

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

DR. RACHEL TUDOR,)	
)	
Plaintiff,)	
)	
v.)	Case No. 5:15-CV-00324-C
)	
SOUTHEASTERN OKLAHOMA)	
STATE UNIVERSITY,)	
)	
and)	
)	
THE REGIONAL UNIVERSITY)	
SYSTEM OF OKLAHOMA,)	
)	
Defendants.)	

PLAINTIFF’S MOTION TO ADMIT TESTIMONY OF HONORABLE JUDGE RICHARD OGDEN BY DEPOSITION PURSUANT TO FRCP RULE 32(a)(4)(D) AND (E) DUE TO INABILITY TO PROCURE TESTIMONY DESPITE SUBPOENA AND EXCEPTIONAL CIRCUMSTANCES

NOW COMES Plaintiff, Rachel Tudor (Tudor), by and through undersigned counsel, and moves this Court to introduce the deposition of Honorable Judge Richard Ogden at the trial of this matter and shows as follows:

- 1) The oral deposition of Honorable Judge Richard Ogden was taken on August 26, 2016.
- 2) The testimony of Honorable Judge Richard Ogden, a former Regent of the Regional University System of Oklahoma Board (“RUSO”), contained in the deposition is significantly relevant and admissible since it bears on several issues in this cause, including, but not limited to, Defendants’ decisions concerning treatment of Tudor after she underwent a transition from male to female at Southeastern

Oklahoma State University (“SEOSU”) and how such policies were implemented toward Plaintiff. More specifically, Judge Ogden’s testimony is unavailable from other witnesses as he has personal knowledge concerning Plaintiff’s claims and direct evidence as claims pertain to RUSO and SEOSU.

3) FRCP Rules 32(a)(4)(D) and 32(a)(4)(E) which provide, in relevant part, that a “party may use for any purpose the deposition of a witness...if the court finds...that the witness cannot attend or testify because of the party offering the deposition could not procure the witness's attendance by subpoena; or that exceptional circumstances make it desirable—in the interest of justice and with due regard to the importance of live testimony in open court—to permit the deposition to be used.”

4) In the late hours of November 14, 2017, opposing counsel advised co-counsel that the *only way* to have Judge Ogden’s in-person appearance would be by order of this Honorable Court given his busy court schedule and in that he is also having to cover for other judges this week, too. (emphasis added).

5) Plaintiff is concerned that Defendants’ proposal for having Judge Ogden testify will only create unnecessary inconvenience and tension. Most importantly, it threatens judicial economy to two jurisdictions, especially this Honorable Court’s, and compromises Plaintiff’s due process right to a fair and just trial.

6) The specific designations of deposition testimony sought for admission are as follow:

Judge Richard Ogden	6:13-21	
	9:7-11:24	

	12:15-17:9	
	22:2-24:1 and 38:13-42:4	
	98:4-108:7	
	108:9-113:4 and 113:24-10	
	116:12-119:6 and 121:5-126:16	
	127:9-129:20	
	131:1-134:9	
	80:5-84:9; 56:13-59:25; and 65:5-69:2	

Dated: November 15, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2017, I filed the foregoing with the Clerk of the Court in person and transmittal of a Notice of Electronic Filing to the Following ECF registrants and in person if present in person in Court:

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