Fees-Civil Discretionary

12 O.S. § 928 — Injury to property

12 O.S. § 940 — Negligent or willful injury to property

12 O.S. § 941 — Actions for damages (injury-related costs/fees)

12 O.S. § 1101.1 — Confession of judgment

12 O.S. § 1141 — Partition actions

12 O.S. § 2023 — Class actions

15 O.S. § 421 — Open account / account stated

15 O.S. § 689 — Contract for sale / breach-related claims

15 O.S. § 721 — Negotiable instruments

15 O.S. § 776.7 — Consumer credit / retail installment transactions

36 O.S. § 1105 — Insurance claims

51 O.S. § 256 — Governmental Tort Claims Act

52 O.S. § 318.5 — Oil and gas proceeds disputes

54 O.S. § 1-701 — Partnership (winding up / accounting)

54 O.S. § 500-1005A — Limited liability company disputes

60 O.S. § 175.57(D) — Trust litigation / administration

70 O.S. § 6-149.5 — Teacher employment proceedings

78 O.S. § 54 — Miscellaneous civil remedies

78 O.S. § 89 — Miscellaneous civil remedies

Attorney Fees-Family Law

10 O.S. § 7700-636(c) — Oklahoma Uniform Parentage Act (Costs and Attorney Fees)

43 O.S. § 109.2(B) — Custody and Visitation Enforcement (Attorney Fees)

43 O.S. § 107.3(A)(3) — Child Custody Determinations – Best Interests Factors

43 O.S. § 107.3(A)(D) — Child Custody – Additional Best Interest Considerations

43 O.S. § 109.4(F)(6)(d) — Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) – Fees and Costs

43 O.S. § 109.4(I) — UCCJEA – Costs and Attorney Fees

43 O.S. § 110(D)-(E) — Custody Proceedings – Attorney Fees and Costs

43 O.S. § 111.1(C)(3) — Visitation Rights – Enforcement and Sanctions

43 O.S. § 111.3(E) — Modification/Enforcement of Visitation – Fees

43 O.S. § 112(D) — Divorce Actions – Support, Custody, and Attorney Fees

43 O.S. § 111.2 — Visitation Enforcement Remedies

43 O.S. § 112.3(F)(1)(d) — Child Support Guidelines – Deviations and Expenses

43 O.S. § 112.3(L)(2) — Child Support – Attorney Fees and Costs

43 O.S. § 112.6 — Child Support Enforcement – Fees and Costs

43 O.S. § 150.10 — Protective Orders – Attorney Fees and Costs

22 O.S. § 60.2(c)(1)-(2) — Protection from Domestic Abuse Act – Filing and Relief

BENCH CHECKLIST
DISCOVERY PROPORTIONALITY (12 O.S. § 3226 + Chick-fil-A)

STEP 1 — IDENTIFY THAT YOU ARE IN A PROPORTIONALITY ISSUE

Use this analysis when:

- Motion to compel
- Motion for protective order
- Scope objection
- Burden objection
- Request appears facially overbroad

Enhanced scrutiny required when request seeks:

- Broader than specific claim discovery
- multiple incidents or claims
- long time periods
- enterprise-level information
- broad ESI

- If facially broad or not obviously tied to a claim → **you must require explanation**

STEP 2 — IDENTIFY THE REQUEST AND OBJECTION (ON THE RECORD)

State clearly:

- "The request seeks…"
- "The objection is…"

- Do not proceed without clearly framing the dispute

STEP 3 — REQUIRE CLAIM/DEFENSE RELEVANCE (CHICK-FIL-A SHIFT)

Ask the proponent:

- What specific **claim or defense** is this tied to?
- How does this discovery advance that claim?

- This is no longer optional

Key Rule:

- ❌ NOT "subject matter relevance"
- ✅ MUST be tied to a **specific claim or defense**

- If that showing is not made → **deny**

STEP 4 — REQUIRE SCOPE JUSTIFICATION

Ask:

- Why is this **scope necessary**?
- Why is a narrower request insufficient?

