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An *Erie* Development in Professional Liability Litigation? Supreme Court Ruling Limits Reach of State Law Requirements in Federal Court

***Berk v. Choy*, 607 U.S. 187 (Jan. 20, 2026)**

Affidavit of merit requirements have long served a gatekeeping function in professional liability litigation by requiring that plaintiffs submit expert attestations in the early stages of the case or else risk dismissal. In *Berk v. Choy* (decided Jan. 20, 2026), the U.S. Supreme Court addressed an issue that had divided appellate courts across the country regarding the interplay between affidavit of merit requirements under state law and the Federal Rules of Civil Procedure ("Federal Rules"). The Supreme Court held unanimously that Delaware's affidavit of merit statute does not apply in federal court because it conflicts with, and must give way to, the Federal Rules. This decision resolves a sharp circuit split and has immediate implications for professional liability litigation nationwide. It may also signal a broader trend, with broader implications, as to the limits on enforcing state law requirements in federal court.

Background

More than half of U.S. states have enacted laws imposing affidavit of merit requirements in professional malpractice actions. These laws are designed to weed out meritless claims by requiring that a plaintiff submit early in the litigation process an affidavit from a qualified professional attesting that the defendant's conduct fell below the applicable standard of care. In some states, including Delaware, the affidavit of merit requirement is limited to medical malpractice actions. In other states, including New Jersey, the requirement extends to claims against a broader range of licensed professionals, from physicians and dentists to lawyers and architects.

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In *Berk*, the plaintiff was a Florida resident who was injured while visiting Delaware. He sued his physician and the hospital at which he was treated for medical malpractice in federal district court in Delaware, invoking diversity jurisdiction. Under Delaware law, a plaintiff may not sue for medical malpractice unless an affidavit of merit, signed by a medical professional, accompanies the complaint.

The plaintiff in *Berk* did not submit an affidavit of merit with his complaint, so the defendants moved to dismiss, arguing that his noncompliance with Delaware's affidavit requirement compelled dismissal. The district court agreed. On appeal, the U.S. Court of Appeals for the Third Circuit affirmed the dismissal of the complaint, holding that Delaware's affidavit requirement applies in diversity actions in federal court. The Third Circuit concluded that the Federal Rules are silent as to whether an affidavit must accompany the complaint. Applying *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938) and its progeny, the Third Circuit concluded that Delaware's affidavit of merit statute is substantive and therefore applies.

Prior to *Berk*, the federal courts of appeal were sharply divided on the subject. The Third and Tenth Circuits held that state affidavit of merit requirements are substantive and apply in federal diversity actions. But six other circuits — the Second, Fourth, Fifth, Sixth, Seventh, and Ninth Circuits — held that state affidavit of merit and similar statutes could not be enforced in federal court because they conflict with the Federal Rules.

Supreme Court's *Berk* Opinion

The U.S. Supreme Court reversed the Third Circuit, holding that the Federal Rules directly conflict with Delaware's affidavit requirement and therefore displace it. The court, in an opinion authored by Justice Barrett, concluded that Rule 8 prescribes what information a plaintiff must present about the merits of a claim at the outset of the case: "a short and plain statement of the claim showing that [the plaintiff] is entitled to relief." By requiring this and nothing more, Rule 8 — as "reinforce[d]" by Rule 12 — establishes "implicitly, but with unmistakable clarity" that "evidence of the claim is *not* required." Thus, the Supreme Court reasoned, there was no need to

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wade into "*Erie*'s murky waters" and evaluate whether Delaware's affidavit requirement is substantive or procedural because the state law conflicts with Rule 8, is displaced by it, and cannot be applied in federal court.

Justice Jackson concurred in the judgment but wrote separately to express her view that the Delaware statute conflicts with Federal Rules 3 and 12, not Rule 8.

Key Takeaways

- **Rethinking the forum:** When diversity jurisdiction exists, defendants in professional liability matters initiated in state court frequently remove the case to federal court. Following *Berk*, there may be reason for hesitation. In those states that have affidavit of merit statutes, there is now an incentive for defendants to remain in state court so that they can avail themselves of the screening mechanism the statutes provide. At the same time, *Berk* may result in more professional liability litigation being brought in federal courts than before.
- **Local rule changes:** Federal courts located in some of the states in which affidavit of merit statutes exist have adopted local rules tailored to fulfill the requirements of those statutes. This includes the District of New Jersey, where Local Civil Rule 16.1 contemplates that initial scheduling orders in actions involving malpractice or professional negligence claims identify, among other things, whether and when an affidavit of merit must be served and, if already served, whether the defendant has any objections to the adequacy of the affidavit. On June 12, 2026, the District of New Jersey issued a Notice to the Bar with a proposed amendment to Local Civil Rule 16.1 that would delete that language from the Rule — presumably, in direct response to *Berk*.
- **A broader impact than might appear at first glance:** Although *Berk* arose in the medical malpractice context and addressed Delaware's affidavit requirement, the Supreme Court's holding will likely have a much more sweeping impact. Most obviously, it casts doubt on the enforceability in federal court of similar affidavit of merit requirements imposed under

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other states' laws — regardless of the type of claims to which those requirements apply. The decision is also likely to result in more challenges in diversity actions to the applicability of other state laws that impose preconditions to suit, evidentiary showings at the outset of litigation, or other procedural requirements that do not appear in the Federal Rules.

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