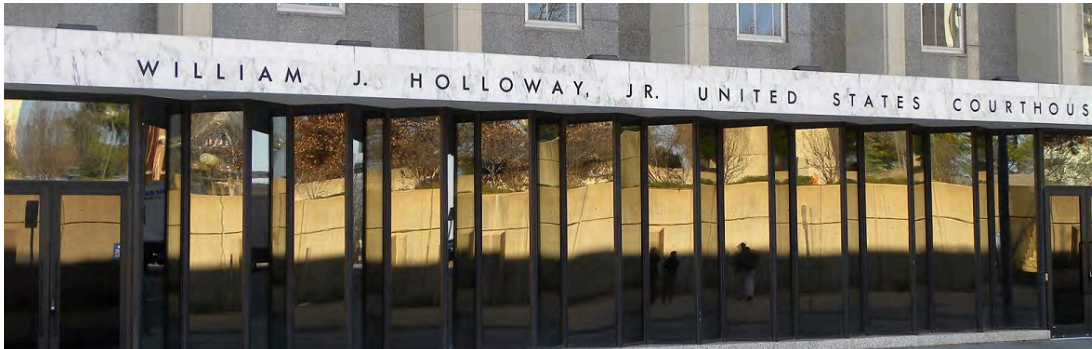


The Holloway

The Newsletter of the Oklahoma City Chapter of the Federal Bar Association



Tenth Circuit considers procedural questions

Court provides guidance to future litigants

BY CALEB J. EVANS

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The Tenth Circuit had a busy 2025 in the area of civil procedure and jurisdiction. My colleague Gerard D’Emilio and I presented on the topics at last year’s Tenth Circuit Year in Review. This article provides a brief overview of two cases featuring unique procedural postures, along with the Court’s direct guidance on how the unsuccessful litigants could have achieved more favorable outcomes.

Markley v. U.S. Bank Nat’l Ass’n, 142 F.4th 732 (10th Cir. 2025) illustrates the bedrock principles of claim preclusion while serving as a cautionary tale about selecting the proper grounds for federal jurisdiction.

The plaintiff in *Markley* brought a federal-law age discrimination claim asserting federal question jurisdiction, as well as a state-law wrongful

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Federal Bar Association

To learn more about the Federal Bar Association and the Oklahoma City Chapter, please visit <https://www.fedbar.org/oklahoma-city-chapter/>

Evans

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termination claim asserting supplemental jurisdiction. The district court granted the defendant's motion for summary judgment as to the federal-law claim, but declined to exercise jurisdiction over the state-law claims, dismissing them without prejudice.

The plaintiff reasserted his state-law claim in state court. However, the defendant removed the case on the basis of diversity jurisdiction. As it turns out, the parties were of diverse citizenship, providing a separate and independent basis for federal jurisdiction. The defendant successfully moved to dismiss the claim under claim preclusion because the plaintiff could have—but did not—pursue his state-law claim via diversity jurisdiction.

The Tenth Circuit affirmed, citing the foundational principle of claim preclusion that “a party who once has had a chance to litigate a claim before an appropriate tribunal usually ought not have another chance to do so.” In short, because the state-law claim arose from the same operative facts as the federal-law claim, and the plaintiff could have asserted that state-law claim through diversity jurisdiction, his failure to do so

precluded his attempt to re-litigate the state-law claim in a second suit. In other words, the plaintiff was not entitled to a second bite at the apple.

The opinion, though, provides guidance on what the plaintiff could have done differently to avoid this result, aside from simply asserting diversity jurisdiction in his complaint. The Court noted that he could have either appealed the dismissal of his state law claim following summary judgment or moved for reconsideration and asserted diversity jurisdiction. But because the plaintiff failed to pursue these alternative remedies, claim preclusion foreclosed the re-litigation of his state-law claim.

Waetzig v. Halliburton Energy Servs., Inc., 145 F.4th 1279 (10th Cir. 2025) examined the contours of relief from judgment under Federal Rule of Civil Procedure 60(b) in an uncommon procedural posture.

The plaintiff in *Waetzig* sued his employer for age discrimination. After learning that his employment contract mandated arbitration, the plaintiff voluntarily dismissed his suit. He later sought to revive his claim to challenge the arbitration proceedings. The district court reopened the case under Rule 60(b). The defendant appealed and the Tenth Circuit reversed, holding that Rule 60(b) did not

apply because a voluntary dismissal without prejudice is not a final proceeding. The Supreme Court then reversed the Tenth Circuit's decision, holding that a voluntary dismissal is a “final proceeding” for purposes of Rule 60(b), and remanded to determine whether the district court erred in granting relief under Rule 60(b).

On remand, the Tenth Circuit held that the district court erred in reopening the case under Rule 60(b). First, the Court held that Rule 60(b)(1) was inapplicable because the plaintiff sought to reopen the case 17 months after it was closed, exceeding Rule 60(c)(1)'s one-year limitation.

The Court also reaffirmed that a change in law, without more, is insufficient to constitute an extraordinary circumstance under Rule 60(b)(6).

