

**IN THE DISTRICT COURT OF LOGAN COUNTY
STATE OF OKLAHOMA**

Oklahoma Department of Securities)	
<i>ex rel.</i> Irving L. Faight, Administrator, et al.,)	
)	
Plaintiff,)	Case No. CJ-2004-256
)	
vs.)	
)	
Marsha Schubert, an individual and d/b/a ,)	
Schubert and Associates, et al.,)	
)	
Defendants.)	

**MOTION IN LIMINE
TO STRIKE PLAINTIFF'S WITNESS TESTIMONY**

Movants, having filed a Motion to Vacate herein on July 27, 2005, submit this Motion in Limine to strike Plaintiff's proposed witness testimony at hearing and, in support hereof, states as follows:

Movants were recently advised by phone from the Oklahoma Department of Securities that Plaintiffs intend to offer witness testimony at the hearing scheduled for August 12, 2005.

In response, it is apparent from Movant's Motion to Vacate that its subject and concern is "purely legal" and does not call into question any question of fact. Therefore, any presentation of witness testimony is improper.

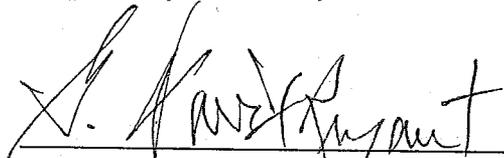
Undoubtedly, questions of law are to be determined by the court, not through testimony of witnesses. "Issues of law must be tried by the court, unless referred." Okla. Stat. Tit. 12, § 556 (1981); See also, *Pearson v. Hope Lumber Supply Company, Inc.*, 820 P.2d 443, 444 (Okla. 1991) ("Questions of law are to be determined by the court, not the jury"). The sole issue before this Court is whether a receiver can legally assert any right, title or interest over the assets, including claims, if any, of persons other than the party in receivership (i.e., Marsha Schubert). The receiver's standing in this regard is clearly a question of law, to be determined by the Court,

not witness testimony. *Motive Parts Warehouse v. Facet Enterprises*, 774 F.2d 380 (10th Cir. 1985), citing to, *John Lenore & Co. v. Olympia Brewing Co.*, 550 F.2d 495, 498 (9th Cir. 1977).

In *Roman v. Delgao Altieri*, the court stated, “it is black-letter law that ‘[i]t is not for witnesses to instruct the jury as to applicable principles of law, but for the judge’.” *United States v. Newman*, 49 F.3d 1, 7 (1st Cir. 1995). . . [Q]uestions of law are “not to be decided by the trier of fact;” rather it is for the judge, not the lawyers or the witnesses . . . to decide any purely legal issue. 371 F.Supp.2d 7, 10 (D.Puerto Rico, 2005); See also, *Pearson, supra* at 444. **“Each courtroom comes equipped with a ‘legal expert,’ called a judge, and it is his or her province alone to instruct the jury on the relevant legal standards”.** *Burkhart v. Washington Metro. Area Trans. Auth.*, 112 F. 3d 1207, 1213 (D.C.Cir. 1997).

WHEREFORE, Movants respectfully request that the Court enter an Order restraining the Plaintiff from presenting witness testimony or evidence as to the purely legal issue before the Court.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that on the 8TH day of August, 2005, true and correct copies of the above and foregoing were mailed by first class mail, postage prepaid, to the following:

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A handwritten signature in black ink, appearing to read "Jack Mattingly", is written over a horizontal line.