Force specificity on:

- time
- geography
- custodian
- subject matter

- The requested scope is NOT presumed reasonable

STEP 5 — REQUIRE BURDEN SHOWING

From responding party, require:

- Specific facts (not conclusions)
- Preferably:
    - affidavit
    - declaration or proffer
    - cost estimate
    - ESI burden explanation

Ask:

- What must be done to comply?
- How long will it take?
- What will it cost?

- "Unduly burdensome" without proof = no weight

STEP 6 — PERFORM PROPORTIONALITY ANALYSIS

Weigh (explicitly or implicitly):

- Importance of issues
- Amount in controversy
- Parties' access to information
- Resources
- Importance of discovery
- Burden vs. benefit

- The record must reflect this analysis

STEP 7 — NARROW THE REQUEST (JUDICIAL CONTROL)

If overbroad, YOU define scope:

- limit by time
- limit by geography
- limit by incident type
- limit by custodian
- limit by search terms

- Avoid:

“splitting the difference” without explanation

STEP 8 — MAKE REQUIRED FINDINGS (CRITICAL)

Your record must show:

1. Request
2. Objection
3. Claim/defense connection
4. Whether relevance exists
5. Burden analysis
6. Scope ordered

- This is what appellate courts review

⚠️ COMMON REVERSIBLE ERRORS (POST–CHICK-FIL-A)

- Compelling discovery without requiring claim-specific relevance
- Using “subject matter” language

- Ignoring burden evidence
- Ordering broad discovery based on instinct

BENCH SCRIPT (FULL VERSION)

"The request seeks ___. The objection is ___.
The Court finds the request [is/is not] tied to a claim or defense because ___.
The Court further finds the burden of production is ___ based on ___.
Considering proportionality under § 3226, the Court orders ___."

JUDICIAL RULE

If the proponent cannot explain the claim-specific need

the Court should not compel the discovery

IN THE DISTRICT COURT OF [COUNTY],
STATE OF OKLAHOMA

[PLAINTIFF],	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.
	)	
[DEFENDANT],	)	
	)	
Defendant.	)	

ORDER ON MOTION TO COMPEL / FOR PROTECTIVE ORDER

I. INTRODUCTION

Before the Court is [Party's] motion concerning disputed discovery requests. The Court has reviewed the filings, evidentiary material, and the record as a whole.

II. DISCOVERY REQUESTS AT ISSUE

The requests seek [describe scope]. The responding party objects that the requests are overbroad, not tied to a claim or defense, and unduly burdensome.

III. GOVERNING LAW

Under 12 O.S. § 3226, discovery must be relevant to a party's claim or defense and proportional to the needs of the case. The Oklahoma Supreme Court has held that a trial court abuses its discretion when it compels overbroad discovery without requiring a showing of claim-or-defense relevance. See Chick-fil-A, Inc. v. Ogden, 2026 OK 13.

IV. FINDINGS AND ANALYSIS

A. Relevance

The Court finds that the request [is/is not] sufficiently tied to a claim or defense because [____].

B. Scope

The Court finds that the breadth of the request [is/is not] justified because [____].

C. Burden

The Court finds that compliance would require [____], which [does/does not] constitute an undue burden.

D. Proportionality

Weighing the likely benefit against the burden, the Court finds that the request is [proportional / not proportional] in its current form.

V. SCOPE OF ORDERED DISCOVERY

The Court limits discovery as follows: [time], [geography], [subject matter], and [custodians].

VI. RULING

The motion is [GRANTED / DENIED / GRANTED IN PART]. Discovery shall proceed consistent with the limitations set forth above.

IT IS SO ORDERED.

DATED this ___ day of _____, 20__.

