

Trust and Estate Attorney Jim Milton: Revisiting Pleading Standards?

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This legislative session, the Oklahoma State Senate approved a bill that would require much more particularity in pleadings in state court. Senate Bill 968 would amend Section 2008, which deals with the general rules of pleading. Currently, a petition must include a “short and plain statement of the claim.” This is known as “notice pleading.” If the allegations in the petition, taken as true, would support any theory of recovery, the pleading will be allowed to stand under this general rule.

Senate Bill 968 would require the petition to state the claim “with particularity,” with “all material facts known to the pleading party that support the claim.” If the pleading party makes an allegation based on “belief,” then the party must identify, with particularity, all facts supporting the belief.

To remove doubt, the bill would remove subparagraph E(1), which currently provides that “[e]ach averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings or motions are required.”

One might think that this bill is implementing the federal standard for pleading as announced by the U.S. Supreme Court in *Twombly* and *Iqbal*. In its 2007 decision in *Twombly*, the Supreme Court imposed pleading requirements beyond the “short and plain statement” standard found in Rule 8 of the Federal Rules of Civil Procedure. The *Twombly* Court held that “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” The *Iqbal* Court carried the ball further down this line.

But more importantly, a close examination of Senate Bill 968 reveals that its text goes a few steps further. Even under *Twombly* and *Iqbal*, the federal plaintiff need not include in her complaint “all material facts known.” And even though *Twombly* imposes constraints on allegations based on “information and belief,” the plaintiff in federal court is not necessarily required to plead “all facts supporting the belief.”

The above analysis gives rise to two fundamental questions that must be asked when Senate Bill 968 is considered. First, should Oklahoma move away from the liberal pleading standards that have prevailed for many years based upon notions of “open courthouse doors” that pervade our state’s constitutional framework? Second, do we want to move past the U.S. Supreme Court on pleading standards, requiring

immediate enumeration of all facts known?

Attorneys

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