Like in *Markley*, the Court provided practitioners with guidance on how to avoid the same fate, noting that the plaintiff could have moved to abate the action rather than pursuing voluntary dismissal, and that by doing so, he could have avoided application of Rule 60(b).

I'm sure this year will bring many more interesting cases, and I look forward to seeing you at the 2026 Tenth Circuit Year in Review!



From the desk of the Chapter President

Dear Members,

As we move into the summer season, I am pleased to share several exciting updates regarding the Oklahoma City Chapter's programming, including the 2026 Judicial Reception and Fireside Chat.

The 2026 Judicial Reception and Fireside Chat brought together members of the bench and bar for an engaging and dynamic discussion with Judge David L. Russell, moderated by Judge Scott L. Palk. It was an opportunity to gain perspective and exchange ideas to further shape and strengthen the relationships that define the OKC Chapter. We could not be more thankful to Judge Russell for generously giving his time and sharing impactful, thoughtful stories from his more than four decades on the federal bench.

We have continued to expand our programming with a focus on time and relevant CLEs impacting the federal practitioner landscape. Recent and upcoming sessions are designed to foster thoughtful dialogue, provide substantive insights, and create space for connection among practitioners at all stages of their careers. I encourage each of you to take advantage of these offerings and remain engaged. ***See Page 5 for a list of upcoming CLEs and events.***

As always, thank you for your continued involvement and support of the OKC Chapter. Our Chapter's success is a direct reflection of the commitment and enthusiasm of our members. I look forward to seeing many of you at our upcoming events and CLEs.

Emma J. Payne is an attorney at Fuller, Tubb, Bickford, Warmington, and Panach, PLLC, in Oklahoma City, and the 2025–26 president of the FBA's Oklahoma City Chapter.



The 2026 Judicial Reception and Fireside Chat, held April 7, brought together members of the bench and bar for an engaging discussion between Judges David L. Russell and Scott L. Palk (MIDDLE PHOTO).

PHOTOS COURTESY OF JAKE KRATTIGER



AP Government students from Southmoore High School recently visited the William J. Holloway Courthouse and participated in a mock trial, serving as jurors, attorneys, and clerks.

PHOTO COURTESY OF JENNIFER BLEVINS

An eye-opening trip to the courthouse

BY ELI WORTMAN

My AP Government class from Southmoore High School recently participated in the Civil Discourse and Difficult Decisions program through the Western District Court of Oklahoma. Getting to spend all day in the U.S. Bankruptcy Court, the site of the infamous Machine Gun Kelly trial, was a great break from school, and all the staff were very nice.

Our class was divided into different roles (jury, attorneys, and judge's assistants), and we all learned a bit about how court works through a mock trial about a school walkout over a change in dress code policy. I worked to defend the students' side with a few of my peers.

Two attorneys showed us how to create an argument and taught us how to advocate for what we believe in. We went over Supreme Court precedent, "common sense" logic, the First Amendment, court etiquette, and delivered an oral argument defending

our side in front of the whole class.

I think this experience really opened all of our eyes to how the law functions and how our court systems work. Working with real lawyers and learning real strategies was super cool, and getting to argue for something in front of the class was a thrill I will not forget. The jury came to a unanimous verdict that the protesting students deserved to get suspended, but they also unanimously ruled (in favor of my side) that the school policy, which sparked the walkout, was unconstitutional. At the end of the case, we all got cookies and gavel-shaped pencils.

Eli Wortman is a senior at Southmoore High School. After graduation, he plans to attend the University of Oklahoma, where he will major in journalism and minor in political science.

LEADERSHIP SUMMIT AND CAPITOL HILL DAY



ABOVE: Judge Suzanne Mitchell, left, participates in a panel during the FBA’s annual Leadership Summit, held March 27 and 28 in Arlington, Va. The Summit, held in conjunction with Capitol Hill Day, consists of sessions, workshops, and networking opportunities for FBA leaders to learn and grow.

BELOW: Chapter officers met with members of Congress, including Rep. Stephanie Bice, on March 26 during the FBA’S Capitol Hill Day. The annual event is an opportunity for FBA representatives and members of Congress to discuss legislative issues impacting the federal courts.

PHOTOS COURTESY OF EMMA PAYNE



Upcoming events

- **April 28:** *10th Circuit Immigration & Habeas CLE*
 - **Time:** 11:30 a.m.-1:30 p.m.
 - **CLE:** 1.5 Oklahoma credits
 - Online presentation, covering immigration habeas topics.
- **May 2026:** *Wisdom and War Stories CLE with George Corby and Drew Neville*
- **June 2026:** *Paralegal Seminar*
- **July 2026:** *New Attorney Admissions Ceremony*

FBA members will receive more details via email.

Week-long HS summer program coming up

FBA-OKC and the Oklahoma City National Memorial and Museum are teaming up for a week-long program geared toward high schoolers interested in legal careers. Participants will meet with judges, attorneys, U.S. Marshals, and probation officers; participate in a simulated mediation; and more. For more information and to apply, visit <https://tinyurl.com/fbaokc> or use the QR code below.