_____
DISTRICT JUDGE

BENCH CHECKLIST
EXPERT TESTIMONY (§ 2702 — UPDATED GATEKEEPING)

STEP 1 — IDENTIFY THAT GATEKEEPING IS REQUIRED

- You are in a § 2702 issue when:

- Motion to exclude expert
- Challenge to reliability
- Challenge to application
- Trial objection
- Experience-based opinion offered

- This is always a **judicial decision**, not a jury issue

STEP 2 — IDENTIFY THE SPECIFIC OPINIONS

- Require counsel to identify:

- What exact opinions are offered?
- Where are they stated? (report, deposition, summary)

- Never rule on "the expert" unless unqualified
- Always rule on **specific opinions**

STEP 3 — APPLY THE REQUIRED ADMISSIBILITY STANDARD

- The Court must determine:

It is **more likely than not** that the testimony satisfies § 2702

- This is a **preponderance standard**
- You are making an admissibility decision—not deferring to jury

STEP 4 — MAKE THE FOUR REQUIRED FINDINGS

- You must determine:

1. **Qualification**
    - Is the witness qualified for this opinion?
2. **Helpfulness / Fit**
    - Will the testimony assist the trier of fact?
3. **Reliable Methodology**
    - Is the method reliable?
4. **Reliable Application (CRITICAL)**
    - Was the method reliably applied to this case?

STEP 5 — FOCUS ON APPLICATION (MOST IMPORTANT STEP)

- Ask:

- How was the methodology applied?
- What steps did the expert take?
- Do the conclusions logically follow from the data?

- This is where most failures occur

STEP 6 — REQUIRE PROOF FROM PROPONENT

- Require:

- Identification of methodology
- Identification of factual basis
- Explanation of application

- Logical connection:
    - method → facts → conclusion

- If this chain breaks → the opinion fails

STEP 7 — CLARIFY THE CHALLENGE

Require opposing counsel to specify:

- Method problem
  OR
- Application problem

Also identify:

- unsupported assumptions
- analytical gaps
- overreach

STEP 8 — MAKE REQUIRED FINDINGS ON THE RECORD

Your record must address:

- Qualification
- Helpfulness
- Reliability
- Application
- Admissibility ruling

- Even briefly—but clearly

STEP 9 — DEFINE THE SCOPE OF TESTIMONY

State explicitly:

- What is admitted
- What is excluded
- Any limitations

- Especially critical for partial rulings

⚠️ COMMON REVERSIBLE ERRORS

- "That goes to weight"
- Addressing method but not application
- Failing to identify specific opinions
- No admissibility determination
- Thin or absent record

BENCH SCRIPT — ADMIT

"The Court finds the witness is qualified to offer this opinion.
The methodology is reliable.
The Court further finds the methodology has been reliably applied to the facts of this case.
The testimony is admitted [subject to ___].

BENCH SCRIPT — EXCLUDE

"The Court finds that the methodology or its application is unreliable because ___.
The opinion is excluded under § 2702."

JUDICIAL RULE

You must decide admissibility

before the jury decides weight

IN THE DISTRICT COURT OF [COUNTY],
STATE OF OKLAHOMA

[PLAINTIFF],	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.
	)	
[DEFENDANT],	)	
	)	
Defendant.	)	

ORDER ON MOTION TO EXCLUDE / LIMIT EXPERT TESTIMONY

I. INTRODUCTION

Before the Court is the motion challenging the testimony of [Expert Name] under 12 O.S. § 2702. The Court has reviewed the briefing, expert materials, and record.

II. OPINIONS AT ISSUE

The challenged opinions include: [list opinions]. The Court evaluates admissibility on an opinion-by-opinion basis.

III. GOVERNING LAW

Under 12 O.S. § 2702, the proponent must demonstrate that it is more likely than not that the testimony: (1) will help the trier of fact, (2) is based on sufficient facts or data, (3) is the product of reliable principles and methods, and (4) reflects a reliable application of those principles and methods to the facts of the case.

IV. FINDINGS AND ANALYSIS

A. Qualifications

The Court finds that the expert [is/is not] qualified because [____].

B. Helpfulness

The Court finds that the testimony [will/will not] assist the trier of fact because [____].

C. Facts or Data

The Court finds the opinions are based on [sufficient/insufficient] facts because [____].

D. Methodology

The Court finds the methodology is [reliable/unreliable] because [____].

E. Application

The Court finds the application of the methodology is [reliable/unreliable] because [____].

V. RULING

The motion is [GRANTED / DENIED / GRANTED IN PART]. The expert may testify only as set forth in this Order.

IT IS SO ORDERED.

DATED this ___ day of _____, 20__.

_____
DISTRICT JUDGE